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November 18, 2026
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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

— CONTROL —

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

CN'S COMMENTS ON AMENDED APPLICATION AND REQUEST FOR CONDITIONS

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Dated: November 18, 2026

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INTRODUCTION AND EXECUTIVE SUMMARY

Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries (collectively, "CN"),[1] respectfully submits these comments on the Amended Application of Union Pacific Corporation and Union Pacific Railroad Company (collectively, "Union Pacific" or "UP") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "Norfolk Southern" or "NS," and together with Union Pacific, "Applicants") seeking authority for Union Pacific to acquire control of Norfolk Southern (the "Proposed Transaction").[2] Concurrently with these comments, CN is filing four responsive applications requesting that the Board condition any approval of the Proposed Transaction on the remedial proposals ("proposed conditions") described herein.[3]

CN's proposed conditions are necessary to prevent adverse competitive effects from the Proposed Transaction. Applicants present the Proposed Transaction as a predominantly "end-to-end" combination of a western and an eastern railroad that raises no meaningful horizontal competitive concerns. Their expert, Dr. Elizabeth M. Bailey, similarly asserts that "the proposed merger of the Applicants' railroad networks is a predominantly vertical merger with little horizontal overlap" and that the "limited potential horizontal anticompetitive effects" are outweighed by the transaction's benefits.[4] The record, and Applicants' own statements, however, tell a different story.

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[1] Bessemer and Lake Erie Railroad Company, Cedar River Railroad Company, Chicago, Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, Iowa Northern Railway Company, The Pittsburgh & Conneaut Dock Company, and Wisconsin Central Ltd.

[2] UP-39/NS-37, FD 36873 (filed Apr. 30, 2026) [hereinafter the "Amended Application" or "Am. Appl."].

[3] *See* FD 36873 (Sub-Nos. 2–10, 34); *see also* CN-30, FD 36873 (filed Sept. 9, 2026).

[4] Am. Appl. Vol. 2, Verified Statement of Dr. Elizabeth M. Bailey at ¶¶ 10, 16 [hereinafter "Bailey V.S."].

UP and NS currently operate parallel, competing routes across Missouri between Kansas City and St. Louis / East St. Louis, two of the most important gateways in the watershed. Applicants also compete, directly and as two of only two or three Class I options, to access customer facilities in Iowa near Des Moines and Avon and throughout Illinois. Combining Applicants' networks, without conditions, would eliminate that head-to-head competition, harming rail customers by giving Applicants the means and opportunity to increase rates and reducing their incentives to invest in service improvements. Applicants' presence and overlapping networks at these key gateways also enable them to serve as critical interline partners. The Proposed Transaction would alter the current incentives of UP and NS and provide them with the means, opportunity, and incentive to foreclose competitors, including through partial foreclosure tactics, also ultimately harming shippers by reducing their competitive options, absent adequate conditions.

On July 22, 2026, CN entered into a binding Memorandum of Understanding with Union Pacific (the "Settlement MOU").[5] Under the Settlement MOU, Union Pacific agreed to: (i) grant CN access to Kansas City and expanded access to St. Louis / East St. Louis where UP and NS have parallel overlapping lines; (ii) request that the Board designate CN as the remedy carrier for affected 2-to-1 and 3-to-2 customer facilities; and (iii) request that the Board impose the definitive agreement implementing the Settlement MOU as a condition of the Proposed Transaction.[6] As of the date of these comments, CN continues to cooperate with Union Pacific to finalize the numerous, complex definitive agreements required to give effect to the Settlement MOU.

CN's proposed conditions would preserve competition for the impacted shippers in the

[5] *See* UP-80/NS-78, FD 36873, at 203–11 (filed July 27, 2026) [hereinafter the "Second Supplemental Submission"].
[6] *See id.*; CN-30 at 1–3.

watershed states and beyond. Applicants acknowledged in their Second Supplemental Submission the 2-to-1 and 3-to-2 customer facilities and committed to remedying those facilities by providing access to another Class I, in most cases, CN.[7] Additionally, the Settlement MOU, Applicants' CEOs' public remarks, and the record of this proceeding reflect that conditions on the Proposed Transaction are necessary to remedy Applicants' overlap between Kansas City and St. Louis / East St. Louis and to preserve competition and serve the public interest. Union Pacific's Chief Executive Officer Jim Vena stated that the Settlement MOU with CN is necessary because Applicants "*knew [they] had some concentration happening because of the additional line that [Union Pacific was] going to take over from Norfolk Southern between St. Louis and Kansas City*," and that "*[r]ight from the very start, we knew we needed to fix that.*"[8] Norfolk Southern's Chief Executive Officer, Mark George, likewise acknowledged that the agreement with CN "*resolves Kansas City for us.*"[9] The discovery record similarly reflects Applicants' understanding that their networks overlap between Kansas City and St. Louis, and that the agreement with CN resolves this overlap by granting a new Class I access to Kansas City and this corridor.[10]

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[7] *See* Second Supplemental Submission at 56–66.

[8] Exhibit 23, Remarks of Jim Vena, Virtual Fireside Chat Hosted by Bernstein Research at 15 (Sept. 1, 2026); *see also* Exhibit 24, Jim Vena, Union Pacific Q2 2026 Earnings Call at 9 (July 23, 2026) (stating that CN access to Kansas City prevents Union Pacific from being "too concentrated" post-merger and "takes care of" the part "of the company where [UP/NS] have a significant overlap").

[9] Exhibit 25, David Lassen, *CEOs of UP, NS, Say Latest Additions to Merger Application Further Enhance Competitive Aspects*, Trains Pro at 3 (July 28, 2026).

[10] *See* Bailey V.S. at ¶¶ 34–39; Exhibit 10, Transcript of Jeffrey Pincock Deposition at 372:15–373:2 (Oct. 8, 2026) [hereinafter "Pincock Dep. Tr."] {{

}}; Pincock Dep. Tr. at 373:16–19 {{

Notwithstanding this recognition, Applicants' competitive analysis fails to grapple with this overlap and resulting competitive impacts. Instead, Dr. Bailey applies unsupported assumptions in her competitive analysis that result in her categorically excluding the majority of traffic to and from Kansas City and a substantial share of traffic to and from St. Louis. Dr. Bailey's competitive analysis also ignores Applicants' significant post-merger market shares, relies on theoretical routing options between Kansas City and St. Louis without assessing competitiveness, and assumes without factual bases that truck and barge are adequate substitutes for customers without considering key factors that matter to shippers, like price, service, or distance.[11] Rather than confront these commercial and competitive realities, Dr. Bailey categorically excludes large swaths of rail traffic from further inquiry, dismissing any potential for competitive harm and failing to properly analyze rail competition. When these exclusions and assumptions are corrected, the analysis confirms what Applicants' executives have publicly acknowledged;[12] absent conditions, the Proposed Transaction is likely to harm shippers in Kansas City and St. Louis / East St. Louis, in the Des Moines area, and at numerous 2-to-1 and 3-to-2 customer facilities in Illinois.

In evaluating whether a major transaction is "consistent with the public interest," the Board must consider, among other factors, "the effect on the public interest of including, or failing to

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}}; Pincock Dep. Tr. at 382:24–383:2 {{

}}; Exhibit 11, Transcript of Todd Rynaski Deposition at 205:22–206:19 (Sept. 9, 2026) [hereinafter "Rynaski Dep. Tr."] {{

}}; Exhibit 12, Transcript of Dr. Elizabeth Bailey Deposition at 82:17–83:3 (Oct. 29, 2026) [hereinafter "Bailey Dep. Tr."] {{

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[11] *See infra* Part I.B.

[12] *See supra* notes 8, 9.

include, other rail carriers in the area involved in the proposed transaction" and "whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system."[13] To address competitive concerns, or where otherwise needed for the public interest, the Board has statutory authority to condition its approval of a transaction.[14] The Board's authority to impose such conditions is broad and can include "the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities."[15] As shown below, CN's proposed conditions readily satisfy that standard, as they would allow CN to provide cost-competitive and efficient service to preserve competition for impacted shippers.

CN has thoughtfully and carefully crafted its proposed conditions to ensure that competition is fully preserved for customers related to CN's proposed conditions, including by requesting the necessary operational and commercial access to customers that would allow CN to compete aggressively for every customer against the merged UP/NS following the Proposed Transaction. Accordingly, CN requests that the Board condition any approval of the Proposed Transaction on:

- ***Kansas City Access*:** divestiture of the Kansas City Line[16] to CN[17]; the lease of Neff Yard, including the Neff intermodal terminal, in whole or in part, with an option to

[13] 49 U.S.C. § 11324(b)(2), (5).
[14] 49 U.S.C. § 11324(c).
[15] 49 U.S.C. § 11324(c); *see also Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, Decision No. 44, 1 S.T.B. 233, 419 (1996) [hereinafter "*UP/SP*"] (granting extensive BNSF trackage rights to remedy competitive harm); *Grainbelt Corp. v. STB*, 109 F.3d 794, 796 (D.C. Cir. 1997) (explaining the Board's authority to impose conditions to ameliorate the anti-competitive impacts of rail mergers).
[16] The "Kansas City Line" is defined as detailed in CN's responsive application. *See* STB Docket No. FD 36873 (Sub-No. 2).
[17] As detailed herein, CN believes divestiture is the most effective remedy to preserve competition under these circumstances. *See* STB Docket No. FD 36873 (Sub-No. 2). However, in the alternative (i.e., if the Board declines to order divestiture), CN requests (1) trackage rights, including access to the former Sarpy Yard property in St. Louis, (and overhead haulage rights);

purchase said yard (including the terminal)[18]; terminal trackage rights over approximately 7.5 miles of BNSF Railway Company ("BNSF") track between Eton and Congo, Missouri[19] near Kansas City; trackage rights between Lydia Avenue and Broadway Boulevard in Kansas City[20]; sale of NS's KCT ownership interest to CN, giving CN access to Kansas City Terminal Railway Company ("KCT") for interchange and KCT customers; and access to Kansas City customers open to reciprocal switching under Applicants' tariffs;[21]

- ***Expanded St. Louis / East St. Louis Access*:** overhead trackage rights for CN over the Tuscola Line[22]; overhead trackage rights over the lines of UP's wholly owned subsidiary, The Alton & Southern Railway Company ("A&S"), between Lenox in Mitchell, Illinois and Valley Junction in East St. Louis, Illinois[23]; and access to the former Sarpy Yard property for handling CN's intermodal and automotive traffic in St. Louis, whether via (1) divestiture of the Kansas City Line, *or* (2) trackage rights and a Board order requiring sale of the former Sarpy Yard property to CN;[24]
- ***Des Moines Access*:** trackage rights or, in the alternative, haulage over UP's line between Manly / Iowa Falls, Iowa and Des Moines / Avon, Iowa; trackage rights to serve 2-to-1 and 3-to-2 customer facilities requiring unit train service; and switching access to the 2-to-1 and 3-to-2 customer facilities in and around Des Moines;[25]
- ***Illinois 2-to-1 and 3-to-2 Access*:** (1) trackage rights to reach the Foresight Energy facilities at Hillsboro and Carlinville, Illinois (or haulage in the alternative)[26], and (2) haulage or switching access to the remaining 2-to-1 and 3-to-2 customer facilities in

(2) local haulage rights over the Kansas City Line; and (3) a Board order requiring sale of the former Sarpy Yard property to CN. *See* STB Docket No. FD 36873 (Sub-No. 3).

[18] *See* STB Docket No. FD 36873 (Sub-No. 6).

[19] *See* STB Docket No. FD 36873 (Sub-No. 5).

[20] *See* STB Docket No. FD 36873 (Sub-No. 4).

[21] CN-30 at 3, 10–11.

[22] The "Tuscola Line" is defined as detailed in CN's responsive application. *See* STB Docket No. FD 36873 (Sub-No. 7).

[23] *See* STB Docket No. FD 36873 (Sub-No. 8).

[24] CN-30 at 2–3, 11. If the Board orders divestiture of the Kansas City Line to CN, CN would gain access to UP's former Sarpy Yard property and plans to invest in developing the yard to handle CN's automotive and intermodal traffic at that location in St. Louis. If the Board orders only trackage rights over the Kansas City Line, CN also requests access to the former Sarpy Yard property and a condition ordering the sale of the former Sarpy Yard property to CN.

[25] CN's requested trackage rights would extend from Manly to UP's Short Line Yard in Des Moines and, for unit train service, to a facility currently operated by ADM in Des Moines and a facility currently operated by Heartland Co-Op in Avon. *See* STB Docket No. FD 36873 (Sub-No. 10). For manifest service customers, CN requests a condition requiring reciprocal switching access from Short Line Yard to any 2-to-1 and 3-to-2 customer facilities in the Des Moines area. *See id.* at 16.

[26] *See* STB Docket No. FD 36873 (Sub-Nos. 9, 34).

Chicago, Bloomington, Mt. Vernon, Granite City, Momence, Federal/Alton, and Danville, Illinois;[27] and

- ***Robust and Enforceable Gateway Protections*:** gateway protections that are robust and enforceable in practice, so that the merged carrier cannot use its control of interchange, routing, or interline pricing to foreclose competitors and the customers that depend on competitive routing options.

Figure 1: CN's Proposed Conditions Summary

CN's Proposed Conditions Summary	
Kansas City Access	• Divestiture of the Kansas City Line to CN; o In the alternative (i.e., if the Board declines to order divestiture), trackage rights and local haulage rights on the Kansas City Line. • Lease or purchase of Neff Yard, including the Neff intermodal terminal; • Terminal trackage rights over ~7.5-miles of BNSF track near Kansas City; • Trackage rights between Lydia Avenue and Broadway Boulevard in Kansas City; • Sale of NS's KCT ownership interest to CN; and • Access to Kansas City customers open to UP or NS reciprocal switching.
Expanded St. Louis / East St. Louis Access	• Overhead trackage rights over the Tuscola Line; • Overhead trackage rights over A&S; and • Former Sarpy Yard property (part of the Kansas City Line).
Des Moines 2-to-1 and 3-to-2 Customer Access	• Trackage rights over UP's line between Manly, Iowa and Des Moines and Avon, Iowa to access or serve 2-to-1 and 3-to-2 customer facilities in and around Des Moines, including direct access to two unit train customers; and • Reciprocal switching access to 2-to-1 and 3-to-2 customer facilities in the Des Moines area.
Illinois 2-to-1 and 3-to-2 Customer Access	• Trackage rights to reach the Foresight Energy facilities at Hillsboro and Carlinville, Illinois; and • Haulage or switching access to the remaining 2-to-1 and 3-to-2 customer facilities in Illinois.
Robust and Enforceable Gateway Protections	• Robust and enforceable open gateway protections.

Importantly, CN requests that the Board condition the Proposed Transaction on UP divesting the Kansas City Line to CN. Divestiture is the only remedy that would *fully* preserve competition for shippers in the Kansas City and St. Louis / East St. Louis areas, by placing another Class I carrier in these areas with full commercial and operational independence and free to

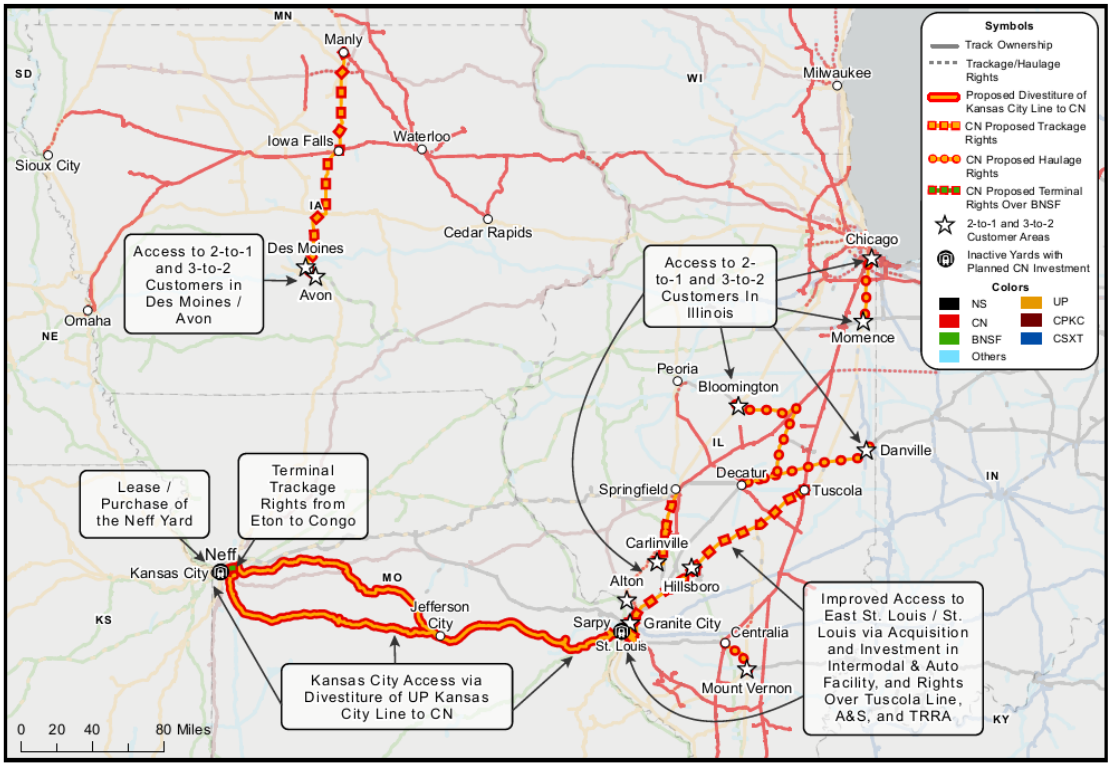
[27] CN-30 at 3 & n.8, 11–12.

compete for traffic that traverses this key corridor without risk of entanglements. Moreover, CN is the only carrier seeking a full divestiture of the Kansas City Line and is well positioned to robustly compete following the Proposed Transaction based on its adjacent geographic network, commodity expertise, strong financial positioning, and demonstrated prior commitment to investing in the Kansas City area. Other carriers have proposed alternative remedies to address Applicants' overlaps in Kansas City.[28] Proposed remedies that permit UP to retain any ownership interest in the Kansas City Line are insufficient to fully preserve competition. If the Board believes it is necessary to provide additional Class I carriers beyond CN access to Kansas City to preserve competition, CN is willing to jointly acquire the Kansas City Line with another Class I carrier, as long as CN obtains at least 50% ownership and no ownership stake remains with the merged UP/NS. Finally, following divestiture, CN plans to grant UP overhead trackage and local haulage rights that preserve UP's ability to access local customers on the Kansas City Line, to ensure no customers lose their existing competitive options.

CN's proposed conditions are tailored to resolve the Proposed Transaction's competitive harms and address the geographic areas and commodities most impacted. As demonstrated through these comments, accompanying verified statements, and CN's responsive applications, these conditions are necessary to preserve competition and protect the public interest. The conditions would give CN—a Class I carrier with an extensive existing Midwest network, deep expertise in the commodities most affected, and a demonstrated record of investment—the access and infrastructure required to provide cost-competitive and efficient service to affected customers ensuring that competition is fully preserved.

[28] *See* CSXT-25, FD 36873 (filed Sept. 9, 2026); *see also* CPKC-46, FD 36873 (filed Sept. 9, 2026).

Figure 2: CN's Network With CN's Proposed Conditions



Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database.

Further, in the Settlement MOU, CN agreed to cooperate with Applicants to resolve control issues related to important switching and terminal railroads, including the KCT, Peoria & Pekin Union Railway ("PPU"), and the Terminal Railroad Association of St. Louis ("TRRA"). CN agreed to acquire shares in the KCT and the PPU to prevent UP from exercising control.[29] Because CN and Union Pacific would each own 50% of the PPU if the Proposed Transaction is approved and CN acquires the shares detailed in the Settlement MOU, neither CN nor Union Pacific would control the PPU. Accordingly, CN respectfully submits that no control application is required for CN to acquire these shares. CN also agreed to cooperate with Union Pacific's efforts to resolve

[29] *See* Second Supplemental Submission at 206 ("CN shall acquire the Kansas City Terminal Railway Company ('KCT') ownership interest currently held by Norfolk Southern (8.33%)"); *see also id.* at 207 ("Union Pacific shall divest a portion of P&PU ownership interest (3.14%) to CN for nominal consideration[.]").

the question of control of the TRRA, as provided for and subject to the terms set out in the Settlement MOU.[30] Applicants have proposed five options to avoid UP/NS acquiring or exercising control over the TRRA, one of which provides that UP would transfer the relevant shares back to the TRRA ("Option B").[31] This option is preferred and most consistent with TRRA governance documents. Finally, Applicants have also proposed that they divest a portion of their interest in TTX Company ("TTX") for fair market value so that UP would not control TTX if the Proposed Transaction is approved, but Applicants' proposal is unworkable given that the cost of the shares is prohibitively high. Resolving Applicants' TTX control issue is not CN's cost to bear, and CN and other TTX owners should not be held financially responsible. The Board should require that the Applicants reduce their shares in TTX to no more than 49% without imposing the cost of such shares on non-Applicants.

CONDITIONS ARE NECESSARY TO ENSURE THE PUBLIC INTEREST IS PROTECTED IN SEVERAL GEOGRAPHIES

Absent conditions, the Proposed Transaction would reduce rail competition resulting in competitive impacts in several distinct geographic areas in the Midwest: (A) the Kansas City and St. Louis / East St. Louis gateways and the corridor between them, where Applicants operate parallel lines; (B) Des Moines, Iowa (and adjacent Avon, Iowa), where Applicants are two of only three Class I carriers in the area and at least fifteen customer facilities would go from either two to one or three to two Class I options; and (C) numerous Illinois customer facilities where Applicants are the only two, or two of only three, Class I options. Applicants have already

[30] *See id.* at 207.

[31] *See id.* at 207 ("UP has offered five options in UP/NS's response to Requests TRRA-1 and TRRA-2 in STB Decision No. 21 (Docket No. FD 36873) (the "Existing TRRA Options") that UP believes, if implemented, would avoid UP/NS acquiring or exercising control over the TRRA (the "TRRA Resolution") as a result of the transaction contemplated in Surface Transportation Board (STB) Proceeding Docket No. FD 36873 (the "Proposed Transaction")").

acknowledged the need for a remedy in each and agreed to grant CN access to these customers and geographies. Their competitive analysis, however, materially understates the scope of the harm—particularly in Kansas City and St. Louis / East St. Louis—and the implementation that Applicants propose for certain of their access commitments in their Second Supplemental Submission[32] is not premised on operational or commercial feasibility or on preserving a cost-efficient competitive option. Applicants' competitive analysis and proposals therefore are not invariably a reliable basis for determining the appropriate scope of the conditions required in these geographies. CN's proposed conditions are tailored to be commercially and operationally feasible and to enable CN to successfully preserve competition.

I. CN'S PROPOSED CONDITIONS WOULD PRESERVE COMPETITION IN KANSAS CITY AND ST. LOUIS / EAST ST. LOUIS

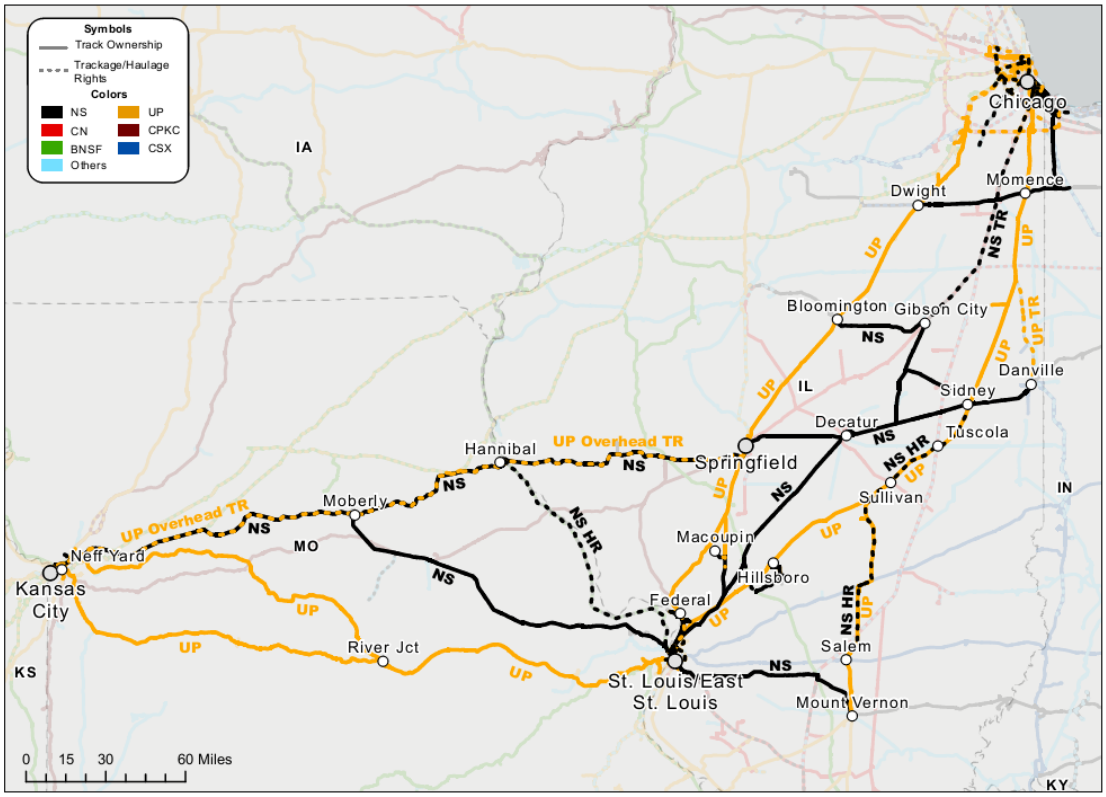
A. Absent Conditions, Applicants' Proposed Transaction Would Harm Competition in Kansas City and St. Louis.

i. Applicants' Networks Overlap in Kansas City and St. Louis / East St. Louis With High Post-Merger Concentration.

Kansas City and St. Louis / East St. Louis are principal gateways at which Union Pacific and Norfolk Southern serve customers and interchange traffic. Additionally, Union Pacific and Norfolk Southern each operate single-line service between them on parallel lines.[33] As Figure 3 illustrates, the Applicants' networks run four parallel lines across Missouri, including three between St. Louis and Kansas City. Shippers utilizing this critical corridor would lose a competitive Class I option to serve this traffic as a result of the Proposed Transaction, absent conditions.[34]

[32] *See id.* at 58–62.
[33] *See* Bailey V.S. at ¶¶ 38, 128(a), 143.
[34] *See* CN-30 at 5; *see also* Figure 3.

Figure 3: Pre-Merger UP and NS Overlap Throughout Illinois and Missouri



Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database.

Given the Applicants' overlap in this key corridor, it is no surprise that the St. Louis / East St. Louis and Kansas City areas would experience significant consolidation and adverse competitive effects if the Proposed Transaction is approved without conditions. Under well-established antitrust principles, absent remedies, the Proposed Transaction is presumptively unlawful for traffic originating and terminating in the Kansas City and St. Louis BEAs.[35] Although the Board is not bound by the antitrust laws, it must consider the policies embodied in such laws when analyzing whether a merger has the potential to reduce competition either directly or

[35] *See* U.S. Dep't of Justice & Fed. Trade Comm'n, *Merger Guidelines* § 2.1 (Dec. 18, 2023) (establishing that a market share greater than 30% for a merged firm, together with an increase in HHI greater than 100, results in a presumptively unlawful merger).

indirectly.[36] Additionally, the "antitrust factors have a special place in [the agency's] analysis."[37] Applicants' experts, too, have recognized the relevance of established antitrust principles reflected in the 2023 Merger Guidelines and relied on them.[38]

If approved, post-merger, Applicants' combined rail traffic market shares in the Kansas City, Missouri BEA would be significant: Applicants would have {{ }} of originating traffic and {{ }} of terminating traffic.[39] A merger that produces a highly concentrated market and increases the HHI by more than 100 points (the "HHI Delta") is presumed likely to substantially lessen competition.[40] The combined UP/NS's post-merger market shares and HHI Deltas for Kansas City far exceed the presumption standard.[41] Today, four Class I railroads serve Kansas City; after the Proposed Transaction, only three would remain.[42] CN, which does not currently reach Kansas City, is not among them.

The St. Louis BEA would experience similar results. Post-merger, Applicants' combined rail share in the St. Louis, Missouri BEA would be {{ }} of originating traffic and {{ }}

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[36] *See* Decision No. 9, FD 36873, slip op. at 6 n.6 (STB served Jan. 16, 2026) (citing 49 U.S.C. § 11321, 49 C.F.R. § 1180.1(c)(2)).
[37] *Burlington N. Inc.—Control & Merger—St. Louis-S.F. Ry. Co.*, 360 I.C.C. 788, 933 (1980).
[38] *See* Bailey V.S. at ¶¶ 79–84 (explaining that "to identify situations in which a merger might lessen competition, the Agencies consider the pro forma change in market shares at the time that the merger is consummated as an initial indicator"); *see also* Bailey V.S. at App'x B4 (listing Merger Guidelines as materials relied upon); Bailey Dep. Tr. at 84:3–85:24 {{

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[39] Bailey V.S. Workpaper "Appendix D1, D2"; Exhibit 1, Verified Statement of Dr. Mary Coleman at ¶ 41 [hereinafter "Coleman V.S."]. Pre-merger, Union Pacific accounts for {{ }} of originating and {{ }} of terminating traffic, and Norfolk Southern for {{ }} of originating and {{ }} of terminating traffic.
[40] *See* U.S. Dep't of Justice & Fed. Trade Comm'n, *Merger Guidelines* § 2.1 (Dec. 18, 2023).
[41] The post-merger HHI for Kansas City originating traffic would be {{ }}, an increase of {{ }}; for Kansas City terminating traffic it would be {{ }}, an increase of {{ }}. *See* Coleman V.S. Workpaper "Appendix D1, D2_modified.xlsx."
[42] *See* Bailey V.S. at ¶ 38.

of terminating traffic.[43] The combined UP/NS's post-merger market shares and HHI Deltas in St. Louis also exceed the thresholds at which the antitrust agencies presume harm.[44]

Although Dr. Bailey's competitive analysis generally analyzes competition at the geographic level of BEAs, many customers may also consider competitive alternatives at the SPLC level.[45] Given their size, BEAs may be too large an area to accurately capture the competitive options available to customers, and analyzing competitive options at a SPLC level may better identify areas that may experience competitive harms from the Proposed Transaction without remedies.[46] As reflected in Dr. Coleman's Verified Statement, the Kansas City SPLC and numerous SPLCs throughout the St. Louis BEA would experience significant consolidation as a result of the Proposed Transaction.[47] St. Louis, MO and Kansas City, MO are the largest SPLC locations where Applicants, post-merger absent conditions, would handle more than 50% of originations or terminations. Applicants would have {{ }} market share of originations and {{ }} market share of terminations for the Kansas City SPLC and {{ }} market share of originations and {{ }} market share of terminations for the St. Louis SPLC.[48]

The Applicants' market shares in certain key commodity groups reflect even higher concentration levels. For automotive traffic, for example, post-merger Applicants would control {{ }} of originating and {{ }} of terminating motor vehicle parts traffic and {{ }} of

[43] Bailey V.S. Workpaper "Appendix D1, D2"; Coleman V.S. at ¶ 41. Pre-merger, Union Pacific accounts for {{ }} of originating and {{ }} of terminating traffic; Norfolk Southern accounts for {{ }} of originating and {{ }} of terminating traffic.
[44] Applicants' post-merger HHI in the St. Louis BEA would be {{ }} for originating traffic (an increase of {{ }}) and {{ }} for terminating traffic (an increase of {{ }}). *See* Coleman V.S. Workpaper "Appendix D1, D2_modified.xlsx."
[45] Coleman V.S. at ¶ 4. A SPLC is a Standard Point Location Code assigned to all stations registered by rail carriers.
[46] *See id.*
[47] *See id.* at ¶¶ 39–41, Figure 6, Figure 7.
[48] *See id.* at Figure 6, Figure 7.

originating and {{ }} of terminating motor vehicle traffic in the Kansas City BEA.[49] In St. Louis, post-merger Applicants would control {{ }} of originating and {{ }} of terminating motor vehicle traffic. Applicants would also control significant volumes of commodities that move as intermodal traffic, including for example, Freight All Kinds ("FAK") shipments, for which post-merger Applicants would control {{ }} of originating and {{ }} of terminating traffic in the Kansas City BEA and {{ }} of originating and {{ }} of terminating traffic in the St. Louis BEA.[50]

ii. The Union Pacific Settlement MOU Grants CN Access to Kansas City and Expanded Access to St. Louis / East St. Louis.

Applicants have acknowledged the overlap in their networks and the need to remedy it. As noted above, Union Pacific's CEO Jim Vena stated that the Settlement MOU "takes care of" the part "of the company where [Applicants] have a significant overlap," that without it Union Pacific would be "too concentrated," and that Applicants "knew [they] needed to fix that" "[r]ight from the very start."[51] Norfolk Southern's CEO Mark George agreed that the Settlement MOU "resolves Kansas City."[52] The Applicants' Merger Agreement itself further confirms that Applicants anticipated a divestiture remedy in this corridor. Divestiture of a line between Kansas City and St. Louis is one of the few concessions that Union Pacific can be, under the Merger

[49] Coleman V.S. at ¶ 136, Figure 21; *see* Coleman V.S. Workpaper "Appendix C.xlsx."
[50] Coleman V.S. at Figure 19, Figure 20.
[51] *See supra* note 8.
[52] *See supra* note 9.

Agreement, required to accept.[53] Deposition testimony in the record also confirms this overlap and the resulting concentration levels.[54]

In July 2026, UP and CN entered into the Settlement MOU, under which Union Pacific would grant CN access to Kansas City and expanded and more efficient access to St. Louis / East St. Louis via the Kansas City Line and the Tuscola Line, together with capacity at Neff Yard, and would provide for divestiture of the Kansas City Line if required by the Board or offered by Union Pacific.[55] Also under the Settlement MOU, if the Board removes any paper barrier on the Kansas City Line or grants any exception to any paper barrier on the Kansas City Line, Union Pacific would similarly remove or grant an exception to CN for the paper barrier governing Genesee & Wyoming's Missouri & Northern Arkansas Railroad ("MNA"), as the MNA connects to the Kansas City Line at Pleasant Hill.[56] While the Second Supplemental Submission incorporates the Settlement MOU, Applicants' competitive analysis included in Dr. Bailey's Verified Statement does not identify, analyze, or address the competitive harm that the Settlement MOU would

[53] *See* Am. Appl. Vol. 4 at 75, 182.
[54] *See* Pincock Dep. Tr. *supra* note 10; Rynaski Dep. Tr. *supra* note 10; Exhibit 13, Transcript of Jim Vena Deposition at 275:7–15 (Oct. 20, 2026) [hereinafter "Vena Dep. Tr."] {{

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[55] *See* Second Supplemental Submission at 203–11; CN-30 at 1–2.
[56] *See* Second Supplemental Submission at 207 ("If Union Pacific (a) removes any paper barrier on the Kansas City Line, or (b) grants any exception to any paper barrier on the Kansas City Line, Union Pacific would similarly remove or grant an exception to CN for any paper barrier on the Kansas City Line.").

resolve.[57] The Board should evaluate the remedy against the competitive harm actually presented—which, as reflected below and in the accompanying verified statements, is substantial.

B. Applicants' Competitive Analysis Is Unreliable Because Their Expert Omits Significant Traffic to and From Kansas City and St. Louis / East St. Louis.

Although Applicants have stated publicly that the Kansas City and St. Louis areas would experience competitive impacts from the Proposed Transaction requiring conditions, Applicants simultaneously maintain in this proceeding that Dr. Bailey's analysis reflects "that the proposed transaction would have no significant potential horizontal competitive effects and does not raise any meaningful geographic competition concerns."[58] Applicants also rely on Dr. Bailey for the conclusion that any horizontal anticompetitive effects of the Proposed Transaction "would be outweighed by the quantifiable benefits expected from the transaction."[59] Dr. Bailey's conclusions, however, rest on improper exclusions and assumptions that remove most of the relevant Kansas City and St. Louis traffic from evaluation. It is therefore not surprising that having dismissed nearly *all of the traffic likely to experience competitive harms*, Dr. Bailey concludes there is limited or no harm to competition in these key areas from the Proposed Transaction.

i. Dr. Bailey's Analysis Improperly Excludes Nearly Half of U.S. Rail Traffic from Evaluation.

1. Dr. Bailey's Analysis Excludes Intermodal and Automotive Traffic.[60]

Dr. Bailey conducts two main analyses to identify horizontal competitive harm addressing competition within and between corridors, but both remove and therefore fail to analyze some of

[57] *See* Second Supplemental Submission at 184 (asserting that "the proposed transaction would have no significant potential horizontal competitive effects and does not raise any meaningful geographic competition concerns").
[58] *See id.*
[59] *See id.*
[60] In addition to her exclusions of certain exempt traffic groups, Dr. Bailey further inappropriately excludes from her Between Corridor analysis several additional traffic groups. Specifically, Dr. Bailey excludes traffic for certain commodity codes entirely that Dr. Bailey asserts group together

the most significant commodities' traffic. In both her Within Corridor and Between Corridor analyses,[61] Dr. Bailey categorically excludes: (i) Motor Vehicles and Motor Vehicle Parts ("automotive traffic") and (ii) traffic moving in intermodal equipment.[62] Dr. Bailey justifies these exclusions solely on the ground that the Board and the Interstate Commerce Commission ("ICC") have exempted such traffic from regulation after finding "effective competition."[63]

But Dr. Bailey's exclusion of these traffic categories and failure to analyze the competitive impacts from the Proposed Transaction on this traffic is contrary to established precedent. Board precedent establishes that exempt traffic must be analyzed to assess the competitive impacts of a rail merger. In *Santa Fe/Southern Pacific*, applicants excluded from their competitive analysis certain exempt traffic, including TOFC/COFC traffic, which Dr. Bailey also excludes through her

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miscellaneous or unrelated products. Bailey V.S. at ¶ 174 n.159. These "miscellaneous" commodities are removed without justification and include chemical, food, coal, metal, and textile products. Dr. Bailey's exclusion of these miscellaneous commodities removed {{ }} of 2023 rail traffic from the analysis for Kansas City and {{ }} for St. Louis. *See* Coleman V.S. Workpaper "Figure 13.xlsx." There is some overlap with Dr. Bailey's exclusion of exempt commodities because Dr. Bailey also categorizes many of these commodities as intermodal. *See* Coleman V.S. at ¶ 87.

[61] To evaluate the Proposed Transaction's horizontal competitive impacts on rail competition, Dr. Bailey conducts three main analyses: (i) an analysis of the Proposed Transaction's impact on customer access; (ii) an analysis of the Proposed Transaction's impact on competition at origins and destinations within BEA-to-BEA corridors (the "Within Corridor analysis"); and (iii) an analysis on geographic competition between origins and destinations (the "Between Corridor analysis" or "geographic competition analysis").

[62] *See* Bailey V.S. at ¶¶ 140, n.125, 179–80. In the Within Corridor analysis, traffic is treated as "intermodal" and excluded based on equipment or service codes; in the Between Corridor analysis, any commodity that "predominantly ship[s]" in intermodal equipment is excluded entirely—including the portion of that commodity that does not move in intermodal equipment. *Id.* at n.125.

[63] *See* id. at ¶ 140 n.127 (quoting *Rail Gen. Exemption Auth.—Transp. Equipment*, EP 346 (Sub-No. 27) (ICC decided Dec. 30, 1992), and *WTL Rail Corp.—Petition for Partial Revocation of Exemption*, EP 230 (Sub-No. 9) (STB served Feb. 15, 2006)); *see also* Bailey Dep. Tr. at 94:5-95:2 {{

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exclusion of intermodal traffic.[64] Like Dr. Bailey, in *SF/SP*, to justify excluding this exempt traffic, applicants relied on findings in the relevant exemption decisions, including that intermodal competition was a sufficient competitive constraint on the traffic.[65] The ICC expressly rejected applicants' reasoning and held that "it is clear that exempt traffic would have to be examined to determine if the proposed rail merger would have an effect on rail competition."[66] "Section [11324(b)(5)]," the ICC explained, "requires no less."[67] If exempt traffic were required to be analyzed under the prior major merger rules, there is no justification for Dr. Bailey's failure to analyze this traffic under the Board's new rules, which impose a greater burden on Applicants to demonstrate their merger is in the public interest.[68]

2. Dr. Bailey's Exclusions Resulted in a Failure to Analyze Material Volumes of Traffic.

The impact of Dr. Bailey's exclusions is material, resulting in the removal of substantial volumes of rail traffic from the competitive analysis in areas where Applicants' networks directly overlap, in Kansas City and St. Louis / East St. Louis.

Kansas City BEA: For the Kansas City BEA, Dr. Bailey's exclusions of automotive and intermodal traffic removed around {{ }} of rail traffic from her Within Corridor analysis, and resulted in a failure to identify nine additional 2-to-1 and 3-to-2 Kansas City corridors.[69] For her Between Corridor analysis, Dr. Bailey's exclusions, including of "miscellaneous" commodities,

[64] *Santa Fe S. Pac. Corp.—Control—S. Pac. Transp. Co.*, 2 I.C.C.2d 709, 739 (1986) [hereinafter "*SF/SP*"].
[65] *Id.*
[66] *Id.*
[67] *Id.* (*SF/SP* referred to then Section 11344(b)(1)(E), which was recodified as the current Section 11324(b)(5)).
[68] Notably, Dr. Bailey relies on this same exempt traffic when it suits her—counting it to identify additional rail alternatives to discount competitive effects elsewhere—while declining to analyze the Proposed Transaction's impact on it. *See* Bailey V.S. at ¶ 140.
[69] *See* Coleman V.S. Workpaper "Calcs for Comment.py."

removed an average of {{ }} of traffic to or from the Kansas City BEA.[70] The exclusions from the Between Corridor analysis and Dr. Bailey's other improper assumptions result in her failure to identify numerous commodities originating or terminating in the Kansas City BEA that would meet the 50/10 screen[71]: twelve for destination competition (Misc. Fabricated Textile Products; Prepared or Canned Feed; Paper; Paper or Building Board; Chemical Preparations, Nec; Tires or Inner Tubes; Plastic Mater or Synth Fibres; Misc. Plastic Products; Misc. Machinery or Parts; Motor Vehicles; Transportation Equipment, Nec; Mixed Shipments, Multi-STCC) and eleven for source competition (Misc. Food Preparations, Nec; Misc. Fabricated Textile Products; Wood Lockers, Partitions, etc.; Paper; Misc. Indus. Inorganic Chemicals; Chemical Preparations, Nec; Misc. Plastic Products; Plastic Mater or Synth Fibres; Fertilizers; Prepared or Canned Feed; Fiber, Paper or Pulpboard).[72]

St. Louis BEA: For the St. Louis BEA, Dr. Bailey's automotive and intermodal exclusions removed around {{ }} of rail traffic from her Within Corridor analysis, and resulted in a failure to identify three additional 2-to-1 and 3-to-2 St. Louis corridors.[73] For her Between Corridor analysis, Dr. Bailey's exclusions resulted in an exclusion of an average of {{ }} of traffic to or from the St. Louis BEA.[74] The exclusions from the Between Corridor analysis and Dr. Bailey's other improper assumptions result in her failure to identify numerous commodities originating or terminating in the St. Louis BEA that would meet the 50/10 screen:[75] fifteen for destination

[70] Coleman V.S. Workpaper "Figure 13.xlsx."
[71] *Compare* Coleman V.S. at ¶¶ 112, 115, Figure 15, Figure 17 *with* Bailey V.S. at ¶¶ 181, 184, Exhibit 14, Exhibit 15.
[72] *See id.*
[73] *See* Coleman V.S. Workpaper "Calcs for Comment.py."
[74] Coleman V.S. Workpaper "Figure 13.xlsx."
[75] *Compare* Coleman V.S. at ¶¶ 112, 115, Figure 15, Figure 17 *with* Bailey V.S. at ¶¶ 181, 184, Exhibit 14, Exhibit 15.

competition (Dog, Cat or Other Pet Food, Nec; Misc. Food Preparations, Nec; Misc. Fabricated Textile Products; Soap or Other Detergents; Chemical Preparations, Nec; Asphalt Coatings or Felt; Tires or Inner Tubes; Misc. Plastic Products; FAK Shipments; Lime or Lime Plaster; Flour or Other Grain Mill Products; Petroleum Refining Products; Gravel or Sand; Paper Waste or Scrap; Wet Corn Milling or Milo) and fourteen for source competition (Nonmetal Minerals, Processed; Petroleum Refining Products; Distilled or Blended Liquors; Wet Corn Milling or Milo; Metal Scrap or Tailings; Fertilizers; Malt Liquors; Misc. Fabricated Textile Products; Misc. Indus. Inorganic Chemicals; Chemical Preparations, Nec; Misc. Plastic Products; Motor Vehicles; Motor Vehicle Parts or Accessories; FAK Shipments).

ii. Dr. Bailey's Within Corridor Analysis Further Excludes Flagged Traffic Between Kansas City and St. Louis Using Hypothetical Routes.

After already substantially narrowing the universe of traffic included in her analysis, Dr. Bailey also conducts an analysis designed to dismiss potential competitive harm in several of the 2-to-1 and 3-to-2 corridors relating to the Kansas City and St. Louis BEAs, including those traversing the Kansas City – St. Louis corridor, initially identified in her Within Corridor analysis. Specifically, Dr. Bailey dismisses certain corridors as 2-to-1 or 3-to-2 on the basis that hypothetical alternative interline options exist, even though such hypothetical options had no traffic during the period analyzed by Dr. Bailey.[76] For 2-to-1 and 3-to-2 corridors traversing the Kansas City – St. Louis corridor, Dr. Bailey further attributes her identified hypothetical interline routes to St. Louis or Kansas City as serving as alternatives to *either* area.[77] Dr. Bailey's conclusions, including that St. Louis "may as well be Kansas City," are premised on numerous assumptions that she fails to

[76] Bailey V.S. at ¶¶ 142-152 & nn.139-141; *see also id.* at ¶¶ 130–131, Exhibit 12.
[77] *See id.* at ¶¶ 145-148.

support with any factual bases.[78] Notably, Dr. Bailey's unsupported assumption that these hypothetical options are competitive alternatives ignores that these alternatives may not be commercially or operationally feasible options for customers or carriers. Dr. Bailey ultimately dismisses three 2-to-1 and thirteen 3-to-2 corridors involving Kansas City or St. Louis based on her identification of hypothetical interline options.[79] After her various exclusions, improper application of her corridor size limitations, and evaluation of hypothetical interline options, Dr. Bailey identifies just six 3-to-2s involving either Kansas City or St. Louis.[80]

By crediting as competitive constraints these hypothetical competitive interline options, Dr. Bailey is essentially asking the Board to credit potential new entry into these areas without any factual support. When evaluating whether new entry prevents a merger from substantially lessening competition, the antitrust agencies assess whether the new entry would be "timely, likely, and sufficient in its magnitude, character, and scope to deter or counteract the competitive effects of concern."[81] Neither Applicants nor Dr. Bailey, however, has made any effort to demonstrate that these hypothetical interline options are operationally or commercially feasible for the traffic that they are purportedly competitive options for, let alone that they are "timely, likely, and sufficient in [their] magnitude, character, and scope to deter or counteract the competitive effects of concern."

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[78] *See id.* at ¶ 147. Dr. Bailey does not analyze or explain in any way on what basis she concludes that these hypothetical non-existent interline options could serve the traffic experiencing competitive harms. And her analysis ignores entirely that the Proposed Transaction would reduce the number of independent Class I carriers at both ends of the Kansas City-St. Louis corridor and that the availability of interchange through terminal railroads owned in part by Applicants does not replace the independent competitor the merger eliminates.
[79] *See* tab "Correct Observed 2-1" in Coleman V.S. Workpaper "Exhibit 12."
[80] *See* Bailey V.S. Workpaper "Exhibit 12."
[81] *See* U.S. Dep't of Justice & Fed. Trade Comm'n, *Merger Guidelines* § 3.2 (Dec. 18, 2023) (citing *FTC v. Sanford Health*, 926 F.3d 959, 965 (8th Cir. 2019)).

These hypothetical interline options are not a competitive constraint to substitute for the real interline and single-line options that customers currently have and that the Proposed Transaction would eliminate. The Board should therefore not consider them in evaluating the Proposed Transaction's impact on Kansas City and St. Louis / East St. Louis.

iii. Dr. Bailey's Analysis Assumes Truck and Barge Are Competitive Alternatives.

Dr. Bailey also dismisses significant volumes of traffic from potential concern by making unsupported assumptions about competitive constraints posed by truck and barge. In making its public interest determination, the Board must consider, among other factors, "whether the proposed transaction would have an adverse effect on competition ***among rail carriers*** in the affected region or in the national rail system."[82] To evaluate a merger's impact on rail competition, first, the Board identifies the markets the consolidation would affect, including the relevant product and geographic market.[83] "The product provided by railroads is the transportation of freight."[84] In both her Within Corridor and Between Corridor analyses Dr. Bailey assumes, without explanation or analysis as to when and how these alternative modes of transportation constrain rail carriers, that the relevant product market includes truck and barge transportation.

1. Dr. Bailey's Approach to Evaluating Truck and Barge in Her Between Corridor Analysis is Improper.

a. *Dr. Bailey Categorically Includes Truck and Barge in Her Geographic Competition Screen.*

Dr. Bailey begins her Between Corridor analysis, which analyzes source and destination competitive effects, with a "50/10" screen, which flags origin- and destination-commodity pairs for which Applicants would hold 50% or more of the market post-merger and each held at least

[82] 49 U.S.C. § 11324(b)(2), (5) (emphasis added).
[83] *SF/SP*, 2 I.C.C.2d at 727-28.
[84] *Id.*

10% pre-merger.[85] Unlike the 50/10 screen applied in prior rail mergers, Dr. Bailey does not evaluate Applicants' market shares of the **rail** market. Rather, Dr. Bailey analyzes Applicants' market shares for origin- and destination-commodity pairs in a broader product market that includes non-rail modes such as truck and barge. Because Dr. Bailey's version of the 50/10 screen includes volumes of traffic moved by truck and barge, it dilutes Applicants' rail market shares and inflates the total market volume in the analysis.[86]

The result is that a significantly smaller volume of traffic is flagged as raising potential competitive concerns for further analysis. Even after her unsupported exclusion of numerous commodities, Dr. Bailey's use of a blended rail/non-rail market removes 89% of the traffic that would have met her 50/10 screen if she had only analyzed a rail market for destination competition and 68% that would have met her 50/10 screen for source competition.[87] The blended market contributes to Dr. Bailey's failure to identify the additional commodities raising concerns in the Kansas City and St. Louis BEAs, referenced above.[88]

Further, after both her exclusions and blended market have already removed significant traffic, Dr. Bailey flags an origin- or destination-commodity pair only if it passes the 50/10 screen for every year from 2019 through 2024.[89] A commodity-BEA pair is thus removed from analysis if it fails the 50/10 screen in any one of the six years Dr. Bailey analyzed—even if it passes in five.

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[85] Bailey V.S. at ¶¶ 160–166, 183. The 50/10 screen has been used in prior rail mergers to identify origin- and destination-commodity pairs that may experience competitive effects of a transaction because it identifies pairs in which applicants could gain the ability to raise prices or degrade service. *See* Exhibit 18, Verified Statement of W. Robert Majure, *Canadian Pac. Ry.—Control—Kan. City S.*, FD 36500, at 52–54 (Oct. 29, 2021) [hereinafter "Majure V.S."].

[86] Bailey V.S. at ¶ 177 ("In addition, non-rail *volumes* for each commodity are included in the calculation of UP's and NS's shares for purposes of the 50/10 screens").

[87] *See* Coleman V.S. Workpaper "Calcs for Comment.py."

[88] *Supra* Part I.B.i.2.

[89] Bailey V.S. at ¶ 176 & n.160; *see also id.* at ¶ 183 (source competition analyzed "analogously").

Dr. Bailey's approach fails to account for variation in rail traffic driven by factors unrelated to the durability of a carrier's market position such as the pandemic, supply issues, or railroad mergers.[90]

b. *Dr. Bailey Improperly Relies on Truck and Barge at a Second Stage in Her Geographic Competition Analysis to Eliminate Additional Traffic.*

Further, despite already relying on non-rail modes in her initial screening stage to eliminate origin- and destination-commodity pairs for which non-rail modes purportedly provide sufficient competition, Dr. Bailey considers non-rail mode competition a ***second*** time in her evaluation of potential geographic competition effects when she employs her "Critical Loss Analysis."[91] There, and again without justification or nuanced analysis, Dr. Bailey includes non-rail modes as competitive freight transportation alternatives sufficient to constrain Applicants' post-merger behavior, without any analysis as to whether those modes are legitimate alternatives to customers based on price or distance.

2. Dr. Bailey Also Relies on Truck and Barge in Her Within Corridor Analysis to Eliminate Flagged Traffic.

In addition to considering non-rail modes in her analysis of geographic competition, Dr. Bailey also credits non-rail modes in her analysis of competition within corridors. There, Dr. Bailey excludes traffic on a corridor for a specific commodity if non-rail modes account for 50 percent or more of the total freight moved for that commodity in the corridor. Again, unsurprisingly, this approach yields results minimizing the potential competitive impacts from the Proposed Transaction by diminishing the volume of impacted traffic. Dr. Bailey's approach is based solely on non-rail mode market shares and does not analyze the potential for non-rail modes to serve as competitive constraints.

[90] Coleman V.S. at ¶ 98.
[91] Bailey V.S. at ¶¶ 166, 169, 171, 177.

3. Dr. Bailey's Approach to Evaluate Truck and Barge is Unsupported.

Dr. Bailey claims that her approach to including non-rail modes is consistent with verified statements, including the 50/10 screens, submitted in prior merger cases.[92] Not so. None of the verified statements Dr. Bailey cites considered non-rail modes at the screening stage when conducting the 50/10 analysis or relied on market share screens alone to exclude relevant traffic.[93] Nor is Dr. Bailey's approach consistent with Applicants' own Amended Application, which acknowledges that non-rail modes are not uniformly substitutable for rail. Indeed, elsewhere in the Amended Application, Mr. Hunt's Verified Statement acknowledges that the substitutability of each transportation mode varies by commodity and depends on commodity-specific factors such as length of haul.[94] Dr. Bailey's approach is also inconsistent with testimony provided by Applicants' executives.[95]

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[92] *See id.* at ¶¶ 160, 166 & nn.148, 150–51 (explaining that the 50/10 screen was used in prior mergers and includes similar consideration from non-rail options); *see also* Bailey Dep. Tr. at 33:2-6 & 47:1-11 {{

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[93] *See* Majure V.S. at 52–53 (describing the screen as considering shares "among railroads"); Exhibit 19, Verified Statement of Christopher A. Vellturo, *Canadian Nat'l Ry., & Grand Trunk Corp.-Control-Wis. Cent.*, FD 34424, at 111 (Apr. 6, 2001) [hereinafter "Vellturo 2001 V.S."] ("I have applied the screen to rail traffic only, not taking into account truck competition."); Exhibit 20, Verified Statement of Christopher A. Vellturo, *Canadian Nat'l Ry., & Grand Trunk Corp.—Control—EJ&E W. Co.*, FD 35087 (Oct. 29, 2007) (applying the same 50/10 screen described in CN/WC control proceeding).

[94] *See* Am. Appl. Vol. 2, Verified Statement of David Hunt at 417–18 [hereinafter "Hunt V.S."] (explaining that the truck-to-rail diversion model "groups markets by distance and commodity type, and by transit-time and price differences relative to truck service"); *id.* at 426 (explaining that "shippers of a given commodity behave consistently on a national basis"); *id.* at 506–07 (classifying each commodity as intermodal or carload depending on how it actually moves by rail); *see also id.* at 509 n.145 (setting 250 miles as "a minimum threshold for intermodal to be a feasible alternative to truck, as shorter hauls would be uncompetitive on transit time and price"); *id.* at 531 (treating finished-vehicle lanes under 250 miles as "not likely addressable by rail"); *id.* at 536 (excluding merchandise and bulk lanes of 250 miles or less); *id.* at 58 (noting that intermodal "typically takes higher share in longer haul lanes").

[95] Exhibit 14, Transcript of David Lehlbach Deposition at 113:14–114:14 (Sept. 9, 2026) [hereinafter "Lehlbach Dep. Tr."] {{

4. Dr. Bailey's Approach is Contrary to Precedent and Established Antitrust Principles.

Dr. Bailey's analysis is fundamentally flawed because she assumes truck and barge are competitive alternatives without analyzing the key inquiry to determine their competitiveness to rail. Whether non-rail modes should be included in the relevant product market depends on whether they are "reasonably substitutable for rail carriers in the geographic markets" and therefore "will provide a sufficient constraint on any market power applicants might gain as a result of merger."[96] To establish non-rail modes will pose a competitive constraint, Applicants must prove, and the Board must be able to find, that "the rates and service provided by, or likely to be provided by, motor and water carriers are sufficiently close to those provided by applicants."[97] Nowhere in Dr. Bailey's 173-page Verified Statement, or in her Supplemental Verified Statement, does she conduct any analysis or studies to establish that non-rail modes may pose a competitive constraint in the relevant geographies.

Rather, Dr. Bailey throughout her analysis simply presumes non-rail modes are substitutable for Applicants' services based on market shares alone, a presumption and approach that the ICC expressly rejected in *Santa Fe/Southern Pacific*.[98] In rejecting this market-share based presumption of substitutability as improper, the ICC explicitly rejected the inclusion of non-rail modes in screening stages to exclude certain rail traffic from further competitive analysis.[99] The

}}; Exhibit 15, Transcript of Michael McClellan Deposition at 161:19-162:16 (Oct. 9, 2026) [hereinafter "McClellan Dep. Tr."] {{

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[96] *SF/SP*, 2 I.C.C.2d at 738.
[97] *Id.*
[98] *Id.* at 756 (rejecting assumptions based on the conclusion that "a large market share held by other modes, or, in some instances, by other railroads, constitute[s] substitutability for applicants' services").
[99] *Id.* at 750, 756 (rejecting screen that eliminated rail traffic from consideration "if more than 50 percent of a commodity group moved by any other carrier of any mode" and screen that "assumed

ICC's conclusion makes good sense because the assumption that non-rail modes are adequate substitutes based on market shares alone, and especially at an initial screening level, fails to evaluate the key inquiry: whether non-rail rates and/or service can be found to reliably constrain Applicants' behavior.[100] Applicants' experts in prior cases, including those that Dr. Bailey relies upon to support her approach, have acknowledged this fundamental fact.[101] As detailed below, in certain origin- and destination-commodity pairs they cannot.

Dr. Bailey's approach is also unsupported by antitrust principles more generally. The FTC and DOJ Merger Guidelines, and decades of established antitrust precedent, make clear that more rigor is required to establish the relevant market, and they provide various tools to do so.[102] Dr. Bailey attempts to employ none of these.[103] Similarly, Board precedent provides guidance for how

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that if non-rail modes handled 50 percent or more of a commodity between origin-destination pairs (in those instances where movements of the commodity exceeded 10,000 tons by rail), the non-rail mode was substitutable").

[100] *See id.*

[101] *See* Vellturo 2001 V.S. at 14 (explaining that he "did not draw conclusions simply from modal shares as to the potential of truck competition to constrain any post-merger price increases").

[102] *See* U.S. Dep't of Justice & Fed. Trade Comm'n, *Merger Guidelines* § 4.3 (Dec. 18, 2023) (detailing tools the DOJ and FTC rely on to demonstrate a relevant antitrust market, including an analysis of the *Brown Shoe* factors, which reflect observed market characteristics ("practical indicia") of a market or application of the Hypothetical Monopolist Test ("HMT"), which examines "whether a hypothetical monopolist over this market could profitably worsen terms significantly, for example, by raising price"); *see also FTC v. Tapestry, Inc.*, 755 F. Supp. 3d 386, 414 (S.D.N.Y. 2024) (explaining that in evaluating the proper product market, courts often look to the HMT, which asks "whether a hypothetical monopolist acting within the proposed market would be substantially constrained from increasing prices by the ability of customers to switch to other producers" or to "practical indicia of market boundaries to identify whether two products are economic substitutes and compete within the same antitrust market") (internal citations omitted); *FTC v. IQVIA Holdings Inc.*, 710 F. Supp. 3d 329, 353–76 (S.D.N.Y. 2024) (noting that "Courts consider both quantitative and qualitative evidence in defining the relevant product market" and analyzing both the *Brown Shoe* factors and the HMT).

[103] *See* Bailey Dep. Tr. at 49:25-50:9 {{

}}; *see also id.* at 44:20-45:2 {{

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Applicants could have analyzed this question. In prior cases, analyses to assess substitutability have evaluated the price elasticity of rail freight and whether non-rail options remain price and service competitive at various distances for specific commodities.[104] But here, Applicants conduct no such analysis of substitutability and rely on blanket assumptions, without any regard to specific commercial realities.

C. A Comprehensive Competitive Analysis Reveals Competitive Harms Would Occur in Kansas City and St. Louis / East St. Louis Without Conditions.

As demonstrated through these comments, accompanying verified statements, and CN's responsive applications, competitive harms would occur in Kansas City and St. Louis / East St. Louis if the Proposed Transaction is approved without fulsome conditions. A competitive analysis evaluating the Proposed Transaction's impact on rail competition should not indiscriminately exclude material traffic, adopt an overly broad product market, or rely on improper assumptions that the railroad industry is not susceptible to vertical foreclosure. A competitive analysis without these flaws reflects that horizontal and vertical competitive harms are likely in these areas and competition-preserving conditions therefore are necessary.

i. Removing Dr. Bailey's Improper Exclusions and Assumptions Reveals Competitive Harms are Likely in Kansas City and St. Louis / East St. Louis Absent Conditions.

CN expert Dr. Mary Coleman has analyzed the horizontal competitive effects of the Proposed Transaction. Dr. Coleman has concluded that Dr. Bailey's own competitive analysis, once corrected to remove the improper assumptions and exclusions, reflects that shippers in the Kansas City and St. Louis BEAs may experience competitive harms from the Proposed Transaction absent conditions. Specifically, as Dr. Coleman demonstrates, a corrected horizontal competitive analysis reflects that {{ }} of Kansas City BEA originations and terminations by

[104] *Union Pac. Corp.—Control—Mo. Pac. Trans. Co.*, 366 I.C.C. 459, 670–73 (1982) [hereinafter "*UP/MP*"].

UP and NS and {{ }} of St. Louis BEA originations and terminations by UP and NS are flagged as traffic that is likely to experience potential competitive effects.[105] As Dr. Coleman explains, this flagged traffic would experience decreased competition as a result of the Proposed Transaction, likely resulting in increased prices, reduced service quality, and reduced incentives to invest, harming shippers.[106]

1. A Corrected Within Corridor Analysis Shows Proposed Transaction Likely to Harm Customers Absent Conditions.

Dr. Bailey's competitive analysis systematically under-identifies corridors where competition would be adversely impacted absent conditions. Dr. Coleman's Corrected Within Corridor analysis comprehensively evaluates corridors that would go from 2-to-1 or 3-to-2 as a result of the Proposed Transaction and the volume of traffic impacted in those corridors.[107] As reflected in Dr. Coleman's analysis, the Proposed Transaction would pose harms to competition within at least thirty Kansas City and St. Louis corridors absent conditions (compared to the six identified by Dr. Bailey).[108] Around 64% of the anticipated 2-to-1 and 3-to-2 corridors resulting from the Proposed Transaction involve either the Kansas City or St. Louis BEAs.[109] There are seventeen 2-to-1 and 3-to-2 corridors involving Kansas City, totaling {{ }} UP- or NS-related shipments, and thirteen involving St. Louis, totaling {{ }} UP- or NS-related shipments. Dr. Bailey identified only two 3-to-2 corridors involving Kansas City, totaling {{ }} final impacted carloads, and four 3-to-2 corridors involving St. Louis, totaling {{ }} final impacted carloads.

[105] *See* Coleman V.S. Workpaper "Calcs for Comment.py."
[106] *Id.* at ¶ 129.
[107] *Id.* at ¶¶ 70–72, Figure 10. Corridors are defined by Dr. Bailey as BEA-BEA pairs. *See* Bailey V.S. at ¶ 123.
[108] Coleman V.S. at ¶ 73, Figure 11; Bailey V.S. at ¶ 131, Exhibit 12.
[109] *See* Coleman V.S. Workpaper "Calcs for Comment.py."

Seventy percent of the thirty 2-to-1 and 3-to-2 corridors involve movements going west from St. Louis or east from Kansas City and therefore likely utilize UP's and/or NS's parallel lines between St. Louis and Kansas City.[110] These parallel lines between Kansas City and St. Louis therefore provide important competitive options for customers for many corridors affected by the Proposed Transaction.[111] If the Proposed Transaction is approved without sufficient conditions to remedy the loss of competitive rail options between Kansas City and St. Louis, customers utilizing these 2-to-1 and 3-to-2 corridors are likely to face adverse competitive effects from the Proposed Transaction. The loss of competitive options for customers on these already highly-concentrated corridors would result in a decrease in incentives to compete for that traffic and may result in customers experiencing higher rates and/or poorer service following the Proposed Transaction.[112]

A wide range of commodities travel on these 2-to-1 and 3-to-2 corridors and will thus likely experience anticompetitive effects from the Proposed Transaction absent necessary conditions, including, for example, intermodal, automotive, grain and fertilizers, and petroleum and chemicals traffic.[113] Customers for these commodities would face a loss of competitive options on these 2-to-1 and 3-to-2 corridors absent conditions.[114] This loss of competition is likely to have adverse competitive effects for shippers.[115] For example, customers shipping various grain and grain products, including wheat, flour, feed, ethanol and soybeans utilize these 2-to-1 and 3-to-2 corridors.[116] As numerous stakeholders have emphasized, rail competition is critical to agricultural

[110] *Id.* at ¶ 75.
[111] *Id.* at ¶ 76.
[112] *Id.* at ¶¶ 72, 77–78.
[113] *Id.* at ¶ 74, Figure 12.
[114] *Id.*
[115] *Id.* at ¶ 77.
[116] *Id.* at ¶ 74, Figure 12.

shippers and grain shippers for whom competitive rail service is essential.[117] Similarly, these 2-to-1 and 3-to-2 corridors are utilized for significant automotive traffic.[118] Rail competition is essential to the automotive supply chain, which relies on rail to move finished vehicles and parts.[119]

2. A Corrected Between Corridor Analysis Shows Proposed Transaction Likely to Harm Customers Absent Conditions.

A corrected Between Corridor analysis reflects that absent conditions the Proposed Transaction would result in competitive harms to Kansas City and St. Louis / East St. Louis traffic, including to source and destination competition. In Dr. Coleman's corrected Between Corridor analysis, the initial 50/10 screen[120] evaluates all rail traffic without Dr. Bailey's traffic group exclusions, does not require pairs to pass in every single year, and analyzes only rail. With these corrections, the analysis identifies numerous origin- and destination-commodity pairs[121] for the Kansas City and St. Louis BEAs as likely to experience competitive effects from the Proposed

[117] Letter from Iowa Sec'y of Agric. Mike Naig et al. at 2, FD 36873 (Jan. 20, 2026) ("For agriculture, maintaining and enhancing competition is critical. It is not a choice between trucks and rail service. Our large quantity bulk commodities moving hundreds of miles must move by rail, making competitive rail service essential for producers, processors, and exporters."); Letter from Matthew Aultman (Greenville, Ohio) at 1, FD 36873 (STB entered Nov. 13, 2025) ("Agriculture needs a competitive rail system to survive, and we cannot afford changes that would weaken that system further.").

[118] Coleman V.S. at ¶ 74, Figure 12.

[119] Exhibit 3, Verified Statement of Sarah Slazinski at 7–8 [hereinafter "Slazinski V.S."] (explaining that non-rail modes are not effective sustainable substitutes for rail for high volume, longer shipments for automotive customers); Letter from Daniel M. Bigda, M4 Railcar Grp. at 1, FD 36873 (filed July 23, 2026) (noting that "industries such as automotive, steel, and manufacturing rely heavily on railroads to transport raw materials and finished goods," and that "[t]he merger's potential to disrupt these supply chains poses a critical threat to the economic revitalization efforts").

[120] As discussed above, this screen identifies origin- and destination-commodity pairs for which Applicants post-merger would have 50% or more market share of the volume where pre-merger each Applicant had at least 10% market share. The screen is used to identify origin- and destination-commodity pairs for which the Proposed Transaction may raise competitive concerns relating to source or destination competition.

[121] Origin-commodity pairs that pass the screen raise potential destination competition concerns and destination-commodity pairs that pass the screen raise potential source competition concerns.

Transaction. Specifically, **twenty-seven** origin-commodity pairs and **twenty-nine** destination-commodity pairs relating to Kansas City and St. Louis pass the 50/10 screen (compared to **two** origin-commodity pairs and **two** destination-commodity pairs identified by Dr. Bailey).[122]

Kansas City BEA: For Kansas City, Dr. Coleman's analysis concludes that, absent conditions, there would be a loss of source and destination competition for certain commodities. For destination competition, Dr. Coleman's evaluation reflects that {{ }} UP and NS shipments originating in the Kansas City BEA meet the 50/10 threshold and therefore may experience competitive effects from the Proposed Transaction.[123] A wide group of commodities are susceptible to potential competitive effects relating to destination competition in the Kansas City BEA, including intermodal traffic, as well as carload service for automotive, and petroleum and chemical products.[124] For impacts to source competition, Dr. Coleman's evaluation reflects there are {{ }} UP and NS shipments terminating in the Kansas City BEA that meet the 50/10 threshold and therefore may experience competitive effects from the Proposed Transaction.[125] A wide group of commodities are also susceptible to potential competitive effects relating to source competition in the Kansas City BEA, including intermodal traffic as well as petroleum and chemicals, grains and fertilizers, and forest products.[126]

St. Louis BEA: For St. Louis, Dr. Coleman's analysis also concludes that, absent conditions, there would be a loss of source and destination competition for certain commodities. For destination competition, Dr. Coleman's evaluation reflects there are {{ }} UP and NS

[122] Coleman V.S. at ¶¶ 112, 115, Figures 15 and 17; *see* Coleman V.S. Workpaper "Figures 15 and 17.xlsx."
[123] *Id.* at ¶¶ 112–114, Figure 15.
[124] *Id.* at Figure 16.
[125] *Id.* at ¶¶ 115–117, Figures 17.
[126] *Id.* at Figure 18.

shipments originating in the St. Louis BEA that meet the 50/10 threshold and therefore may experience competitive effects from the Proposed Transaction.[127] A wide group of commodities are susceptible to potential competitive effects relating to destination competition in the St. Louis area, including intermodal traffic as well as carload service for metals and minerals, petroleum and chemicals, grains and fertilizers, and forest products.[128] For impacts to source competition, Dr. Coleman's evaluation reflects there are {{ }} UP and NS shipments terminating in the St. Louis BEA that meet the 50/10 threshold and therefore may experience competitive effects from the Proposed Transaction.[129] A wide group of commodities are also susceptible to potential competitive effects relating to source competition in the St. Louis BEA, including intermodal traffic as well as carload service for automotive, petroleum and chemicals, metals and minerals, grains and fertilizers, and forest products.[130]

As Dr. Coleman's analysis shows, these commodities are likely to experience competitive harms from the Proposed Transaction, absent sufficient conditions.[131] Without adequate competitive alternatives for these commodities, the post-merger combined carrier is incentivized to raise prices.[132] The higher the Applicants' post-merger market shares, the greater the incentive is for them to increase prices.[133] Shippers of this traffic may also experience additional anticompetitive effects as a result of the decrease in competitive alternatives, including for example decreased service quality.[134]

[127] *Id.* at ¶¶ 112–114, Figure 15.
[128] *Id.* at Figure 16.
[129] *Id.* at ¶¶ 115–117, Figures 17.
[130] *Id.* at Figure 18.
[131] *Id.* at ¶¶ 129–135.
[132] *Id.*
[133] *Id.* at ¶ 18.
[134] *Id.* at ¶ 129.

The commodities triggering the 50/10 screen are some of the most significant commodities for the Kansas City and St. Louis BEAs. Absent conditions, shippers would not have adequate alternatives to impose competitive constraints on Applicants for these affected commodities, even when evaluating non-rail modes. For example, consider automotive traffic. The 50/10 screen reflects that automotive traffic from Kansas City and to St. Louis is likely to experience significant competitive effects as a result of the Proposed Transaction. Post-merger, Applicants would have nearly {{ }} market share of all Motor Vehicle traffic originating in the Kansas City BEA and {{ }} of all Motor Vehicle traffic terminating in the Kansas City BEA.[135] As a result of the Proposed Transaction, customers shipping Motor Vehicles from Kansas City would have fewer competitive options with which they can ship this traffic, reducing their ability to negotiate for better rates and terms than if they had more options.[136] Non-rail modes do not serve as a competitive alternative for automotive traffic at these distances and therefore cannot constrain the post-merger combined carrier from increasing prices or decreasing service quality for shippers.[137]

The commodities flagged by Dr. Coleman as experiencing these harms also play an important role to shippers throughout the U.S., including for example, potash—a critical fertilizer. In 2025, the U.S. Geological Survey added potash to the Critical Mineral List, which identifies minerals that are "essential to the economy and national security" of the U.S. and that have "supply

[135] *Id.* at ¶¶ 130, 136, Figure 21.
[136] *Id.* at ¶¶ 130–132, 136, Figure 21.
[137] Slazinski V.S. at 7–8 (explaining that non-rail modes are not effective sustainable substitutes for rail for high volume, longer shipments for automotive customers); *see SF/SP*, 2 I.C.C.2d at 775 (explaining the product market for the Southern Corridor is rail transportation because chemicals, assembled automobiles, food products, iron and steel, and cotton are the most common commodities and shippers have demonstrated that economically those movements must be by rail); *UP/MKT*, 4 I.C.C.2d at 455 (acknowledging that barges may not be competitive for non-bulk commodities).

chains that are vulnerable to disruption."[138] Dr. Coleman's analysis reflects that potash (STCC 2812 – potassium or sodium compound) terminating in Kansas City is likely to experience adverse competitive effects to source competition as a result of the Proposed Transaction.[139] Post-merger, Applicants would have nearly {{ }} market share of potash traffic terminating in the Kansas City BEA.[140] Agricultural shippers are especially vulnerable to any loss of competitive rail options.[141] Moreover, the majority of potash supplies move by rail, and supply chain disruptions "could lead to fertilizer shortages and sharp price increases."[142]

If the Proposed Transaction is approved, a remedy is needed to introduce a new Class I competitor to Kansas City, and an increased Class I presence in St. Louis / East St. Louis, to ensure shippers in Kansas City and St. Louis / East St. Louis have source and destination competitive options.

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A proper evaluation of the Proposed Transaction's competitive effects confirms that the Kansas City-St. Louis overlap is not a "small piece" of an otherwise end-to-end transaction. The Proposed Transaction's competitive effects in Kansas City and St. Louis / East St. Louis would affect traffic moving to, from, and through these critical gateways, across the very commodities—intermodal, automotive, and bulk—that predominate in those gateways. As Applicants' executives have recognized, conditions that fully preserve an independent Class I competitor in the Kansas City-St. Louis corridor and these BEAs are warranted.[143]

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[138] *See* USGS, *What are Critical Minerals* (Nov. 6, 2025), https://www.usgs.gov/programs/mineral-resources-program/science/what-are-critical-minerals-0.
[139] Coleman V.S. at ¶¶ 115, 117, Figure 17.
[140] *Id.* at Figure 20.
[141] Exhibit 6, Verified Statement of Sandra Ellis at 11 [hereinafter "Ellis V.S."].
[142] *See* The Fertilizer Institute, Phosphate And Potash Must Be Critical Minerals, (Mar. 2025).
[143] *See* Pincock Dep. Tr. *supra* note 10; *see* Rynaski Dep. Tr. *supra* note 10.

D. CN's Proposed Conditions Remedy Applicants' Horizontal Overlap In Kansas City and St. Louis / East St. Louis and Protect The Public Interest.

CN's Kansas City and St. Louis / East St. Louis conditions respond directly to the competitive harms described above. Divestiture of the Kansas City Line, together with access at Neff Yard, terminal trackage rights over Eton-Congo, Lydia Avenue-Broadway Boulevard trackage rights, and Kansas City switching access, would place CN—an independent Class I competitor—in the corridor and at the Kansas City gateway, preserving the competitive option that the merger otherwise eliminates.[144] CN does not currently access Kansas City, so its proposed conditions would introduce a new Class I entrant to the Kansas City gateway. Access to Neff Yard would allow CN to invest in new intermodal and automotive services, in addition to moving other merchandise traffic. CN is highly motivated to compete for every new customer opportunity and carload, including the local customers located on the Kansas City Line.[145] CN plans to invest significantly to provide a new Class I competitive service option for Kansas City customers, and requests that in addition to conditioning the Proposed Transaction on the sale of NS's KCT ownership interest to CN to allow CN access to KCT for interchange and KCT reciprocal switching customers, the Board also order a condition that allows CN to access UP and NS reciprocal switching tariff customers in order to preserve competition for these customers.

Overhead trackage rights over the Tuscola Line, rights over UP's wholly owned subsidiary A&S, and access to the former Sarpy Yard property located on the Kansas City Line in St. Louis for handling CN's intermodal and automotive traffic, key commodities impacted by the Proposed Transaction, would connect CN efficiently to its existing network and give CN access to St. Louis, Missouri and expanded access to East St. Louis, Illinois.[146] CN currently reaches East St. Louis,

[144] CN-30 at 3, 10–11.
[145] *See* Exhibit 5, Verified Statement of Girish Nair at 7, 9 [hereinafter "Nair V.S."].
[146] CN-30 at 2–3, 11.

Illinois only, not St. Louis, Missouri, and only through a more circuitous, less effective route. The proposed overhead trackage rights over the Tuscola Line would thus give CN access to St. Louis and expand CN's access to East St. Louis, allowing it to preserve competition that would otherwise be lost in the St. Louis area, and enhance the efficiency of CN's routing to both St. Louis / East St. Louis and Kansas City by eliminating ~70 miles from CN's route from Chicago and additional handlings, allowing it to offer a more cost-effective option to customers.[147] CN's proposed conditions would also allow CN to introduce new automotive and intermodal service offerings in the St. Louis area, where it is currently unable to compete effectively for these services.[148] UP and NS are currently the only two carriers with auto ramps in St. Louis, and CN would introduce a third option for auto customers, replacing the lost competition from the Proposed Transaction. CN plans to invest in the former Sarpy Yard property, which is an inactive UP property located on the Kansas City Line, to handle automotive and intermodal traffic in St. Louis. If the Board orders divestiture of the Kansas City Line, CN would gain access to the former Sarpy Yard property for its planned investment and development.[149]

[147] Exhibit 2, Verified Statement of Henry Kahwaty at ¶¶ 44–46 [hereinafter "Kahwaty V.S."]; *see* CN Responsive Applications, FD 36873 (Sub-Nos. 2-4, 6-8, 10), Exhibit 13 *and* CN Responsive Applications, FD 36873 (Sub-Nos. 9, 34), Exhibit 15 [hereinafter the "Operating Plan"]; *see also* Slazinski V.S. at 12–15.

[148] Slazinski V.S. at 12–13; *see* McClellan Dep. Tr. at 158:23-159:10 {{

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[149] In the alternative, if the Board does not order divestiture of the Kansas City Line, CN is seeking access to the former Sarpy Yard property as part of its responsive application for trackage rights in Sub-No. 3, and a condition from the Board ordering the sale of the former Sarpy Yard property to CN. Without access to the former Sarpy Yard property, CN would not have a location to handle automotive and intermodal traffic in the St. Louis BEA.

Each of CN's proposed conditions is specifically tailored to preserve the competition otherwise lost from the Proposed Transaction and ensure that CN has the tools necessary to be a cost-effective competitor for customers. Collectively, CN's proposed conditions for Kansas City and St. Louis / East St. Louis restore a competitive Class I option to these key gateways and to the critical corridor between them, preserving competition and increasing customer choice. CN's proposed conditions in Kansas City and St. Louis / East St. Louis are further supported by CN's operating plan and the accompanying verified statements.[150] CN's proposal would also increase competition across Class Is for traffic traversing this critical corridor benefiting customers in origins and destinations far beyond. Because CN is willing to jointly acquire the line with another Class I carrier (as long as UP/NS retain no ownership stake), CN's proposal also ensures that all of the Class Is have access to Kansas City, if the Board believes necessary to preserve competition, opens new and critical gateways for interchange across carriers, further reduces congestion in Chicago, and provides for 100% divestiture of the Kansas City Line, a necessary remedy to preserve competition.

i. Full Divestiture of the Kansas City Line is Necessary to Preserve Competition.

CN requests that the Board order divestiture of the Kansas City Line to CN. Pursuant to its authority to impose conditions, the Board has express statutory authority to order "the divestiture of parallel tracks."[151] CN recognizes that the Board does not order divestiture lightly and that any divestiture remedy must be tailored to the competitive concern identified.[152] The

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[150] *See generally* Operating Plan; Coleman V.S.; Kahwaty V.S.; Ellis V.S.; Exhibit 4, Verified Statement of David Przednowek [hereinafter "Przednowek V.S."]; Slazinski V.S.; Nair V.S.; Exhibit 8, Verified Statement of Janet Drysdale [hereinafter "Drysdale V.S."]; Exhibit 7, Verified Statement of Kelly Levis [hereinafter "Levis V.S."].

[151] 49 U.S.C. § 11324(c).

[152] *See Canadian National Railway Co., and Grand Trunk Corp.—Control—Illinois Central Corp.*, 1999 WL 336285 at *21 ("We have often said that divestiture is an extreme remedy not to be

Applicants' overlap between Kansas City and St. Louis / East St. Louis is precisely the case for divestiture. Not only do Applicants' networks overlap in the Kansas City and St. Louis BEAs, but Applicants have multiple parallel lines between St. Louis and Kansas City. Indeed, in their Merger Agreement, the parties anticipated this may be a necessary condition and excluded the divestiture of one of the lines between Kansas City and St. Louis from their list of "Non-Required Restrictions" that UP need not accept if ordered by the Board.[153] Without appropriate conditions, post-merger, Applicants would control the three most direct lines connecting this key corridor.

1. Trackage And/or Haulage Rights are Insufficient to Remedy Lost Competition Between Kansas City and St. Louis.

Full divestiture of the Kansas City Line is necessary to adequately preserve competition if the Proposed Transaction is approved. While trackage and/or haulage rights between Kansas City and St. Louis are superior to approval of the Proposed Transaction without any conditions, they would leave CN's ability to compete for traffic using the corridor dependent, indefinitely, on the merged firm—its dispatching, its maintenance and capital decisions, its yard operations, and the trackage or haulage rates it negotiates. In a haulage arrangement, CN's traffic would move on Applicants' trains; in a trackage rights arrangement, CN's trains would move on Applicants' dispatching and maintenance schedule and subject to Applicants' priorities. In each case CN's service quality, transit times, and cost would be reliant on decisions of the very competitor whose market power the condition is designed to check.[154] A remedy that provides only for partial

imposed lightly"); *UP/SP*, Decision No. 44, 1 S.T.B. at 419 ("While showing that a condition addresses adverse effects of the transaction is necessary to gain our approval for imposition of a condition, it is by no means sufficient. The condition must also be narrowly tailored to remedy those effects."); *see also* CN-13 at 66, FD 36500 (filed Feb. 28, 2022).

[153] *See* Am. Appl. Vol. 4 at 75, 182.

[154] Slazinski V.S. at 15 (explaining that trackage and haulage rights alone would not allow CN to compete effectively because CN could not offer a competitive product by the time its traffic reached Kansas City if it was dependent on UP's fees and dispatching); Nair V.S. at 9; Drysdale V.S. at 13.

divestiture (*i.e.*, with UP retaining partial ownership) similarly forces the remedy carrier to rely on the merged carrier to compete, undermining independence and competition. The ICC recognized these issues in *Santa Fe/Southern Pacific*, rejecting a proposed remedy under which the competing carrier would use the merged carrier's trains, because "its service could never be better than or competitive with" the merged carrier's, and it could not compete on "equipment supply, scheduling, transit time, accessorial services, new or improved intermodal facilities, or service to new shipper facilities."[155] Similarly, in *BN/SF*, the ICC struck a compensation escalation provision from a settlement agreement because "unduly high rentals could undermine the efficacy of a trackage rights remedy that [was] essential to [its] approval of th[e] merger."[156]

Full ownership of the Kansas City Line would give CN the incentive and the ability to invest in the line, to control its own dispatching and service design, and to price independently—the attributes that define an effective competitor, independent of entanglements from the merged carrier. Federal antitrust enforcers have long recognized that structural remedies that are "clean and certain, effective" and "avoid ongoing entanglement[,]" are strongly preferred and that divesting an "autonomous, ongoing business" "will most immediately eliminate the competitive problems created by the merger . . . and . . . entails the least amount of risk."[157] The key inquiry in evaluating the adequacy of a remedy is whether the remedy leaves the recipient "a willing, independent competitor capable of effective production in the . . . market."[158] A remedy carrier whose ability to compete depends on negotiated rates and service guarantees from the merged

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[155] *SF/SP*, 2 I.C.C.2d at 811.
[156] *Burlington Northern Inc.—Control and Merger—Santa Fe Pacific Corp.*, 1995 ICC LEXIS 214, 238 [hereinafter "*BN/SF*"].
[157] U.S. Dep't of Justice, Antitrust Division, *Merger Remedies Manual* § III(B) (2020); Fed. Trade Comm'n, Bureau of Competition, *Negotiating Merger Remedies: Statement of the Bureau of Competition of the Federal Trade Commission* at 5 (2012).
[158] *White Consol. Indus. v. Whirlpool Corp.*, 781 F.2d 1224, 1228 (6th Cir. 1986).

firm, as would be the case with partial divestiture or trackage and/or haulage rights, is less likely to meet that standard.

Courts recognize that these sorts of entanglements reduce the effectiveness of a remedy. "Courts are skeptical of a divestiture that relies on a continuing relationship[] between the seller and buyer of divested assets because that leaves the buyer susceptible to the seller's actions—which are not aligned with ensuring that the buyer is an effective competitor."[159] Those concerns apply with full force here. Another carrier's proposal for this corridor would perpetuate entanglement: CSX Transportation, Inc. ("CSXT") has proposed an arrangement that would leave Union Pacific with a 50% ownership interest in the very asset needed to preserve competition.[160] To fully preserve the competition lost from the Proposed Transaction, the remedy carrier cannot be reliant post-merger on Union Pacific to effectively compete. CN's request for full divestiture would accomplish a clean transfer to an independent operator. CN is also willing to jointly acquire the Kansas City Line with another Class I carrier if the Board believes it necessary to preserve competition, as long as CN obtains at least 50% ownership and no ownership stake remains with the merged UP/NS.

2. Divestiture of The Kansas City Line Does Not Present Risks to the Proposed Transaction or to Competition.

Divestiture of the Kansas City Line would restore the precise competition lost from the Proposed Transaction without impacting the Applicants' competitive positioning. The Board has previously expressed reluctance to impose divestiture as a condition to a transaction where the requested divestiture would "destroy major parts of the efficiency benefits of the merger," "cause [the] deal to become uneconomical . . . and destroy the merger," or risk "destroy[ing]" a settlement

[159] *United States v. Aetna Inc.*, 240 F. Supp. 3d 1, 60 (D.D.C. 2017).
[160] CSXT-25 at 6, FD 36873 (filed Sept. 9, 2026).

agreement.[161] Divestiture of the Kansas City Line would have no such effects. None of the Proposed Transaction's efficiencies would be eliminated by divesting the Kansas City Line. Applicants would still have a direct line between Kansas City and St. Louis, the current NS line, which their operating plan indicates they plan to primarily rely on in their post-merger plans.[162] Additionally, Applicants would still have access on the divested Kansas City Line under CN's proposed conditions.[163] CN anticipates granting Union Pacific local haulage rights over the divested line so that every customer on the line retains access to Union Pacific, as well as overhead trackage rights for Union Pacific's trains operating between Kansas City and St. Louis.[164]

Divestiture here would also not cause the Proposed Transaction to become uneconomical or risk the Settlement MOU. UP and NS specifically contemplated that certain conditions may present risk to the Proposed Transaction and provided for that risk in the Merger Agreement.[165] Indeed, the Merger Agreement specifically accounts for the fact that the Board may condition the Proposed Transaction on divestiture of a line between Kansas City and St. Louis and excludes such a condition from the list of "Non-Required Restrictions" that Union Pacific need not accept if ordered by the Board.[166] This means that divestiture of the Kansas City Line is not an independent basis for UP to walk away from the Proposed Transaction. Divestiture of the Kansas City Line is also expressly contemplated in the Settlement MOU.[167] CN and UP negotiated and agreed on which line between Kansas City and St. Louis would be subject to conditions, and the Settlement MOU recognizes that CN would file a responsive application for divestiture of the Kansas City

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[161] *See UP/SP*, Decision No. 44, 1 S.T.B. at 374–75.
[162] *See* Am. Appl. Vol. 2 at 674, ¶ 139 [hereinafter "Applicants' Operating Plan"].
[163] Drysdale V.S. at 16.
[164] *See* Operating Plan at 127; Drysdale V.S. at 16.
[165] *See* Am. Appl. Vol. 4 at 75, 182.
[166] *Id.*
[167] Second Supplemental Submission at 209.

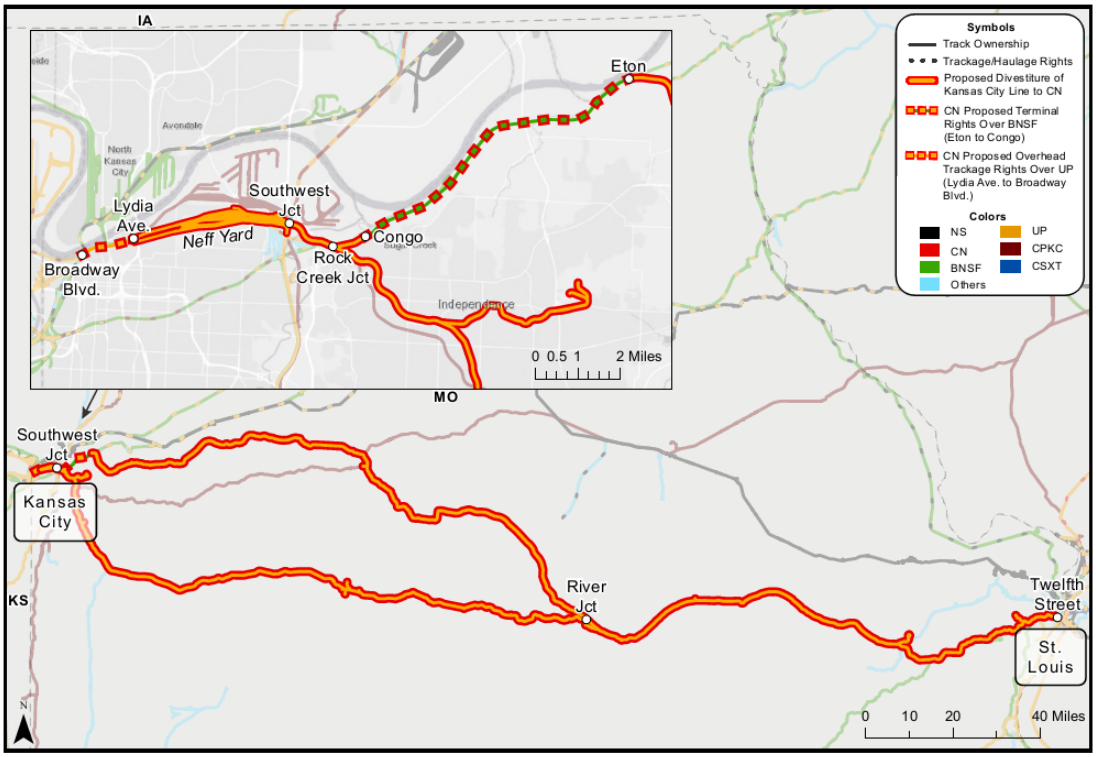
Line.[168] Divestiture of the Kansas City Line here is thus appropriately tailored to remedy the competitive harm of the Proposed Transaction without raising risks that the Board has considered when evaluating divestiture.

ii. CN's Additional Conditions are Also Necessary to Ensure Competition is Preserved in Kansas City and St. Louis / East St. Louis.

Access to the Kansas City Line alone would not fully allow CN to compete for the traffic that would lose a competitive option as a result of the Proposed Transaction. CN does not currently reach Kansas City, and its network reaches only East St. Louis, Illinois, not St. Louis, Missouri.[169] To preserve competition that would be lost due to the Proposed Transaction, CN is seeking an efficient route from its existing network to the line, yard capacity in Kansas City and St. Louis, property to invest in automotive and intermodal terminal facilities in Kansas City and St. Louis, access to the customers in the Kansas City terminal area, and the ability to interchange with other carriers so that CN can provide customers with more options to move gateway traffic further west. Each of CN's proposed conditions is necessary and tailored to that end. See these rights detailed in Figure 4 below.

[168] *Id.*
[169] Operating Plan at 86.

Figure 4: CN Conditions for Kansas City Access



Sources: Federal Railroad Administration Shapefiles; Railinc Centralized Station Master.

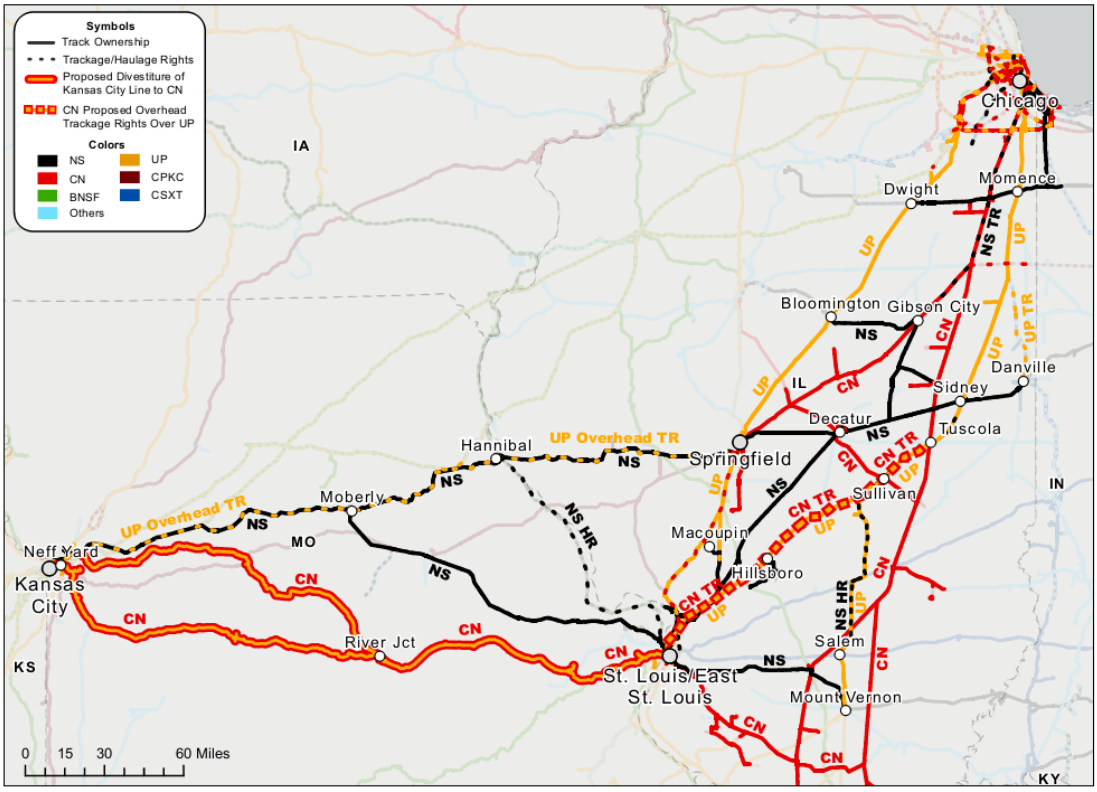
1. <u>Trackage Rights Over the Tuscola Line are Necessary to Preserve Competition.</u>

As detailed further in CN's responsive application, CN requests overhead trackage rights over the Tuscola Line between Tuscola, Illinois and East St. Louis, Illinois, together with overhead trackage rights over A&S between Lenox in Mitchell, Illinois and Valley Junction in East St. Louis for purposes of reaching UP and A&S, and connecting with UP.[170] These rights would provide CN access to St. Louis, as CN currently reaches only as far as East St. Louis, Illinois, and expand

[170] CN-30 at 2–3, 9–11. The Board has confirmed that CN does not need to file a responsive application to seek trackage rights over the TRRA between East St. Louis and St. Louis, Missouri to effectuate this access. *See* Decision No. 46, FD 36873, slip op. at 6 (STB served Nov. 4, 2026) ("The Board agrees that because TRRA is a non-applicant, CN is not requesting that the trackage rights agreement be made a condition to the Proposed Transaction, and the anticipated trackage rights agreement would be entered into voluntarily and available to CN regardless of the proposed Transaction, it is appropriate for CN to seek authority for such trackage rights outside of this proceeding.")

CN's access to East St. Louis, preserving the St. Louis area competition lost from the Proposed Transaction. Additionally, these rights would connect CN's existing central Illinois lines directly to the St. Louis gateway and, through it, to the Kansas City Line—eliminating approximately 70 miles from CN's route from Chicago to St. Louis and Kansas City.[171] Without them, CN's service to St. Louis and Kansas City would be materially longer and costlier than Applicants' single-line service. Trackage rights over the Tuscola Line are thus an important part of ensuring that CN can provide the competitive constraint its conditions are intended to preserve.[172] See these rights detailed in Figure 5 below.

Figure 5: CN Conditions for St. Louis and Kansas City Access



Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database.

[171] Operating Plan at 136.
[172] *See* Kahwaty V.S. at ¶ 44.

2. Lease or Purchase of Neff Yard Capacity and Access to Property in St. Louis for Automotive or Intermodal Traffic is Necessary to Preserve Competition.

Intermodal and automotive traffic, together with motor vehicle parts, are some of the commodities most impacted in Kansas City and St. Louis by the Proposed Transaction and account for {{ }} of Applicants' Kansas City and St. Louis traffic.[173] To compete for that traffic, CN needs terminal facilities in both Kansas City and St. Louis to load and unload containers and finished vehicles. Combined, UP and NS operate several yards and facilities equipped to handle automotive traffic in Kansas City.[174] UP currently serves Kansas City automotive traffic through its Muncie automotive facility and directly services GM Fairfax Assembly, and NS through its Voltz Yard, near Ford Kansas City Assembly.[175] In St. Louis, there are only two existing automotive rail ramps—UP's Centreville facility and NS's Wentzville facility.[176] No other Class I railroad operates an automotive facility in St. Louis.[177]

Access to such facilities to handle automotive and intermodal traffic in Kansas City and St. Louis is essential for CN to compete effectively for this traffic in these areas.[178] In Kansas City, CN therefore requests the lease of UP's Neff Yard, including the Neff intermodal terminal, in whole or in part, with an option to purchase the yard (including the terminal). And in St. Louis, if the Board orders divestiture of the Kansas City Line, CN plans to use UP's former Sarpy Yard property located on the divested portion of the line to develop facilities to handle automotive and intermodal traffic. To the extent the Board grants CN trackage rights over the Kansas City Line, instead of divestiture, CN is also seeking access to the former Sarpy Yard property for the same

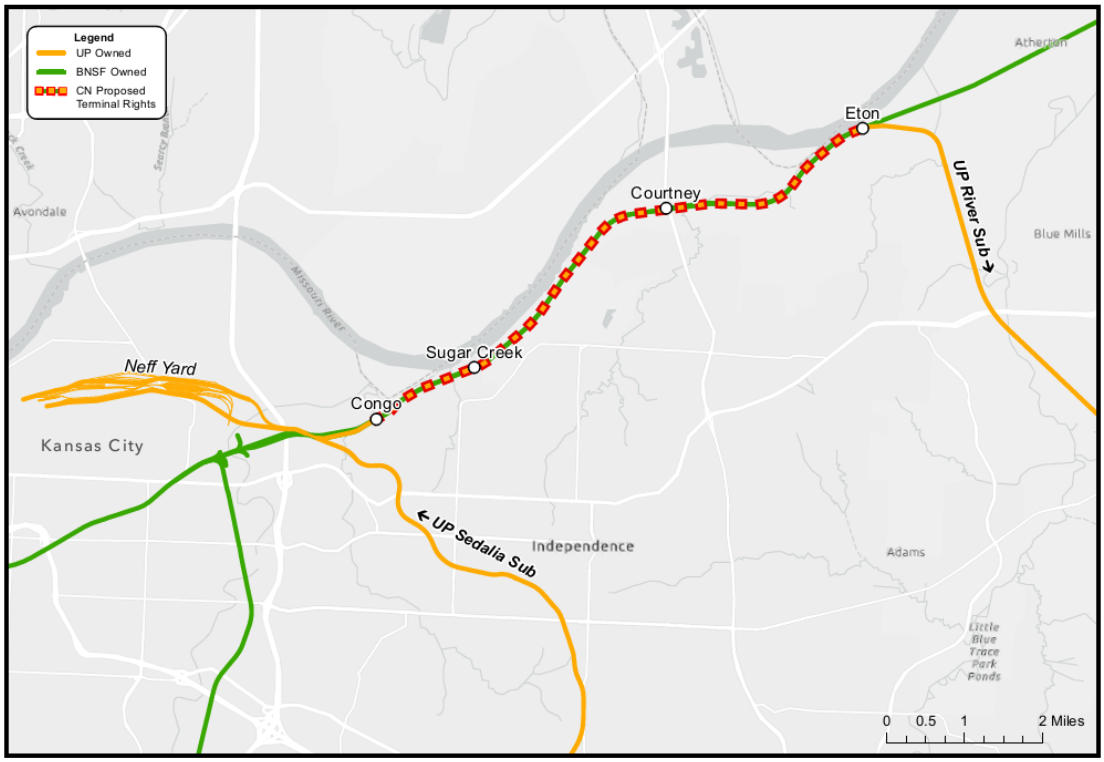
[173] *See supra* Part I.A.i; Part I.B.i.2.
[174] Slazinski V.S. at 6.
[175] *Id.* at 6–7.
[176] *Id.* at 7.
[177] *Id.*
[178] *Id.* at 10, 13.

purpose, and a condition from the Board ordering the sale of the former Sarpy Yard property. Without access to the former Sarpy Yard property, CN would not have a location to handle this intermodal and automotive traffic in St. Louis.

3. Terminal Trackage Rights over BNSF from Eton to Congo, Missouri Are Necessary to Preserve Competition.

As part of its comprehensive solution to preserve access to Kansas City, CN also requests terminal trackage rights over approximately 7.5 miles of BNSF track between Eton and Congo, Missouri near Kansas City (the "Eton to Congo Segment") to connect the River Subdivision to Neff Yard pursuant to 49 U.S.C. § 11102.[179] See these rights detailed in Figure 6 below.

Figure 6: CN Terminal Trackage Rights Between Eton and Congo, Missouri



Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

Terminal trackage rights between Eton and Congo, Missouri are needed to connect the River Subdivision on the Kansas City Line to Neff Yard and to the Kansas City terminal and are

[179] CN-30 at 3, 10–11.

necessary for CN to serve the affected customers.[180] As detailed in CN's responsive application requesting these terminal trackage rights, the Board has authority to grant such terminal trackage rights pursuant to 49 U.S.C. § 11102. Under 49 U.S.C. § 11102, the Board "may require terminal facilities, including main-line tracks for a reasonable distance outside of a terminal, owned by a rail carrier . . . to be used by another rail carrier." The Board can order terminal trackage rights where the Board finds that use to be practicable and in the public interest and where such rights would not "substantially impair[] the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business."[181] Here that standard is easily met.

The Eton to Congo Segment is located within the Kansas City terminal area and serves to connect line-haul routes to Kansas City yards, intermodal terminals, and interchange points, including Neff Yard. The ICC has already found that these exact tracks are "within a reasonable distance of the Kansas City terminal area and their use is related to terminal area activity."[182]

CN's use of this segment also readily meets the public interest standard. To remedy the competitive harms that would otherwise occur in Kansas City and in the corridor between Kansas City and St. Louis, access to Neff Yard and the Kansas City terminal is critical.[183] Rights over the Eton to Congo Segment are essential for CN's operations to reach Neff Yard and the Kansas City terminal over UP's River Subdivision and thus to CN's ability to provide a competitive alternative.[184] Granting CN terminal trackage rights over this segment is thus the most effective way for CN to provide a competitive alternative between Kansas City and St. Louis, including for automotive and intermodal traffic. Without the Eton to Congo Segment, CN would have access

[180] Operating Plan at 137.
[181] 49 U.S.C. § 11102(a).
[182] *UP/MP*, 366 I.C.C. at 588.
[183] Slazinski V.S. at 10–12.
[184] Operating Plan at 57, 137.

to Kansas City only over the Sedalia Subdivision (over which Amtrak service operates), which would be unreasonable from an operational standpoint, as CN would have to operate "against the flow" of UP's current directional running.[185] Operating in such a manner would create conflicting train movements and risk hampering efficient use of the line by all users, including Amtrak.[186] Moreover, CN's use of this segment would generate public benefits beyond merely preserving competition post-merger. CN's new single-line routes connecting Kansas City with CN's network would divert truck traffic to rail, taking trucks off the highway and reducing emissions.[187]

CN's use of the segment is also practicable and would not substantially impair BNSF's ability to handle its own business. Although CN's use of the terminal trackage rights "may make operations . . . slightly more complicated . . . because [an additional] carrier[] will be operating over them[,]" "this will simply 'require coordination of operations between the parties.'"[188] CN's use of the rights would also be consistent with UP's current use and would run directionally, as UP's traffic does. Additionally, the capacity used by CN, some of which would be using capacity freed up by UP, would not substantially impair BNSF's ability to use the segment.[189]

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[185] *See, e.g.*, UP/SP, Decision No. 44, 1 S.T.B. at 403–04 (permitting BNSF to participate in UP's directional running was among the conditions needed to ensure that trackage rights would be a successful remedy); Exhibit 22, BNSF Rebuttal Evidence & Argument, V.S. Ernest L. Hord 17, Oct. 16, 1998, FD 32760 (Sub-No. 26) ("BNSF's actual operations and service have been, and will continue to be adversely impacted by UP's decision to adopt these directional operations if BNSF has trackage rights over some, but not all, of the routes where UP is operating directionally. BNSF simply cannot provide consistent, reliable and competitive service to customers when it is forced to operate 'against the flow.'").
[186] Operating Plan at 112.
[187] Slazinski V.S. at 17; Kahwaty V.S. at ¶¶ 176–177.
[188] *UP/SP*, Decision No. 44, 1 S.T.B. at 447 (citing *UP/MP/WP*, 366 I.C.C. at 576).
[189] Kahwaty V.S. at ¶ 37; Operating Plan at 120–121.

4. Overhead Trackage Rights Between Lydia Avenue and Broadway Boulevard in Kansas City, Missouri Are Necessary to Effectuate Kansas City Access.

CN also requests that the Board grant CN overhead trackage rights between Lydia Avenue and Broadway Boulevard in Kansas City, Missouri.[190] The trackage between Lydia Avenue and Broadway Boulevard connects Neff Yard[191] and the KCT and is necessary for CN's ability to interchange with BNSF and other carriers in Kansas City.[192] The ability to interchange with other carriers via access to the KCT, as well as the ability to directly interchange with BNSF and Union Pacific, is essential to CN's ability to serve as an effective remedy carrier. CN's entrance into Kansas City would not only introduce a new Class I carrier to the area but would open up new interline opportunities for shippers utilizing the Kansas City gateway. CN's ability to interchange with other rail carriers is critical to these new interline partnerships and routes, including CN's plans to provide customers with new opportunities to direct traffic through the Kansas City gateway, instead of Chicago.[193] Without the ability to interchange with other carriers in the Kansas City gateway (capabilities UP and NS currently have), CN cannot effectively restore the full extent of lost competition.

[190] CN-30 at 3, 10–11.
[191] These trackage rights would provide CN with a route out of Neff Yard to the west to access the KCT and interchange with BNSF and other carriers. Lydia Avenue is the eastern terminus of the trackage rights because it is the western yard limit of Neff Yard according to UP's track chart and timetable. *See* FD 36873 (Sub-No. 4), App'x B at 1, 5, 7.
[192] Operating Plan at 135.
[193] Ellis V.S. at 13–14 (explaining that access to Kansas City gateway would allow CN to move potash on to more distant destinations like Texas via a connecting carrier); Slazinski V.S. at 11 ("[A]utomotive traffic that would otherwise be interchanged in Chicago could instead use Kansas City as a gateway, and opening traffic to longer hauls invites more competitive solutions and new destinations."); Drysdale V.S. at 21–22.

5. Sale of NS's KCT Ownership Interest and Reciprocal Switching Access to Customers are Necessary to Preserve Competition.

CN requests that the Board impose as conditions to the Proposed Transaction: (i) the sale of NS's ownership interest in KCT to CN, giving CN access to KCT for interchange and KCT reciprocal switching customers, and (ii) that CN be granted reciprocal switching access to the Kansas City customers currently open to reciprocal switching under the UP and NS tariffs.[194] CN is not among KCT's current owners. The Settlement MOU, however, provides that CN would acquire NS's ownership interest in KCT for nominal consideration. The customers reached through ownership of KCT and through Applicants' reciprocal switching tariffs are among the customers whose options would be reduced by the Proposed Transaction and who would be directly impacted by the competitive harms to the Kansas City area. As detailed in the comments above and Dr. Coleman's Verified Statement, customers in Kansas City, including those on Applicants' reciprocal switching tariffs and reached through the KCT, will experience adverse competitive effects from the Proposed Transaction notwithstanding the fact that if the Proposed Transaction is approved Kansas City will still have three Class I carriers that access the BEA.

For example, {{ }}, {{ }}, and {{ }} are all customers that are open to switching either through UP's reciprocal switching tariffs or the KCT's switching tariffs.[195] These customers originate or terminate chemical commodities, critical fertilizers like potash, and motor vehicles, all of which are identified as either moving on a 2-to-1 or 3-to-2 corridor or as experiencing source or destination competitive harms from the Proposed Transaction notwithstanding the presence of

[194] *See* Second Supplemental Submission at 206; Coleman V.S. at ¶ 9.
[195] *See* tabs "UP Reciprocal Switching Tariff.pdf" and "Local Switching and Terminal Tariff (KCTL 8036-A).pdf" in Coleman V.S. Workpaper "Coleman Materials Considered."

other Class I carriers in Kansas City.[196] Thus, to effectively preserve the competition lost for customers in Kansas City, CN must be able to access those customers. Further, accessing these customers is also important to allow CN to build sufficient density on the Kansas City Line to offer a competitively viable service and fund further investments in the line.[197]

iii. CN is Best Positioned to Preserve Competition in Kansas City and St. Louis / East St. Louis.

1. CN is the Best Remedy Carrier to Preserve Competition in These Areas.

CN's network positions it as an ideal remedy carrier to preserve competition in the Kansas City and St. Louis corridor. CN operates a rail network of approximately 18,600 route miles—approximately 5,400 of them in the United States—connecting the U.S. Midwest and Gulf Coast with Canada's eastern and western coasts and serving seven major ports on three coasts.[198] CN operates in 16 states directly and it reaches 48 states and the District of Columbia through interchange.[199] The Midwest and the watershed region, where Applicants' networks directly overlap, are in relatively close proximity with CN's network. CN's proposed conditions are therefore a natural extension of CN's existing network and would expand its presence in the Midwest, CN's current U.S. hub[200]—allowing CN to access affected customers with single-line service where its network reaches their traffic's origins and destinations, and with efficient interline service elsewhere.

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[196] Coleman V.S. at ¶ 117, Figure 18.
[197] *UP/SP*, Decision No. 44, 1 S.T.B. at 372–73 (imposing conditions to address concerns "about whether BNSF will have sufficient traffic to compete effectively").
[198] Drysdale V.S. at 5.
[199] *Id.*
[200] Illinois is CN's largest state by operations and employees, with approximately 1,600 railroaders. Ellis V.S. at 8. CN's U.S. headquarters, training center, and mechanical hub are in the Chicago area, and CN owns and has invested in its Chicago bypass loop (the former EJ&E), the fastest rail route in and around Chicago. Drysdale V.S. at 5.

CN's adjacent Midwest network connects directly to the Kansas City-St. Louis region, and CN currently serves many of the same customers' facilities in other locations that Applicants serve in the Kansas City and St. Louis BEAs, including customers impacted by the Proposed Transaction's competitive effects.[201] CN's entry would create a new Class I option in Kansas City and a strengthened option in St. Louis / East St. Louis, and would open new single-line routes for otherwise affected customers—for example, customers utilizing Kansas City to Detroit for automotive traffic and Chicago to Kansas City for intermodal traffic.[202] Dr. Henry Kahwaty's diversion analysis study, which estimates CN's anticipated traffic gains from the new lines, indicates that the Kansas City Line divestiture and Tuscola Line conditions would enable CN to attract significant volumes of traffic across intermodal, automotive, and bulk commodities.[203] CN's diversion study anticipates CN would attract {{ }} units from rail, with the most significant portion of rail-to-rail diversion coming from UP/NS.[204] Further, CN's conditions would enable CN to attract {{ }} units from trucks, including {{ }} from intermodal, {{ }} from automotive traffic, and {{ }} from other commodities.[205]

CN has the commodity-specific capabilities to serve the most affected customers and commodities. CN handled approximately 2.53 million U.S. originations and terminations in 2025, including approximately {{ }} intermodal and {{ }} automotive units.[206]

[201] Drysdale V.S. at 4, 17, 31.
[202] Coleman V.S. at ¶¶ 140–41, 153, 161; Kahwaty V.S. at ¶¶ 134, 141.
[203] Kahwaty V.S. at ¶ 16.
[204] Kahwaty V.S. at ¶ 16, Table 1.
[205] Kahwaty V.S. at ¶¶ 17, Table 1.
[206] Drysdale V.S. at 5; Nair V.S. at 4.

a. *Automotive*

CN handles more than two million finished vehicles annually and serves 18 automotive compound facilities and 11 North American vehicle assembly plants.[207] For automotive customers, CN's entry would remedy merger-related harms and create competitive routings that are unavailable today. CN serves vehicle assembly and parts plants for GM, Ford, Stellantis, and Nissan, many of which are located throughout Ontario and Michigan.[208] The requested conditions would enable CN to carry those manufacturers' vehicles and parts directly into Kansas City and St. Louis, and in the reverse direction, move finished vehicles from the Ford Claycomo and GM Fairfax plants straight to Michigan and Canada.[209] Kansas City GM vehicles now routed through Chicago, for instance, could travel to Toronto without an interchange.[210] Kansas City would also serve as an alternative to the Chicago interchange, on which CN's automotive business currently relies, meaning less handling of high-value vehicles, quicker turns for the shared multilevel fleet, more railcars available to shippers, and reduced inventory costs.[211] CN's entry provides new competitive opportunities for automotive customers, including a second single-line rail service to Kansas City or St. Louis for Michigan shippers.[212]

b. *Intermodal*

CN also operates ten intermodal terminals in the United States, has daily access to approximately 1,050 trucks for first- and final-mile service, and is a full member of the Equipment Management Pool, with access to approximately 40,000 containers.[213] Intermodal is the leading

[207] Slazinski V.S. at 3.
[208] *Id.* at 4.
[209] *Id.* at 11, 14.
[210] *Id.* at 11.
[211] *Id.* at 10–11, 15.
[212] *Id.* at 14.
[213] Nair V.S. at 3–4.

growth driver of CN's business, accounting for approximately 40% of its carload volume.[214] CN's reliance on double-stack trains and grounded terminals makes its operations efficient and less exposed to chassis shortages.[215] Kansas City access would allow CN to provide new single-line intermodal service from Detroit and Eastern Canada.[216] It would also allow CN to compete for existing international intermodal units moving to and from the East Coast and Gulf Coast, and to divert existing traffic to and from Kansas City and St. Louis away from congested U.S. ports.[217] CN access would also offer new competitive options, for example, CN's temperature-controlled intermodal service program would, for the first time, offer protein producers in the Kansas City and Omaha areas single-line, temperature-controlled service in ISO containers, which no U.S. Class I railroad provides today.[218]

c. *Potash*

CN is also uniquely qualified to remedy competitive harms for potash terminating in Kansas City. CN is a leading potash carrier in North America and serves major Canadian producers.[219] CN's unique access to the Gulf Coast, river system, Western Canadian production facilities, and Eastern Canadian import facilities enables fertilizer distributors on its network to benefit from responsive, cost-competitive supply chains that rely predominantly on single-line service.[220] Because the U.S.'s potash supply is more than 90% imported (primarily from Canada), carriers in the eastern United States are not positioned to originate this traffic.[221]

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[214] *Id.* at 3.
[215] *Id.* at 5.
[216] *Id.* at 11.
[217] *Id.* at 13.
[218] *Id.* at 14.
[219] Ellis V.S. at 12.
[220] *Id.*
[221] *Id.*

d. *Grain and Grain Products*

Competition for grain and grain product customers will also be preserved through CN entry into Kansas City and St. Louis and CN's expanded access to East St. Louis. CN ranks among North America's largest grain carriers, originating or terminating grain and grain-product traffic for roughly {{ }} U.S. customers.[222] Kansas City is a significant grain market, serving as a central location for grain processing, feed manufacturing, milling, and interchange with western carriers.[223] Kansas City would give CN access to a new wheat footprint, providing wheat customers a new competitive option.[224] Access to Kansas City would also provide Midwest grain customers a new competitive routing option to Kansas City markets, further increasing origination reach, market optionality, and competitive dynamics for grain shippers across CN's network.[225]

2. CN is Financially Resilient and Has a Strong Investment Record.

CN has solid financial footing and a demonstrated record of investing to expand competitive service. CN continues to demonstrate strong financial and operational performance, reflecting its continued priority of operational execution as well as its ability to provide solid service to customers.[226] CN's strong financial position is demonstrated by its consistent financial results and commitment to growth.[227]

CN also has a track record of investing to expand and successfully integrating new operations following acquisitions. CN opened an automotive and intermodal terminal in New Richmond, Wisconsin, in 2021, {{ }}

[222] Przednowek V.S. at 3.
[223] *Id.* at 19.
[224] *Id.* at 20.
[225] *Id.*
[226] *See* CN, *CN Delivers on Commitments with Strong Second Quarter Results and Raises 2026 Guidance* (July 24, 2026) available at https://www.cn.ca/en/news/2026/07/cn-delivers-on-commitments-with-strong-second-quarter-results-an/.
[227] *See* CN, *Built for Growth*, Investor Fact Book (2026), available at https://www.cn.ca/-/media/images/investors/photos/cn-2026-ifb-thumbnail-en-297x382.jpg.

and is adding intermodal capacity for resilience and pursuing a 900-acre Chicago logistics hub.[228] Following its acquisition of the Iowa Northern, CN has improved transit times and increased traffic moving within Iowa, including grain traffic.[229] CN has also invested $295 million in Iowa over the past decade.[230] CN is committed to developing and investing in its presence in Kansas City and St. Louis. CN previously sought access to Kansas City in the CP/KCS proceedings, and it is committed to investing the resources needed to make the conditions requested here effective.

3. CN is the Only Remedy Carrier Willing to Acquire 100% of the Kansas City Line, a Remedy Needed to Preserve Competition.

Notably, CN is the only railroad that has requested to acquire 100% of the Kansas City Line. Other proposals would not provide customers with a new structurally independent competitor in Kansas City. Canadian Pacific Kansas City Railway Company ("CPKC") already operates a line between Kansas City and St. Louis, and its proposal for trackage rights between Mexico, Missouri and St. Louis would strengthen an incumbent rather than replace the competitor the merger eliminates.[231] Further, CSXT's proposal, as noted, would leave Union Pacific with a continuing ownership stake in the line.[232] CN's proposal alone would resolve the overlap through a clean structural transfer. That CN is the only carrier willing to purchase 100% of the Kansas City Line demonstrates its significant commitment to competing for customers in Kansas City and St. Louis and investment in these areas.

E. Vertical Foreclosure is Likely in Kansas City and St. Louis Gateways Absent Conditions.

The competitive harms in Kansas City and St. Louis are not limited to the loss of a direct Class I alternative. The same combination of UP's and NS's parallel lines between Kansas City

[228] Drysdale V.S. at 7.
[229] Przednowek V.S. at 8–9.
[230] Przednowek V.S. at 7.
[231] *See* CPKC-46, FD 36873 (filed Sept. 9, 2026).
[232] *See* CSXT-25 at 6, FD 36873 (filed Sept. 9, 2026).

and St. Louis along with the market power of the merged UP/NS across several key commodities also gives the merged carrier the incentive and ability to foreclose, in whole or in part, interline options that run through these gateways. Applicants' expert economist, Dr. Mark Israel, dismissed that risk categorically.[233] But Board precedent, Applicants' own prior advocacy, and the real-world experience of the most recent end-to-end Class I merger all show that the risk is real, absent robust and enforceable conditions to protect gateways. At the Kansas City and St. Louis gateways, the risk of foreclosure necessitates divestiture along with robust gateway protections to ensure CN has sufficient traffic (density) on the Kansas City Line to be financially viable to preserve competition over time. The effectiveness of CN's proposed remedies in Kansas City and St. Louis depends critically on CN's ability to extend its length of haul to these gateways and to interchange traffic there with connecting carriers for movement west and south.[234] An open gateway condition without robust and enforceable protections to secure that ability would undermine CN's access remedies at both gateways and impair CN's ability to compete effectively. Together, these gateway protections, the requested trackage rights, and the proposed line divestiture would enable CN to serve as an effective remedy carrier for traffic moving to, from, and through these gateways.

i. Dr. Israel's Contentions Regarding the Lack of Foreclosure in End-to-End Mergers Are Not Supported.

The Board has recognized that end-to-end mergers can harm competition. In CP/KCS, the Board explained that "[e]ven end-to-end mergers . . . can pose competitive risks," and that its decision "overturns prior agency precedent that did not sufficiently recognize such concerns."[235] The Board found that, even without horizontal network overlap, "potential adverse vertical

[233] Am. Appl. Vol. 2, Verified Statement of Mark Israel at ¶ 17 (Apr. 30, 2026) [hereinafter "Israel V.S."].
[234] Drysdale V.S. at 21–22.
[235] Decision No. 35, *Can. Pac. Ry.—Control—Kan. City S.*, FD 36500, slip op. at 4 (STB served Mar. 15, 2023) [hereinafter "*CP/KCS*"].

competitive impacts can include diminished service and/or increased prices on interline movements that have the effect of foreclosing efficient competitive options."[236] The Board also "expressly rejected the presumption" that a vertical combination would not result in competitive harm.[237] While merger applicants may argue that the facts in a particular proceeding make foreclosure unlikely, they may not rely on a presumption that it is.[238] The Board reiterated the point in the current proceeding: "[a]ny railroad combination, including an end-to-end combination, entails a risk that the merged carrier would acquire and exploit increased market power."[239] This is particularly true in the UP/NS merger, which creates a new railroad with unprecedented scale and market power, controlling dominant shares of traffic at key gateways.

Applicants nonetheless dismiss any case for vertical foreclosure based on a categorical proposition: that "vertical foreclosure theories do not apply in the context of railroad pricing practices."[240] Dr. Israel asserted that "the economic theories of foreclosure that have been developed in the literature are ill-matched for the railroad industry."[241] He did so not because of anything about this transaction or based on empirical analysis, but because of general features of rail pricing.[242] Dr. Israel did not examine whether, on the facts of this transaction, the merged

[236] *Id*. at 65.
[237] *Id*. at 66.
[238] *Id*. at 47, 65-66.
[239] Decision No. 9, FD 36873, slip op. at 4 (STB served Jan. 16, 2026).
[240] Am. Appl. Vol. 1 at 22, 52.
[241] Israel V.S. at ¶¶ 14, 17.
[242] Israel V.S. at ¶ 14; Exhibit 16, Transcript of Dr. Mark Israel Deposition at 276:17-277:8 (Oct. 15, 2026) [hereinafter "Israel Dep. Tr."] {{

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carrier would have the incentive and ability to disadvantage interline rivals at any particular gateway, including Kansas City and St. Louis. Nor did he examine the one natural experiment that could test his theory: the CP/KCS merger itself. His conclusion rested largely on theoretical propositions; he conducted no empirical analysis or retrospective study of any prior vertical railroad merger.[243]

Dr. Israel's framework was also limited to whether the merged carrier would close a route outright through its pricing strategy. Competitive harm does not require complete foreclosure.[244] A merged carrier can disadvantage an interline rival in many ways short of closing a gateway, and each of those tactics ultimately harms shippers. It can short-haul the connecting carrier (*i.e.*, set pricing that effectively forces a shipper to choose an interchange point that lengthens the merged carrier's portion of the haul and shortens the connecting carrier's, reducing its miles and revenue).[245] Short-hauling often forces shippers onto longer, more circuitous routes overall.[246] Because rail transportation costs are tied to distance, those longer routes can raise shippers' total shipping costs and increase transit times. The merged carrier can also use manipulated pricing to

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[243] Israel Dep. Tr. at 323:3-6 {{
}}; Israel Dep. Tr. at 204:21-206:1 {{
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[244] *See Illumina, Inc. v. FTC*, 88 F.4th 1036, 1053 (5th Cir. 2023) (recognizing "myriad ways in which Illumina could engage in foreclosing behavior *without* triggering suspicion in other customers, such as by making late deliveries or subtly reducing the level of support services") (emphasis in original).

[245] *See* Kahwaty V.S. at ¶¶ 66–68.

[246] *See* Slazinski V.S. at 15 ("Today, CN must short-haul automotive freight to Chicago and interchange there to reach western carriers, compounding Chicago congestion and adding transit time."); Levis V.S. at 6–7 (explaining that CN today interchanges much of its metals and minerals traffic to NS at Chicago or to UP at Chicago and Superior, and the requested conditions would let CN carry that traffic farther on its own network to extend its length of haul).

steer interchange to a less efficient location, which adds cost, dwell, and handling for the shipper.[247] The merged carrier can also delay rate quotes or interchange handling, or degrade the frequency and quality of interchange service.[248] These tactics leave shippers with slower, less reliable service. They may also push shippers to accept the merged carrier's single-line offering simply because it is meaningfully faster to obtain, not because it is the better option. Each of these tactics increases the competitor's costs and pushes traffic toward the merged carrier's routing, so shippers lose the competitive discipline that alternatives would otherwise provide.[249] Over time, those tactics also erode the competitor's traffic density and, with it, its ability to compete at all. The result is fewer effective routing options and higher rates for shippers. Dr. Israel did not consider any of these partial foreclosure strategies or their effects on shippers and competition more generally.

The risk of foreclosure Dr. Israel dismisses is real in Kansas City and St. Louis. Today, UP and NS operate competing parallel lines between St. Louis and Kansas City, and customers moving traffic through the corridor can route over either carrier. The Proposed Transaction combines those parallel routes under common control. For certain customers, that combination recreates the dynamic that concerned the Board in CP/KCS: fewer independent routing options in a corridor, controlled by a carrier that also offers competing service.[250] For that traffic, the merged carrier

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[247] For example, a connecting carrier may seek to shift a shipper's traffic away from the traditional interchange to a more distant gateway by quoting unreasonable terms for its own leg of the movement, which forces the interchange onto the carrier's longer length of haul as the only economical routing for the shipper. *See also* Kahwaty V.S. at ¶¶ 67–68.

[248] For example, a merged carrier may keep the traditional interchange nominally open while giving lower priority to cars bound for the connecting carrier, making the interline service much less desirable for the shipper. That steers traffic to its own service without formally closing the gateway. *See* Kahwaty V.S. at ¶ 67.

[249] *See id.*

[250] *See CP/KCS* slip op. at 65-66.

would have both the incentive and the ability to raise the price of interline options that compete with its own service, or to otherwise engage in partial foreclosure tactics.

This foreclosure risk is yet another reason the conditions CN requests in Kansas City and St. Louis are necessary to preserve competition. CN plans to invest significant resources to acquire the Kansas City Line and to invest in intermodal facilities and automobile ramps in St. Louis and Kansas City.[251] For those investments to be commercially viable, and for CN to function as an effective remedy carrier in Kansas City and St. Louis, CN must be able to compete for and retain enough traffic to make its operations over the Kansas City Line sustainable. That includes traffic that originates or terminates in Kansas City and traffic that moves beyond it.

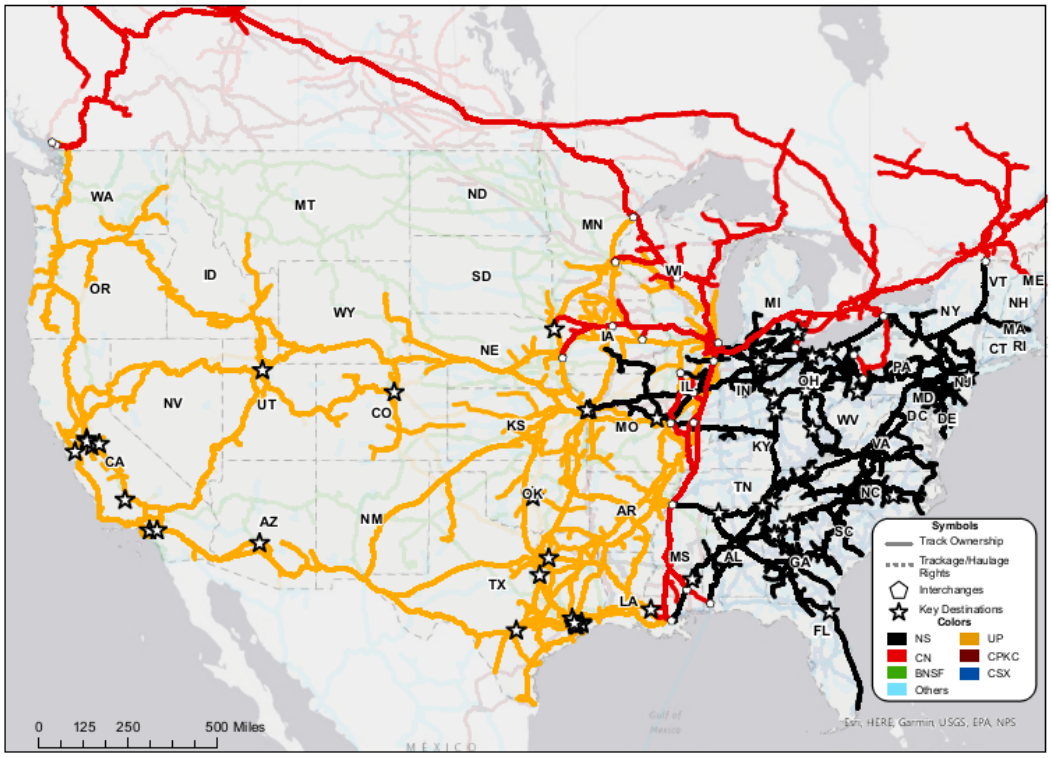
As Dr. Kahwaty explains, those volumes are achievable only if CN's traffic is not subject to foreclosure at its new St. Louis and Kansas City interchange locations.[252] CN cannot build sufficient traffic density if the merged carrier can dictate where, and on what terms, CN's traffic is interchanged, or can short-haul CN. CN's requested conditions are designed to prevent exactly that:

- **Divestiture of the Kansas City Line eliminates the risk that UP could disadvantage CN by degrading its service or prioritizing UP trains over CN trains on the line.** While haulage or trackage rights would also mitigate competitive harm to some extent, they would allow the merged carrier to self-preference at East St. Louis or Kansas City and short-haul CN on automotive traffic from Detroit to Kansas City and beyond, or set haulage or trackage rates at levels that make it cost-prohibitive for CN to compete with UP/NS.
- **The CP/KCS experience demonstrates the importance of robust and enforceable open gateway conditions to prevent partial foreclosure tactics.** The Board should therefore impose gateway protections that are robust and enforceable to ensure they preserve the competitive routing options on which CN's investments and shippers depend.[253]

[251] Nair V.S. at 7; Slazinski V.S. at 9, 16.
[252] *See* Kahwaty V.S. at ¶¶ 62–63.
[253] Other shippers have made similar observations about the CP/KCS transaction and the effectiveness of the open gateway conditions. *See* PBF Energy Inc., Comments in Opposition to the Proposed Merger, FD 36873 (Nov. 10, 2026) ("In PBF's view, vague commitments to be 'reasonable' are not meaningful and are not a workable basis for real-world supply chain strategies.

CN interchanges with UP and NS at dozens of gateways and interchange points across its U.S. network, from Chicago, Detroit, Memphis, and New Orleans to the Twin Cities, Council Bluffs, and Buffalo. CN relies on these interchanges to reach customers at key origins and destinations, including, for example, Houston, the Twin Cities, Atlanta, and other locations throughout the country.[254] Figures 7 and 8 below show the top U.S. destinations CN reaches (either as origin or destination carrier, respectively) through its interline relationships.

Figure 7: CN as Origin Carrier for Interchange with UP/NS to Reach Destinations

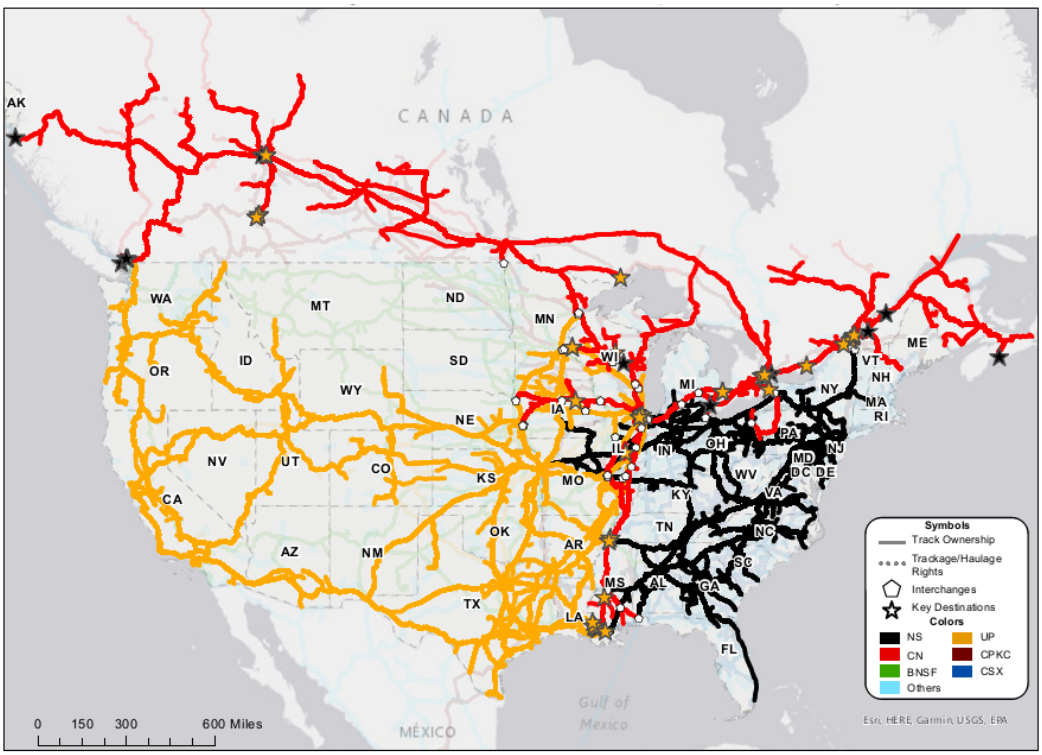


Sources: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; CN Traffic Tapes.

Railroads favor their own traffic whenever possible, and the requirement to be 'commercially reasonable' is a vague standard that makes it difficult for shippers to challenge the railroad.").

[254] Drysdale V.S. at 14.

Figure 8: CN as Destination Carrier for Interchange with UP/NS to Reach Destinations



Sources: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; CN Traffic Tapes.

Post-merger, absent robust and enforceable gateway protections, the combined carrier would have the incentive and ability to self-preference and disadvantage CN's interline routes, as the Board warned in CP/KCS, with both short-term and longer-term implications for competition.[255] Exhibit 9 lists the CN gateways and interchange points with UP and NS. Any open gateway condition the Board adopts, including the voluntary gateway commitments Applicants propose, should be robust and enforceable and expressly apply to each of those locations.

ii. CPKC Retrospective Confirms Vertical Foreclosure is a Reality.

Dr. Israel's theoretical dismissal of foreclosure can be tested against real-world evidence. The CP/KCS merger, the most recent end-to-end Class I combination, provides a natural

[255] *See supra* notes 234–238 and accompanying text.

experiment for studying vertical foreclosure effects after a rail merger. UP's own expert in that proceeding, Dr. Steven Salop, concluded there was a substantial risk of vertical foreclosure following the merger, specifically at the {{ }} interchange.[256] Dr. Salop recognized that a vertical merger can create incentives both to foreclose and raise prices and to lower prices, and that how those incentives balance out is an empirical question.[257] The Board shared those concerns. It found that "a robust and readily enforceable open gateway requirement is the best means to ameliorate or eliminate vertical foreclosure concerns," and conditioned its approval on CPKC's commitment to keep gateways open on commercially reasonable terms.[258] That condition applies in perpetuity, is supplemented by a requirement during the oversight period to provide shippers, on request, a written justification for interline rate increases above inflation, and is enforceable through arbitration or expedited Board proceedings.[259] Applicants here propose the same open gateway condition that the Board imposed in CP/KCS, and they rely on it as their answer to any residual foreclosure concern.[260] That makes CP/KCS the ideal natural experiment: it shows how a merged carrier has actually behaved under the very conditions Applicants propose. Such empirical questions can be studied in the form of a merger retrospective.

Dr. Israel did not conduct a merger retrospective in this case, claiming {{

}}[261] However, Dr. Israel also noted that it is possible to {{

[256] *See* Exhibit 21, Verified Statement of Dr. Steven Salop at ¶ 12, *Can. Pac. Ry.—Control—Kan. City S.*, FD 36500 (Feb. 28, 2022) [hereinafter "Salop V.S."].
[257] Kahwaty V.S. at ¶ 70 (citing Salop V.S. at ¶¶ 12, 17, 47).
[258] *CP/KCS* slip op. at 67–68.
[259] *CP/KCS* slip op. at 72, 76–78.
[260] Israel V.S. at ¶¶ 19, 46, 90–92.
[261] Israel Dep. Tr. at 324:4–20.

}}[262] Nor does any claimed lack of comparability withstand scrutiny: because rail pricing is lane-specific, not national, and foreclosure can occur at individual gateways, differences in haul direction and length between CP/KCS and the Proposed Transaction are no reason to disregard studying the impacts of the CP/KCS transaction.[263] CN's economic expert, Dr. Henry Kahwaty, conducted a merger retrospective of the CP/KCS merger to answer just such a narrow question: whether there is evidence of vertical foreclosure at the {{ }} gateway after the CP/KCS merger, as Dr. Salop hypothesized, despite the open gateway conditions the Board imposed.

Dr. Kahwaty's study uses a difference-in-differences ("DiD") framework, which economists widely regard as a standard methodology for conducting merger retrospectives. The analysis compares price changes before and after the CP/KCS merger for a group of interline movements through the {{ }} interchange which might have been impacted by the merger (treatment group) with price changes over the same period for comparable movements not expected to be affected by the merger (control group). As Dr. Kahwaty explains, if the two groups are similar in all significant respects, post-merger differences in their pricing can reasonably be attributed to the merger.[264]

Dr. Kahwaty's study finds evidence consistent with partial vertical foreclosure at {{ }} after the CP/KCS merger, even though the Board imposed open gateway conditions on that transaction.[265] Dr. Kahwaty's findings include:

- At {{ }}, volume shifted to CPKC single-line service as expected, but total volume fell. Prices on {{ }}-origin interline shipments rose, driven by price increases on

[262] Israel Dep. Tr. at 325:5–12.
[263] *See* Kahwaty V.S. at ¶ 73.
[264] Kahwaty V.S. at Attachment B, ¶ 7.
[265] Kahwaty V.S. at ¶¶ 95–96.

the CPKC segment where CPKC is the sole-serving carrier. This pattern is consistent with the foreclosure effects UP's own expert, Dr. Salop, predicted in CP/KCS.[266]

- Transportation equipment traffic from {{ }}, particularly vehicle parts, shifted from {{ }} to {{ }} even as prices through {{ }} increased. That is, prices at {{ }} increased despite some shippers responding to such price increases by shifting their traffic elsewhere.[267]

These outcomes occurred under open gateway conditions that Applicants' proposed commitments closely mirror. Based on his retrospective analysis, Dr. Kahwaty concludes that there is a potential for partial vertical foreclosure in the railroad industry, and in particular in Kansas City and St. Louis as a result of the Proposed Transaction, even with the Applicants' proposed open gateway condition.[268] As his retrospective demonstrates, where a merged carrier controls one side of an interchange and offers a competing service, it can and does use routing, pricing, and/or service levers to steer traffic to its own lines. A commitment to keep gateways open on commercially reasonable terms does not, by itself, prevent those tactics, particularly where the means of enforcing it is available only to shippers that may not have the information, resources, or incentive to challenge violations.[269] And the risk is greater here than in CP/KCS. The combined UP/NS would hold a significantly larger post-merger share than CPKC, giving it more opportunities to engage in foreclosure tactics.

iii. Robust and Enforceable Gateway Conditions are Needed.

Structural conditions, coupled with robust and enforceable gateway protections, are needed in Kansas City and St. Louis / East St. Louis. Divestiture of the Kansas City Line, together with

[266] Kahwaty V.S. at ¶¶ 95–97, 100.
[267] Kahwaty V.S. at ¶¶ 98–100.
[268] Kahwaty V.S. at ¶ 102.
[269] The lived experience of shippers who were impacted by the CP/KCS merger supports Dr. Kahwaty's results. *See* Letter from Richard Miller, Spearpoint Logistics, to the Board, FD 36873 (filed Nov. 12, 2026) (stating that "critical competitive gateways to/from Mexico have been closed to competing railroads" following CP/KCS, and that the "same incentives that drove CPKC to stop working with connecting carriers will clearly exist for the merger UP-NS").

gateway protections that are robust and enforceable in practice, would give CN an independent path to compete for traffic in the corridor that the merged carrier could not readily manipulate, ensuring CN's long-term competitive viability on the route. As Dr. Kahwaty explains, divestiture of the Kansas City Line lessens the vertical concerns raised by this transaction.[270] CN's proposed conditions ultimately would allow CN to serve as an effective remedy carrier for the customers who would otherwise lose a competitive option in Kansas City and St. Louis / East St. Louis.

II. CN'S PROPOSED CONDITIONS WOULD PRESERVE COMPETITION FOR 2-TO-1 AND 3-TO-2 CUSTOMER FACILITIES IN IOWA AND ILLINOIS

A. Absent Conditions, the Applicants' Proposed Transaction Would Harm Competition for 2-to-1 and 3-to-2 Customers in Des Moines, Iowa (and Avon, Iowa).

i. Without Conditions, Customers in the Des Moines and Avon Areas Would Experience Competitive Harm as a Result of the Proposed Transaction.

In addition to Kansas City and St. Louis, Applicants' networks overlap directly in the Des Moines area (the Des Moines area includes for these purposes Avon, Iowa). Pre-merger, Union Pacific and Norfolk Southern both access customers in Des Moines, Iowa; Norfolk Southern does so via haulage and trackage rights over BNSF's line and UP does so via its own line from Iowa Falls. As Applicants have acknowledged,[271] absent conditions, at least 15 Des Moines area customers—predominantly grain, metals, and chemicals shippers—would go from two Class I options to one or from three Class I options to two.[272] "It is well recognized that a 'merger[] that eliminate[s] head to head competition between close competitors often result[s] in a lessening of

[270] Kahwaty V.S. at ¶¶ 106, 206–07.
[271] *See* Rynaski Dep. Tr. at 205:22–206:19 {{

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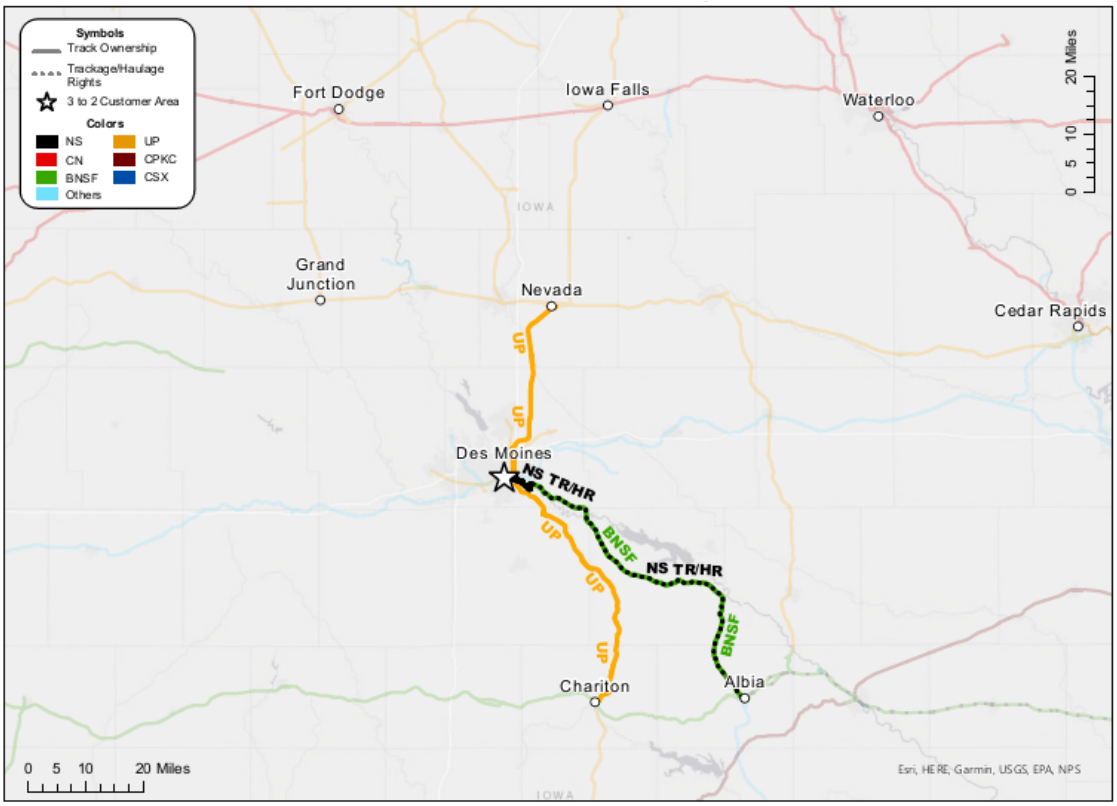
[272] *See* Second Supplemental Submission at 58–62.

competition.'"[273] These 15 customer facilities in Des Moines would experience the loss of head-to-head competition between UP and NS.

Figure 9: Pre-Merger Class I Options in Des Moines, Iowa



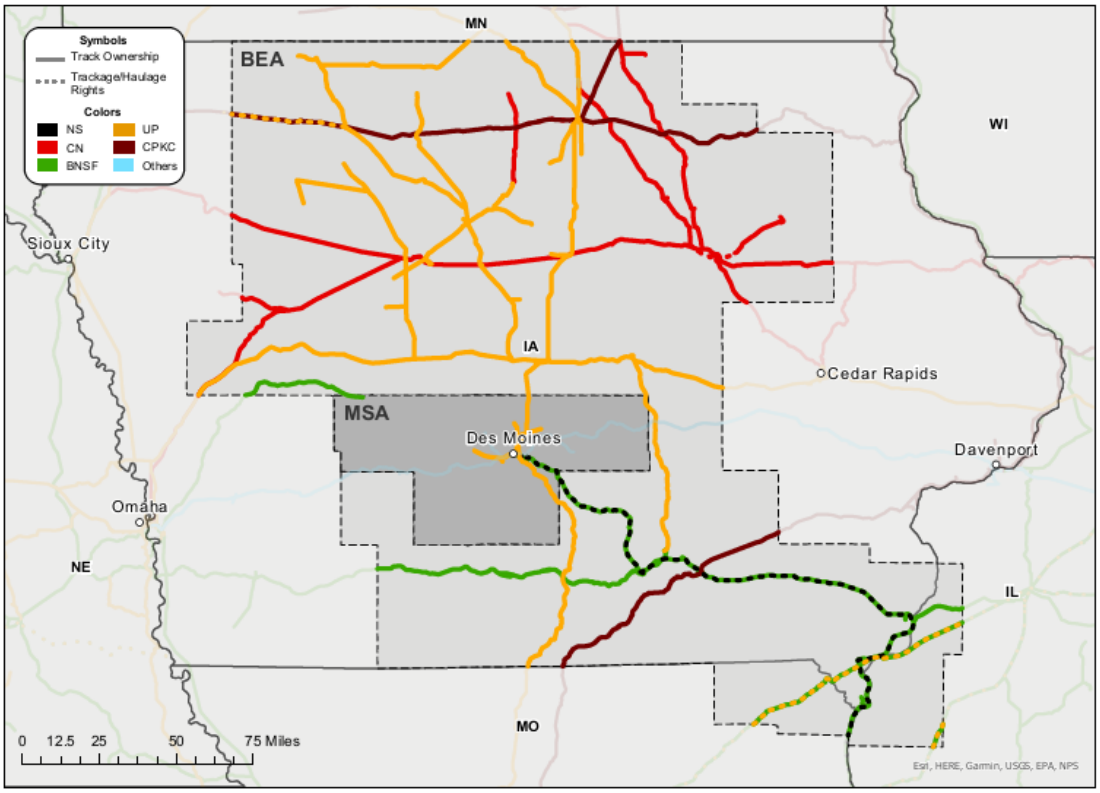
Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database.

The competitive effects on these customers are compounded by the fact that the Des Moines area generally would go from three Class I options to only two. Beyond Applicants, BNSF is the only other Class I that has access to the Des Moines area. Dr. Bailey does not identify any competitive harms to the Des Moines area or identify it as a 3-to-2 point because she analyzes harm to specific points at an overly broad BEA-level. Although utilizing BEAs in an analysis may be appropriate when evaluating competitive harms across or between corridors, it is not appropriate when evaluating specific points at which Applicants' networks overlap or customer

[273] *See Canadian Nat'l Ry.—Control—Iowa N. Ry.*, FD 36744 et al., slip op. at 7–11 (STB served Jan. 14, 2025) (quoting *FTC v. Staples, Inc.*, 190 F. Supp. 3d 100, 131 (D.D.C. 2016)).

facilities that Applicants access. As Dr. Coleman explains, BEAs can be extremely large depending on the BEA and in some situations may capture competitive options that cannot actually reach the areas that require analysis.[274] This is true here. Dr. Bailey finds that both CN and CPKC access the Des Moines BEA and therefore five Class Is are present in Des Moines. But neither CN nor CPKC have the ability to service or compete for customers in the Des Moines area on their current networks. Accordingly, the Des Moines area is properly considered a 3-to-2 and these customer facilities would lose a Class I option both directly and indirectly.

Figure 10: Des Moines BEA vs. MSA



Sources: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database.

The loss of head-to-head Class I competition would directly impact competition for these 2-to-1 and 3-to-2 customer facilities. As Dr. Coleman explains, the loss of competition between UP and NS, or the loss of the threat of competition from each as a competitive constraint, may

[274] Coleman V.S. at ¶¶ 34, 35, Figure 4, Figure 5.

have significant adverse competitive effects on these customers, including potentially increased rates, decreased service quality, and decreased customer negotiating power.

ii. Applicants Have Agreed to Access Commitments to Preserve Competition For These Affected Customers.

Applicants in their Second Supplemental Submission have acknowledged the competitive harms to customers in Des Moines and have proposed that the Board remedy the affected 2-to-1 and 3-to-2 Des Moines facilities as a condition of the Proposed Transaction.[275] Specifically, Applicants propose that the Board remedy almost all[276] of these facilities by granting access to CN.[277] Further, the Settlement MOU provides that UP shall request that the Board designate CN as the preferred remedy carrier for all affected 2-to-1 and 3-to-2 locations, absent a customer preference to the contrary.[278] To CN's knowledge, no customer in the Des Moines area has indicated a preference for any remedy carrier other than CN.[279]

iii. CN's Proposed Conditions Are Necessary to Remedy The Competitive Harms In the Des Moines Area and Protect The Public Interest.

CN requests trackage rights over UP's line between Manly and Des Moines and Avon, Iowa, including access to the 2-to-1 and 3-to-2 customer facilities in the Des Moines area.[280] CN's proposed condition would ensure that access to at least two or three competing Class I carriers is preserved for Des Moines area customers after the Proposed Transaction, and that no customer is

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[275] Second Supplemental Submission at 59–62.
[276] For one 2-to-1 customer, Titan Tire, Applicants propose instead to open switching to BNSF. *Id.* at 59.
[277] *Id.*
[278] Second Supplemental Submission at 203–04.
[279] Exhibit 17, Transcript of Katherine Novak Deposition at 288:15–20 (Sept. 24, 2026) [hereinafter "Novak Dep. Tr."] {{

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[280] CN-30 at 3, 13.

left with fewer Class I options than it has today.[281] CN's proposal is specifically tailored to ensure that CN has the access needed to preserve competition and provide a cost and service efficient competitive option for affected customers. CN initially plans to use the connection with UP at Manly, Iowa to handle Des Moines traffic until it builds a connection at Iowa Falls, approximately 60 miles closer to Des Moines. The requested trackage rights would extend from Manly to UP's Short Line Yard in Des Moines and, for unit train service, to a facility currently operated by ADM in Des Moines and a facility currently operated by Heartland Co-Op in Avon.[282] For manifest service customers, CN requests a condition requiring reciprocal switching access from Short Line Yard to any 2-to-1 and 3-to-2 customer facilities in the Des Moines area.[283]

1. Trackage Rights from Manly / Iowa Falls are Needed to Effectively Preserve Competition in Des Moines.

The Applicants propose that the Board condition the Proposed Transaction on a Class I being granted access to these affected customer facilities in the Des Moines area, and the Settlement MOU acknowledges that UP shall request that the STB designate CN as the remedy carrier for affected 2-to-1 and 3-to-2 customer facilities.[284] Union Pacific proposes that CN reach Des Moines via haulage from St. Louis to Des Moines utilizing BNSF's existing haulage agreement with Norfolk Southern.[285] CN, however, proposes that the Board grant a condition that allows CN access through trackage rights over Union Pacific's line from Manly, Iowa to Des Moines and Avon, Iowa as reflected in Figures 11 and 12.

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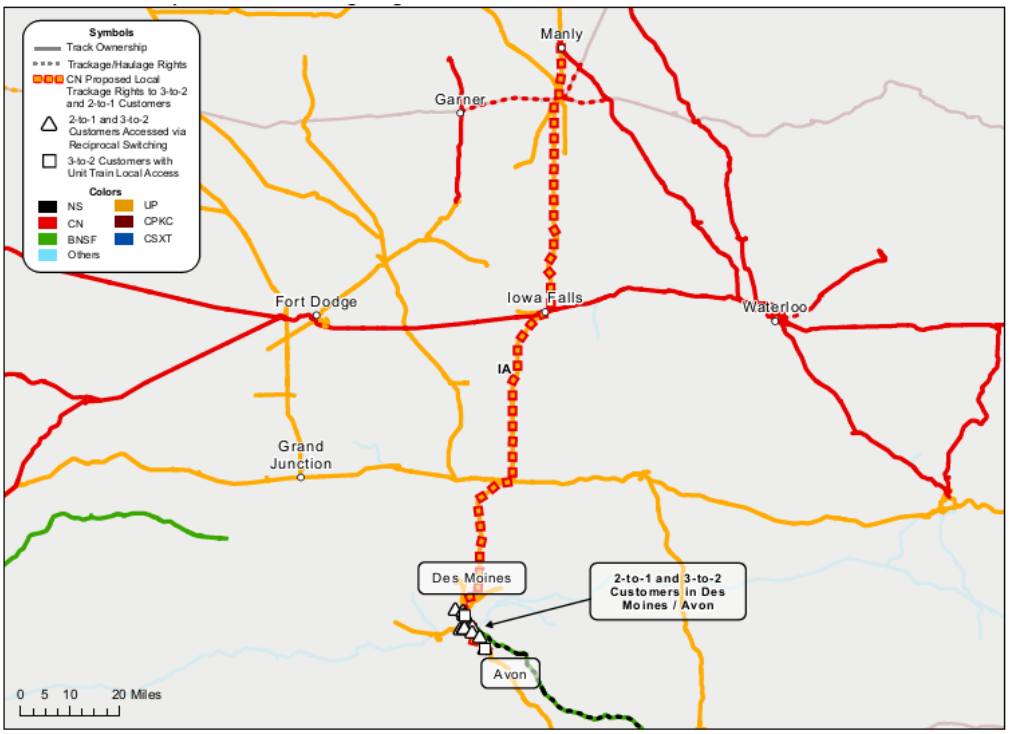
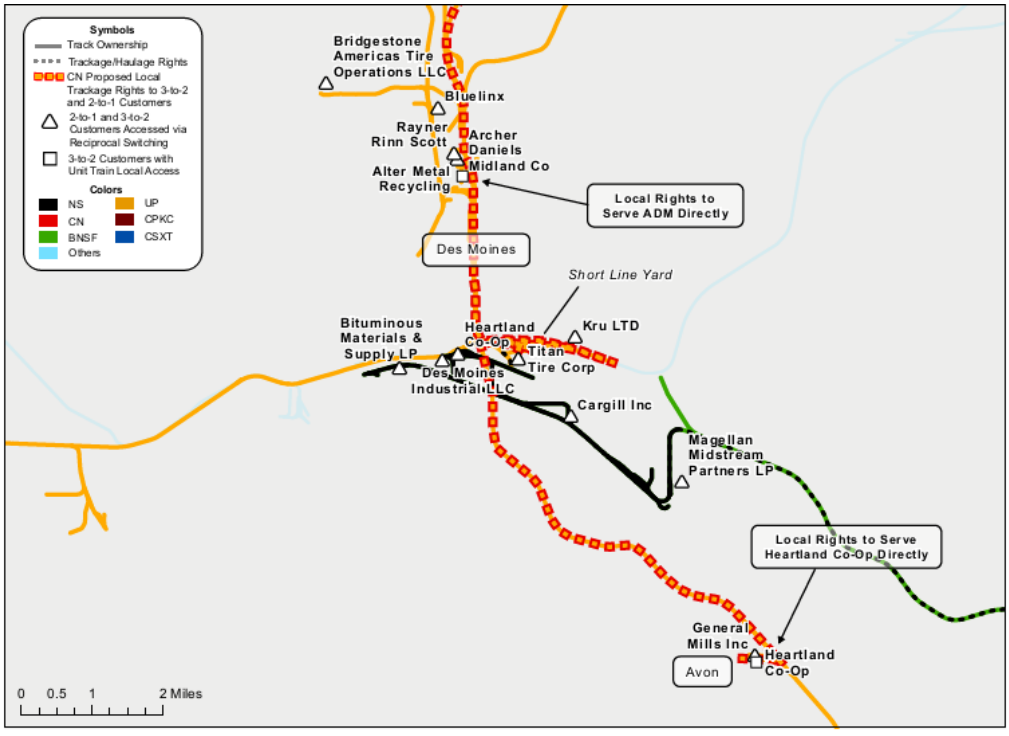
[281] *Id.* at 7.
[282] *See* Responsive Application of Iowa Northern Ry. Co. and Chicago, Central & Pacific R.R. Co., FD 36873 (Sub-No. 10) (filed Nov. 18, 2026).
[283] *Id.* at 16.
[284] Second Supplemental Submission at 203–04.
[285] Second Supplemental Submission at 60–61. For the two customers in Avon, Iowa, Applicants propose that CN access those facilities via haulage over UP, but Applicants do not detail where those haulage rights would be from. *See id.* at 61. The remedy for Avon, Iowa, which is in the Des Moines area, should be the same as the remedy for the affected Des Moines customers.

Figure 11: CN Proposed Trackage/Haulage Rights to Des Moines and Avon



Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

Figure 12: CN Proposed Rights to Customer Facilities in Des Moines and Avon



Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

In addition to being counter-intuitive to offer rights over a non-applicant carrier's line, Union Pacific's proposal for CN to access Des Moines via BNSF haulage from St. Louis is insufficient to adequately preserve competition for these affected customers and is not operationally efficient, for three reasons. *First*, as UP acknowledges in the Second Supplemental Submission, UP's proposal depends on rights under a BNSF-NS haulage agreement that restricts the extension of those rights to another carrier.[286] Implementing it would therefore require the Board to override a private contractual restriction and bind a non-applicant carrier. Although the Board has the ability to override such a restriction pursuant to 49 U.S.C. § 11321(a), the Board can do so only where "necessary to let that rail carrier, corporation, or person carry out the transaction." Here, such access is not "necessary" given CN has proposed an alternative and superior option to reach the affected customers in the Des Moines area that does not require the Board to override a restriction and impose the condition on BNSF, a non-applicant carrier.

Second, CN's proposed access—trackage rights over UP's line between Manly (including Iowa Falls) and Des Moines—requires far less mileage to connect Des Moines to CN's network. CN's network connects with Union Pacific at Iowa Falls, approximately 73 miles from Des Moines, and Manly, approximately 130 miles from Des Moines.[287] As reflected below in Figure 13, UP's proposal would instead route CN's Des Moines traffic over BNSF from St. Louis—approximately four times the length of haul.[288] A route of that length would add cost and transit

[286] Second Supplemental Submission at 60–61; *see also* Second Supplemental Submission Workpaper "Des Moines Haulage Agreement" at 36 {{
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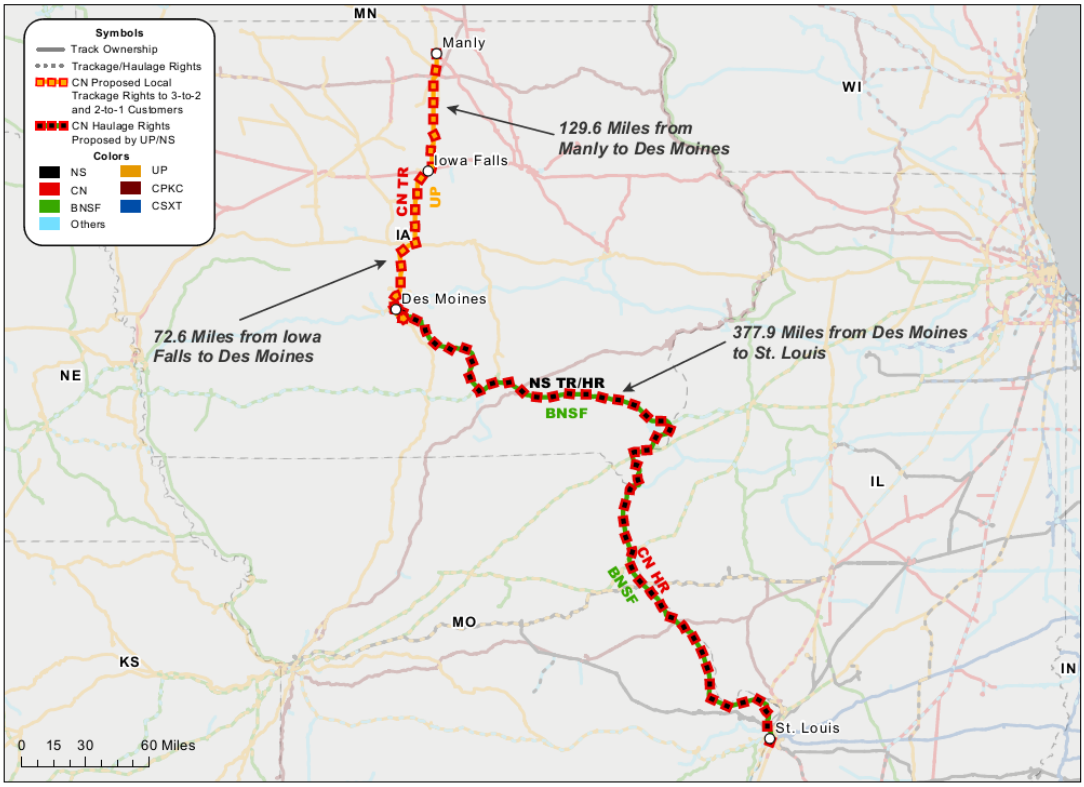
[287] Operating Plan at 17. CN plans to build a connection between UP and CN where they connect in Iowa Falls, Iowa so CN can utilize Iowa Falls, which is only 73 miles from Des Moines. Until that connection can be built, CN will use Manly. *See id.*; Przednowek V.S. at 13.

[288] Operating Plan at 17 n.5.

time to every shipment, placing CN at a structural disadvantage relative to the merged carrier and depriving Des Moines customers of a genuinely competitive third option.

Figure 13: Comparison of CN's Proposed Routing to Des Moines vs. Applicants' Proposed Routing



Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

Third, UP's proposal would also force all of CN's Des Moines traffic through the St. Louis terminal, one of the most congested points on the national network, rather than over a direct route from CN's Iowa lines.[289] Routing through St. Louis would add handling and dwell, increase variability in transit times, and make CN's service dependent on terminal operations it does not control—each of which would weaken the competitive constraint CN could provide. Although

[289] *Id.* at 17.

CN has asked, UP has provided no basis for Applicants' inefficient proposal for CN to access Des Moines in this manner.[290]

CN's proposed access would permit CN to efficiently route traffic to/from Des Moines and easily connect to its broader network permitting CN to provide more cost-efficient service that is less susceptible to service disruptions. CN's proposed conditions are thus necessary to ensure that CN can provide customers with a truly competitive third Class I option.

iv. CN Is Best Positioned to Remedy Competitive Harm to These Customers in Des Moines.

Applicants themselves have proposed that the Board condition the Proposed Transaction on additional Class I access to the affected Des Moines facilities and proposed that CN serve as the remedy carrier.[291] That choice is sound. CN is best positioned to remedy the competitive harms in the Des Moines area and provide competitive service for the affected customers. CN has a robust Iowa network—its operations support more than 730 Iowa jobs and add $133 million to Iowa's GDP.[292] CN also has the infrastructure and expertise to serve the commodities that predominate among the affected Des Moines area customers, including grain, metals, chemicals, and fertilizers.[293] CN performs approximately {{ }} U.S. grain and fertilizer originations and terminations and serves more than {{ }} U.S. grain and fertilizer customers.[294] Because grain typically reaches elevators by short-haul truck before moving by rail, the competitive benefit for these customers lies chiefly in restoring rail-to-rail competition.[295] CN's extensive Iowa rail

[290] *See* Novak Dep. Tr. at 285:16–21 {{

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[291] Second Supplemental Submission at 59–62.
[292] Przednowek V.S. at 7; Drysdale V.S. at 5.
[293] Drysdale V.S. at 24; Przednowek V.S. at 14–16.
[294] Ellis V.S. at 12; Drysdale V.S. at 5–6.
[295] Przednowek V.S. at 10–11.

infrastructure and expertise in key commodities, including grain, make CN commercially and operationally best-positioned to preserve competition for the affected Des Moines area customers.

Additionally, CN has a history of demonstrated success in acquisitions in Iowa. Following its acquisition of the Iowa Northern, CN has improved transit times and increased traffic moving within Iowa.[296] Since acquiring Iowa Northern, CN has worked closely with local customers to understand their transportation needs, identify new commodity flows, and develop additional destination markets for Iowa grain.[297] These efforts have already yielded meaningful results. For example, {{

}}[298] These examples demonstrate CN's ability to develop new commercial opportunities for Iowa grain shippers by leveraging its broader network and providing competitive transportation options.[299]

CN has also made substantial operational investments to improve the efficiency and reliability of grain transportation on the legacy Iowa Northern network.[300] Since the acquisition, transit times have improved significantly, allowing customers to use both privately owned railcars and CN-supplied hopper cars more efficiently.[301] These service improvements have specifically

[296] *Id.*
[297] Przednowek V.S. at 8–9.
[298] *Id.* at 9.
[299] *Id.* at 8–9, 16.
[300] *Id.* at 8–9.
[301] *Id.* at 9.

helped improve service and traffic for grain, the most significant commodity moved by affected Des Moines area customers.[302]

B. Absent Conditions, the Proposed Transaction Also Would Harm Competition for 2-to-1 and 3-to-2 Customers in Illinois.

i. Numerous Customer Facilities In Illinois Would Go From 2-to-1 Or 3-to-2 Class I Railroad Options As a Result of the Proposed Transaction.

Applicants' networks overlap significantly in Illinois as well. Today Union Pacific and Norfolk Southern both compete for the business of specific Illinois customer facilities as the only two Class I carriers, or as two of only three. Absent conditions, in Illinois six customer facilities would be left with only a single Class I option and six customer facilities would be left with only two Class I options if the Proposed Transaction is approved. These customers' facilities are located throughout the state of Illinois. Specifically, there are 2-to-1 customer facilities in Hillsboro, Carlinville, Bloomington, Chicago, and Mt. Vernon, Illinois and 3-to-2 customer facilities in Danville, Federal, Granite City, and Momence, Illinois.

ii. To Preserve Competition For These Affected Customers, Additional Class I Access Is Needed.

"Protection against a reduction in the number of railroads serving a shipper facility is not new."[303] The Board is familiar with the competitive harms that can occur to shippers that have few railroads serving their facility and that, as a result of a transaction, would lose an independent competitive railroad option. Specifically, such scenarios result in the loss of "direct competition."[304] The loss of such direct competition can result in increased prices and decreased service quality for such shippers.[305] To avoid transactions resulting in these recognized competitive harms, the Board has, "[s]ince 1980 at least, . . . consistently imposed merger

[302] *Id.* at 8–10.
[303] *See* Decision No. 21, FD 36873, slip op. at 22 (STB served May 28, 2026).
[304] *Major Rail Consol. Proc.*, 5 S.T.B. 539, 546, 555 (2001).
[305] Coleman V.S. at ¶ 25.

conditions to preserve two-railroad service where it existed" and has "imposed remedies to preserve competition where the number of carriers serving a shipper has gone from three to two in limited circumstances on a case-by-case basis." And recent Board precedent has recognized and imposed conditions, in a minor transaction, to address "the competitive impact of a proposed transaction on 3-to-2 shipper facilities."[306]

The Proposed Transaction is not unique. The Proposed Transaction would, absent conditions, result in the loss of direct competition to these Illinois 2-to-1 and 3-to-2 customer facilities and thus competitive harms to the affected customers. Accordingly, conditions to remedy the loss of this Class I competitive option are warranted. Access to an additional Class I railroad is the only way to preserve the competition these affected customers had prior to the Proposed Transaction.

iii. Applicants Have Agreed to Access Commitments to Preserve Competition For These Customers.

Applicants have acknowledged the need for conditions at these facilities and have proposed that the Board condition the Proposed Transaction on granting another Class I carrier access to each affected customer facility.[307] Further, in the Settlement MOU, Union Pacific agreed to "request that the STB designate CN as the remedy carrier at affected [2-to-1 and 3-to-2] locations," where operationally and commercially feasible, unless the shipper has identified a preferred carrier other than CN, in which event Union Pacific would provide CN with haulage rights to access the facility.[308] Applicants' Second Supplemental Submission includes potential proposed Access Commitments for each of these customers.[309] Applicants' proposed Access Commitments,

[306] *See* Decision No. 21, FD 36873, slip op. at 22 (STB served May 28, 2026).
[307] Second Supplemental Submission at 53–54, 58–62.
[308] *Id.* at 203–04.
[309] *Id.* at 58–62.

however, do not consistently designate CN and in several cases prescribe routings that would not effectively preserve competition.[310] CN addresses the specific access required for each location below.

iv. CN's Proposed Condition Would Remedy The Competitive Harms In Illinois and Protect The Public Interest.

1. CN's Proposed Conditions and Access are Needed to Preserve Competition for 2-to-1 and 3-to-2 Customers in Illinois.

CN requests trackage rights or, if the Board declines to order trackage rights, haulage to reach the Foresight Energy facilities at Hillsboro and Carlinville, and haulage or switching access to the remaining 2-to-1 and 3-to-2 facilities in Chicago, Bloomington, Mt. Vernon, Granite City, Momence, Federal/Alton, and Danville.[311] These conditions would replace, for every affected Illinois customer facility, the Class I option the Proposed Transaction would otherwise eliminate, on routes that connect directly with CN's existing Illinois network.[312] Applicants and CN agree to certain Access Commitments for affected customers. In some cases, however, Applicants have proposed Access Commitments that do not designate CN, and in several instances prescribe routes that would not provide effective competition and/or present operational challenges. CN proposes conditions that provide CN with access to each customer facility that is necessary to effectively service those facilities from CN's existing network. Specifically, CN proposes:

2-to-1 Customers in Illinois

- **Hillsboro Energy LLC (Hillsboro, IL):** CN proposes trackage rights for CN between East St. Louis/Tuscola and Hillsboro.

[310] *Compare id.* at 58–62, *with* CN-30 at 3 & n.8.
[311] CN-30 at 3 & n.8, 11–12.
[312] *See* Operating Plan at 16–18, 121–22.

- **Macoupin Energy LLC (Carlinville, IL):** CN proposes trackage rights for CN between Springfield and Carlinville for this idled facility.

- **Midwest Salt LLC / US Glu-Lam Inc. (Chicago, IL):** CN proposes the customers be open to switching for CN in Chicago.

- **AgRail LLC (Bloomington, IL):** CN proposes haulage rights for CN via NS from Decatur.

- **Milano Metals & Recycling / Milano Railcar Services / Shapiro Bros. of Illinois Inc. (Mt. Vernon, IL):** CN proposes haulage rights for CN via NS from Centralia.

3-to-2 Customers in Illinois

- **Bunge Milling Inc. (Grain Craft); REG Danville LLC / Renewable Energy Group Inc.; The Quaker Oats Co. (Danville, IL):**[313] CN proposes haulage rights for CN via NS from Decatur and/or Tolono.

- **Mighty River Recycling LLC / Azcon Inc. (Federal / Alton, IL):** CN proposes the customers be open to switching for CN in St. Louis.

- **Edmund A. Allen Lumber Co. (Momence, IL):** CN proposes haulage rights for CN via UP from Yard Center.

- **USS Granite City Works (Granite City, IL):** CN proposes the facility be open to switching for CN in St. Louis.

CN discusses each of CN's proposed access by location below.

a. *Hillsboro and Carlinville*

Applicants acknowledge that the Foresight Energy facilities at Hillsboro (Hillsboro Energy LLC) and Carlinville (Macoupin Energy LLC) would go from two Class I carriers to one and have

[313] CN understands that Bunge Milling is now known as Grain Craft and that the Quaker Oats facility is now closed.

agreed to grant trackage rights to another Class I carrier.[314] Indeed, Dr. Bailey excludes the Springfield-Evansville/Henderson corridor from her Within Corridor analysis results only because traffic on that segment is almost exclusively Hillsboro Energy's and Applicants have committed to remedy that customer's 2-to-1 status.[315] CN proposes trackage rights for CN between East St. Louis/Tuscola and Hillsboro for the Hillsboro Energy facility and between Springfield and Carlinville for the Macoupin Energy facility.[316] If approved, CN would be able to easily serve Hillsboro via the Tuscola Line.[317] Because the commodity served at the Foresight Energy facilities is coal that moves in unit trains, trackage rights are by far the most effective way to preserve competition for the facilities.[318] Haulage rights would not permit CN to provide reliable, competitive coal service for these facilities.[319]

CN is best situated to serve Hillsboro as CN is the closest other Class I carrier that already reaches destinations of Hillsboro Energy's traffic and/or can serve destinations through limited interchange.[320] Additionally, CN has extensive experience and the infrastructure needed to service this coal traffic.[321]

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[314] Am. Appl. Vol. 1, Verified Statement of Katherine Novak at ¶ 56 (Apr. 30, 2026) [hereinafter "Novak V.S."]; Second Supplemental Submission at 58.
[315] Bailey V.S. at ¶ 141 & n.128.
[316] Although Foresight Energy has requested that BNSF serve these facilities via trackage rights as the remedy carrier, BNSF did not request trackage rights to either facility in its description of anticipated responsive application and to CN's knowledge no agreement between UP and BNSF has occurred. *See* BNSF-53, FD 36873 (filed Sept. 9, 2026); CN-30 at 6 n.13.
[317] The Macoupin facility at Carlinville is currently idle. *See* Foresight Energy, *Operations*, https://www.foresight.com/operations/ (last visited Nov. 9, 2026).
[318] Operating Plan at 138; Ellis V.S. at 10.
[319] *See* Ellis V.S. at 10 (explaining that trackage rights would provide CN with operational control, and operational control is necessary to provide reliable, competitive coal service).
[320] *Id.* at 8–10.
[321] *Id.* at 4, 8.

b. *Chicago*

Midwest Salt LLC and US Glu-Lam Inc. are both 2-to-1 customers in Chicago. Midwest Salt LLC is a bulk salt distributor and industrial salt supplier.[322] US Glu-Lam is a wholesale distributor of engineered wood products.[323] Applicants have recognized that Midwest Salt LLC and US Glu-Lam Inc. are 2-to-1 customers and have proposed opening these facilities to switching by all Class I carriers in the Chicago switching district.[324] CN requests that the Board condition the Proposed Transaction on the facilities being opened to switching to all Class I carriers in the Chicago switching district, including CN.[325] CN supports this proposed remedy and agrees that it is operationally feasible.[326]

c. *Bloomington*

AgRail LLC is a 2-to-1 customer in Bloomington. AgRail is a high-speed rail grain terminal that has a full-service grain elevator.[327] AgRail has identified CN as its preferred remedy carrier.[328] Applicants have recognized AgRail is a 2-to-1 customer and have committed to granting CN haulage rights to Bloomington to remedy AgRail's 2-to-1 status.[329] Specifically, Union Pacific proposes that CN be granted haulage rights via UP's line from East St. Louis.[330] But this proposed route would require CN to hand traffic to UP in the heavily congested St. Louis terminal and to take it back there. CN cars routed through St. Louis would also need to compete for yard and track capacity with the traffic of several other carriers.[331] CN requests that the Board condition the

[322] *See About Midwest Salt*, Midwest Salt, https://midwestsalt.com/about-mws (last visited Oct. 22, 2026).
[323] *See Our Story*, US Glu-Lam, https://www.usglulam.net/who-we-are (last visited Oct. 22, 2026).
[324] Second Supplemental Submission at 58–59.
[325] *Id.* at 203.
[326] Operating Plan at 124.
[327] *See AboutUs*, AgRail LLC, https://www.agrail.com/aboutus (last visited Oct. 22, 2026).
[328] *See* Second Supplemental Submission at 65.
[329] *Id.* at 58.
[330] *Id.*
[331] Operating Plan at 122.

Proposed Transaction on UP granting CN haulage rights via NS from Decatur, Illinois where CN's network already connects and interchanges with NS—a substantially shorter and more direct route that avoids the heavily congested St. Louis terminal.[332] CN's preferred route is more efficient and would permit CN to offer a more competitive option for AgRail.[333] It is also more consistent with the customer's own preference, which was that CN be granted haulage over NS's current line to avoid the heavy congestion in the St. Louis terminal.[334]

d. *Mt. Vernon*

Milano Metals & Recycling / Milano Railcar Services / Shapiro Bros. of Illinois Inc. are currently served directly by UP, NS, and Evansville Western Railway in Mt. Vernon. Applicants have recognized that these customers are 2-to-1 customers because their Class I options would be reduced from two to one as a result of the Proposed Transaction.[335] Applicants have proposed granting haulage rights to CSXT from Princeton, rather than to CN.[336] CN, however, requests that the Board condition the Proposed Transaction on Applicants granting CN haulage rights via NS from Centralia, where CN has an existing interchange agreement with NS, to Mt. Vernon. CN's existing network in Centralia would allow CN to serve these shippers with a short haulage move rather than a long move from a more distant connection, resulting in more competitive transit times and rates.[337]

e. *Danville*

Union Pacific, Norfolk Southern, and CSXT currently access three customers in Danville, Illinois—Bunge Milling Inc., REG Danville LLC / Renewable Energy Group Inc., and The Quaker

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[332] *Id.*
[333] *Id.*
[334] *See* Exhibit 26, UP_0333599 (Confidential) {
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[335] Second Supplemental Submission at 59.
[336] *Id.*
[337] Operating Plan at 122–23.

Oats Co.—each of which would go from three Class I options to two as a result of the Proposed Transaction without sufficient conditions.[338] Applicants have acknowledged that these Danville customers are 3-to-2 customers and have proposed that the Board condition the Proposed Transaction on another Class I, CN, being granted access to these customers.[339] Specifically, Applicants propose that CN be granted access to Danville via haulage on CSXT's line from Chicago through a CSXT-UP haulage agreement. CN, however, requests that the Board grant CN access to Danville via NS's line from Decatur and/or Tolono, Illinois. CN's network currently connects to NS's line from Decatur, and CN and NS could restore the switch at Tolono to interchange there.[340]

Implementing Union Pacific's proposal would again require the Board to override a private contractual restriction binding a non-applicant carrier, here CSXT. As detailed above, although the Board has the ability to override such a restriction pursuant to 49 U.S.C. § 11321(a), the Board can do so only where "necessary to let that rail carrier, corporation, or person carry out the transaction." Here, as was the case in Des Moines, such access is not "necessary" given CN has proposed an alternative and superior option for reaching the affected customers in Danville. This is an alternative that does not require the Board to override a restriction and impose the condition on CSXT, a non-applicant carrier.

And as was the case with Applicants' Des Moines proposal, Applicants' proposal for Danville would require a longer route to connect the traffic to CN's network and one that forces the traffic through the congested Chicago gateway. Such a route would add cost and transit time to every shipment, placing CN at a structural disadvantage relative to the merged carrier and

[338] Second Supplemental Submission at 58–62.
[339] *Id.*
[340] *See* Operating Plan at 123.

depriving Danville customers of a genuinely competitive third option. Accordingly, CN requests that the Board condition the Proposed Transaction on CN being granted haulage rights over NS's line from Decatur and/or Tolono, which are registered CN-NS interchange locations and places where CN's network already connects.[341] As mentioned above, CN expects that Danville haulage would initially move physically via Decatur, but if Danville volumes warrant, or if customers located near Tolono justify it, CN and NS could restore the Tolono switch to provide an even shorter connection.[342] Designating both Decatur and Tolono as connection points would let CN initially route Danville haulage via Decatur, while preserving the option for CN and NS to restore the Tolono switch for an even shorter connection if Danville volumes or nearby customers warrant it, all without requiring new interchange infrastructure at the outset.[343]

f. *Federal/Alton*

Mighty River Recycling LLC / Azcon Inc. (Federal/Alton) is a 3-to-2 customer. Applicants have acknowledged this customer's 3-to-2 status and propose that the facility should be open to reciprocal switching to CN via a connection with UP/NS in St. Louis. CN agrees this proposal is operationally feasible and would be the best means to preserve competition for these customers.[344] Accordingly, CN requests that the Board impose this remedy as a condition of the Proposed Transaction.[345] Dr. Bailey's observation that the facility shipped {{ }} carloads in 2023 does not diminish the need for the remedy.[346]

g. *Momence*

[341] Operating Plan at 123.
[342] *Id.*
[343] *Id.*
[344] Operating Plan at 125.
[345] Second Supplemental Submission at 58–62.
[346] *See* Bailey V.S. at ¶ 115; *supra* Part I.C.i.1.

Edmund A. Allen Lumber Co. is a 3-to-2 customer in Momence. Applicants have acknowledged this customer's 3-to-2 status and proposed haulage for CN via a joint UP/CSXT local train from Chicago as a remedy.[347] This arrangement is not preferable or efficient because it would make CN's service dependent on the operations of two competitors. UP and CSXT, which both compete with CN for this traffic, would set train schedules, car handling, frequency, and priority.[348] CN requests that the Board condition approval of the Proposed Transaction on UP granting CN haulage via UP from Yard Center in Dolton, Illinois, which would provide a direct and more independent route.[349] A single-carrier haulage move from Yard Center would allow CN to offer more reliable service and competitive rates for this customer.[350]

h. *Granite City*

USS Granite City Works is a 3-to-2 customer in Granite City, Illinois. Applicants have acknowledged this customer's 3-to-2 status and proposed that the Board condition the Proposed Transaction on CN being granted access to USS Granite City Works.[351] CN and Union Pacific agree that the preferred remedy for this customer facility is that the facility should be opened to switching for CN in St. Louis. Accordingly, CN requests that the Board impose that access as a condition of the Proposed Transaction. CN's expanded St. Louis access via the Tuscola Line, A&S, and TRRA would enhance its ability to serve this facility. CN currently has the ability to access USS Granite City Works via a switch from the TRRA at East St. Louis, Illinois and would not be dependent on UP to effectuate the proposed remedy.[352]

2. CN is Best Positioned to Remedy Competitive Harms for Additional 2-to-1 and 3-to-2 Customers in Illinois.

[347] Second Supplemental Submission at 59–60.
[348] Operating Plan at 124.
[349] *Id.*
[350] *Id.*
[351] Second Supplemental Submission at 58–62.
[352] Levis V.S. at 6.

CN proposes conditions that would provide a comprehensive remedy for all 2-to-1 and 3-to-2 customer facilities across Illinois, preserving competitive rail service for customers that would otherwise lose a Class I carrier option because of the Proposed Transaction. The affected Illinois 2-to-1 and 3-to-2 facilities lie largely in and around CN's existing and comprehensive Illinois footprint. CN's presence in Illinois allows it to access all of these facilities with minimal additional trackage or haulage rights. Moreover, CN's network and infrastructure provide it with the tools to access the affected customers with single-line service over its existing network or through effective interline service, while expanding these customers' single-line reach to new destinations.[353] At least one affected customer, { }, has told Union Pacific that CN { }[354] CN is not aware of any affected Illinois customer other than Foresight Energy that has expressed a preference for a different remedy carrier.[355]

NO CONTROL APPLICATION IS NEEDED FOR THE PPU

Applicants filed a related minor application seeking Board approval and authorization to control the PPU in Docket No. FD 36873 (Sub-No. 1).[356] This related application was premised entirely on the fact that, absent further action, the Proposed Transaction would combine Norfolk Southern's 40.64% interest and Union Pacific's 12.5% interest in the PPU to give Applicants a combined 53.14% majority stake, with CN (through Illinois Central Railroad Company) holding the remaining 46.86%.[357] From the outset, Applicants expressed their willingness to divest to CN

[353] Drysdale V.S. at 26–27.
[354] *See* UP_0333599 (Confidential).
[355] Novak Dep. Tr. at 288:15–20 {{ }}.
[356] *See* Am. Appl. Vol. 2 at 1145–70.
[357] *Id.* at 1145–46.

as much of NS's ownership interest in the PPU as required to reduce their combined interest to 50%.[358] The Settlement MOU would implement that commitment. Because Applicants would never hold a majority of the PPU, and because a 50% interest held opposite an equal co-owner does not constitute control, no control application for the PPU is required.

I. APPLICANTS' PPU CONTROL APPLICATION IS MOOT IN LIGHT OF CN'S AGREEMENT TO ACQUIRE SHARES.

Under the terms of the Settlement MOU, "Union Pacific shall divest a portion of P&PU ownership interest (3.14%) to CN for nominal consideration, such that CN's ownership stake shall be 50% and Union Pacific's ownership stake shall be 50% if the STB approves the Proposed UP/NS Transaction."[359] UP and CN further agreed "to work in good faith to make any necessary changes in the P&PU governance documents to effectuate the transfer."[360] The Settlement MOU therefore eliminates the sole predicate for the PPU control application. The divestiture is tied to the Board's approval of the Proposed Transaction, so that upon consummation Applicants would hold exactly 50% of the PPU, not the 53.14% majority that prompted the minor application, and CN would hold the other 50%.[361] At no point following consummation would Applicants hold a majority interest in the PPU. The relief sought in Sub-No. 1 is therefore unnecessary, and the Board should dismiss the PPU control application as moot or, alternatively, find that no control authorization is required, subject to implementation of the divestiture contemplated by the Settlement MOU.

II. NO CONTROL APPLICATION IS NECESSARY FOR 50% OWNERSHIP.

Absent other indicia of control, a 50% ownership interest held opposite an equal 50% co-

[358] *Id.* at 1146.
[359] Second Supplemental Submission at 207–08.
[360] *Id.*
[361] *Id.*

owner does not amount to control. Applicants themselves have consistently taken this position in this proceeding, arguing with respect to KCT that 50% ownership does not constitute control where the owner lacks a majority on the board of directors and the respective governing documents assure impartiality.[362] The Board has previously held that a 50 percent interest does not constitute control when "[t]he operating agreement by which th[e] company is governed assures complete impartiality" and the company is operated as a joint venture that can be dominated by neither owner.[363]

The ownership structure and governance documents of the PPU prevent any 50% owner from exercising control. Following the divestiture, ownership of the PPU would be divided evenly between just two owners, UP and CN, who would both have the same 50% ownership interest. According to the PPU Bylaws, representation on the Board of Directors is "determined in relation to the stock owned by the shareholders."[364] Equality in board representation would prevent either party from unilaterally directing the PPU's affairs over the other's objection. Additionally, the PPU operating agreement {{

}}[365] Accordingly, Applicants' 50% interest in the PPU would not constitute control,

[362] *See* UP-68/NS-66, FD 36873, at 38 (filed July 7, 2026) [hereinafter the "First Supplemental Submission"] ("Board precedent establishes that a 50 percent interest in a terminal company does not constitute control when the company's operating agreement assures complete impartiality and the party with the 50 percent interest does not hold a majority on the board of directors, which would be the case here.").
[363] *See Burlington Northern, Inc.—Control & Merger—St. Louis-San Francisco Railway Co.*, 366 I.C.C. 862, 866–67 (1983).
[364] *See* Second Supplemental Submission Workpaper "PPU Bylaws" at 5 ("Representation on said Board of Directors shall be determined in relation to the stock owned by the shareholders.").
[365] *See* Second Supplemental Submission Workpaper "PPU Operating, Marketing and Interchange Agreement" at 8 {{

and no control application is necessary.

THE BOARD SHOULD REQUIRE A PROPERLY IMPLEMENTED OPTION B TO RESOLVE TRRA CONTROL

Applicants have committed to relinquish sufficient ownership and governance rights in TRRA so the combined company would not control TRRA, with the selected remedy effective no later than consummation of the Proposed Transaction.[366] The operative TRRA provision in the Settlement MOU contemplates resolution through one of Applicants' five proposed alternatives to prevent Union Pacific from obtaining control of TRRA.[367] CN continues to cooperate with Applicants to resolve the issue of TRRA control through whatever alternative the Board requires as a condition of the Proposed Transaction. CN requests that the Board select Option B, subject to the conditions necessary for its lawful and effective implementation before consummation of the Proposed Transaction.

I. OPTION B MOST CLOSELY COMPORTS WITH THE EXISTING SHARE TRANSFER RESTRICTIONS.

Under Option B, 4,117 shares—4,116 legacy Norfolk Southern shares and one legacy Union Pacific share—would be returned to TRRA for no or nominal consideration. According to Applicants, their combined ownership would increase to 49.998%, their representation would be reduced to two of five voting directors, BNSF, CN, and CSXT would each retain one voting director, TRRA's president would remain non-voting, and the governing documents would impose ownership and director-appointment caps.[368] Applicants further represent that the structure would not increase their ability to cause or block shareholder or board action relative to Union Pacific's

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[366] *See* Am. Appl. Vol. 1 at 76–79.
[367] *See* Second Supplemental Submission at 5, 207.
[368] *See* First Supplemental Submission at 20–24.

current non-controlling position. The implementing amendments to the operative TRRA governance documents should make that limitation enforceable, including by preventing any new veto, quorum-blocking, committee, consent, or comparable right that would confer control or negative control.

Option B follows the direction of transfer expressly identified in the TRRA share documents. The stock certificates state that the shares are "not transferable except back to [TRRA]," and the 1889 Reorganization Agreement ties each block of stock to the associated railroad.[369] Because TRRA would be the recipient of the returned shares, Option B more closely tracks the certificate legend than alternatives requiring a direct transfer to another railroad or third party. The legend, however, does not itself establish an unconditional redemption right or dispense with the corporate approvals and other requirements applicable to TRRA's reacquisition of its shares.

II. APPLICANTS' OPTION B PROPOSAL REQUIRES A COMPLETE IMPLEMENTATION PACKAGE.

Applicants' July 7, 2026, Option B proposal is not self-executing and requires Applicants to take additional steps. The definitive documents must specify whether the share return constitutes a purchase, redemption, cancellation, retirement, or other authorized transaction, establish the requisite authority and approvals under TRRA's governing documents and Missouri law, and provide for appropriate entries in the stock ledger and treatment of the existing certificates. They must also address whether the reacquired shares are outstanding or held in treasury and their treatment for voting, quorum, ownership-cap, distribution, information, and director-designation purposes, and prohibit reissuance or other disposition that would restore

[369] *See* CN-15, FD 36873, at 31–36 (filed May 8, 2026) [hereinafter "CN Completeness Comments"].

Applicants' control.[370] The implementing governance documents should aggregate Union Pacific, Norfolk Southern, and their controlled affiliates for purposes of the applicable caps, implement the five-voting-director structure, and eliminate the former Norfolk Southern seat and one Union Pacific seat. The Board should require Applicants to establish that all necessary corporate actions have been lawfully authorized and completed before consummation, without directing TRRA directors to cast predetermined votes contrary to their fiduciary obligations.

Prior to implementing Option B, Applicants must also address the Merchants Bridge obligations. Applicants already agreed to retain Norfolk Southern's obligations related to a guaranty regarding certain financing for repairs to TRRA's Merchants Bridge. Applicants also acknowledge that a return to TRRA does not fit squarely within the "Railroad Permitted Transfer" definition in the Railroad Guaranty Agreement and propose to continue guaranteeing Norfolk Southern's obligations.[371] Applicants should identify and obtain any required holder, lender, or other financing-party consent or no-default acknowledgment or, if such relief is unavailable, request specifically tailored Board relief supported by a showing of necessity. The implementing documents should confirm that the existing obligations of Union Pacific and Norfolk Southern remain enforceable, that the share return does not itself release any guarantor, and that neither TRRA nor any other TRRA shareholder assumes additional obligations attributable to Applicants or the returned shares solely because Option B is implemented.

Finally, the Board should retain jurisdiction to address implementation disputes and condition consummation on Applicants' demonstration that the share return, governance amendments, board-seat changes, and Merchants Bridge protections have become effective. Any

[370] *See* Mo. Rev. Stat. §§ 351.015(2), 351.200, 351.245(2), 351.265, 351.390 (2026).
[371] *See* First Supplemental Submission at 23–24; Railroad Guaranty Agreement at 1–2 (Nov. 21, 2023).

requested preemption should be confined to identified impediments shown to be necessary to implement the approved remedy, rather than presumed to displace ordinary Missouri corporate-law requirements. If lawfully and fully implemented, Option B would address the TRRA control issue through a structural remedy without requiring CN to acquire Norfolk Southern's shares. CN respectfully requests that the Board condition approval accordingly.

APPLICANTS' PROPOSED TTX DIVESTITURE IS INADEQUATE

I. APPLICANTS' PROPOSED TTX DIVESTITURE IS UNWORKABLE AND WOULD SHIFT THE COST OF THEIR CONCESSION TO TTX AND ITS OTHER OWNERS.

TTX owns and manages the industry's pooled fleets of flatcars, boxcars, and gondolas under pooling authority granted by the Board and its predecessor pursuant to what is now 49 U.S.C. § 11322.[372] TTX's seven railroad owners hold voting shares, and each owner's director casts a number of board votes equal to the shares held by the appointing railroad.[373] If the Proposed Transaction is approved without UP or NS divesting any TTX shares, it would give the merged carrier 8,975 of TTX's 15,800 shares—approximately 56.8%—and with it an outright majority of the votes at both the stockholder and board levels.[374] Applicants have committed to divest a portion of their combined TTX interest so that it "shall not exceed 49 percent."[375] Applicants propose they divest the shares using TTX's Restrictive Stock Transfer Agreement ("RSTA"), under which TTX itself holds the first option, for {{ }} days, to repurchase any shares an owner offers for sale, followed by a {{ }}-day option for the other owners and, only then, a {{ }}-day window for sale to third parties.[376] The price for any purchase by TTX or an existing owner

[372] *See* First Supplemental Submission at 48; *TTX Co.—Application for Approval of Pooling of Car Services with Respect to Flatcars*, FD 27590 (Sub-No. 4) (STB served Oct. 1, 2014).
[373] First Supplemental Submission at 48–49; *see also id.* at 59 n.110.
[374] *Id.* at 49; *see also id.* at 47, 51, 60.
[375] *Id.* at 51; *see* Am. Appl. Vol. 1 at 32–33.
[376] First Supplemental Submission at 52–54.

is fixed by contract at {{

}}[377]

To reach 49% ownership through a repurchase by TTX, Applicants would need to sell 2,418 shares back to TTX; to do so through sales to other owners, Applicants would need to sell 1,223 shares.[378] If neither TTX nor its other owners purchase, Applicants propose to consummate the merger anyway and to divest "at such time as they are able to do so on commercially reasonable terms," while placing excess shares in an "Independent TTX Transferee" or voting them with the majority of the other owners in the interim.[379] The cost for TTX, or any other owner, to purchase these shares is extraordinary by any objective measure. NS reports its investment in TTX at approximately $1.0 billion for its 3,125 shares (roughly $320,000 per share), and UP carries its 5,850 shares at approximately $1.8 billion (roughly $307,700 per share).[380] At those values, the 2,418 shares Applicants would sell back to TTX are worth between approximately $744 million and $774 million—a sum that would consume more than four-fifths of the approximately $900 million TTX spends each year to maintain the entire national pooled fleet.[381] Neither TTX nor its other owners should be required to fund that sum. CN respectfully submits that the costs of a divestiture necessitated by the Proposed Transaction should be borne by Applicants, not by TTX, its owners, or the shippers that depend on its fleets.

Applicants' suggestion that, "if TTX's other owners believe Applicants' ownership of more than 49 percent of TTX's shares would create a competitive problem, they can solve the

[377] *Id.* at 55 & n.105.
[378] *Id.* at 53 nn.103–104.
[379] *Id.* at 52, 55–58.
[380] *See* Exhibit 27, Norfolk S. Ry. Co., Annual Report Form R-1 for the Year Ended Dec. 31, 2025, Schedule 310A; Exhibit 28, Union Pac. R.R. Co., Annual Report Form R-1 for the Year Ended Dec. 31, 2025, Schedule 310A.
[381] *See id.*

problem themselves," inverts the burden that rests on Applicants to demonstrate that their transaction, as conditioned, is consistent with the public interest.[382] Nor is the commitment enforceable in any meaningful sense. Applicants reserve the right to consummate without divesting, tie the obligation to an undefined "commercially reasonable" standard, and impose no deadline—leaving the merged carrier, in the interim, with a majority of TTX's economic interest and, under any voting arrangement, the single largest bloc of votes on a share-weighted board.[383] That concentration matters. TTX's pooling authority extends to the number and type of cars acquired, car-hire rates, distribution rules, and maintenance of a fleet of more than 175,000 units on which every Class I railroad—and the intermodal, automotive, and forest products shippers it serves—depends.[384] The Board should therefore condition any approval on Applicants' reducing their shares in TTX to no more than 49% and should further provide that any disposition of Applicants' excess shares be accomplished without cost to, or financing by, TTX or its other owners. CN would be open to potential alternative means of resolving Applicants' control of TTX that avoid costs to TTX or its non-Applicant owners, including, for example, {

}.[385]

CONCLUSION

For the reasons detailed in these comments, the Board should find that conditions are necessary to preserve competition and protect the public interest if the Proposed Transaction is approved. To preserve the public interest, CN respectfully requests that the Board condition

[382] First Supplemental Submission at 47–48; *see* 49 C.F.R. § 1180.1(c); 49 U.S.C. § 11324(b)(5), (c).
[383] First Supplemental Submission at 52, 55–58.
[384] *Id.* at 48–50.
[385] Any proposed remedy would need to be well below 49% to take into account that Ferromex (FXE) also has an ownership stake in TTX and is owned, in part, by UP. *See* Am. Appl. Vol. 1 at 136, 147, 154.

approval of the Proposed Transaction on imposition of CN's requested conditions. Specifically, to preserve competition in Kansas City, CN requests that the Board order divestiture of the Kansas City Line to CN and impose the related conditions necessary to effectuate CN's access to Kansas City, including the lease of Neff Yard, including the Neff intermodal terminal, in whole or in part, with an option to purchase the yard (including the terminal); terminal trackage rights over approximately 7.5 miles of BNSF track between Eton and Congo, Missouri near Kansas City; trackage rights between Lydia Avenue and Broadway Boulevard in Kansas City; the sale of NS's KCT ownership interest to CN, giving CN access to KCT for interchange and KCT reciprocal switching customers; and access to Kansas City customers open to reciprocal switching under Applicants' tariffs.

To preserve competition in St. Louis and East St. Louis, CN requests that the Board impose overhead trackage rights for CN over the Tuscola Line; overhead trackage rights over A&S lines between Lenox in Mitchell, Illinois and Valley Junction in East St. Louis, Illinois; and access to the former Sarpy Yard property for handling CN's intermodal and automotive traffic, whether via (1) divestiture of the Kansas City Line *or* (2) trackage rights and a Board order requiring sale of the former Sarpy Yard property to CN.

CN further requests that the Board condition the Proposed Transaction on robust and enforceable gateway protections.

Additionally, to preserve competition for the affected 2-to-1 and 3-to-2 customer facilities in and around Des Moines, CN requests that the Board impose as a condition of the Proposed Transaction trackage rights or, in the alternative, haulage for CN over UP's line between Manly, Iowa and Des Moines and Avon, Iowa, including direct access for unit train service to the two facilities noted above, as well as reciprocal switching access from Short Line Yard to any 2-to-1

and 3-to-2 customer facilities in the Des Moines area. To preserve competition for the affected 2-to-1 and 3-to-2 customer facilities in Illinois, CN requests that the Board impose as a condition of the Proposed Transaction trackage rights or haulage for CN to reach the Foresight Energy facilities at Hillsboro and Carlinville, Illinois, and haulage or switching access for CN to the remaining 2-to-1 and 3-to-2 customer facilities in Chicago, Bloomington, Mt. Vernon, Granite City, Momence, Federal/Alton, and Danville, Illinois.

Finally, CN requests that the Board (1) dismiss the PPU control application as moot or, in the alternative, find that no control authorization is required for CN to acquire the PPU shares, because CN and Union Pacific would each own 50% of the PPU following the divestiture set out in the Settlement MOU; (2) select Option B to resolve TRRA control, requiring Applicants to transfer the relevant TRRA shares back to TRRA, subject to the conditions necessary for its lawful and effective implementation before consummation of the Proposed Transaction; and (3) require that the Applicants reduce their shares in TTX to no more than 49% without imposing the cost of such shares on TTX or its non-Applicant owners.

Respectfully submitted,

/s/ Sara Y. Razi

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CERTIFICATE OF SERVICE

I hereby certify that, on this 18th day of November 2026, I caused a true and correct copy of the foregoing to be served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General, and Administrative Law Judge Jenifer Soulikias.

/s/ Andrew Bernstein
Andrew Bernstein
Sr. Paralegal Manager
Simpson Thacher & Bartlett LLP

Exhibit 1

PUBLIC VERSION

BEFORE THE

SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

—CONTROL—

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

- **SUB-NO. 2, ILLINOIS CENTRAL RAILROAD COMPANY—DIVESTITURE—LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN ST. LOUIS, MO. AND KANSAS CITY, MO.**
- **SUB-NO. 3, ILLINOIS CENTRAL RAILROAD COMPANY—TRACKAGE RIGHTS—LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN ST. LOUIS, MO. AND KANSAS CITY, MO.**
- **SUB-NO. 4, ILLINOIS CENTRAL RAILROAD COMPANY—OVERHEAD TRACKAGE RIGHTS—LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN LYDIA AVENUE AND BROADWAY BOULEVARD IN KANSAS CITY, MO.**
- **SUB-NO. 5, ILLINOIS CENTRAL RAILROAD COMPANY—TERMINAL TRACKAGE RIGHTS—OVER LINE OF BNSF RAILWAY COMPANY BETWEEN ETON, MO. AND CONGO, MO.**
- **SUB-NO. 6, ILLINOIS CENTRAL RAILROAD COMPANY—LEASE AND PURCHASE—UNION PACIFIC RAILROAD COMPANY NEFF YARD IN KANSAS CITY, MO.**
- **SUB-NO. 7, ILLINOIS CENTRAL RAILROAD COMPANY—OVERHEAD TRACKAGE RIGHTS—LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN TUSCOLA, ILL. AND EAST ST. LOUIS, ILL.**
- **SUB-NO. 8, ILLINOIS CENTRAL RAILROAD COMPANY—OVERHEAD TRACKAGE RIGHTS—OVER LINE OF THE ALTON & SOUTHERN RAILWAY COMPANY BETWEEN MITCHELL, ILL. AND EAST ST. LOUIS, ILL.**
- **SUB-NO. 9, ILLINOIS CENTRAL RAILROAD COMPANY—LOCAL TRACKAGE RIGHTS—LINE OF UNION PACIFIC RAILROAD COMPANY TO SERVE HILLSBORO, ILL.**

- **SUB-NO. 10, IOWA NORTHERN RAILWAY COMPANY AND CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY—TRACKAGE RIGHTS—LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN MANLY /IOWA FALLS, IOWA AND DES MOINES/AVON, IOWA**
- **SUB-NO. 34, ILLINOIS CENTRAL RAILROAD COMPANY—LOCAL TRACKAGE RIGHTS—LINE OF UNION PACIFIC RAILROAD COMPANY TO SERVE CARLINVILLE, ILL.**

Verified Statement of Dr. Mary Coleman

November 18, 2026

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I. INTRODUCTION

A. QUALIFICATIONS, ASSIGNMENT, AND SUMMARY OF CONCLUSIONS

1. My name is Mary Coleman. I am a Senior Managing Director and Head of the U.S. Antitrust Practice at Compass Lexecon, which is a division of FTI, Inc. I previously provided Verified Statements included as Exhibit 1[1] in Grand Trunk Corporation's Comments on Completeness of Union Pacific and Norfolk Southern's Application, submitted on December 29, 2025[2] and as Exhibit 1[3] in Grand Trunk Corporation's Comments on Completeness of Union Pacific and Norfolk Southern's Amended Application, submitted on May 8, 2026.[4] Briefly, I received my Ph.D. in economics from Stanford University and my B.A. in economics from Stonehill College. I have served as an advisor on antitrust and regulatory issues to many organizations, including the American Bar Association, the Department of Justice ("DOJ"), and the Federal Trade Commission ("FTC") and served as Deputy Director for Antitrust in the Bureau of Economics at the FTC during 2001-2004. My *curriculum vitae*, which includes a complete list of my publications, is attached as Appendix A. A list of the materials that I relied upon is attached as Appendix B. I reserve the right to update my opinions as I receive additional relevant information.

B. ASSIGNMENT

2. I have been asked by counsel for Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries[5] (collectively, "CN"), to evaluate the likely effects on horizontal competition as a result of the transaction detailed in the Amended Application[6] and the Second

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1 CN-6, FD 36873 (filed Dec. 29, 2025), Verified Statement of Dr. Mary Coleman (Dec. 29, 2025) [hereinafter "Coleman Initial Application Statement"].

2 CN-6, FD 36873 (filed Dec. 29, 2025) [hereinafter "CN's Initial Completeness Comments"].

3 CN-15, FD 36873 (filed May 8, 2026), Verified Statement of Dr. Mary Coleman (May 8, 2026) [hereinafter "Coleman Amended Application Statement"].

4 CN-15, FD 36873 (filed May 8, 2026) [hereinafter "Comment on Completeness of Amended Application"].

5 Bessemer and Lake Erie Railroad Company, Cedar River Railroad Company, Chicago, Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, Iowa Northern Railway Company, The Pittsburgh & Conneaut Dock Company, and Wisconsin Central Ltd.

6 UP-39/NS-37, FD 36873 at 1–4 (filed Apr. 30, 2026) [hereinafter the "Amended Application" or "Am. Appl."].

Response to Decision No. 21[7] of Union Pacific Corporation, Union Pacific Railroad Company (together with Union Pacific Corporation, "UP" or "Union Pacific"), Norfolk Southern Corporation, and Norfolk Southern Railway Company (together with Norfolk Southern Corporation, "NS" or "Norfolk Southern") (collectively, "Applicants") seeking authority for the acquisition of control by Union Pacific Corporation of Norfolk Southern Corporation and, through it, Norfolk Southern Railway Company (the "Proposed Transaction"). Specifically, CN's counsel have asked me to evaluate the Amended Application, including the analyses of Elizabeth Bailey, Ph.D., describing potential losses of horizontal competition, and to assess any other potential losses of horizontal competition from the Proposed Transaction, focusing on individual customers' reduction in access to Class I railroads from 2-to-1 or 3-to-2 as well as any reduction in within corridor and between corridor railroad competition, or reduction in competition due to increased concentration, related to the Kansas City and St. Louis BEAs.[8, 9] Where I find potential losses of horizontal competition, CN's counsel has asked me to evaluate whether CN's Proposed Conditions will remedy these losses.

C. SUMMARY OF CONCLUSIONS

3. Absent conditions, the Proposed Transaction raises competitive concerns for 2-to-1 and 3-to-2 customers in Iowa (specifically, in Des Moines and Avon, Iowa) and throughout Illinois, and for customers that ship to, from, or through the Kansas City and St. Louis gateways.

4. Applicants' Amended Application identifies some, but not all, of the competitive concerns raised by the Proposed Transaction. I identify additional competitive concerns, which CN's Proposed Conditions remedy. Specifically, I find the following:

- **The Proposed Transaction will cause 35 customer facilities who currently have access to both UP and NS to face a reduction in Class I carrier options from 2-to-1 or 3-to-2**: Dr. Bailey's supplemental analysis of competition for customer facilities

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7 UP-80/NS-78, FD 36873 (filed July 27, 2026) [hereinafter "Applicants' Second Supplemental Submission].

8 Am. Appl. Vol. 2, Verified Statement of Dr. Elizabeth Bailey (April 27, 2026) [hereinafter "Bailey Amended Statement"]; Applicants' Second Supplemental Submission, Supplemental Verified Statement of Dr. Elizabeth Bailey (July 17, 2026) [hereinafter "Bailey Supplemental Statement"].

9 A BEA is defined as a center of economic activity (such as a metropolitan area), together with nearby areas that are integrated with the center, where integration is determined by, e.g., worker commuting patterns. *See Final Redefinition of the BEA Economic Areas*, Bureau of Transportation Statistics, https://www.bts.gov/archive/publications/federal_register/1995/bts_19950310 (last visited Nov. 11, 2026).

identifies 35 customer facilities that will face a reduction in Class I railroad options from 2-to-1 or 3-to-2 after the Proposed Transaction. Because of the loss of competition, these customers may pay higher prices or receive poorer service. Dr. Bailey's list of affected customers largely aligns with my analysis, and based on available materials, I have not identified additional 2-to-1 or 3-to-2 customers.

- **The Proposed Transaction would result in a loss of competition in Des Moines/Avon, Iowa; Kansas City and St. Louis, Missouri; and throughout Illinois:** Dr. Bailey's BEA-level analysis is based on her unsupported assumption that every railroad within a BEA is a competitive alternative for every customer in that BEA, for all BEAs. Analyzing smaller geographic areas such as SPLCs[10] reveals multiple SPLCs (even within a single BEA) where the Proposed Transaction reduces significantly Class I rail options, including in Des Moines/Avon, Iowa; Kansas City, Missouri; St. Louis, Missouri; and throughout Illinois (including East St. Louis). Customers in these SPLCs may benefit today from actual or potential indirect access to the Applicants—through transloads, trucking, a potential buildout, or site selection for a new facility—and would lose that benefit after the Proposed Transaction, absent conditions.

- **The Proposed Transaction raises competitive concerns on 30 corridors that originate or terminate in the Kansas City and St. Louis BEAs:** I have identified 30 corridors originating or terminating in the Kansas City or St. Louis BEAs that would see rail options reduced from 2-to-1 or 3-to-2, which may result in competitive harm to customers who use these corridors, including intermodal and automotive customers. Dr. Bailey's assumptions and traffic exclusions dismiss the potential for harm on these corridors.

    - Dr. Bailey's approach to analyzing within-corridor competition and identifying corridors that will face reduced rail competition following the Proposed Transaction is reasonable. However, her assumptions that certain

[10] A SPLC at a 6-digit level is designed to identify the geographic location by State, County, and City. *Standard Point Location Code (SPLC) User Guide*, Railinc, https://public.railinc.com/sites/default/files/documents/UG_SPLC.pdf (last updated January 2026) at 1.

types of traffic are protected from competitive harm–including intermodal and automotive traffic–are unsupported. This causes her to understate (and, in some cases, reduce to zero) the total UP/NS rail traffic on these corridors that could face adverse competitive effects from the Proposed Transaction.

- Analyzing corridors that originate or terminate in the Kansas City and St. Louis BEAs, without Dr. Bailey's unsupported assumptions, I identify 30 corridors that will see a reduction in service of Class I railroads from 2-to-1 or 3-to-2, most of which use the segment between Kansas City and St. Louis for UP or NS traffic.[11] Although there are four Class I railroads serving customers in the Kansas City BEA (UP, NS, BNSF, and CPKC), and six Class I railroads serving customers in the St. Louis BEA, these results demonstrate that Applicants' Kansas City and St. Louis segments provide important competitive options for customers for many corridors.[12] Because Dr. Bailey excluded this traffic from her analysis, Applicants never study the competitive harm for customers that utilize these corridors.

- **For the Kansas City and St. Louis BEAs, 29 BEA-commodity pairs may face a reduction in destination competition and 27 BEA-commodity pairs may face a reduction in source competition**: Dozens of commodities originating or terminating in the Kansas City or St. Louis BEAs may lose source or destination competition, which Dr. Bailey's methodology fails to identify.
    - Dr. Bailey's consideration of between corridor competition (sometimes called geographic competition) is reasonable, but several of her assumptions and methods are unsupported and cause her to under-identify and dismiss traffic facing potential competitive harm. Three choices result

[11] *See* my Workpaper "Figure 10 and 11.xlsx."

[12] *See* Bailey Amended Statement Workpaper "Appendix D1, D2.xlsx."

in her understating potential harms due to loss of source and destination competition:

(1) She excludes commodities that she claims are protected from competitive harm–including intermodal and automotive traffic;

(2) she estimates shares for remaining BEA-commodity pairs using a traffic base that includes truck and water options without analyzing whether truck and water modes are competitive options for the affected commodities; and

(3) she requires that each BEA-commodity pair pass her initial screen in every year between 2019-2024.

- Each of these assumptions and methods have the effect of understating the traffic that may face competitive harm due to loss of source and destination competition in Kansas City and St. Louis. In addition, her Critical Loss Analysis does not measure whether customers would have alternatives that would mitigate potential competitive harm and thus cannot be used to dismiss source and destination competition concerns.
- Conducting the analysis without applying these assumptions and adopting her flawed Critical Loss Analysis, I find 29 BEA-commodity pairs originating in the Kansas City or St. Louis BEAs that may face reduced destination competition and 27 BEA-commodity pairs terminating in the Kansas City or St. Louis BEAs that may face reduced source competition.[13] These include some of the largest commodity groups originating or terminating in both BEAs, including Intermodal, Automotive, Petroleum and Chemicals, Grain and Fertilizer, Metals & Minerals, and Forest Products. Because Dr. Bailey's assumptions and methods understate or dismiss the potential for competitive harm, Applicants never study the harm to source or destination competition for these commodities originating or terminating in Kansas City or St. Louis.

[13] *See* Figure 15 and Figure 17.

- **CN's Proposed Conditions are an effective remedy to prevent the potential competitive harms of the Proposed Transaction that I have identified**: CN's proposed conditions, sought in its Comment and Responsive Applications[14] will be effective in preventing harms I have identified. CN's proposed conditions: (1) remedy the loss of Class I railroad options for 2-to-1 and 3-to-2 customer facilities and for the Kansas City and St. Louis SPLCs that would otherwise experience significant increases in concentration; (2) address horizontal concerns for traffic on corridors originating or terminating in the Kansas City and St. Louis BEAs; and (3) address potential source and destination competition concerns in Kansas City and St. Louis. In particular, CN's request for a divestiture of UP's line between Kansas City and St. Louis (the "Kansas City Line") would allow CN to operate independently and compete most effectively with the combined UP-NS entity in the Kansas City and St. Louis BEAs.
- **CN would be an effective remedy carrier:** CN's network extends around the areas of concern so the conditions are a natural extension of the CN network. CN also has the infrastructure and experience to handle the affected commodities and can offer source and destination competition options that can replace the competition lost due to the Proposed Transaction. CN's acquisition and integration of the Iowa Northern Railway Company, which similarly involved new market opportunities, customers, and opportunities to expand and improve operations, demonstrates that CN would be a strong remedy carrier.

II. BACKGROUND

5. On July 30, 2025 Applicants filed a Notice of Intent to File Application of Transaction to §§ 11323-25 "for the acquisition of control by UPC, through its wholly owned subsidiary Ruby Merger Sub 1 Corporation, of NSC, and through it of NS, and for the resulting common control by UPC of UP and NS."[15] On December 19, 2025, Applicants filed their Initial Application to

[14] CN-38, FD 36873 "CN's Comments on Amended Application and Request for Conditions" at 9-11 (filed Nov. 18, 2026).

[15] UP-1/NS-1, FD 36873 at 2 (filed July 30, 2025).

the Surface Transportation Board (the "Board").[16] The Board issued a decision on January 16, 2026, finding the Initial Application incomplete.[17] On April 30, 2026, Applicants filed their Amended Application to the Board.[18] The Board issued a decision on May 28, 2026 accepting the Amended Application for consideration and ordering the Applicants to submit supplemental information.[19] Applicants filed a First Response to Decision No. 21 on July 7, 2026 and a Second Response to Decision No. 21 on July 27, 2026.[20]

6. The Amended Application includes the Verified Statement of Elizabeth M. Bailey, Ph.D., dated April 27, 2026. She describes her assignment to "evaluate the potential competitive benefits from the proposed merger and to analyze potential losses of horizontal competition."[21] She analyzes the horizontal competitive effects of the Proposed Transaction, assessing access competition, competition within corridors, and competition between corridors.[22] She relies on the "combined waybill data"[23] as the basis for these competitive analyses.[24] The Analysis of Access to Customers purports to "analyze the scope for adverse competitive effects from situations where UP and NS both serve the same customer location or the same geographic area."[25] The Analysis of Competition Within Corridors purports to analyze "horizontal competition to transport freight along the same segment of specific corridors."[26] The Analysis of Competition Between Corridors purports to analyze horizontal competition related to the "ability of a customer to use alternative railroads to receive a particular product from different origins … and the ability of a shipper to use alternative railroads to ship its product to different destinations."[27]

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16 UP-13/NS-11, FD 36873 (filed Dec. 19, 2025) [hereinafter the "Initial Application" or "Init. Appl."].

17 Decision No. 9, FD 36873 (STB served Jan. 16, 2026).

18 Am. Appl. Vol. 2.

19 Decision No. 21, FD 36873 (STB served May 28, 2026).

20 UP-68/NS-66, FD 36873 (filed July 7, 2026); Applicants' Second Supplemental Submission.

21 Bailey Amended Statement at ¶ 7.

22 Bailey Amended Statement at ¶ 88 and § 4.

23 She describes the "combined waybill data" as a consolidation of the 2019-2024 traffic tapes for the six Class I railroads and 2019-2023 CWS data. Bailey Amended Statement at ¶ 96.

24 Bailey Amended Statement at ¶ 99.

25 Bailey Amended Statement at ¶ 106.

26 Bailey Amended Statement at ¶ 120.

27 Bailey Amended Statement at ¶ 158.

7. Applicants' Second Response to Decision No. 21 includes the Supplemental Verified Statement of Elizabeth M. Bailey, Ph.D., dated July 17, 2026, which "responds to portions of the requests in the STB's Decision 21."[28] This includes an analysis that identifies customer facilities that would face a reduction in access to Class I railroads from 2-to-1 and 3-to-2 as a result of the Proposed Transaction.[29] It also includes several other analyses requested by the Board in its notice of acceptance decision,[30] including analyses related to the geographic competition impact on sole-served single-line shippers.[31]

8. On July 22, 2026, CN and UP entered into a Memorandum of Understanding (Settlement MOU) to expand customer opportunities in connection with the Proposed Transaction,[32] under which:

- UP shall request that the STB designate CN as the remedy carrier at affected 2-to-1 and 3-to-2 locations where operationally and commercially feasible.[33]
- CN gains Kansas City access and expanded access to St. Louis / East St. Louis through rights between Tuscola, Illinois, and East St. Louis, Illinois, and rights between St. Louis, Missouri, and Kansas City, Missouri, with the option to lease or purchase Union Pacific's Neff Yard.[34]
- CN acquires Norfolk Southern's ownership interests in the Kansas City Terminal Railway Company (KCT),[35] a portion of Union Pacific's interest in the Peoria & Pekin Union Railway (PPU)[36] and agrees to cooperate with Union Pacific to resolve control issues related to the Terminal Railroad Association of St. Louis (TRRA).[37]

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28 Bailey Supplemental Statement at ¶ 1.

29 Bailey Supplemental Statement at § 2.

30 Decision No. 21, FD 36873 (STB served May 28, 2026).

31 Bailey Supplemental Statement at § 4.

32 Applicants' Second Supplemental Submission at 203–218; *see also* CN, *Union Pacific and CN Reach Agreement to Expand Customer Opportunities in Connection with Merger*, (July 22, 2026), https://www.cn.ca/en/news/2026/07/union-pacific-and-cn-reach-agreement-to-expand-customer-opportun/ (last visited Nov. 11, 2026).

33 Applicants' Second Supplemental Submission at 203–204.

34 Applicants' Second Supplemental Submission at 204–206.

35 Applicants' Second Supplemental Submission at 206.

36 Applicants' Second Supplemental Submission at 207–208.

37 Applicants' Second Supplemental Submission at 207.

9. CN's President and CEO Tracy Robinson described that the "framework would preserve competitive access to key markets, including Kansas City."[38] Union Pacific CEO Jim Vena described the agreement as reinforcing commitments to "preserve and enhance competitive options and create a stronger railroad industry that delivers better service for customers," "by giving expanded access and operating rights to a tough competitor."[39] Jim Vena also stated that giving CN access to Kansas City prevents UP from being "too concentrated" post-merger and "takes care of" this part "of the company where [they] have a significant overlap."[40] Norfolk Southern CEO Mark George acknowledged that the agreement with CN "resolves Kansas City for us."[41]

10. CN is seeking the following conditions ("CN's Proposed Conditions") as explained in CN's Comments on Amended Application and Request for Conditions which I quote and are summarized in Figure 1 of CN's Comments on Amended Application and Request for Condition below:[42]

- **Kansas City Access**: divestiture of the Kansas City Line to CN; the lease of Neff Yard, including the Neff intermodal terminal, in whole or in part, with an option to purchase said yard (including the terminal); terminal trackage rights over approximately 7.5 miles of BNSF Railway Company ("BNSF") track between Eton and Congo, Missouri near Kansas City; trackage rights between Lydia Avenue and Broadway Boulevard in Kansas City; sale of NS's KCT ownership interest to CN, giving CN access to Kansas City Terminal Railway Company ("KCT") for interchange and KCT customers; and access to Kansas City customers open to reciprocal switching under Applicants' tariffs;

- **Expanded St. Louis / East St. Louis Access:** overhead trackage rights for CN over the Tuscola Line; overhead trackage rights over the lines of UP's wholly

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38 *Union Pacific and CN Reach Agreement to Expand Customer Opportunities in Connection with Merger*, CN (July 22, 2026), https://www.cn.ca/en/news/2026/07/union-pacific-and-cn-reach-agreement-to-expand-customer-opportun/ (last visited Nov. 11, 2026).

39 *Union Pacific and CN Reach Agreement to Expand Customer Opportunities in Connection with Merger*, CN (July 22, 2026), https://www.cn.ca/en/news/2026/07/union-pacific-and-cn-reach-agreement-to-expand-customer-opportun/ (last visited Nov. 11, 2026).

40 Jim Vena, UP Q2 2026 Earnings Call (July 23, 2026), https://fortune.com/company/union-pacific/earnings/q2-2026/ (last visited Nov. 11, 2026).

41 David Lassen, *CEOs of UP, NS, say latest additions to merger application further enhance competitive aspects*, TrainsPro, https://www.trains.com/pro/freight/class-i/ceos-of-up-ns-say-latest-additions-to-merger-application-further-enhance-competitive-aspects/ (last visited Nov. 11, 2026).

42 CN-38, FD 36873 "CN's Comments on Amended Application and Request for Conditions" at 9-11 and Figure 1 (internal footnotes omitted) (filed Nov. 18, 2026).

owned subsidiary, The Alton & Southern Railway Company ("A&S"), between Lenox in Mitchell, Illinois and Valley Junction in East St. Louis, Illinois; and access to the former Sarpy Yard property for handling CN's intermodal and automotive traffic in St. Louis, whether via (1) divestiture of the Kansas City Line, or (2) trackage rights and a Board order requiring sale of the former Sarpy Yard property to CN;

- **Des Moines Access:** trackage rights or, in the alternative, haulage over UP's line between Manly / Iowa Falls, Iowa and Des Moines / Avon, Iowa; trackage rights to serve 2-to-1 and 3-to-2 customer facilities requiring unit train service; and switching access to the 2-to-1 and 3-to-2 customer facilities in and around Des Moines;

- **Illinois 2-to-1 and 3-to-2 Access:** (1) trackage rights to reach the Foresight Energy facilities at Hillsboro and Carlinville, Illinois (or haulage in the alternative), and (2) haulage or switching access to the remaining 2-to-1 and 3-to-2 customer facilities in Chicago, Bloomington, Mt. Vernon, Granite City, Momence, Federal/Alton, and Danville, Illinois; and

- **Robust and Enforceable Gateway Protections:** gateway protections that are robust and enforceable in practice, so that the merged carrier cannot use its control of interchange, routing, or interline pricing to foreclose competitors and the customers that depend on competitive routing options.

CN's Comments on Amended Application and Request for Conditions – Figure 1

CN's Proposed Conditions Summary	
Kansas City Access	• Divestiture of the Kansas City Line to CN; ○ In the alternative (i.e., if the Board declines to order divestiture), trackage rights and local haulage rights on the Kansas City Line. • Lease or purchase of Neff Yard, including the Neff intermodal terminal; • Terminal trackage rights over ~7.5-miles of BNSF track near Kansas City; • Trackage rights between Lydia Avenue and Broadway Boulevard in Kansas City; • Sale of NS's KCT ownership interest to CN; and • Access to Kansas City customers open to UP or NS reciprocal switching.
Expanded St. Louis / East St. Louis Access	• Overhead trackage rights over the Tuscola Line; • Overhead trackage rights over A&S; and • Former Sarpy Yard property (part of the Kansas City Line).
Des Moines 2-to-1 and 3-to-2 Customer Access	• Trackage rights over UP's line between Manly, Iowa and Des Moines and Avon, Iowa to access or serve 2-to-1 and 3-to-2 customer facilities in and around Des Moines, including direct access to two unit train customers; and • Reciprocal switching access to 2-to-1 and 3-to-2 customer facilities in the Des Moines area.

Illinois 2-to-1 and 3-to-2 Customer Access	• Trackage rights to reach the Foresight Energy facilities at Hillsboro and Carlinville, Illinois; and • Haulage or switching access to the remaining 2-to-1 and 3-to-2 customer facilities in Illinois.
Robust and Enforceable Gateway Protections	• Robust and enforceable open gateway protections.

11. CN's Proposed Conditions address likely horizontal competitive concerns for customers most impacted by the Proposed Transaction. The Proposed Conditions combat potential harm due to the loss of competition by enabling new customer options through CN. The divestiture of the Kansas City Line would provide an independent Class I railroad option to provide service between Kansas City and St. Louis, enabling service to customers in those areas and along corridors that traverse that segment. Access to 2-to-1 and 3-to-2 customers through trackage rights to Hillsboro, Carlinville, and Des Moines/Avon over UP lines, along with new haulage and switching agreements to reach other 2-to-1 and 3-to-2 customers, would ensure that if the Proposed Transaction is approved those customers have the same number of Class I options that they have today. These conditions address the competitive effects for customers that face the greatest potential harm if the Proposed Transaction is approved.

III. POTENTIAL HARMS RELATED TO THE PROPOSED TRANSACTION

12. A merger or acquisition of horizontal competitors can result in competitive harm if the transaction removes an important competitive constraint for all or a subset of customers. Loss of competition can result in higher prices, reduced quality, and/or reduced investment, all of which harm customers.

13. In its Major Rail Consolidation Procedures, the Board recognized the potential for harm from future major rail consolidations and explained key areas of concern regarding the reduction of competition:[43]

> *§ 1180.1(c)(2): Potential harm.* The Board recognizes that consolidation can impose costs as well as benefits. It can reduce competition both directly and

[43] Decision, EP 582 (Sub-No. 1) at 23-24 (STB served Jun. 11, 2001) [hereinafter "Major Rail Consolidation Procedures"].

> indirectly in particular markets, including product markets and geographic markets. Consolidation can also threaten essential services and the reliability of the rail network. In analyzing these impacts we must consider, but are not limited by, the policies embodied in the antitrust laws.
>
> *(i) Reduction of competition.* Although in specific markets railroads operate in a highly competitive environment with vigorous intermodal competition from motor and water carriers, mergers can deprive shippers of effective options. Intramodal competition can be reduced when two carriers serving the same origins or destinations merge. Competition arising from shippers' build-out, transloading, plant siting, and production shifting choices can be eliminated or reduced when two railroads serving overlapping areas merge. Competition in product and geographic markets can also be eliminated or reduced by mergers, including end-to-end mergers. Any railroad combination entails a risk that the merged carrier would acquire and exploit increased market power.

Critically, the loss of "*effective options*" for customers and the "*risk that the merged carrier would acquire and exploit increased market power*" are key issues that must be considered for a proper evaluation of the potential competitive harms of the Proposed Transaction.

14. Several approaches can be used to assess whether a merger is likely to result in competitive harm. In the first instance, it is common to look at the impact of the transaction on concentration and shares. The DOJ and FTC's 2023 Merger Guidelines also recognize this concept and explain in Guideline 1:[44]

> *Mergers Raise a Presumption of Illegality When They Significantly Increase Concentration in a Highly Concentrated Market.* Market concentration is often a useful indicator of a merger's likely effects on competition. The Agencies therefore presume, unless sufficiently disproved or rebutted, that a merger between competitors that significantly increases concentration and creates or further consolidates a highly concentrated market may substantially lessen competition.

15. The Merger Guidelines further explain that "a merger that creates a firm with a share over thirty percent is also presumed to substantially lessen competition or tend to create a monopoly if it also involves an increase in HHI of more than 100 points."[45] While combined market share and HHI changes meeting these thresholds are indicative of mergers that may

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[44] U.S. Dep't of Justice & the Fed. Trade Comm'n, *Merger Guidelines* at 2 (Dec. 18, 2023).

[45] U.S. Dep't of Justice & the Fed. Trade Comm'n, *Merger Guidelines* at 6 (Dec. 18, 2023).

lessen competition, it is necessary to review the specific facts around the merger to determine if it is likely to be anticompetitive.[46]

16. Market shares can also be used to assess the potential for unilateral effects that may result from a merger if the distribution of lost sales among competitors following a price increase by one firm is proportional to competitors' shares. Pre-merger, customers can negotiate rates with any railroad that can potentially provide the required service. The rates that each potential railroad provider offers to the customer is constrained in these negotiations by the ability of the customers to choose alternative providers—either another railroad or, in some cases, other modes of transportation—and the relative attractiveness of those options to the customer based on price and potentially other factors such as the time for transport and/or service.[47]

17. For example, consider shippers from Kansas City, and assume that UP operates with a margin of 25% on traffic associated with these shippers. If UP tried to raise negotiated rates by 10%, this would be unprofitable if the price increase caused some shippers to shift to alternatives and UP lost at least 28.5% of the traffic volume–i.e. the critical loss of output.[48] Assuming that the UP current negotiated rates are profit-maximizing, we can infer that the actual loss of output UP would face from a 10% rate increase given the current competition would be at least 28.5%.

18. The Proposed Transaction between UP and NS could alter the profitability of a UP (or NS) price increase because it reduces the independent alternatives available to shippers and thus reduces the constraints on UP (or NS). If all the lost UP traffic following a price increase would go to other railroads according to their shares of current traffic for shippers of that commodity from Kansas City, then that price increase may become profitable post-merger even though it was not profitable pre-merger. If, for example, there are currently three railroads that supply shippers in a particular area (and non-rail traffic is not a competitive constraint)–UP, NS, and BNSF, all with equal shares–then UP's lost business following a price increase would be expected to go to NS and BNSF in equal shares, i.e., 50% of UP's lost volume would go to NS

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46 Dr. Bailey relies on these Guidelines, noting that "The focus of the MG is on harm to the competitive process." *See* Bailey Amended Statement at ¶ 79.

47 These are some constraining factors but others disciplining factors could include build outs to alternative railroads and source and destination competition.

48 S*ee, e.g.*, Russell Pittman, *Three Economist's Tools for Antitrust Analysis: A Non-Technical Introduction*, at 4, https://www.justice.gov/atr/page/file/925641/dl.

and 50% to BNSF. Post-merger, if the combined firm tried to raise prices on UP service, UP would still lose at least the 28.5% volume but now half of that volume is gained by NS; post-merger, the combined entity recaptures (internalizes) half of the lost volume. If the price increase causes UP to lose, say, 30% of its volume, the merged entity loses only 15% of the UP volume because of recapture by NS, then the price increase would be profitable. As a result, in situations where UP and NS are among multiple options for a customer, the Proposed Transaction, absent appropriate conditions, provides UP and NS incentives to raise price, and the bigger are the UP and NS shares, the greater the merged carrier's incentives to raise price.

19. Another approach commonly used to assess whether a rail merger may lead to adverse competitive outcomes is to assess how many significant competitors exist pre-merger and whether the merger will result in the loss of one competitor among a small number of significant competitors.[49] For example, a transaction that results in a reduction in competitors from 2-to-1 or 3-to-2 for customers typically raises competitive concerns, absent other factors that mitigate those concerns. I discuss in more detail in Section IV.A.2 how reductions in the number of significant competitors can result in competitive harm. I also understand that different analyses have been presented to the Board in prior railroad mergers (e.g., 2-to-1 customers and corridors, 50/10 screens) for evaluation of the competitive effects of mergers in the railroad industry and I discuss those analyses in Sections IV, V, and VI.[50]

IV. ANALYSIS OF ACCESS TO CUSTOMERS

20. Railroads compete for customers that can (actually or potentially) access multiple railroad options for their shipping requirements.[51] If both UP and NS can provide (in whole or in part) railroad options for serving a customer's traffic, they may compete with each other for the

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[49] *See Burlington N. Inc.—Control and Merger—Santa Fe Pac. Corp.*, 10 I.C.C.2d 661, 728 (1995) [hereinafter "*BN/SF*"] ("Where most or all of the firms in the market have sufficient capacity to serve a significant amount of total market sales, and there is no significant disadvantage in obtaining these sales, the analysis considers the number of competitors rather than their market shares."); *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, 1 S.T.B. 233, 365 (1996) [hereinafter "*UP/SP*"].

[50] Traffic groups in which both UP and NS handle 10% of the shipments and combined would have more than a 50% share exceed the Merger Guidelines threshold for the presumption of substantially lessened competition.

[51] At times I may also refer to customers as shippers but my analysis also examines the impacts to customers who receive commodities shipped on rail.

customer's traffic. All else equal, competition between UP and NS is more important when there are fewer other railroad options available. The Proposed Transaction would eliminate this competition between UP and NS, reducing some customers' options, and those customers may face adverse competitive effects without appropriate conditions on the Proposed Transaction.

21. I agree with Dr. Bailey that an analysis of railroads' access to customers is needed to identify customers for which the Proposed Transaction may raise horizontal competitive concerns. In addition to analyzing railroads' direct access to customer facilities, an analysis of customer access should also consider indirect or potential access, where a customer can indirectly or potentially access railroads that are competitive options. Dr. Bailey's analysis of existing, direct railroad access to customer facilities identifies one set of affected customers that will face a 2-to-1 or 3-to-2 reduction in Class I railroad options from the Proposed Transaction. However, I disagree that her analysis of access to customer facilities at a BEA-level identifies all other customers that may face potential adverse effects from the Proposed Transaction due to a post-merger reduction in railroad access.

A. DR. BAILEY'S ANALYSIS OF CUSTOMER FACILITIES THAT WILL FACE A REDUCTION IN CLASS I RAILROAD ACCESS OPTIONS FROM 2-TO-1 OR 3-TO-2 IDENTIFIES CUSTOMERS THAT WILL FACE ADVERSE COMPETITIVE EFFECTS

1. Dr. Bailey's Supplemental Analysis of Existing Access to Specific Customer Facilities is Consistent with my Prior Approach and Identifies Thirty-Five 2-to-1 and 3-to-2 Customer Facilities Impacted by the Proposed Transaction

22. Dr. Bailey's April 27, 2026 analysis of "adverse competitive effects from situations where UP and NS both serve the same customer location or the same geographic area" focuses on "direct access to customer facilities."[52] She identifies customer facilities "where a combination of UP and NS would reduce the number of railroads accessible to the customer from 2-to-1 or from 3-to-2."[53] She identifies five and four such customer facilities, respectively.[54]

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[52] Bailey Amended Statement at ¶¶ 106–107.

[53] Bailey Amended Statement at ¶ 109.

[54] Bailey Amended Statement at ¶ 109, Exhibit 11. In the Coleman Amended Application Statement, I identified "at least 21 customer facilities that would experience a reduction in competitive Class I rail options" omitted from Dr. Bailey's initial list. Coleman Amended Application Statement at ¶ 5.

23. In her July 17, 2026 Supplemental Statement, Dr. Bailey provides a follow-up to her initial analysis and identifies a total of 35 "customer facilities that would face a reduction in access to Class I railroads," including eight 2-to-1 and twenty-seven 3-to-2 such facilities.[55] She also determines that one of the 2-to-1 and nine of the 3-to-2 customer facilities either do not have UP and NS as serving carriers or are under line abandonment proceedings.[56]

24. The customer facilities identified by Dr. Bailey in her Supplemental Statement largely align with those I identified in my Amended Application Statement as shown in Figure 1 below.[57] I have not identified any additional customer facilities that would face a reduction in access to Class I railroads from 2-to-1 and 3-to-2 based on available materials.

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55 Bailey Supplemental Statement at ¶ 5, Exhibits 1–2.

56 Bailey Supplemental Statement at § 2.

57 Appendix B, Coleman Amended Application Statement. Dr. Bailey excluded a few customer facilities from my prior list on the basis that they were no longer in business or were affected by inaccurate SCRS data entries. If she has accurately described data errors, then a reclassification is appropriate.

Figure 1: Customer Facilities Facing a 2-to-1 or 3-to-2 Reduction in Class I Railroad Options as a Result of the Proposed Transaction

Customer	Stations(s)	Bailey Amended Statement	Coleman Amended Application Statement	Bailey Supplemental Statement	Access Commitment Offered
AgRail LLC	Bloomington, IL	2-to-1	2-to-1	2-to-1	Yes
Hillsboro Energy LLC	Hillsboro, IL	2-to-1	2-to-1	2-to-1	Yes
Macoupin Energy LLC	Monterey Mine Carlinville, IL	2-to-1	2-to-1	2-to-1	Yes
Midwest Salt LLC	Chicago, IL	2-to-1	2-to-1	2-to-1	Yes
Milano Metals & Recycling/Milano Railcar Services LLC/Shapiro Bros of Illinois Inc.	Mt Vernon, IL	Omitted	2-to-1	2-to-1	Yes
Titan Tire Corp.	Des Moines, IA	Omitted	2-to-1	2-to-1	Yes
US Glu-Lam Inc.	Chicago, IL	2-to-1	2-to-1	2-to-1	Yes
Stewart Grain Company Inc.	Marshfield/Stewart, IL	Omitted	Omitted	2-to-1	No[1]
Alter Metal Recycling	Des Moines, IA	Omitted	3-to-2	3-to-2	Yes
Archer Daniels Midland Co.	Des Moines, IA	Omitted	3-to-2	3-to-2	Yes
Bituminous Materials & Supply LP	Des Moines, IA	Omitted	3-to-2	3-to-2	Yes
BlueLinx Corp.	Des Moines, IA	Omitted	3-to-2	3-to-2	Yes
Bridgestone Americas Tire Operations LLC	Des Moines, IA	Omitted	3-to-2	3-to-2	Yes
Bunge Milling Inc.	Danville, IL	Omitted	3-to-2	3-to-2	Yes
Cargill Inc.	Des Moines, IA	Omitted	3-to-2	3-to-2	Yes
Des Moines Industrial LLC	Des Moines, IA	Omitted	3-to-2	3-to-2	Yes
Edmund A Allen Lumber	Momence, IL	3-to-2	3-to-2	3-to-2	Yes
Feed Energy Co.	Des Moines, IA	Omitted	3-to-2	3-to-2	Yes
General Mills Inc.	Avon, IA	Omitted	3-to-2	3-to-2	Yes
Heartland Co-op	Des Moines/Avon, IA	Omitted	3-to-2	3-to-2	Yes
Magellan Midstream Partners LP	Des Moines, IA	Omitted	Omitted	3-to-2	Yes
Mighty River Recycling LLC/Azcon Inc. (Former Owner of MRR LLC's Facility)	Federal, IL	3-to-2	3-to-2	3-to-2	Yes
Rayner Rinn Scott	Des Moines, IA	Omitted	Omitted	3-to-2	Yes
REG Danville LLC/Renewable Energy Group Inc.	Danville, IL	Omitted	3-to-2	3-to-2	Yes
The Quaker Oats Co.	Danville, IL	Omitted	3-to-2	3-to-2	Yes
USS Granite City Works	Madison/Granite City, IL	Omitted	Omitted	3-to-2	Yes
Wheeler Consolidated Inc.	Des Moines, IA	Omitted	3-to-2	3-to-2	No[2]
Intrinsic Ag LLC	Altoona, IA	Omitted	Omitted	3-to-2	No[1]
Lebanon Chemical Corp.	Danville, IL	3-to-2	3-to-2	3-to-2	No[1]
Lineage Logistics LLC/Iowa Cold Storage	Altoona, IA	Omitted	Omitted	3-to-2	No[1]
Merchants White Line Warehousing Inc.	Altoona, IA	Omitted	Omitted	3-to-2	No[1]
Viscofan USA Inc.	Danville, IL	3-to-2	3-to-2	3-to-2	No[1]
Beisser's Inc.	Grimes, IA	Omitted	Omitted	3-to-2	No[1, 2]
CB&I Storage Tank Solutions LLC	Des Moines, IA	Omitted	Omitted	3-to-2	No[1, 2]
Frontier Forest Products Inc.	Des Moines, IA	Omitted	Omitted	3-to-2	No[1, 2]

[1] Serving Carrier Not UP or NS

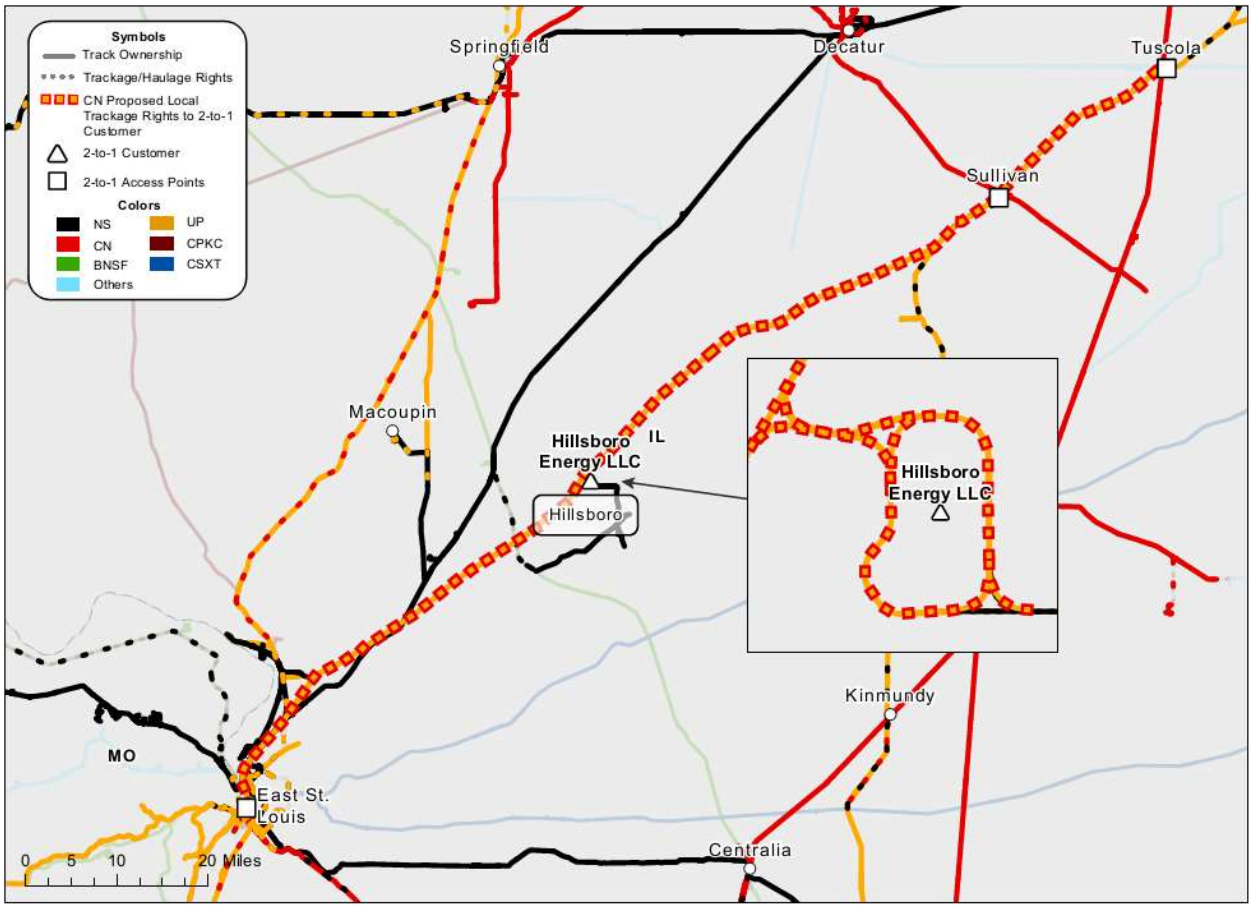
[2] Customer located on Line Abandonment

2. 2-to-1 and 3-to-2 Customer Facilities may Face Adverse Competitive Effects as a Result of the Proposed Transaction

25. The 2-to-1 and 3-to-2 customers may face adverse competitive effects as a result of the Proposed Transaction because of the loss of a Class I railroad option. Pre-merger, UP and NS compete independently for these customers and each may offer better rates or service terms to the customer to choose its railroad over the other. Depending on the customer's transportation needs, certain railroads may have advantages over others based on their own networks, operating plans, facilities, capabilities, and equipment that impact the rates and service they could economically offer to customers. When railroads compete with each other, customers may benefit from better rates and service than would be available without such competition. Following the Proposed Transaction, this competition would be lost as the combined UP-NS railroad would have a reduced incentive (or, in the case of 2-to-1 customers, no incentive) to provide better rates or service terms beyond the terms required by the Board's regulatory framework. Thus, with less railroad competition post-merger, customers may pay higher prices or be offered poorer service.

26. This is most easily demonstrated for 2-to-1 customers (meaning customers who have access to both UP and NS and no other Class I railroads before the merger), such as Hillsboro Energy LLC ("Hillsboro Energy"). Hillsboro Energy originated {{ }} shipments in 2025 – {{ }} by NS and {{ }} by UP. Of the NS originations, {{ }} shipments were delivered to {{ }} via an interline movement with the Evansville Western Railway (EVWR) in {{ }}. Another {{ }} shipments were delivered to {{ }}. Of the UP originations, {{ }} were delivered to {{ }} and {{ }} to {{ }}. Both railroads handled substantial traffic for Hillsboro Energy in 2025, showing that each is a viable and competitive option for this customer. Figure 2 depicts rail access and the area rail network for Hillsboro Energy.

Figure 2: Hillsboro Energy Rail Access



Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

27. Because both UP and NS offer originating service to Hillsboro Energy, this customer has varying railroad options it can use to negotiate its terms and rates. NS can provide direct service to customers in {{ }} and UP can offer interline service; UP can provide direct service to customers in {{ }} and {{ }} and NS can offer interline service. Neither NS nor UP can provide direct service to {{ }}; NS interlines that traffic with the EVWR in {{ }}, and UP could do the same.[58] As separate railroads, UP and NS compete against each other to serve Hillsboro Energy's transportation needs (either with direct service or through interline arrangements), which may include offering attractive rates for different routes, improved service that could add costs to operations, and additional investments. As a result of the Proposed Transaction, UP and NS will no longer have to compete with each

[58] *See Evansville Western Railway*, https://evwr.com/ (last visited Nov. 11, 2026).

other for this customer's business: if Hillsboro Energy wants to utilize rail transportation, absent conditions imposed on the merger, it would be left with one post-merger option, the combined UP-NS entity.

28. The same dynamic applies beyond 2-to-1 customers.[59] For 3-to-2 customers (or any customers that have both UP and NS as railroad options), the loss of a Class I railroad option may have adverse competitive effects. Suppose a customer has three Class I railroad options it could use to originate a shipment. Railroad A has a high cost of service which may include interline operations and switching fees over a circuitous route and can economically service the shipment for $1,500. Railroad B has a medium cost of service that includes direct service over a circuitous route and can economically service the same shipment for $1,000. Railroad C has a low cost of service that includes direct service over a straight route and can economically service the same shipment for $800. When negotiating for the customer's shipment, Railroad A would offer a rate no lower than $1,500. Railroads B and C are able to profitably offer lower rates than Railroad A due to their lower costs of service. Through negotiations, Railroad C would be expected to gain the business at any rate under $1,000, at which point Railroad B could no longer match the rate in an economically profitable way. If Railroads B and C were to merge, however, they would have less incentive to agree to any rate below the $1,500 rate that Railroad A could offer. In the absence of other competitive constraints, the customer would end up paying a rate closer to $1,500, rather than a rate closer to $1,000 that would be expected if Railroads B and C were independent rail options.[60] This is illustrated in Figure 3 below.

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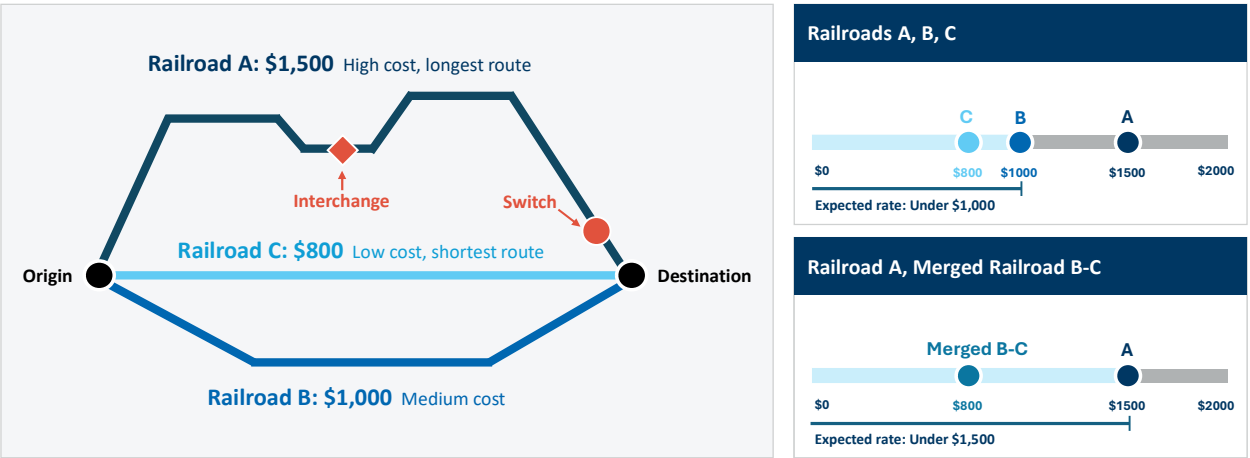
[59] This dynamic is discussed by Applicants' Expert Mark Israel, who explains that "railroads will compete until price falls to the cost of the higher-cost railroad, and then the lower cost railroad will price just under that cost and win the business because the higher cost railroad cannot profitably match that price. The winning lower-cost railroad will earn a margin roughly equal to the difference between the two railroad's costs." Am. Appl. Vol. 2, Verified Statement of Mark A. Israel, at ¶ 25 (April 24, 2026), [hereinafter "Israel V.S."].

[60] In this example, if Railroad A and C were to merge, the competitive effect may be minimal. However, Railroads A and C may compete for other traffic on their networks and a merger could generate adverse competitive effects to their customers.

Figure 3: Pricing Dynamics for a 3-to-2 Customer



29. For example, {{ }} is one of the 3-to-2 customers identified in Des Moines, IA.[61] According to the Serving Carrier/Reciprocal Switch ("SCRS") data,[62] NS is the serving carrier with open access agreements to BNSF, IAIS, and UP.[63] Through these arrangements, NS would provide the industry pull or delivery from {{ }} and then provide the traffic to BNSF, IAIS, or UP at their stations for a change fee known as "reciprocal switching" between $250 and $552 depending on the commodity and whether or not it is a grain unit train.[64] In Des Moines, {{ }} originated {{ }} shipments that went to {{ }} via UP, {{ }} shipments that went to {{ }} via NS, {{ }} shipments that went to {{ }} via UP, {{ }} shipments that went to {{ }} via UP, and {{ }} that went to {{ }} via IAIS and NS in 2025.[65] {{ }} also made shipments to {{

61 Bailey Supplemental Statement, Exhibit 2.

62 *See Serving Carrier/Reciprocal Switch*, Railinc, https://public.railinc.com/products-services/serving-carrierreciprocal-switch (last visited Nov. 11, 2026).

63 *See*, for example, "SCRS 3-to-2 and 2-to-1 customer notes.xlsx" in Dr. Bailey's Amended Application Workpapers for {{ }} in IA. As I noted in the Coleman Amended Application Statement, "[i]n addition to the limitations that IAIS faces as a Class II railroad in providing rail services to customers, IAIS's access to many of these customers is subject to certain restrictions." *See* Coleman Amended Application Statement at ¶ 22.

64 *See NS 8001 Switching and Absorption Tariff*, NS, (effective August 1, 2026), at 25 https://www.norfolksouthern.com/content/dam/nscorp/pdf/tariffs/8-1-2026/NS%208001%2008-01-26.pdf (last visited Nov. 11, 2026);*NS 8001 Section 5 - Industries Open to Switching*, NS, https://www.norfolksouthern.com/content/dam/nscorp/pdf/tariffs/8-1-2026/NS%208001%20Section%205%2008-01-26.pdf (last visited Nov. 11, 2026).

65 *See* Bailey Amended Statement Workpaper "Class 1 Reductions Carloads.xlsx."

}}. This demonstrates that both UP and NS are meaningful railroad options for {{ }}.

30. For each of these destinations, {{ }} could negotiate with UP and NS (and BNSF) to obtain rates closer to the lowest-cost rail carrier option. In addition, {{ }} may be able to leverage volume commitments to certain locations in exchange for better terms and service. If UP and NS were to merge, however, {{ }} would lose a key railroad option competing for its business in Des Moines, along with the leverage that allows it to obtain its current rates and terms, unless the Proposed Transaction is conditioned to preserve that competition. {{ }} could also be served by IAIS through its switching agreement with NS. However, as explained in my Amended Application Statement, I understand the focus on merger cases and Board precedent involve access to Class I rail options and the Board has recognized that the operational characteristics "significantly differentiate" Class I railroads and regional carriers "are heavily dependent in many critical ways on their Class I interchange partners."[66]

B. DR. BAILEY'S ANALYSIS OF CUSTOMER ACCESS AT A BEA LEVEL IS OVERLY BROAD AND FAILS TO IDENTIFY AREAS WHERE CUSTOMERS MAY FACE ADVERSE EFFECTS

1. Dr. Bailey's Analysis of Customer Access at a BEA Level is Overly Broad and Fails to Consider the Differences in Customer Access within a BEA

31. Dr. Bailey's second analysis of "Access to Customers" considers "the effect of the merger on the number of railroads that serve individual BEAs."[67] Dr. Bailey states that the Bureau of Economic Analysis designed "Economic Areas (which are referred to as BEAs in this statement) as the basis for regional and economic analysis."[68] She further states that "[a]nalyzing access at the BEA level captures potential changes in the number of options available to customers that use truck to deliver freight to an access point, so that the geographic scope of competitive rail alternatives includes more than just the customer location. It can also capture

66 Coleman Amended Application Statement at ¶ 15, n. 26.

67 Bailey Amended Statement at ¶ 117.

68 Bailey Amended Statement at ¶ 117.

some aspects of potential competition for customers that are expanding or relocating within an area and are choosing where to site their facility."[69]

32. I agree with Dr. Bailey that assessing the horizontal competitive effects of the Proposed Transaction on individual customers requires more than just analyzing the impact on current customer facility access as discussed in the previous section. This is because although some customers may not currently access a railroad's line directly they may still rely on the presence of that railroad for current or future potential needs. Dr. Bailey recognizes examples for when this may occur, including "customers that use truck to deliver freight to an access point" and "customers that are expanding or relocating within an area."[70] Another example is customers that can use the threat of building access to a nearby railroad as a competitive alternative when negotiating with the railroads they can already access.[71]

33. My disagreement with Dr. Bailey's approach is her use of BEAs for this analysis. Dr. Bailey's use of BEAs assumes that all railroads within a BEA are competitive alternatives for all customers (and all commodities) shipped by those customers within the BEA for every BEA.[72] This assumption is unsupported. The Bureau of Economic Analysis explains that the economic areas were developed to facilitate "regional economic analysis" and goes on to explain that "[f]or some analyses, government agencies and businesses need data that are more geographically detailed than EA data," citing examples such as determining plant locations and defining sales and marketing territories.[73] While the use of BEAs has been used and accepted by the Board for certain competitive analyses in prior merger matters, Dr. Bailey's use of BEAs as a basis for determining customer access is novel, and she has provided no support for its use in this manner.

34. BEAs are an inappropriate basis for determining customer access because of their size and the differences in customer access within a BEA. BEAs can encompass large areas. Across

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69 Bailey Amended Statement at ¶ 117.

70 Bailey Amended Statement at ¶ 117.

71 Major Rail Consol. Proc., 5 S.T.B. at 561 ("Competition arising from shippers' build-out, transloading, plant siting, and production shifting choices can be eliminated or reduced when two railroads serving overlapping areas merge.").

72 Bailey Amended Statement at ¶¶ 118–119.

73 *See Final Redefinition of the BEA Economic Areas*, Bureau of Transportation Statistics (January 11, 2012), https://www.bts.gov/archive/publications/federal_register/1995/bts_19950310 (last visited Nov. 11, 2026).

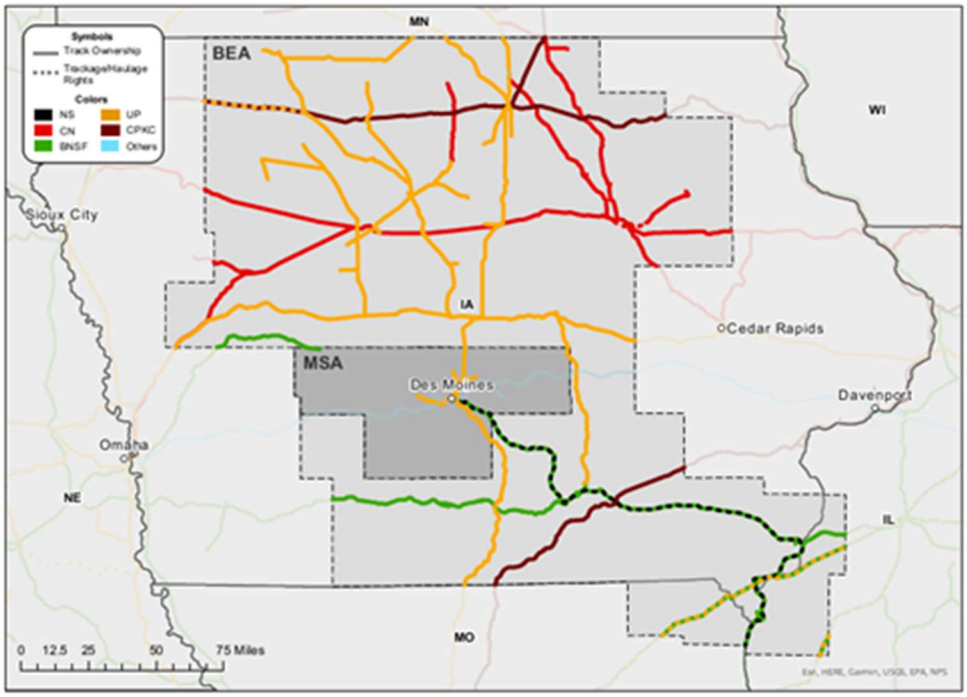
the entire United States, BEAs on average cover nearly twenty thousand square miles of land area. As shown in Figure 4, the land areas for BEAs in which both UP and NS operate range from 5,721 square miles (Peoria-Pekin, IL BEA) to 35,341 square miles (Des Moines, IA-IL-MO BEA), with an average of 16,353 square miles.

Figure 4: Land Area of Overlapping UP & NS BEAs Identified by Dr. Bailey

BEA Code	BEA Name	Land Area (Square Miles)
64	Chicago-Gary-Kenosha, IL-IN-WI	18,381
68	Champaign-Urbana, IL	8,547
73	Memphis, TN-AR-MS-KY	17,746
83	New Orleans, LA-MS	7,776
96	St. Louis, MO-IL	27,498
97	Springfield, IL-MO	8,794
98	Columbia, MO	6,285
99	Kansas City, MO-KS	27,442
100	Des Moines, IA-IL-MO	35,341
101	Peoria-Pekin, IL	5,721
	Average Land Area	**16,353**

35. Individual railroads' network, operations, and ability to serve individual customers within each BEA may vary depending on the location of the customer within the BEA, as well as customers' shipment needs; simply because two railroads operate in the same BEA does not mean that they have similar access to all of the customers within that BEA and can compete for each customer's traffic in a meaningful way. Figure 5 below identifies the rail network within the Des Moines, IA-IL-MO BEA. As described above, BEAs can cover large areas, including multiple MSAs (Metropolitan Statistical Areas) within a single BEA. For example, within the Des Moines-West Des Moines, IA MSA, only three Class I railroads – UP, NS, and BNSF – along with IAIS have access to customers. Dr. Bailey's approach would consider CPKC and CN as competitors for these customers, despite the fact that they operate nowhere in the MSA.

Figure 5: Map of Rail Network within Des Moines, IA-IL-MO BEA



Sources: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database.

2. Dr. Bailey's Analysis of Customer Access at a BEA Level is Inconsistent with Applicants' Expert David Hunt's Assumptions Regarding Competitive Rail Traffic

36. Dr. Bailey's use of BEAs in assessing customer access is also at odds with the work of Applicants' Expert David Hunt evaluating competitive rail traffic for his traffic diversion analysis.[74] As part of his rail-to-rail diversion analysis, Mr. Hunt makes the following assumptions regarding the competitiveness of rail traffic:[75]

- Merchandise and bulk were defined as competitive at an SPLC-SPLC level, based on the definitions in the Switching Carrier/Reciprocal Switching ("SCRS") data, which shows if a railroad can access or has reciprocal switching rights at a station;

- Intermodal traffic was defined as competitive at a BEA-BEA level, with a small number of adjustments to more accurately reflect real-world competition based on drayage catchment areas. A railroad requires access to an intermodal terminal in the BEA/catchment area. Thus, if a railroad can

74 Am. Appl. Vol. 2, Verified Statement of David T. Hunt (April 29, 2026) [hereinafter "Hunt Amended Statement"].

75 Hunt Amended Statement, Exhibit 6-3, internal citations omitted.

offer competitive service in both the origin and destination BEA or via interchange, then that railroad can compete for the traffic; and

- Automotive traffic was defined as competitive on an origin SPLC to destination BEA level, where a railroad requires access to the origin SPLC and an automotive ramp in the destination BEA.

Mr. Hunt also examines other factors in evaluating the ability of rail traffic to divert to another carrier, including the history of railroads moving traffic on routes for a service type and the use of "impedance" or the final "cost" of a route.[76]

37. Dr. Bailey's analysis of the number of railroads that serve individual BEAs to identify areas where customers may face a reduction in railroad options does not capture the available competitive options in a manner consistent with Mr. Hunt's approach. Specifically, Dr. Bailey's approach does not analyze the number of railroads serving SPLCs, which, under Mr. Hunt's analysis, would be relevant for (1) merchandise and bulk traffic for both the origin and destination of the movement and (2) automotive traffic at the origin of the movement. For intermodal traffic for both the origin and destination of the movement or automotive traffic at the destination of the movement, Mr. Hunt's analysis in theory could be consistent with a BEA-level approach, but he examines additional considerations before concluding that a railroad serving a BEA could serve a particular customer within that BEA; unlike Mr. Hunt's analysis, Dr. Bailey's analysis does not consider whether the other railroads in the BEA have the necessary equipment (such as intermodal or automotive ramp facilities) that would be needed to serve such traffic.

3. My Analysis Identifies Additional Customer Areas Where the Proposed Transaction Reduces Railroad Options

38. In order to evaluate whether any additional customers (not identified by Dr. Bailey) may face a 2-to-1 or 3-to-2 reduction in potential railroad options, I conduct a similar analysis to Dr. Bailey's Analysis of Access to Customers at a BEA level, but I conduct my analysis at a SPLC level rather than for the entire BEA. As I explain in Section IV.B.1, BEAs may encompass too large an area to be a useful geography in assessing customer access to railroad facilities. Defining geographies at a SPLC level may better identify areas where customers, even if they are not currently directly served, have access to additional railroad options and therefore may better

[76] Hunt Amended Statement, Exhibit 6-3.

capture the actual competitive options available to customers. This approach is also more consistent with the approach taken by Mr. Hunt.

39. To analyze the railroad originations and terminations by SPLC location, I use the combined waybill data prepared by Dr. Bailey based on the Class I railroads' 2019-2024 traffic tapes and the 2019-2023 Carload Waybill Sample data.[77] I total the traffic volume of shipments, by the originating railroad for the base year 2023 and calculate each railroad's share of all originations for the year for each SPLC.[78] I identify SPLCs with at least 365 carloads in 2023 where both UP and NS perform at least 1% of customer originations. The results of this analysis are presented in Figure 6 below. I conduct a similar analysis for shipment terminations, presented in Figure 7 below.

Figure 6: Railroad Shares of Originations, by SPLC, in Base Year 2023

Location Information				Originations			
SPLC	Station	State	BEA Name	Total Traffic	NS	UP	UP + NS
363400	HAMMOND	IN	Chicago-Gary-Kenosha, IL-IN-WI	{{ }}	{{ }}	{{ }}	{{ }}
363510	EAST CHICAGO	IN	Chicago-Gary-Kenosha, IL-IN-WI	{{ }}	{{ }}	{{ }}	{{ }}
363228	PORTAGE	IN	Chicago-Gary-Kenosha, IL-IN-WI	{{ }}	{{ }}	{{ }}	{{ }}
387440	BLOOMINGTON	IL	Chicago-Gary-Kenosha, IL-IN-WI	{{ }}	{{ }}	{{ }}	{{ }}
381376	RIVERDALE	IL	Chicago-Gary-Kenosha, IL-IN-WI	{{ }}	{{ }}	{{ }}	{{ }}
536870	DES MOINES	IA	Des Moines, IA-IL-MO	{{ }}	{{ }}	{{ }}	{{ }}
566900	KANSAS CITY	MO	Kansas City, MO-KS	{{ }}	{{ }}	{{ }}	{{ }}
439900	MEMPHIS	TN	Memphis, TN-AR-MS-KY	{{ }}	{{ }}	{{ }}	{{ }}
647000	NEW ORLEANS	LA	New Orleans, LA-MS	{{ }}	{{ }}	{{ }}	{{ }}
388260	PEORIA	IL	Peoria-Pekin, IL	{{ }}	{{ }}	{{ }}	{{ }}
392880	HILLSBORO	IL	Springfield, IL-MO	{{ }}	{{ }}	{{ }}	{{ }}
567500	ST LOUIS	MO	St. Louis, MO-IL	{{ }}	{{ }}	{{ }}	{{ }}
396292	GRANITE CITY	IL	St. Louis, MO-IL	{{ }}	{{ }}	{{ }}	{{ }}
396609	SAUGET	IL	St. Louis, MO-IL	{{ }}	{{ }}	{{ }}	{{ }}
396295	MADISON	IL	St. Louis, MO-IL	{{ }}	{{ }}	{{ }}	{{ }}
396298	VENICE	IL	St. Louis, MO-IL	{{ }}	{{ }}	{{ }}	{{ }}

[77] Bailey Amended Statement at ¶ 96.

[78] For purposes of this analysis, I group all non-Class I railroads into an "Other" category.

Figure 7: Railroad Shares of Terminations, by SPLC, in Base Year 2023

Location Information				Terminations			
SPLC	Station	State	BEA Name	Total Traffic	NS	UP	UP + NS
387650	DANVILLE	IL	Champaign-Urbana, IL	{{ }}	{{ }}	{{ }}	{{ }}
380000	CHICAGO	IL	Chicago-Gary-Kenosha, IL-IN-WI	{{ }}	{{ }}	{{ }}	{{ }}
363510	EAST CHICAGO	IN	Chicago-Gary-Kenosha, IL-IN-WI	{{ }}	{{ }}	{{ }}	{{ }}
363228	PORTAGE	IN	Chicago-Gary-Kenosha, IL-IN-WI	{{ }}	{{ }}	{{ }}	{{ }}
381376	RIVERDALE	IL	Chicago-Gary-Kenosha, IL-IN-WI	{{ }}	{{ }}	{{ }}	{{ }}
381380	BLUE ISLAND	IL	Chicago-Gary-Kenosha, IL-IN-WI	{{ }}	{{ }}	{{ }}	{{ }}
363400	HAMMOND	IN	Chicago-Gary-Kenosha, IL-IN-WI	{{ }}	{{ }}	{{ }}	{{ }}
363501	ROBY	IN	Chicago-Gary-Kenosha, IL-IN-WI	{{ }}	{{ }}	{{ }}	{{ }}
380001	CHICAGO ASHLAND AVE	IL	Chicago-Gary-Kenosha, IL-IN-WI	{{ }}	{{ }}	{{ }}	{{ }}
381417	DOLTON	IL	Chicago-Gary-Kenosha, IL-IN-WI	{{ }}	{{ }}	{{ }}	{{ }}
536870	DES MOINES	IA	Des Moines, IA-IL-MO	{{ }}	{{ }}	{{ }}	{{ }}
566900	KANSAS CITY	MO	Kansas City, MO-KS	{{ }}	{{ }}	{{ }}	{{ }}
439900	MEMPHIS	TN	Memphis, TN-AR-MS-KY	{{ }}	{{ }}	{{ }}	{{ }}
647000	NEW ORLEANS	LA	New Orleans, LA-MS	{{ }}	{{ }}	{{ }}	{{ }}
388260	PEORIA	IL	Peoria-Pekin, IL	{{ }}	{{ }}	{{ }}	{{ }}
567500	ST LOUIS	MO	St. Louis, MO-IL	{{ }}	{{ }}	{{ }}	{{ }}
396640	EAST ST LOUIS	IL	St. Louis, MO-IL	{{ }}	{{ }}	{{ }}	{{ }}
396292	GRANITE CITY	IL	St. Louis, MO-IL	{{ }}	{{ }}	{{ }}	{{ }}
396609	SAUGET	IL	St. Louis, MO-IL	{{ }}	{{ }}	{{ }}	{{ }}
396295	MADISON	IL	St. Louis, MO-IL	{{ }}	{{ }}	{{ }}	{{ }}
396250	ALTON	IL	St. Louis, MO-IL	{{ }}	{{ }}	{{ }}	{{ }}

40. Based on the approach described above, Figure 6 identifies {{ }} SPLCs where UP and NS both provide originating service to customers and Figure 7 identifies {{ }} SPLCs where UP and NS both provide terminating service to customers. The highlighted rows in the Figures are SPLCs with 2-to-1 and 3-to-2 customers (e.g., Bloomington, Hillsboro, Alton, Chicago, Madison/Granite City, Des Moines, and Danville). {{ }} of these SPLC locations would face a loss in Class I railroad options from 2-to-1 and {{ }} of these SPLC locations would face a loss in Class I railroad options from 3-to-2.[79] UP and NS combined originate the majority of railroad shipments in {{ }} SPLC locations, including {{ }} SPLC locations in which they originate more than 75% of railroad shipments. They terminate the majority of railroad shipments in {{ }} SPLC locations, including {{ }} SPLC locations in which they terminate more than 75% of railroad shipments.

[79] *See* tab "In-text Figures" in my Workpaper, "Figure 6 and 7.xlsx."

41. The largest SPLC locations where UP and NS handle more than {{ }} of originations and terminations are St. Louis, MO and Kansas City, MO. This is consistent with the overall shares for the corresponding BEAs that Dr. Bailey calculated in her Appendices, which show:[80]

- UP and NS combined performed {{ }} of originations and {{ }} of terminations across the Kansas City, MO-KS BEA, and
- UP and NS combined performed {{ }} of originations and {{ }} of terminations across the St. Louis, MO-IL BEA.

4. Customers that Could Have Utilized UP and NS Options May Face Adverse Effects after the Proposed Transaction

42. Just as customers with direct access to multiple railroads may face adverse competitive effects through the loss of a Class I railroad option, so too may customers with indirect access face adverse competitive effects. Competition through indirect access occurs when shippers can access alternative railroads by trucking their product to the rail networks, can build out track to reach an alternative rail network, or can choose among sites served by alternative railroads when building a new facility.

43. Some customers may rely on trucks to move their shipments to or from the rail network for first- and last-mile service. As discussed in § III.A.2, when a customer can choose among multiple railroad options to deliver or receive their shipments, they can use those options to negotiate for better rates and service terms. If both UP and NS are among those options for a customer, the Proposed Transaction would reduce the number of railroad options that could compete for that customer's traffic. As explained in ¶ 41 above, UP and NS have high shares in the Kansas City and St. Louis BEAs; customers in those areas may currently benefit from competition between UP and NS that would be lost after the Proposed Transaction.

44. For example, grain elevators are an important part of the supply chain for bulk grain commodities such as corn, soybeans, and wheat. Farmers not located at a rail station must first rely on truck options to transport products from their farm and may then rely on grain elevators as points to market and deliver their products. Farmers are likely to have multiple grain elevators within a reasonable trucking distance, and those grain elevators may be served by one or more

[80] *See* Bailey Amended Statement Workpaper "Appendix D1, D2.xlsx."

railroads. Products trucked to grain elevators can be marketed and delivered to areas of demand via these railroad options (or additional truck options) to the benefit of the farmers. Even though these farmers may not be located on the rail network, competition among the rail options available at accessible grain elevators may discipline the prices offered for transport from those elevators.

45. Ray-Carroll County Grain Growers, Inc. has a grain elevator in Brunswick, MO (within Chariton County) with access to both BNSF and NS.[81] Northwest Missouri Grain LLC (now the MFA Rail Facility) has grain elevators in Hamilton, MO (within Caldwell County) and access to UP.[82] Each of these railroads can access and offer competitive service to different areas of demand. Ray-Carroll and MFA compete for grain producers' business (e.g., producers in Chariton, Caldwell, and the Livingston and Carroll counties in between) to utilize their services to market and sell their products. The products are then distributed to areas of demand via the rail network or trucking options from these facilities. The facilities are located less than a 70-mile drive from each other, and producers in that region may truck their products to one or the other facility. Pre-merger, UP's service to the MFA at Hamilton competes with BNSF's and NS's service to Ray-Carroll at Brunswick. If rail rates are too high or service is poor from one facility, then farmers may choose to shift their products towards the other facility or another railroad. With the merger between UP and NS though, part of that competition is lost. This could result in reduced or limited service to one or both of the Brunswick and Hamilton grain facilities. Additionally, the combined UP-NS entity may not have the same incentive to invest in and support both facilities. As a result of the lost competition, the customers using the Brunswick and Hamilton grain elevators may face higher freight rates, reduced service, or more onerous or expensive terms on equipment.

46. Customers can also use the ability to create (or threaten to create) buildouts to another railroad option to negotiate better rates and terms from their current railroad provider. A buildout occurs when a customer develops track lines from its facility to connect with a railroad. Such a buildout provides customers with flexibility in railroad options for their traffic. A customer does

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81 *See Ray-Carroll County Grain Growers*, https://www.ray-carroll.com/index.cfm?show=10&mid=43 (last visited Nov. 11, 2026); SCRS data.

82 *See MFA Rail Facility*, http://www.mfarailfacility.com/index.cfm?show=10&mid=29 (last visited Nov. 11, 2026); SCRS data.

not need to complete a buildout, however, for a buildout option to have value. The very possibility of creating a buildout can, on its own, help discipline rates and service terms with the connecting serving rail carrier. If a customer was served by only one of the Applicants but had the option to build out to the other Applicant, the Proposed Transaction would eliminate this option and the competitive threat it provides.

47. Customers can also use competing rail options when selecting a site for a new facility. For example, if a customer was planning a new facility in the Kansas City area, it could contact railroads about potential sites along their networks and negotiate rates and service terms for its traffic. In negotiating with one railroad about a particular site, the customer can use the fact that it is considering other sites served by other railroads to press for favorable terms. If the customer's site options include one (or more) served by UP and one (or more) served by NS, the Proposed Transaction would eliminate competition between those sites and leave customers with fewer options and less ability to negotiate favorable terms.[83]

48. In each of these scenarios—whether a customer has indirect access through trucking, a potential buildout, or a choice among sites for a new facility—having multiple Class I railroad options benefits customers because the railroads compete for their transportation business. As independent competitors, UP and NS may be incentivized to offer better rates or service terms to induce customers to choose one railroad over the other. The Proposed Transaction would eliminate this competition. Just as conditions are necessary to protect customers with direct access to both UP and NS, conditions are also necessary to protect customers who rely on these indirect forms of access.

49. As I discuss in §§ V-VI, the Kansas City and St. Louis BEAs are also flagged in additional approaches identifying potential harms of the Proposed Transaction, highlighting the likelihood of potential competitive concerns for customers in these areas.

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[83] *See*, for example, *Focus Sites on the Union Pacific Network*, UP, https://www.up.com/shipping/connect-to-rail/premier (last visited Nov. 11, 2026); *Choosing a Rail Served Site*, NS, https://www.norfolksouthern.com/en/rail-development-property/industrial-rail-development/site-location-services/choosing-a-rail-served-site (last visited Nov. 11, 2026) (detailing insights regarding their marketing strategies targeted towards customers).

V. ANALYSIS OF WITHIN CORRIDOR COMPETITION IMPACTING KANSAS CITY AND ST. LOUIS

50. Railroads compete for traffic that customers want to move from a specific origin to a specific destination, which can be called a corridor. I agree with Dr. Bailey that an analysis of railroads that serve traffic along corridors is useful in identifying corridors for which the Proposed Transaction may raise horizontal concerns. If both UP and NS have lines that typically provide one of a few railroad options for some or all of the corridor, they may be strong competitors for customers' traffic along that corridor. The Proposed Transaction eliminates this competition, and customers may face adverse effects unless appropriate conditions are placed on the Proposed Transaction. At a high-level, Dr. Bailey's analysis provides a reasonable approach to identifying corridors that will face a reduction in rail competition after the Proposed Transaction. However, I disagree with several of Dr. Bailey's unsupported assumptions, including assumptions that certain types of traffic are protected from competitive harm. Dr. Bailey's assumptions have the effect of understating (and, in some cases, reducing to zero) the total rail traffic using these corridors that could face adverse competitive effects. I have been asked by Counsel to focus my analysis on within corridor competition for traffic involving corridors with origins or terminations in Kansas City or St. Louis BEAs.

A. DR. BAILEY'S ANALYSIS OF WITHIN CORRIDOR COMPETITION FAILS TO INCLUDE TRAFFIC ON CORRIDORS THAT WOULD FACE A LOSS OF RAILROAD OPTIONS

51. Dr. Bailey conducts an "Analysis of Competition Within Corridors" that she describes as "analyz[ing] horizontal competition to transport freight along the same segment of specific corridors."[84] Dr. Bailey asserts the focus of the analysis is on "potential adverse competitive effects of the merger on linehaul services between different points."[85] She claims that her "analysis shows that there is limited scope for potential horizontal harm to competition within corridors as a result of the Proposed Transaction," with "at most 15 corridors where there might be a loss of competition from a reduction from 3-to-2 in the number of railroads observed on a segment of the corridor, and only {{ }} carloads of freight in 2023 on these corridors that

[84] Bailey Amended Statement ¶ at 120 (defining corridors as bidirectional "BEA-BEA pairs."); Bailey Amended Statement, ¶¶ 123–124.

[85] Bailey Amended Statement at ¶ 120.

might be exposed to harm from horizontal competitive."[86] Of the corridors she identifies, [six] involve the St. Louis or Kansas City BEAs at one end of the corridor.

52. Dr. Bailey's Analysis of Competition Within Corridors proceeds in two steps:[87]

> The first step is an initial screen that flags a corridor based on the potential horizontal effect of the merger on the number of options available to customers on segments within that corridor that are observed in the combined waybill data. The second step is to conduct further analysis about competition on the flagged corridors to assess whether the corridor can be unflagged entirely, or whether at least some of the traffic on the corridor is protected from the risk of harm.

53. For the first step, Dr. Bailey examines corridors in bi-directional BEA-BEA pairs for all commodities, in order to "to focus attention on horizontal competitive effects on the linehaul service along the corridor."[88] She describes the goal of this step as "to provisionally flag a corridor if UP and NS are the only two railroads that both operate at the same end of the corridor or are two of only three that do so."[89]

54. Dr. Bailey describes the second step as investigating "corridors that were initially flagged to assess whether the corridor can be unflagged entirely, or whether some of the traffic on the corridor is protected from harm."[90] She describes five methods to assess whether this traffic is "protected from harm," including considering "Competition with Non-Rail Modes," "Automotive and Intermodal," "Corridors Traversing the Kansas City – St. Louis Segment," and "Additional Interline Options."[91]

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86 Bailey Amended Statement at ¶ 121.

87 Bailey Amended Statement at ¶ 120.

88 Bailey Amended Statement at ¶¶ 123–127.

89 Bailey Amended Statement at ¶ 128. Dr. Bailey also considers the possibility of an effect for routes where UP and NS both operate as a bridge carrier on the corridor but finds no competitive concern due to areas that UP and NS provide service to. Bailey Amended Statement at ¶ 129, n. 116.

90 Bailey Amended Statement at ¶ 135.

91 Bailey Amended Statement at § 4.3.4 (1), § 4.3.4 (2), § 4.3.4 (4), § 4.3.4 (5), ¶ 135. Dr. Bailey also considers the "Springfield, IL-MO – Evansville-Henderson, IN-KY Corridor." Bailey Amended Statement at § 4.3.4 (3).

55. After her analysis Dr. Bailey asserts that, at most, she finds [15] corridors where there might be a loss of competition, including [6] involving Kansas City or St. Louis.[92]

1. Dr. Bailey's Traffic Exclusions are Unsupported

56. Dr. Bailey's methods to assess whether certain traffic is "protected from harm" rely on unsupported assumptions that have the effect of removing significant volumes of traffic from consideration. Dr. Bailey excludes this traffic based on assumptions that are without empirical support. As a result, Dr. Bailey fails to analyze the competitive effects of the merger on the excluded traffic.

(a) Dr. Bailey relies on non-rail modes to exclude corridors and traffic.

57. First, Dr. Bailey considers "Competition with Non-Rail Modes." For her consideration of "Competition with Non-Rail Modes," she states:[93]

> Some customers within a flagged corridor are protected from potential horizontal anticompetitive harm because they have other competitive alternatives. Non-rail freight flows between BEAs show where customers have a viable non-rail option to move freight within a given corridor.

58. She then explains that "[t]o capture competition with non-rail modes, traffic on a flagged corridor for a particular commodity is excluded from the final carloads reported in Exhibit 12 if non-rail (truck and water) freight volume (measured in tons) accounts for 50 percent or more of the combined freight tonnage by rail and non-rail for that commodity on that corridor."[94] She cites language from an STB commodity exemption decision but provides no empirical analysis to support excluding traffic based on non-rail shares or her 50% screen.[95]

59. Dr. Bailey's basis for excluding traffic based on non-rail shares is flawed. The STB decision Dr. Bailey cites for her method to incorporate "non-rail modes" does not provide support for her claim that commodities where non-rail modes account for "50 percent or more of the combined freight tonnage by rail and non-rail for that commodity on that corridor" are

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92 Bailey Amended Statement at ¶ 121.

93 Bailey Amended Statement at ¶ 136 and § 4.3.4(1).

94 Bailey Amended Statement at ¶ 139.

95 Bailey Amended Statement at n. 124.

"protected from potential horizontal anticompetitive harm."[96] The cited decision involves a commodity exemption, in which I understand the Board is directed by 49 U.S.C. § 10502 "to exempt a transaction or service whenever continued regulation (1) is not necessary to carry out the transportation policy of section 10101 and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power."[97] In this particular decision, the Board cited a number of factors that weighed in favor of exempting the hydraulic cement traffic from a specific plant, including traffic from trucks on certain routes, other railroads, geographic alternatives, R/VC ratios, and contract rates in determining that the serving railroad had "no market power to abuse."[98] The decision considered multiple factors, including the presence of other railroads, that bear on whether the traffic was protected from market power abuse and did not state that non-rail traffic of 50% or more means that rail providers have no ability to abuse market power. For additional discussion of the use of non-rail modes in Dr. Bailey's analyses, see § VI.A.2 below.

(b) Dr. Bailey excludes significant traffic through her unsupported exclusion of automotive and intermodal traffic.

60. Dr. Bailey also considers "Automotive and Intermodal" traffic to be "protected from harm." For "Automotive and Intermodal," in her Within Corridor analysis she:[99]

> …exclude[s] traffic that is carried in intermodal containers and motor vehicles (commodity code STCC 3711) and motor vehicle parts (commodity code STCC 3714). STB and Interstate Commerce Commission ("ICC") decisions have stated that there is "effective competition" in the transport of these categories of traffic.

61. Dr. Bailey cites a Board exemption decision for motor vehicle and motor vehicle parts or accessories and a Board exemption revocation decision involving traffic carried in intermodal

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96 Bailey Amended Statement at ¶¶ 136, 139, and n. 124 (describing *Rail Gen. Exemption Auth.—Exemption of Hydraulic Cement*, Ex Parte No. 346 (Sub-No. 34) (STB decided Dec. 4, 1996)) [hereinafter "STB Exemption of Hydraulic Cement"].

97 STB Exemption of Hydraulic Cement at 3.

98 STB Exemption of Hydraulic Cement at 5.

99 Bailey Amended Statement at ¶¶ 135, 140, and § 4.3.4(2).

containers as the bases for excluding these types of traffic entirely from her analysis.[100] Dr. Bailey relied exclusively on these exemption decisions to support her exclusion of this traffic and did not conduct her own analysis to evaluate whether there is "effective competition" for these commodities.[101]

62. I understand that for mergers involving two Class I railroads, 49 U.S.C. §11324 directs the Board to consider "whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system."[102] This inquiry is different from the key inquiry in exemption decisions which, as described above, considers whether regulation is needed to "protect shippers from the abuse of market power" based on current market conditions for a commodity.[103] Moreover, these decisions are based on several factors, including the degree of railroad competition, which could be impacted significantly by the Proposed Transaction. To evaluate the potential horizontal competitive effects of the merger, all commodities should be evaluated. Dr. Bailey does not conduct an independent analysis of the competitive effects for automotive and intermodal traffic.[104]

63. Dr. Bailey does not exclude other exempt commodities beyond automotive and intermodal (which represent {{ }} of all exempted railroad traffic) and does not explain the reason for this selective exclusion.[105] CN's sales and marketing executives responsible for these types of shipments explain that this traffic is not protected from potential adverse effects from a reduction in rail competition. As described by CN's Assistant Vice-President for Automotive, Sarah Slazinski, "[a]utomotive customers depend on multiple competitive Class I carriers for resilient, efficient supply chains," and "[w]hen competitive options are reduced by a merger,

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100 Bailey Amended Statement at n. 127 (citing *Rail Gen. Exemption Auth.—Transp. Equip*, 9 I.C.C.2d 1, 1–2 (1992)); *WTL Rail Corp.—Petition for Partial Revocation of Exemption*, Ex Parte No. 230 (Sub-No. 9), slip op. at 1 (STB decided Feb. 15, 2006).

101 Transcript of Deposition of Elizabeth Bailey Deposition at 94:5–95:25 (October 29, 2026) [hereinafter "Bailey Dep. Tr."].

102 49 U.S.C. § 11324(b)(5).

103 STB Exemption of Hydraulic Cement at 3.

104 Bailey Dep. Tr. at 95:17–95:25{{

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105 *See* my Workpaper, "Exempt traffic.do."

automotive shippers face the risk of higher transportation costs, diminished service quality and interruptions (meaning embargoes), and fewer alternatives during supply chain disruptions."[106] CN's Vice President of Intermodal & Automotive Sales and Marketing, Girish Nair, warns of the loss of "competitive Class I railroad options available to intermodal shippers in the Kansas City-St. Louis corridor, to the detriment of those shippers and the public interest."[107] Furthermore, since exempted transportation falls outside of the authority of the Board for setting reasonable rates, common carrier obligations, and other regulatory authorities,[108] if the Proposed Transaction were to be approved, then the Board would have limited recourse to combat adverse competitive effects for exempted traffic.

64. In addition, Dr. Bailey's analysis considers "all corridors with volumes over 365 cars per year,"[109] explaining "it is difficult to form reliable conclusions about competitive options with so few observations."[110] But Dr. Bailey evaluates her 365-carload limitation after she applies her exclusions.[111] This has the effect of screening out corridors that have more than 365 carloads of total volume but less than 365 carloads after these exclusions.

(c) Dr. Bailey unsupported exclusions have a significant impact on the traffic Dr. Bailey considers for competitive harm.

65. Dr. Bailey's unsupported decisions to exclude automotive and intermodal traffic, as well as the commodities with greater than 50% non-rail shares, from her within corridor analysis substantially reduce the amount of traffic that she considers as potentially subject to competitive harm from the Proposed Transaction. As shown in Figure 8 below, these exclusions amount to {{ }} of the {{ }} rail shipments ({{ }}) on corridors originating or terminating from the Kansas City BEA and {{ }} of the {{ }} rail shipments ({{ }}) on corridors originating or terminating from the St. Louis BEA.[112] Dr. Bailey

106 Verified Statement of Sarah Slazinski (November 18, 2026) at 6–8 [hereinafter "Slazinski V.S."].

107 Verified Statement of Girish Nair (November 18, 2026) at 3 [hereinafter "Nair V.S."].

108 49 U.S.C. § 11321.

109 Bailey Amended Statement at ¶ 122.

110 Bailey Amended Statement at n. 111.

111 *See* Bailey Amended Statement, Exhibit 12.

112 The Excluded Categories can overlap, for instance some automotive commodities may be shipped in intermodal containers; therefore, the sum of the Excluded categories will not equal the "Total – Excluded Commodities."

assumes that this excluded traffic could not face adverse competitive effects from the merger. This assumption is unsupported and she has provided no empirical support for the removal of this traffic.

Figure 8: Traffic Exclusions Applied to Within Corridor Competition for Kansas City and St. Louis Corridors

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2. Dr. Bailey's Consideration of Alternative Interline Options Fails to Consider their Competitiveness

66. In addition to these exclusions, Dr. Bailey claims that corridors traversing the Kansas City – St. Louis segment "will likely retain at least three competing options on each of these corridors after the merger" despite her analyses initially identifying some of these corridors as

likely to experience competitive effects.[113] In her Verified Statement, Dr. Bailey reports that four railroads provide single-line service between these locations (UP, NS, BNSF, and CPKC) and describes the operations of Class III railroad Kansas City Terminal Railway Company (KCT) in Kansas City and Class III railroad Terminal Railroad Association of St. Louis (TRRA) and switching railroad Alton & Southern Railway (A&S, a wholly owned UP subsidiary) in St. Louis facilitating interchanges across the Class I railroads as evidence of these options.[114] She claims that "customers on the flagged corridors that traverse this segment likely have other feasible interline options."[115] These "other feasible interline options" may involve BNSF or CPKC possibly in conjunction with one of the Class III and switching railroads replacing UP or NS service because BNSF and CPKC serve other customer routes in the Kansas City and St. Louis BEAs and also interchange with other Class I railroads in St. Louis.

67. Dr. Bailey extends her analysis of these so called "feasible interline routes" as alternative options to all her flagged corridors involving interchanges at Chicago, St. Louis, New Orleans, Memphis, and Kansas City.[116] These interline options, like those traversing the Kansas City – St. Louis segment, were not utilized for any traffic in the 2019-2024 traffic data that Dr. Bailey analyzes, i.e., they maintain a 0% share of traffic for the flagged corridors for all six years. Thus, the data reflects that these alternatives were not utilized for at least a six-year period and Dr. Bailey's assumption that each railroad operating in these areas could feasibly offer a competitive alternative to the merged railroad is unsupported. As explained in § IV.B above, the ability of railroads to compete for customers' traffic within a BEA varies based on each railroad's networks and capabilities; therefore, the customers on some corridors may not have access to competitive rail options that Dr. Bailey's approach assumes. For example, in the St. Louis area, UP's Centreville facility and NS's Wentzville facility are the only railroad automotive facilities designed to serve automotive traffic and thus other railroads are not well positioned to handle automotive traffic in St. Louis.[117]

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113 Bailey Amended Statement at ¶ 142.

114 Bailey Amended Statement at ¶¶ 143–146, Exhibit 13.

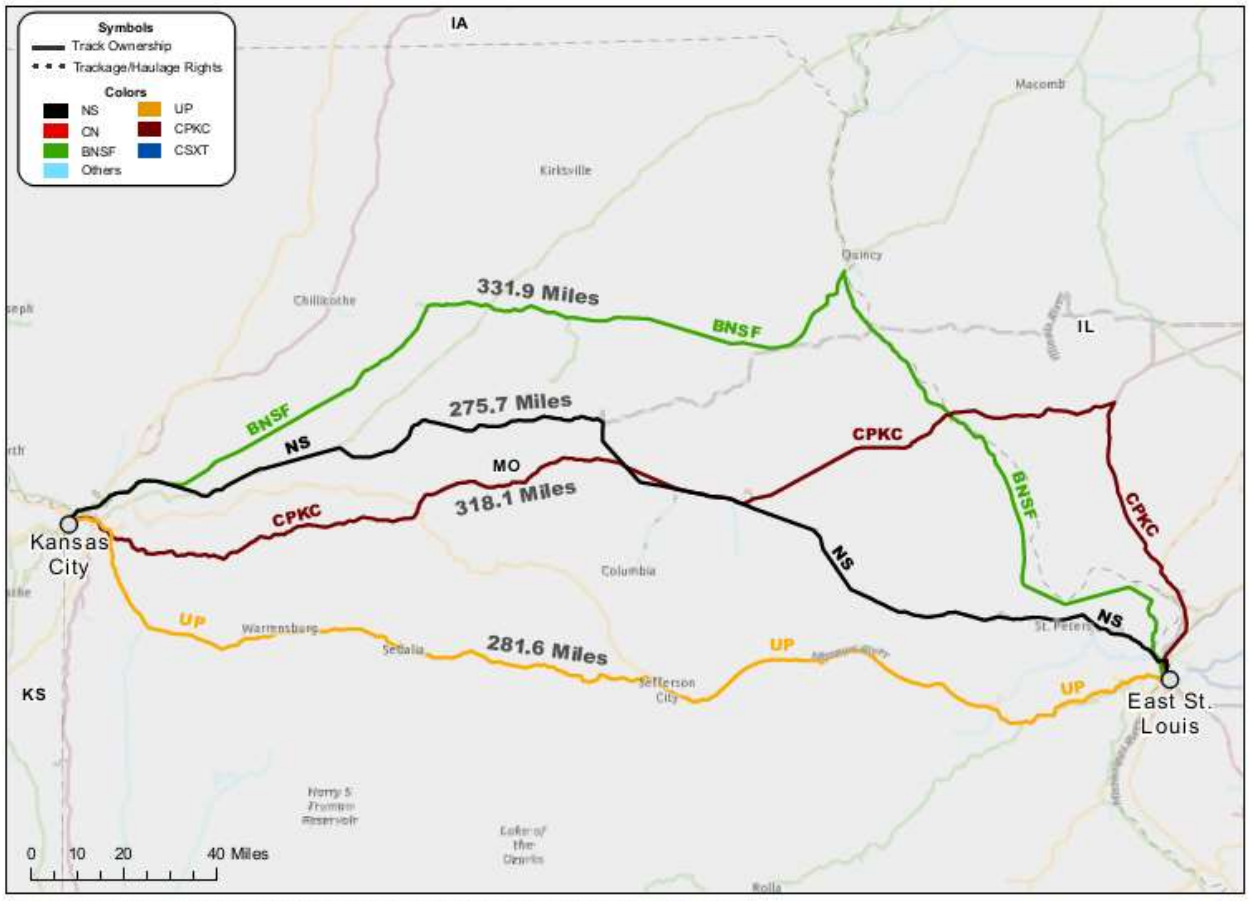
115 Bailey Amended Statement at ¶ 147.

116 Bailey Amended Statement at ¶ 149 and n. 140.

117 Slazinski V.S. at 7.

68. In addition, "feasible" options do not necessarily constitute competitive options. Using the Kansas City – St. Louis segment that Dr. Bailey also uses as an example, although BNSF and CPKC have routes between these BEAs, each railroad's route between these areas covers different areas and distances and requires different infrastructure and operations to service. Figure 9 below shows the shortest path distances between Kansas City, MO and East St. Louis, IL on each of these railroads. NS (275.7 miles) and UP (281.6 miles) have the shortest lengths of haul between these locations,[118] which provides an advantage for traffic moving between these points.

Figure 9: Each Class I Railroad's Shortest Route between Kansas City, MO and East St. Louis, IL



*Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; PC*Miler.*

118 BNSF's actual length of haul may be longer if it does not change tracks at Quincy, IL.

69. Because of these differences, the service and underlying costs for each railroad's handling of traffic between these points varies. In some cases, these differences may not be meaningful for competition but in others they may be significant (e.g., when service time is an important factor or when rates compete largely on underlying costs). Dr. Bailey's belief that traffic interchanged at St. Louis "may as well be Kansas City" fails to recognize any differences between railroads' networks and capabilities in Kansas City (or in St. Louis for traffic interchanged in St. Louis) or those options' competitiveness with actual rail traffic.[119] Dr. Bailey has provided no analysis that suggests these "additional interline options" could meaningfully compete with those observed in the traffic data in a manner that would overcome the Proposed Transaction's adverse effect on competition.

B. AT LEAST 30 KANSAS CITY AND ST. LOUIS CORRIDORS WILL FACE A REDUCTION IN RAIL OPTIONS FROM 2-TO-1 OR 3-TO-2

70. In order to evaluate the corridors with a reduction in rail options, I conduct the same analysis as Dr. Bailey's "Analysis of Competition Within Corridors" for corridors involving the Kansas City or St. Louis BEAs, considering the effect of the Proposed Transaction on the corridors for all rail traffic, without Dr. Bailey's removal of traffic based on commodity regulatory exemptions and non-rail shares. As I explain in § IV.A, the exclusions that Dr. Bailey applied are unsupported, and examining the results for all rail traffic may more accurately highlight the corridors that could face competitive concerns.

71. My analysis uses the same approach as Dr. Bailey to analyze the traffic on bi-directional corridors and identify the number of railroads originating or terminating shipments on each end of the corridor or serving as a bridge carrier for the corridor. I use the combined waybill data prepared by Dr. Bailey based on the Class I railroads' 2019–2024 traffic tapes and the 2019–2023 Carload Waybill Sample data.[120] I use the 2019–2024 data to identify cases where the rail options would drop from 2-to-1 or 3-to-2, and I total the traffic volume of shipments in the base year, 2023, by rail carrier originating or terminating shipments on each end of the corridor.[121] Unlike Dr. Bailey, however, I do not exclude any of the traffic on these corridors and do not

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119 Bailey Amended Statement at ¶ 147.

120 Bailey Amended Statement at ¶ 96.

121 For purposes of this analysis, I group all non-Class I railroads into an "Other" category.

exclude corridors that utilized the Kansas City – St. Louis segment or any other "feasible" options not observed in the traffic data. I identify corridors with a minimum of 365 total shipments in the base year 2023 originating or terminating in the Kansas City or St. Louis BEAs.

72. Figure 10 below identifies the six corridors with a reduction in rail options from 2-to-1 and twenty-four corridors with a reduction in rail options from 3-to-2 in the Kansas City and St. Louis BEAs. Figure 10 also shows the total volume of shipments on these corridors and the volume of shipments considered by Dr. Bailey after her traffic exclusions.[122] The six 2-to-1 corridors total {{ }} shipments and the twenty-four 3-to-2 corridors total {{ }} shipments. UP or NS serve {{ }} shipments on these 2-to-1 corridors and {{ }} shipments on these 3-to-2 corridors, for a total of {{ }} shipments on 2-to-1 and 3-to-2 corridors. Thus, UP and NS have a {{ }} combined share of all traffic on these 2-to-1 and 3-to-2 corridors.

[122] Bailey Amended Statement, Exhibit 12.

Figure 10: Corridors involving Kansas City or St. Louis BEAs Facing a Reduction in Rail Options from 2-to-1 or 3-to-2

Bi Directional Corridor					2023 Traffic Served		Bailey Exhibit 12	
BEA	Number	BEA	Number	Reduction	Total Traffic	UP + NS	Traffic after Exclusions	After Additional Interline Options
Champaign-Urbana, IL	68	Kansas City, MO-KS	99	2-to-1	{{ }}	{{ }}	{{ }}	{{ }}
Greenville, NC	21	Kansas City, MO-KS	99	2-to-1	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	Boise City, ID-OR	150	2-to-1	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	Mexico, Mexico	195	2-to-1	{{ }}	{{ }}	{{ }}	{{ }}
Tampa-St. Petersburg-Clearwater	34	Kansas City, MO-KS	99	2-to-1	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	Idaho Falls, ID-WY	148	2-to-1	{{ }}	{{ }}	{{ }}	{{ }}
Harrisburg-Lebanon-Carlisle, PA	11	Kansas City, MO-KS	99	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	Seattle-Tacoma-Bremerton, WA	170	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Philadelphia-Wilmington-Atl. Cit	12	Kansas City, MO-KS	99	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	Salt Lake City-Ogden, UT-ID	152	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Buffalo-Niagara Falls, NY-PA	8	Kansas City, MO-KS	99	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	Wichita, KS-OK	122	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Greensboro-Winston-Salem-High	18	Kansas City, MO-KS	99	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Orlando, FL	30	Kansas City, MO-KS	99	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Miami-Fort Lauderdale, FL	31	Kansas City, MO-KS	99	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	Oklahoma City, OK	125	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Elkhart-Goshen, IN-MI	65	Kansas City, MO-KS	99	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Appleton-Oshkosh-Neenah, WI	60	St. Louis, MO-IL	96	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Toledo, OH	56	Kansas City, MO-KS	99	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Chattanooga, TN-GA	43	St. Louis, MO-IL	96	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Savannah, GA-SC	28	St. Louis, MO-IL	96	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Huntsville, AL-TN	74	Kansas City, MO-KS	99	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Richmond-Petersburg, VA	15	Kansas City, MO-KS	99	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	Phoenix-Mesa, AZ-NM	158	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	Twin Falls, ID	149	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Evansville-Henderson, IN-KY-IL	69	Kansas City, MO-KS	99	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Augusta-Aiken, GA-SC	27	St. Louis, MO-IL	96	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Pittsburgh, PA-WV	53	Kansas City, MO-KS	99	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Columbia, SC	24	Kansas City, MO-KS	99	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Chattanooga, TN-GA	43	Kansas City, MO-KS	99	3-to-2	{{ }}	{{ }}	{{ }}	{{ }}
Total					{{ }}	{{ }}	{{ }}	{{ }}

73. Figure 11 below compares the corridors I have identified through this approach with those reported in Dr. Bailey's Exhibit 12. Dr. Bailey identifies six of these 3-to-2 corridors; the other eighteen are corridors she initially identified as 3-to-2 corridors but excluded because they traverse the Kansas City to St. Louis segment or, due to her exclusion of certain traffic groups, fell below the minimum 365 shipments she required for consideration.[123] Dr. Bailey identified {{ }} shipments on these six corridors after her exclusions of certain traffic groups, which represents just {{ }} of the total rail traffic on 2-to-1 and 3-to-2 corridors identified using my approach. After further considering additional interline options, she finds only {{ }}

[123] These corridors all have more than 365 shipments when considering the full traffic volumes for 2023.

corridor as potentially facing horizontal concerns, with a total of {{ }} shipments, or {{ }} of the total rail traffic on 2-to-1 and 3-to-2 corridors identified using my approach.

Figure 11: Comparison of Kansas City and St. Louis 2-to-1 and 3-to-2 Corridors Identified

{{ }}

74. As shown in Figure 12 below, these commodities encompass a wide variety of commodities shipped on rail. Commodities on these 2-to-1 and 3-to-2 corridors include:

- Intermodal;
- Grains and Fertilizers (such as consumer goods, pet food, wheat, ethanol, feed, flour products, soybeans, and various fertilizers);
- Automotive (finished vehicles and vehicle parts);
- Petroleum and Chemicals (such as industrial chemicals, aromatics and fibers, alternative fuels, and plastic pellets);
- Metals and Minerals (such as industrial materials like cement and clinker, fly ash, and lime; construction materials like roofing materials and brick-tile; machinery equipment parts; and metals including steel products); and
- Forest Products (such as printing paper, and board-paper and pulp)

Customers relying on rail transportation along these corridors may face competitive effects due to the loss of competitive options, absent appropriate conditions.

Figure 12: UP and NS Commodities Identified on Kansas City and St. Louis 2-to-1 and 3-to-2 Corridors

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75. For both the Kansas City and St. Louis corridors, the segment between Kansas City and St. Louis is important. Most Kansas City corridors are to or from locations east (e.g. Harrisburg, Philadelphia, Buffalo) that could traverse the UP and NS segments between Kansas City and St. Louis. Similarly, most St. Louis corridors are to or from locations west (e.g. Seattle, Salt Lake City, Oklahoma City) that could traverse the UP and NS segments between St. Louis and Kansas City. I find that at least {{ }} of these 30 corridors likely utilize this segment on NS or UP.[124]

76. The fact that multiple corridors utilizing this same segment are identified as 2-to-1 or 3-to-2 in these analyses suggests that even though there are four Class I railroads serving customers in the Kansas City BEA and six Class I railroads serving customers in the St. Louis BEA, the parallel St. Louis - Kansas City segments that UP and NS operate provide important

[124] *See* tab "In-text" in my Workpaper "Figure 10 and 11.xlsx." I identify these corridors if UP or NS interchanged at East St. Louis for traffic they originated/terminated from the Kansas City BEAs or if UP or NS interchanged at Kansas City for traffic they originated/terminated from the St. Louis BEAs.

competitive options for customers for many corridors. If the overlap between Kansas City and St. Louis is left unaddressed, the Proposed Transaction could create adverse competitive effects for traffic utilizing that segment, whether identified with this particular analytical approach or not. Applicants have acknowledged this overlap[125] but not explained why the Proposed Transaction does not create competitive harm for corridors utilizing these segments.

C. REDUCTIONS IN RAILROAD OPTIONS FOR THESE CORRIDORS ARE LIKELY TO PRODUCE ADVERSE COMPETITIVE EFFECTS WITHIN THESE CORRIDORS (ABSENT CONDITIONS)

77. Customers utilizing these 2-to-1 and 3-to-2 corridors are likely to face adverse competitive effects due to the Proposed Transaction for similar reasons discussed in § IV.A.2 as to why customers with reduced rail access options are likely to face competitive effects. The corridor between Buffalo-Niagara Falls, NY-PA and Kansas City, MO-KS illustrates this point: three Class I railroads, NS, BNSF and UP, have historically served this traffic at the Kansas City end, and the Proposed Transaction would reduce the number of Class I rail options for traffic originating in or destined for Kansas City. In 2023, NS, BNSF, and UP each originated substantial traffic for customers in the Kansas City BEA to Buffalo:

- NS originated {{ }} shipments from customers in the Kansas City BEA, all of which was motor vehicle traffic from the {{ }} originating at the {{ }}. NS transports this traffic all the way to Buffalo, NY, to a {{ }} facility served by the BPRR railroad which provides open access to CN, CPKC, NS, and CSXT.[126]
- BNSF originated {{ }} shipments from customers in the Kansas City BEA, mostly intermodal traffic from {{ }} originating at the {{ }}. BNSF interlines with NS in Chicago, and NS delivers the shipments to Buffalo.[127]

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125 Jeffrey Pincock, Vice President of Corporate Development and Strategy for UP, stated that {{ }}. *See* Transcript of Jeffrey Pincock Deposition at 372:15–18 (Oct. 8, 2026) [hereinafter "Pincock Dep. Tr."].

126 *See* my Workpaper, "In-Text Figures.py".

127 *Id.*

- UP originated {{ }} shipments from customers in the Kansas City BEA, mostly Flour or Other Grain Mill Products from {{ }} originating at the {{ }}. UP has direct access to this customer in Kansas City and with open access available to BNSF, CPKC, and NS. To serve this traffic, UP interlines with CSXT in East St. Louis, which then delivers the traffic mostly to {{ }} in Buffalo, a facility with direct access to CN, NS and CSXT.[128]

NS, BNSF, and UP also performed all customer terminations in the Kansas City BEA for traffic that originated in the Buffalo-Niagara Falls, NY-PA BEA. Although the customers and commodities vary by year, NS, BNSF, and UP always perform the originations and terminations in the Kansas City BEA to and from Buffalo from 2019-2024.

78. If UP and NS were to merge, the number of Class I rail options that customers have relied on in the past for service in the Kansas City BEA on the corridor with Buffalo-Niagara Falls, NY-PA BEA would drop from 3-to-2. For the same reasons I describe in § IV.B.4 above, this loss in rail options may result in adverse competitive effects for customers, depending on their circumstances. Because the merged railroad would compete only with BNSF, rather than UP and NS competing with each other in addition to competing with BNSF, customers may face higher rates or more limited (or otherwise lower quality) service.

79. I note that Dr. Bailey's analysis did not identify the Kansas City BEA - Buffalo-Niagara Falls, NY-PA BEA corridor as a 3-to-2 corridor in her Exhibit 12 for two reasons. First, although her backup file includes a summary of the corridor and identifies the corridor as having a total volume of {{ }} shipments, Dr. Bailey evaluated whether the corridor met certain size filters *after* she removed automotive, intermodal, and other commodities from the traffic volume she totals for the corridor. After removing all of this traffic, Dr. Bailey found the corridor to be below her 365-carload threshold.[129] Second, her analysis examining additional interline options eliminates the corridor as a 3-to-2 because CPKC also serves customers in the Kansas City BEA (to or from places other than Buffalo), connecting at Chicago for interchange with NS and at

128 *Id.*

129 *See* tab "3-2 observed" in Bailey Amended Statement Workpaper "Exhibit 12.xlsx."

East St. Louis for interchange with CSXT.[130] Accordingly, Dr. Bailey identifies CPKC as part of a "feasible" alternative route that could theoretically serve the corridor.

80. But simply because CPKC serves customers in the Kansas City BEA does not make it suited to compete for the traffic along this corridor. CPKC may not have access to these corridors' customers in the Kansas City BEA. The fact that CPKC has not performed a single shipment in the 2019-2024 period for traffic on this corridor strongly suggests there are constraints to its competing for this line of traffic that may include extensive use of trackage rights, switching fees, circuitous routings, or a lack of other capabilities that the railroads that do serve the traffic possess. The Kansas City, MO-KS BEA - Buffalo-Niagara Falls, NY-PA BEA corridor is one example; the other flagged corridors likely have similar stories.

VI. ANALYSES OF BETWEEN CORRIDOR COMPETITION

81. When there are multiple shippers of a commodity and multiple receivers of that commodity, railroads can compete for customer traffic even if they do not all serve the same origins and destinations. Instead, they can compete by providing different options at the destination or source for the commodity. This is sometimes referred to collectively as geographic competition or source and destination competition. Dr. Bailey describes source competition as the "ability of a customer to use alternative railroads to receive a particular product from different origins," and destination competition as "the ability of a shipper to use alternative railroads to ship its product to different destinations."[131]

82. I agree with Dr. Bailey that analyses of source and destination competition to identify commodities and areas that may face horizontal concerns as a result of the Proposed Transaction is appropriate. UP and NS both compete in servicing various traffic groups by offering various sources or destinations to customers. Absent this competition, customers may face adverse effects due to the Proposed Transaction without appropriate conditions. At a high-level, Dr. Bailey's analyses identifying commodities that will face a reduction in rail competition due to source or destination competition provides a reasonable approach. However, I disagree with Dr. Bailey's application of several unsupported assumptions and methods in these analyses that have

[130] Bailey Amended Statement at ¶¶ 147–150, Exhibit 12.

[131] Bailey Amended Statement at ¶ 158.

the effect of under-identifying and dismissing traffic facing potential competitive harm. I have been asked by CN's Counsel to focus my analysis on traffic involving Kansas City or St. Louis as origins or destinations.

A. DR. BAILEY'S ANALYSES OF BETWEEN CORRIDOR COMPETITION FAILS TO IDENTIFY COMMODITIES ORIGINATING AND TERMINATING IN KANSAS CITY AND ST. LOUIS THAT WOULD FACE A LOSS OF RAIL COMPETITION

83. Dr. Bailey describes her "Analysis of Competition Between Corridors" as assessing "source competition" and "destination competition."[132] She explains her two-step analysis:[133]

> In the first step, origin-commodity pairs and destination-commodity pairs are flagged for additional review using what is known as a 50/10 screen based on traffic shares. The second step involves further analysis of the options available to customers using tests based on critical loss analysis ("CLA").

84. For the first step in analyzing destination competition, Dr. Bailey examines traffic by origin-commodity pairing using the traffic's originating BEA and STCC4 commodity classification.[134] She examines UP's and NS's share of originating, terminating, and participating traffic for each origin-commodity pair; if UP and NS each have at least a 10% share of traffic and combined they would have more than a 50% share, she finds they meet the 50/10 screen.[135] She then reviews the origin-commodity pairs meeting this screen to identify potential horizontal concerns.[136] She conducts a similar analysis for source competition, examining traffic by destination-commodity pairing using the traffic's destination BEA and STCC4 commodity classification and evaluating destination-commodity pairs that meet the 50/10 screen for originating, terminating, and participating traffic.[137]

85. I understand that a 50/10 screen has been used in previous merger reviews when assessing between corridor competition.[138] Despite asserting that she identified and followed the

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132 Bailey Amended Statement at ¶ 158.

133 Bailey Amended Statement at ¶ 160.

134 Bailey Amended Statement at ¶ 160.

135 Bailey Amended Statement at ¶ 163.

136 Bailey Amended Statement at ¶¶ 162–165.

137 Bailey Amended Statement at ¶ 183.

138 *See* Decision No. 11, *Canadian Pac. Ry.—Control—Dakota, Minn. & E. R.R.*, FD 35081, slip op. at n.15 (STB served Sep. 30, 2008) (concluding that the Applicants provided sufficient information for the Board

approach and methodology from these prior cases,[139] Dr. Bailey's approach differs in important ways that results in a failure to identify destination-commodity and origin-commodity pairs that may raise competitive concerns.

1. Dr. Bailey's Exclusions of Automotive, Intermodal, and Miscellaneous Product Traffic are Unsupported

86. Dr. Bailey excludes certain commodities from her analysis altogether before evaluating origin- and destination-commodity pairs in her initial 50/10 screen. Similar to her within corridor analyses, Dr. Bailey excludes automotive and certain intermodal traffic. Specifically, Dr. Bailey excludes "[a]utomotive products" and "[c]ommodities that have 50 percent or more movements in intermodal equipment," including the traffic for those commodities that does not travel in intermodal equipment.[140] Dr. Bailey does not provide any support for her exclusion of these "intermodal" commodities, and, to justify her exclusion of automotive products, Dr. Bailey refers to another section of her own report[141] discussing those commodities. As described in Section IV.A.1 above, Dr. Bailey's exclusions are unsupported.

87. Dr. Bailey also removes certain commodities that she claims "group together many miscellaneous and potentially unrelated products that do not represent a distinct 'product.'"[142] I have reviewed the traffic data of these commodities and find that they are mostly transported in intermodal containers and by major intermodal customers.[143] Dr. Bailey does not provide any support to explain why this group of traffic could not face potential horizontal effects and should be omitted from these analyses entirely, as opposed to, for example, grouping this traffic by customer types or as intermodal traffic and evaluating those groups for potential concerns.[144]

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to make a determination with respect to the likely effects of the transaction on geographic competition and competition among corridors after they performed the 50/10 screen test); *see also* Decision, *CSX Corp.—Control & Merger—Pan Am Sys., Inc.,* FD 36472, slip op. at 11 (STB served May 26, 2021) (pointing to applicants' use of the 50/10 screen test in *CP&DME* as a model of a complete analysis).

139 Bailey Dep. Tr. at 31:19–33:23.

140 Bailey Amended Statement at ¶¶ 179–180.

141 Bailey Amended Statement at ¶¶ 179–180, n. 165.

142 Bailey Amended Statement at ¶ 174.

143 *See* my workpaper, "In-Text Figures.py."

144 When asked whether she analyzed the {{ }} Dr. Bailey replied, {{ }} Bailey Dep. Tr. at 104:15-21.

88. Figure 13 below shows the impact of Dr. Bailey's exclusions of this traffic from the between corridor analysis when evaluating originating and terminating in the Kansas City and St. Louis BEAs. In total, Dr. Bailey removes from consideration {{ }} of the {{ }} rail shipments ({{ }}) originating or terminating in the Kansas City BEA, and {{ }} of the {{ }} rail shipments ({{ }}) originating or terminating in the St. Louis BEA.[145]

Figure 13: Dr. Bailey's Traffic Exclusions Applied to Between Corridor Competition for Kansas City and St. Louis Originations and Terminations

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2. Dr. Bailey's Use of Non-Rail Modes Is Unsupported

89. In addition to her traffic exclusions, Dr. Bailey's approach includes "non-rail *volumes* for each commodity . . . in the calculation of UP's and NS's shares for purposes of the 50/10

[145] *See* my Workpaper, "Figure_13.xlsx", tab "Summary".

screens."[146] To implement this, when calculating the total traffic volumes (to evaluate UP and NS traffic shares) she includes all tonnages for the commodity transported from the origin (or received at the destination) including by truck and water, regardless of the route or characteristics of that transportation, with the exception of truck or water transportation entirely within the same BEA.[147] This means that in order to meet the 50/10 screen for a BEA-commodity pair in Dr. Bailey's approach, both UP and NS would need to originate, terminate, or participate in at least 10% and combine for more than 50% of *all tons* of the commodity shipped from or to that BEA – not only tons transported by rail, but also tons transported by truck or water from (or to) the BEA to (or from) anywhere outside that BEA. Incorporating non-rail modes into the 50/10 screen increases the total volume used as the denominator in the share calculation and reduces UP's and NS' individual and combined shares. As a result, traffic that would otherwise meet the 50/10 screen if shares were based solely on rail traffic is omitted from further consideration.

90. For example, consider the traffic for STCC 2042 ("Prepared or Canned Feed") originating from the Kansas City BEA as shown in Figure 14 below. This traffic is terminated at the {{ }} and {{ }} BEAs.[148] UP originates {{ }} of the rail tonnages in the Kansas City BEA and NS originated {{ }}, a total of {{ }} of the rail tonnages, which exceed the 50/10 thresholds. Dr. Bailey's approach, however, calculates the shares for the 50/10 screen using rail and non-rail tonnages. In this example, she calculates total tonnages by including truck tonnages, which are {{ }} times the rail tonnage, and water tonnages, which adds a further {{ }} to the rail tonnages. She uses these total tonnages to calculate her UP and NS shares for the 50/10 screen. By including non-rail tonnages, UP's {{ }} and NS's {{ }} shares of the rail tonnages are reduced to {{ }} and {{ }} of the rail and non-rail tonnages, which fall below the thresholds for the 50/10 screen. The BEAs receiving the most truck traffic are Fayetteville-Springdale-Rogers, AR-MO-OK; Little Rock-North Little Rock,

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146 Bailey Amended Statement at ¶ 177. This is at odds with Dr. Bailey's description of source competition as the "ability of a customer to use alternative railroads to receive a particular product from different origins" and of destination competition as "the ability of a shipper to use alternative railroads to ship its product to different destinations." Bailey Amended Statement at ¶ 158.

147 Bailey Amended Statement, Appendix G, at ¶ 11 and n. 1.

148 *See* my Workpaper, "Figure 14.py".

AR; and Springfield, MO – very different from the locations where the rail traffic is destined ({{ }} and {{ }} BEAs).

Figure 14: Impact of Non-Rail Modes to Dr. Bailey's 50/10 Analysis, STCC 2042 Originating in the Kansas City BEA

Origin Carrier	Tonnage	Share of Total Rail	Share of Rail + Truck + Water
UP	{{ }}	{{ }}	{{ }}
NS	{{ }}	{{ }}	{{ }}
BNSF	{{ }}	{{ }}	{{ }}
CPKC	{{ }}	{{ }}	{{ }}
Total Rail	{{ }}	{{ }}	{{ }}
UP+NS	*{{ }}*	*{{ }}*	*{{ }}*
Additional Truck	{{ }}	{{ }}	{{ }}
Additional Water	{{ }}	{{ }}	{{ }}
Rail + Truck + Water	{{ }}		

91. Dr. Bailey cites to a verified statement from a prior railroad transaction as justification for her methodology, but the verified statement she cites—the Verified Statement of Christopher A. Vellturo in the Canadian National Railway Company and EJ&E West Company Railroad Control Application—does not support her method.[149] Dr. Vellturo does not incorporate truck modes of transportation into any analyses in his 2007 Verified Statement. Dr. Vellturo's Verified Statement for the Canadian National Railway Company and Wisconsin Central Transportation Corporation Railroad Control Application in 2001(not cited by Dr. Bailey to support her methodology) makes limited use of truck modes of transportation.[150] Unlike Dr. Bailey's analysis, Dr. Vellturo's 2001 analysis expressly applied the 50/10 screen "to rail traffic only, not taking into account truck competition."[151] Although Dr. Vellturo considers truck competition in a

149 Bailey Amended Statement at n. 148; Verified Statement of Christopher A. Vellturo, *Canadian National Railway Company and Grand Trunk Corporation – Control – EJ&E West Company*, FD 35087 (Oct. 29, 2007) [hereinafter "Vellturo 2007 Statement"].

150 Verified Statement of Christopher A. Vellturo, *Canadian National Railway Company, Grand Trunk Corporation, and WC Merger Sub, Inc. – Control – Wisconsin Central Transportation Corporation, Wisconsin Central Ltd, Fox Valley & Western Ltd, Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link Ltd.*, FD 34000 (Apr. 6, 2001) [hereinafter "Vellturo 2001 Statement"].

151 Vellturo 2001 Statement at 10.

second step of his analysis, he only considers the "competitive discipline that truck competition might bring to bear on the 50/10 product/DBEA pair" to 14 BEA-commodity pairs (with a combined 2,200 carloads) meeting the 50/10 screen to examine divertible capacity.[152] Even there, Dr. Vellturo's approach limited the trucking routes included as potential alternatives to those he defined as competitive based on the route's distance.[153] Notably, Dr. Vellturo explained that he "did not draw conclusions simply from modal shares as to the potential of truck competition to constrain any post-merger price increases."[154] Dr. Vellturo's approach does not support Dr. Bailey's method of including all non-rail mode volumes in calculating shares for the 50/10 screen for every commodity.

92. In addition to failing to provide a justification based on prior analyses, Dr. Bailey has failed to provide any analytical support for her approach. Dr. Bailey's approach implicitly assumes that because some shippers within a BEA use truck and water, those modes are viable alternatives for all customers in a BEA for all routes, and that the resulting shares of traffic by mode reflect the competitive significance of each mode. However, within a single BEA, customers' ability to use different modes of transportation varies. If Customer A is located on a navigable waterway with appropriate facilities, it may be able to move its traffic by water transportation. Customer B of the same commodity may be located hundreds of miles away from a navigable waterway and only have access to rail or truck options. Aggregating the commodity to a single BEA treats Customer A choosing water transportation as evidence of an alternative mode of transportation for Customer B, even if water transportation is not a practical alternative for Customer B.

93. Dr. Bailey fails to examine whether truck and water transportation is a suitable alternative for the specific rail customers, commodities, and routes at issue. By contrast, Mr. Hunt recognizes that the substitutability of each transportation mode varies. He explains: [155]

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152 Vellturo 2001 Statement at 20, Exhibit 4.

153 Vellturo 2001 Statement, Appendix D, Exhibit 4.

154 Vellturo 2001 Statement at 14.

155 Hunt Amended Statement at 23.

> Shippers selecting freight modes and carriers consider numerous factors in their decision-making. Shippers, however, consistently report three factors as particularly important: price, reliability, and transit time.

Implicitly, this means that rail customers today enjoy certain advantages of rail transportation over other modes of transportation. Dr. Bailey's consideration of non-rail forms of transportation ignores these advantages, treating all modes as equal options to rail customers.

94. Trucking options may not be competitive for customer traffic handled by rail if, e.g., the distance traveled prevents a competitive rate; and traffic handled by truck may not be competitive for rail if, e.g., the locations cannot be reached in an economical manner by rail or lower volumes prevent a competitive rate. In an article published on the UP-NS Transcontinental website, Chuck Marias, President of the Transload Group stated that "[i]f a customer is moving freight more than 300 miles, it's usually cheaper to ship by rail with a truck leg on either end than to haul by truck the whole way."[156] The Board itself has used a 500 highway mile threshold as part of its Market Dominance Streamlined Approach to identify traffic "movements that likely lack effective trucking competition."[157] Dr. Bailey's inclusion of all traffic from these modes when evaluating competition and calculating shares assumes all customers within the BEA have the same transportation options.[158]

95. Similarly, Mr. Hunt's diversion analysis recognizes that not all traffic shipped by truck or water is suitable for transport by rail. For example, he finds that while bulk commodities are "well suited" for transport by rail for medium and longer hauls, some large vehicles like school buses and heavy-duty commercial vehicles are not.[159] Likewise, while water could be used by certain customers located near navigable waterways, it is inaccessible for customers without such access. While Mr. Hunt acknowledges such variance, Dr. Bailey's analysis ignores these important differences and instead considers truck and water to be interchangeable substitutes for

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156 Chuck Marias, *Freight Customers Will Always Have Competitive Options*, UP-NS (Oct. 20, 2026), https://www.up-nstranscontinental.com/news-details/freight-customers-will-always-have-competitive-options/ (last visited Nov. 11, 2026).

157 *Mkt. Dominance Streamlined Approach*, EP 756, slip op. at 13 (STB served Aug. 3, 2020).

158 Dr. Bailey notes that her analysis excludes non-rail shipments that remain within a single BEA. *See* Bailey Amended Statement at Appendix G, ¶ 11 and n. 1.

159 Hunt Amended Statement at 26, 50, and 144.

rail for all customers. Though her analysis relies heavily on the inclusion of truck and water transportation, Dr. Bailey conducts no empirical analysis to support this assumption.[160]

96. In fact, Mr. Hunt's analysis shows that the amount of truck traffic that could be diverted (relative to its competitiveness to rail) to rail is quite limited. He shows 6.5M truckloads (of 164M total truckloads) as potentially addressable by rail on the current domestic intermodal network.[161] He shows that of the 47,743 thousand tons of finished vehicle traffic carried by trucks, only 5,417 tons meet his screens for divertible traffic to rail, without considering the Proposed Transaction's impact.[162] He shows that of the 6.3B tons of merchandise / bulk carried by trucks, only 807M tons meet his screens for divertible traffic to rail.[163]

3. Dr. Bailey's Limitation of BEA Commodities Flagged in Every Year 2019-2024 is Unsupported

97. Dr. Bailey's analysis also requires that each BEA-commodity pair tested for source and destination competition meet the 50/10 screen in *every* year between 2019 and 2024, rather than just 2023 – the year the applicants identified for their impact analysis. This systematically reduces the number of BEA-commodity pairs that Dr. Bailey reviews for potential horizontal concerns, no matter how high the UP and NS shares are in 2023 (or over the entire period or more recently). Dr. Bailey cites the Verified Statement of Robert Majure in the CPKC merger as supporting her approach, but Dr. Majure examined the shares in other years as part of a second stage review of those commodities triggered by the initial screen and conducts an evaluation of each pair even if the 50/10 screen is not triggered in each year.[164] Thus, her approach of requiring that the screen be met in every year or otherwise the BEA-commodity pair is excluded from further analysis is unsupported by Dr. Majure's approach.

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160 When asked how she decided to include truck and water in this method, Dr. Bailey testified {{ }} and when asked if she did any analysis of whether rail, truck, and water is a relevant market for antitrust purposes, she stated {{ }} Bailey Dep. Tr. at 49:17–18, 52:22–24.

161 Hunt Amended Statement, Exhibit B-9; *see* my Workpaper, "V. Hunt_Trucks_T2R.sql".

162 Hunt Amended Statement, Exhibit B-15.

163 Hunt Amended Statement, Exhibit B-20.

164 Verified Statement of W. Robert Majure, FD 36500 (Oct. 29, 2021) [hereinafter "Majure CPKC Application Statement"], Exhibits 12 and 13.

98. Not only is Dr. Bailey's approach unsupported, but it is not defensible as a way to identify likely competitive problems. Although in theory considering additional years may be helpful in assessing the competitive options that shippers in the base year could have adopted, this requires that the additional years reviewed are a good proxy for current competition. In this case, there are reasons why this may not be true (particularly given that Dr. Bailey's analysis does not consider the 2019–2024 period as a whole but rather that the screen must be met in each year). The Board has previously characterized 2020, 2021, and 2022 as the "pandemic and supply chain crises years," [165] and impacts to railroad operations due to the pandemic and supply chain problems may distort the screens for these years. In addition, there have been several recent mergers in the rail industry which continue to shape rail transportation in the overlap areas, including the merger of Canadian Pacific and Kansas City Southern Railway in 2023,[166] CN and Iowa Northern Railway Company in 2025,[167] and CSXT and Pan Am Railways in 2022.[168] Data preceding these mergers would not reflect any shifts to rail transportation generated by these mergers. For all these reasons, Dr. Bailey's initial screens are unlikely to identify all BEA-commodity pairs that might raise horizontal concerns.

4. Dr. Bailey's Critical Loss Analysis Does Not Identify Whether the Alternative Sources of Supply and Demand Can Constrain Potential Price Increases

99. Following her initial screen analysis, Dr. Bailey includes a version of what she calls a Critical Loss Analysis (CLA) purportedly to "assess the ability of shipper and receivers to avoid potential price increases in more detail."[169] Dr. Bailey's Critical Loss Analysis of demand available to shippers (CLA1) claims to evaluate the "ability of shippers to switch to alternative

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165 *Reciprocal Switching for Inadequate Serv.,* EP 711 (Sub-No. 2), slip op. at 44–45 (STB served Apr. 30, 2024).

166 *See* CPKC, *Canadian Pacific and Kansas City Southern Combine to Create CPKC*, (Apr. 14, 2023) https://investor.cpkcr.com/news/press-release-details/2023/Canadian-Pacific-and-Kansas-City-Southern-combine-to-create-CPKC/default.aspx (last visited Nov. 11, 2026).

167 *See* CN, *CN's Acquisition of Iowa Northern Approved by STB* (Jan. 14, 2025), https://www.cn.ca/en/news/2025/01/cns-acquisition-of-iowa-northern-approved-by-stb (last visited Nov. 11, 2026).

168 *See* CSX, *CSX Completes Acquisition of Pan Am Railways* (June 1, 2022), https://www.csx.com/index.cfm/about-us/media/press-releases/csx-completes-acquisition-of-pan-am-railways (last visited Nov. 11, 2026).

169 Bailey Amended Statement at ¶ 167.

sources of demand in response to an attempted price increase."[170] Dr. Bailey's Critical Loss Analysis of supply available to receivers (CLA2) claims to evaluate the "ability of customers to switch to alternative sources of supply."[171]

100. Typically, a critical loss analysis in merger analysis has two steps. First, one estimates the amount of volume the merging firms would have to lose to render a price increase unprofitable – this is the "critical loss." Second, one estimates the actual volume the merging parties are likely to lose due to a price increase.[172] If the actual volume lost is greater than the critical loss, then the price increase would not be profitable. This means that competitive concerns are not likely because the firm would not attempt a price increase that is likely to be unprofitable.

101. Dr. Bailey's analysis, however, does not measure the profitability of a price increase. Instead, she calculates "available volumes" for that commodity at alternative origins and destinations that she claims "protect" shippers and receivers from potential transportation cost increases.[173] For the demand available to shippers (CLA1), the available volume is calculated as the amount of the commodity shipped to destinations "that shippers can reach without relying on the combined railroad."[174] For the demand available to receivers (CLA2), the available volume is calculated as the amount of the commodity shipped from origins "receivers can access without relying on the combined railroad."[175] For both the CLA1 and CLA2, Dr. Bailey includes volumes transported via truck or water modes of transportation into the available volumes.[176]

102. These volumes are compared to the reference traffic (or affected volume), i.e., the total rail traffic for the BEA-commodity meeting the 50/10 screen for source or destination

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170 Bailey Amended Statement at ¶ 168.

171 Bailey Amended Statement at ¶ 170.

172 There may also be a concern that all railroads that ship the commodity from the BEA raise prices due to the merger – in that case the critical loss would equal the amount of traffic that all the railroads increasing price would need to lose to defeat the price increase.

173 Bailey Amended Statement at ¶¶ 168–171, Appendix G.

174 Bailey Amended Statement at ¶ 168.

175 Bailey Amended Statement at ¶ 170.

176 Bailey Amended Statement at ¶¶ 166, 169; Appendix G, ¶¶ 14, 19.

competition.[177] Dr. Bailey unflags BEA-commodities if either of these available volumes are larger than the affected volume.[178]

(a) Dr. Bailey's Critical Loss Analysis Fails to Consider the Costs and Profitability of a Price Increase to the Combined UP-NS Entity

103. Dr. Bailey has not explained how her approach measures the ability of customers to respond to a price increase.[179] Instead she simply assumes that "[i]f either of the available volumes are larger than the affected volume for a given origin-commodity pair then the pair is unflagged."[180] Her approach includes "available volumes" that are shipped on UP or NS and assumes that alternative sources of supply or demand, regardless of the mode of transportation they utilize, are viable substitutes for the traffic facing horizontal concerns. However, neither of the CLA1 or CLA2 approaches she employs is likely to measure actual lost volume of the commodities facing potential effects shipped from or received at the BEA and thus they do not help assess the potential competitive effects of the transaction.

104. The first approach (CLA1) assesses the ability of shippers to avoid the price increase by finding alternative destinations to those facing a price increase. Dr. Bailey's approach does identify potential destinations that shippers could theoretically use for the commodity and avoid UP or NS from/to the origin/destination at issue (although she does include shipments on UP and NS from other origins/destinations). Implicitly, her approach is that if there is enough demand for the commodity at these BEAs (no matter how it gets there) then shippers could and would shift their traffic and ship the commodity along non-UP or NS routes to or from the BEA. Dr. Bailey, however, does no analysis to show that this is likely to occur. First, Dr. Bailey entirely ignores whether there is capacity on the alternative routes to absorb the UP and NS demand. Second, she assumes that these alternative destinations or origins would be as profitable for the shippers as the UP or NS shipments, even at increased shipping prices with no assessment of the

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177 Bailey Amended Statement, Appendix G at ¶¶ 15, 20.

178 Bailey Amended Statement, Appendix G at ¶¶ 13, 18.

179 When asked whether her Critical Loss Analysis accounted for rail rates, Dr. Bailey testified {{ }} Bailey Dep. Tr. at 61:19–25.

180 Bailey Amended Statement, Appendix G at ¶ 13.

costs of shipping to those destinations from the BEA at issue, prices at the destinations, and/or whether customers at the destination are likely to shift sources of supply.

105. The second approach (CLA2) suffers from similar flaws. There she assumes that if receivers at the destination locations already purchase at least as much of the commodity from other BEAs that do not involve shipments on UP or NS, then they could increase the volumes for the other BEAs and could avoid a price increase but she does not assess whether such options are viable. Again, she does not look at whether the other options have capacity available to expand shipments, what the costs associated with those options are, and/or whether those options are attractive to receivers.

106. Further, Dr. Bailey's proposed alternative sources of supply and demand include traffic originated, terminated, and serviced by UP and NS and the other railroads that have been assumed by her approach to have raised prices. Under this methodology, Dr. Bailey treats alternative traffic that is shipped on UP and NS as well as the other railroads that she assumes raise prices as viable substitutes for affected UP and NS traffic.[181] However, in this case, some of the lost volume would be internalized by the parties raising prices and this may lessen the constraining effect of such traffic.

107. In sum, Dr. Bailey's Critical Loss Analysis fails to consider prices or margins, including those on alternative modes of transportation, including non-rail. The analysis thus cannot be used to assess the ability of alternative sources of supply or demand to constrain price increases. Dr. Bailey's approach also includes UP and NS volumes as part of the available volumes. This results in an overstatement of the available volumes that shippers and receivers could utilize to avoid using UP or NS. These issues prevent Dr. Bailey's analysis from providing a proper assessment of the "ability of shippers and receivers to avoid potential price increases."[182]

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[181] At her deposition, when asked if she treated {{ }} Dr. Bailey responded {{ }}
Bailey Dep. Tr. at 60:17–25.

[182] Bailey Amended Statement at ¶ 167.

(b) Dr. Bailey's Approach is Inconsistent with Prior CLA Analyses

108. Dr. Bailey has provided little explanation for this approach beyond her claim that it is similar to the methodology used by Dr. Majure in the CP-KCS merger proceedings.[183] However, Dr. Majure's approach involves only railroad traffic. He explicitly states that his CLA analysis evaluates whether "shippers could turn to other railroads serving other sources or destinations of the commodity in enough numbers to make the attempted price increase unprofitable."[184] He explains his approach to measuring relative volumes of railroads that shippers could turn to as the greater of "(a) alternative sources for the affected destinations or (b) alternative destinations for the affected source."[185] He then claims "that a ratio of the affected volume to the available volume that is smaller than one supports a conclusion that the hypothesized price increase would not be profitable."[186] Dr. Bailey, however, includes non-rail traffic without any empirical support.

109. Dr. Majure cites the Vellturo 2007 Statement.[187] Dr. Vellturo explained that he required "direct divertible capacity" (a measure similar to the available volume measures Dr. Bailey calculates for CLA1 and CLA2 limited to rail transportation) be at least ten times the critical loss volumes (a measure similar to the reference traffic in Dr. Bailey's approach).[188] In his 2001 VS, Dr. Vellturo included truck-based competition as "an additional consideration," but "did not draw conclusions simply from modal shares as to the potential of truck competition to constrain any post-merger price increases" by the combined railroads in that matter.[189] Rather, he limited his consideration of truck to fourteen BEA-commodity pairs, limited the universe of trucking

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183 Bailey Amended Statement, Appendix G at ¶ 13 (citing Majure CPKC Application Statement at 77–80).

184 Majure CPKC Application Statement at ¶ 89.

185 Majure CPKC Application Statement at ¶ 94.

186 Majure CPKC Application Statement at ¶ 94. He adds that "[t]he price increase would likely be unprofitable if affected volume is less than available volume – that is, if the ratio of affected to available volume is less than one" in footnote 61.

187 Majure CPKC Application Statement at n. 58.

188 Vellturo 2007 Statement at 91–92.

189 Vellturo 2001 Statement at 14.

volumes considered divertible based on truck miles, and found the "the divertible capacity available through truck shipments is almost 501 times the critical loss.[190]

110. Dr. Bailey's Critical Loss Analysis thus varies from these prior approaches in critical ways. She has incorporated the use of non-rail shares into her analysis (after she's already included non-rail mode volumes in her initial 50/10 screen), with the only requirement for non-rail share inclusion being that there are at least 1,000 tons on those modes in the relevant areas.

B. TRAFFIC THAT MEETS A 50/10 SCREEN IDENTIFYING POTENTIAL CONCERNS IN RAIL COMPETITION IN KANSAS CITY AND ST. LOUIS

111. In order to evaluate source and destination competition in areas with a reduction in rail options, I conduct a similar analysis to Dr. Bailey's initial 50/10 screening analysis for Competition Between Corridors but for all rail traffic and only for rail traffic – thus I include all commodities (including automotive, intermodal, and miscellaneous product traffic) and exclude non-rail traffic. As I explain in § V.A, the commodity exclusions and the application of non-rail modes of transportation in Dr. Bailey's analysis are unsupported; examining the results for all rail traffic is more likely to accurately highlight the major commodities and regions that could face adverse competitive effects from the Proposed Transaction. I also limit my analysis to 2023 traffic to assess the state of competition in the base year.[191] In total, I find 56 BEA-commodity pairs that meet the 50/10 threshold for either Destination or Source Competition in the St. Louis or Kansas City BEAs; by contrast, Dr. Bailey identified 4 in her Amended Report.[192]

1. Destination Competition

112. To evaluate the potential impact of the Proposed Transaction on destination competition, I analyze the railroad traffic originated, terminated, and serviced by each railroad within the originating BEA for each commodity at a STCC4 level in the same manner as Dr. Bailey. I use the combined waybill data prepared by Dr. Bailey based on the Class I railroads' 2019-2024

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190 Vellturo 2001 Statement at 21, Exhibit 4.

191 These results hold when using data from 2024 instead of 2023. In 2024, there are still 29 BEA-commodity pairs in Kansas City and St. Louis meeting the 50/10 threshold for destination competition,. There are 29 BEA-commodity pairs meeting the 50/10 threshold for source competition, an increase of two relative to 2023. The specific mix of commodities varies modestly between the two years. *See* my Workpaper, "VI. 2024 Sensitivity.py."

192 See Figure 15 and Figure 17 below and Bailey Amended Statement at Exhibit 14 and Exhibit 15.

traffic tapes and the 2019-2023 Carload Waybill Sample data, limited to the base year 2023 traffic.[193] Unlike Dr. Bailey, I consider all traffic and exclude shares from non-rail modes when identifying traffic with potential concerns. I identify origin-commodity pairs where UP and NS each perform originations, terminations, or servicing of at least 10% of railroad shipments and combine for more than 50% of the total railroad volumes originating from the BEA during 2023. I identify the twenty-nine BEA-commodity pairs in Figure 15 below that meet this threshold and have more than 365 carloads during the base year for the Kansas City and St. Louis BEAs that are addressed through CN's proposed conditions.

Figure 15: BEA-Commodity Pairs Meeting 50/10 Screen for Destination Competition in Kansas City and St. Louis BEAs

Originating BEA	Number	STCC4	Description	Total	UP + NS	2023 Units 50/10 Screen			Bailey Ex. 14 Results	
						Originating Screen	Participating Screen	Terminating Screen	Pre-CLA Carloads	Post-CLA Carloads
St. Louis, MO-IL	96	4611	Fak Shipments	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	3295	Nonmetal Minerals, Processed	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	3274	Lime Or Lime Plaster	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	2399	Misc Fabricated Textile Products	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	2841	Soap Or Other Detergents	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	2041	Flour Or Other Grain Mill Products	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	2899	Chemical Preparations, Nec	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	2099	Misc Food Preparations, Nec	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	2821	Plastic Mater Or Synth Fibres	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	2911	Petroleum Refining Products	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	1441	Gravel Or Sand	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	2952	Asphalt Coatings Or Felt	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	3011	Tires Or Inner Tubes	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	4024	Paper Waste Or Scrap	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	3071	Misc Plastic Products	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	2046	Wet Corn Milling Or Milo	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	96	2047	Dog, Cat Or Other Pet Food, Nec	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	99	3711	Motor Vehicles	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	99	2399	Misc Fabricated Textile Products	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	99	2042	Prepared Or Canned Feed	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	99	2899	Chemical Preparations, Nec	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	99	3011	Tires Or Inner Tubes	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	99	4621	Mixed Shipments, Multi-Stcc	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	99	2661	Paper Or Building Board	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	99	2621	Paper	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	99	3599	Misc Machinery Or Parts	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	99	2821	Plastic Mater Or Synth Fibres	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	99	3071	Misc Plastic Products	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	99	3799	Transportation Equipment, Nec	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Total				{{ }}	{{ }}				{{ }}	{{ }}

113. In total, there are {{ }} UP and NS shipments originating in the St. Louis BEA and {{ }} UP and NS shipments originating in Kansas City that meet the 50/10 threshold. A wide group of commodities are represented, including intermodal traffic as well as carload service for automotive, metals and minerals, petroleum and chemicals, grains and fertilizers, and forest products. By contrast, Dr. Bailey identified no originating commodities in the Kansas City

[193] Bailey Amended Statement at ¶ 96.

BEA and two originating commodities in the St. Louis BEA meeting the 50/10 screen for Destination Competition, totaling {{ }}, both of which are then "unflagged" based on Dr. Bailey's Critical Loss Analyses.[194]

114. As shown in Figure 16 below, these commodities encompass a wide variety of commodities shipped on rail. These commodities include[195]:

- Intermodal,
- Automotive (finished vehicles),
- Metals and Minerals (such as construction and industrial materials, sand, and machinery and dimensional loads),
- Petroleum and Chemicals (such as industrial chemicals, aromatics and fibers, alternative fuels, plastic pellets; and asphalt),
- Grains and Fertilizers (including feed, consumer goods, and flour products like wheat and semolina)
- Forest Products (such as scrap-paper and rags and printing paper).

Customers relying on rail transportation for these products may face competitive effects due to the loss of destination competition, absent appropriate conditions.

194 Bailey Amended Statement at Exhibit 14.

195 *See* my Workpaper, "Figure_16_18.xlsx."

Figure 16: UP and NS Commodities Flagged through 50/10 Screen for Destination Competition in Kansas City and St. Louis BEAs

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2. Source Competition

115. To evaluate the potential impact of the Proposed Transaction on source competition, I analyze the railroad traffic originated, terminated, and serviced by each railroad within the terminating BEA for each commodity at a STCC4 level in the same manner as Dr. Bailey. I again use the combined waybill data prepared by Dr. Bailey based on the Class I railroads' 2019-2024 traffic tapes and the 2019-2023 Carload Waybill Sample data, limited to the base year 2023 traffic.[196] Unlike Dr. Bailey, I consider all traffic and exclude shares from non-rail modes when identifying traffic with potential concerns. I identify termination-commodity pairs where UP and NS each perform originations, terminations, or servicing of at least 10% of railroad shipments and combine for more than 50% of the total railroad volumes terminating at the BEA during 2023. I identify these twenty-seven BEA-commodity pairs in Figure 17 below that meet this

[196] Bailey Amended Statement at ¶ 96.

threshold and have more than 365 carloads during the base year for the Kansas City and St. Louis BEAs that are addressed through CN's proposed conditions.[197]

Figure 17: BEA-Commodity Pairs Meeting 50/10 Screen for Source Competition in Kansas City and St. Louis BEAs

Terminating BEA	Number	STCC4	Description	Total		UP + NS		2023 Units 50/10 Screen						Bailey Ex. 15 Results			
								Originating Screen		Participating Screen		Terminating Screen		Pre-CLA Carloads		Post-CLA Carloads	
St. Louis, MO-IL	96	4611	Fak Shipments	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
St. Louis, MO-IL	96	3711	Motor Vehicles	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
St. Louis, MO-IL	96	3295	Nonmetal Minerals, Processed	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
St. Louis, MO-IL	96	3071	Misc Plastic Products	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
St. Louis, MO-IL	96	2899	Chemical Preparations, Nec	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
St. Louis, MO-IL	96	3714	Motor Vehicle Parts Or Accessories	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
St. Louis, MO-IL	96	2819	Misc Indus Inorganic Chemicals	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
St. Louis, MO-IL	96	2041	Flour Or Other Grain Mill Products	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
St. Louis, MO-IL	96	2911	Petroleum Refining Products	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
St. Louis, MO-IL	96	2085	Distilled Or Blended Liquors	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
St. Louis, MO-IL	96	2399	Misc Fabricated Textile Products	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
St. Louis, MO-IL	96	2046	Wet Corn Milling Or Milo	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
St. Louis, MO-IL	96	4021	Metal Scrap Or Tailings	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
St. Louis, MO-IL	96	2871	Fertilizers	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
St. Louis, MO-IL	96	2082	Malt Liquors	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
Kansas City, MO-KS	99	2631	Fiber, Paper Or Pulpboard	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
Kansas City, MO-KS	99	3071	Misc Plastic Products	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
Kansas City, MO-KS	99	2812	Potassium Or Sodium Compound	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
Kansas City, MO-KS	99	2621	Paper	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
Kansas City, MO-KS	99	2399	Misc Fabricated Textile Products	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
Kansas City, MO-KS	99	2821	Plastic Mater Or Synth Fibres	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
Kansas City, MO-KS	99	2899	Chemical Preparations, Nec	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
Kansas City, MO-KS	99	2099	Misc Food Preparations, Nec	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
Kansas City, MO-KS	99	2871	Fertilizers	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
Kansas City, MO-KS	99	2042	Prepared Or Canned Feed	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
Kansas City, MO-KS	99	2819	Misc Indus Inorganic Chemicals	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
Kansas City, MO-KS	99	2541	Wood Lockers, Partitions, Etc.	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}	{{	}}
Total				{{	}}	{{	}}							{{	}}	{{	}}

116. In total, there are {{ }} UP and NS shipments terminating in the St. Louis BEA and {{ }} UP and NS shipments terminating in Kansas City that meet the 50/10 threshold. A wide group of commodities are represented, including intermodal traffic as well as carload service for automotive, petroleum and chemicals, metals and minerals, grains and fertilizers, and forest products. By contrast, Dr. Bailey identified: one terminating commodity in the Kansas City BEA meeting the 50/10 screen, totaling {{ }} shipments ("unflagged" based on Dr. Bailey's Critical Loss Analysis) and one terminating commodity in the St. Louis BEA meeting the 50/10 screen for Source Competition, totaling {{ }} (also then "unflagged" based on Dr. Bailey's Critical Loss Analyses).[198]

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197 When modifying this methodology to use 2024 instead of 2023, there are 5 additional BEA-commodity pairs and 3 fewer BEA-commodity pairs between Kansas City and St. Louis. This produces a net change of 2 new BEA-commodity pairs, from 27 to 29. *See* my Workpaper, "VI. 2024 Sensitivity.py".

198 Bailey Amended Statement at Exhibit 15.

117. As shown in Figure 18 below, these commodities encompass a wide variety of commodities shipped on rail. These commodities include:[199]

- Intermodal,
- Petroleum and Chemicals (such as industrial chemicals, industrial chemical acids, soda ash, sodium products, sulphuric acid, aromatics and fibers, caustic soda, petroleum and lube oil, BTX, and plastic pellets),
- Grains and Fertilizers (such as corn meal, consumer goods, dried distiller grains, feed, potash, and dried fertilizers like ammonium sulphate)
- Automotive (finished vehicles and vehicle parts),
- Forest Products (such as printing paper and board-paper and pulp), and
- Metals and Minerals (such as roofing materials, scrap iron, and non-ferrous waste/scrap).

Customers relying on rail transportation for these products may face competitive effects due to the loss of source competition, absent appropriate conditions.

[199] *See* my Workpaper, "Figure_16_18.xlsx."

Figure 18: UP and NS Commodities Flagged through 50/10 Screen for Source Competition in Kansas City and St. Louis BEAs

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C. ADDITIONAL CONSIDERATIONS FOR TRAFFIC THAT FACES COMPETITIVE EFFECTS FOR SOURCE AND DESTINATION COMPETITION IN KANSAS CITY AND ST. LOUIS

118. For the commodities meeting the 50/10 screen for source and destination competition in the Kansas City and St. Louis BEAs, I consider whether further factors suggest that the Proposed Transaction is likely to result in adverse competitive effects for shippers or receivers of that commodity. Specifically, I consider:

- UP's and NS's share in the Kansas City and St. Louis BEAs during the base year,
- The 50/10 screen for 2024 rail traffic,
- Non-rail shares for routes that UP and NS serve, and
- UP and NS originating or terminating shares of that commodity across the United States.

119. First, I calculate the share of originating or terminating rail traffic that UP and NS carried in the base year for each BEA-commodity pair at issue. All of these BEA-commodity pairs pass the 50/10 screen, but this additional detail can show exactly how much of the traffic for each commodity is originated or terminated by UP and NS in the Kansas City and St. Louis BEAs. This approach can help distinguish between commodities where the thresholds are just met to those where the combined shares and/or changes are much higher than the threshold levels.

120. Second, I run a 50/10 screen using the 2024 traffic compiled by Dr. Bailey.[200] This test shows whether the commodity would continue to pass this threshold in the most recent year that data was included. If traffic patterns have changed such that the 50/10 threshold is no longer passed in 2024, this may reduce the potential for competitive harm to that specific BEA-commodity pair from the merger.

121. Third, I calculate the percentage of truck and water shares of traffic on UP and NS routes of the flagged commodity, weighted according to the amount of UP and NS traffic on those routes. This reflects the average share of truck and water modes of transportation that may provide some level of competition on the routes that UP and NS serve.

122. Finally, I examine the combined share of rail traffic of UP and NS in providing nationwide terminating service (for destination competition) or originating service (for source competition). These measures can help evaluate the options that customers have to combat a potential price increase. If, for example, a commodity passes the 50/10 test for destination competition, then these shares can help determine whether there are alternative rail destinations, not served by UP or NS, they could shift traffic to. Similarly, if a commodity passes the 50/10 test for source competition, then these shares can help determine whether there are alternative rail originations, not served by UP or NS, they could shift traffic from.

1. Destination Competition

123. Figure 19 below shows these additional considerations around the commodities meeting the 50/10 screen for destination competition in the Kansas City and St. Louis BEAs.

[200] Dr. Bailey notes that she was unable to incorporate the 2024 CWS data in her Amended Report. *See* Bailey Amended Statement at n. 86.

Figure 19: Additional Considerations around BEA-Commodity Pairs Meeting 50/10 Screen for Destination Competition in Kansas City and St. Louis

Destination Competition - 50/10 Commodities			*Sensitivities*		*Consideration of Other Modes*		*UP/NS Nationwide Shares of Terminations - STCC4*		
Originating BEA	**STCC4**	**Description**	**UP and NS 2023 Originating Share**	**2024 Sensitivity**	**Truck Shares on UP-NS Routes**	**Water Shares on UP-NS Routes**	**UP**	**NS**	**Combined**
St. Louis, MO-IL	4611	Fak Shipments	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	3295	Nonmetal Minerals, Processed	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	3274	Lime or Lime Plaster	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2399	Misc Fabricated Textile Products	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2841	Soap or Other Detergents	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2041	Flour or Other Grain Mill Products	{{ }}	Not 50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2899	Chemical Preparations, Nec	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2099	Misc Food Preparations, Nec	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2821	Plastic Mater or Synth Fibres	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2911	Petroleum Refining Products	{{ }}	Not 50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	1441	Gravel or Sand	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2952	Asphalt Coatings or Felt	{{ }}	Not 50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	3011	Tires or Inner Tubes	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	4024	Paper Waste or Scrap	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	3071	Misc Plastic Products	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2046	Wet Corn Milling or Milo	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2047	Dog,cat or Other Pet Food,nec	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	3711	Motor Vehicles	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	2399	Misc Fabricated Textile Products	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	2042	Prepared or Canned Feed	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	2899	Chemical Preparations, Nec	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	3011	Tires or Inner Tubes	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	4621	Mixed Shipments, Multi-stcc	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	2661	Paper or Building Board	{{ }}	Not 50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	2621	Paper	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	3599	Misc Machinery or Parts	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	2821	Plastic Mater or Synth Fibres	{{ }}	50/10-small	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	3071	Misc Plastic Products	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	3799	Transportation Equipment, Nec	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}

124. The results show the following for destination competition:

- The combined share of UP and NS is substantially above the threshold screens in {{ }} of the {{ }} BEA-commodity pairs. This demonstrates that UP and NS have very high combined shares in most of these BEA-commodity pairs, which further supports the possibility of adverse effects of the Proposed Transaction.
    - The combined share is above 60% in {{ }} BEA-commodity pairs.
    - The combined share is above 75% in {{ }} BEA-commodity pairs.
    - The combined share is above 90% in {{ }} BEA-commodity pairs.
- All but five BEA-commodity pairs meeting the 50/10 screen for destination competition in 2023 also pass the 50/10 screen using 2024 traffic, indicating that changes in traffic flows are not generally a reason to exclude these commodities.

  - Of those, {{ }} not pass because the 2024 volumes fall below the 365-car minimum used to identify and screen out smaller volume commodities.
  - The other {{ }} have combined UP and NS shares between 59% and 100% of the originating traffic in 2023.

- Truck and Water modes of transportation do not appear to compete significantly with the rail traffic for UP and NS routes for most of the 29 BEA-commodity pairs that meet the 50/10 screen, suggesting that competition with truck and rail is not a reason to exclude these commodities.
  - The weighted average of truck shares for UP and NS rail routes ranges is 0% for {{ }} BEA-commodity pairs; greater than 0% and less than or equal to 10% for {{ }} BEA-commodity pairs; greater than 10% and less than or equal to 30% for {{ }} BEA-commodity pairs; and >30% for only {{ }} BEA-commodity pairs. The average truck shares on UP and NS routes across these BEA-commodity pairs is only 11%.
  - The weighted average of water shares for UP and NS rail routes are 0% for {{ }} of the BEA-commodity pairs; greater than 0% and less than or equal to 5% for {{ }} of the BEA-commodity pairs; and 18% for {{ }}. The average across the BEA-commodity pairs is only 1%.

- UP and NS handle a significant amount of the terminations for these commodities across the United States, suggesting that UP and NS are important transportation options for these commodities even outside of the Kansas City and St. Louis BEAs making it harder for customers to use other rail options to constrain pricing to or from the BEA. Thus, these facts do not support excluding these commodities.
  - UP and NS have a greater than 50% share of all terminations across the United States for {{ }} of these BEA-commodity pairs.
  - For the {{ }} commodities for which UP and NS have a share of terminations less than 40%, the 2023 originating shares in the Kansas City or St. Louis BEAs

average {{ }}. While UP and NS terminate less than 40% of the commodity nationwide, their originating shares in Kansas City or St. Louis are very high, raising competitive concerns that alternative destination options may not be able to alleviate.

125. In total, I do not find evidence to support the dismissal of these commodities from those that may face competitive effects due to the loss of destination competition.

2. Source Competition

126. Figure 20 below shows these additional considerations around the commodities meeting the 50/10 screen for source competition in the Kansas City and St. Louis BEAs.

Figure 20: Additional Considerations around BEA-Commodity Pairs Meeting 50/10 Screen for Source Competition in Kansas City and St. Louis

Source Competition - 50/10 Commodities			*Sensitivities*		*Consideration of Other Modes*		*UP/NS Nationwide Shares of Originations - STCC4*		
Terminating BEA	**STCC4**	**Description**	**UP and NS 2023 Terminating Share**	**2024 Sensitivity**	**Truck Shares on UP-NS Routes**	**Water Shares on UP-NS Routes**	**UP**	**NS**	**Combined**
St. Louis, MO-IL	4611	Fak Shipments	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	3711	Motor Vehicles	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	3295	Nonmetal Minerals, Processed	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	3071	Misc Plastic Products	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2899	Chemical Preparations, Nec	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	3714	Motor Vehicle Parts or Accessories	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2819	Misc Indus Inorganic Chemicals	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2041	Flour or Other Grain Mill Products	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2911	Petroleum Refining Products	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2085	Distilled or Blended Liquors	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2399	Misc Fabricated Textile Products	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2046	Wet Corn Milling or Milo	{{ }}	Not 50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	4021	Metal Scrap or Tailings	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2871	Fertilizers	{{ }}	Not 50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2082	Malt Liquors	{{ }}	Not 50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	2631	Fiber, Paper or Pulpboard	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	3071	Misc Plastic Products	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	2812	Potassium or Sodium Compound	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	2621	Paper	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	2399	Misc Fabricated Textile Products	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	2821	Plastic Mater or Synth Fibres	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	2899	Chemical Preparations, Nec	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	2099	Misc Food Preparations, Nec	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	2871	Fertilizers	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	2042	Prepared or Canned Feed	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	2819	Misc Indus Inorganic Chemicals	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	2541	Wood Lockers,partitions, Etc.	{{ }}	50/10	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}

127. The results show the following for source competition:

- The combined share of UP and NS is substantially above the threshold screens in {{ }} of the {{ }} BEA-commodity pairs, demonstrating that UP and NS have very high

combined shares in most of these BEA-commodity pairs, which further supports the possibility of adverse competitive effects of the Proposed Transaction.

  - The combined share is above 60% in {{ }} BEA-commodity pairs.
  - The combined share is above 75% in {{ }} BEA-commodity pairs.
  - The combined share is above 90% in {{ }} BEA-commodity pairs.

- All but three BEA-commodity pairs meeting the 50/10 screen for source competition in 2023 also pass the 50/10 screen for 2024 traffic, indicating that changes in traffic flows are not generally a reason to exclude these commodities.
  - Of those three BEA-commodity pairs, one ({{ }}) has a combined UP and NS share of {{ }} of the terminating traffic in 2023.
- Truck and Water modes of transportation do not appear to compete significantly with the rail traffic for most of the 27 BEA-commodity pairs that meet the 50/10 screen, suggesting that competition with truck and rail is not a reason to exclude these commodities.
  - The weighted average of truck shares for UP and NS rail routes ranges is 0% for {{ }} BEA-commodity pairs; greater than 0% and less than or equal to 10% for {{ }} BEA-commodity pairs; greater than 10% and less than or equal to 30% for {{ }} BEA-commodity pairs; and >30% for only {{ }} BEA-commodity pairs. The average truck shares on UP and NS routes across these BEA-commodity pairs is only {{ }}.
  - The weighted average of water shares for UP and NS rail routes is 0% for {{ }} of the BEA-commodity pairs; greater than 0% and less than or equal to 5% for {{ }} of the BEA-commodity pairs; and greater than 5% and less than or equal 25.1% for {{ }} of the BEA-commodity pairs. The average across the BEA-commodity pairs is only {{ }}.
- UP and NS handle a significant amount of the originations of these commodities across the United States, suggesting that UP and NS are important transportation options for these commodities even outside of the BEA making it harder to use other rail options to

constrain pricing to or from the BEA. Thus, these facts do not support excluding these commodities.

- UP and NS have a greater than 50% share of all originations across the United States for {{ }} of these BEA-commodity pairs.
- For the {{ }} commodities for which UP and NS's share of originations is less than 40%, the 2023 terminating shares in the Kansas City or St. Louis BEAs average {{ }}.[201]

128. In total, I do not find evidence to support removing these commodities from those that may face competitive effects due to the loss of source competition.[202]

D. REDUCTIONS IN SOURCE AND DESTINATION COMPETITION ARE LIKELY TO PRODUCE ADVERSE COMPETITIVE EFFECTS FOR KANSAS CITY AND ST. LOUIS TRAFFIC (ABSENT CONDITIONS)

129. Customers of BEA-commodity pairs meeting the 50/10 threshold may be harmed by a reduction in source and destination competition, as UP and NS will control a majority of the rail transportation for those commodities in specific origins and destinations. As I discussed in § III, when a merger creates a single entity with a high market share accompanied with a significant change in market share, competition for those customers' traffic is reduced. High market shares can thus be indicative of the fact that customers may have limited alternatives to the merged entity for rail transportation, which may allow the merged entity raise prices or reduce service quality. This concern applies not only to high shares for access to particular customers, but also to high shares of BEA-commodity pairs.

130. Consider an example where UP and NS comprise the majority of shipments for specific commodities where Kansas City is the origin or destination – Motor Vehicles traffic (STCC 3711) originating in Kansas City. In 2023, NS originated {{ }} shipments, mostly from their Voltz Mixing Center station. UP originated a total of {{ }} shipments, {{ }} from Fairfax, KS and {{ }} from Muncie, KS stations. BNSF originated {{ }}

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201 *See* my Workpaper, "Figure 19 and 20.xlsx", tab "In-text."

202 I note that traffic STCC 2082 Malt Liquors terminated in St. Louis did not pass the 50/10 screen using 2024 traffic and UP and NS have a combined {{ }} share of all originations across the United States. These factors may allow the St. Louis customers of this commodity to avoid some competitive effects that may result due to the Proposed Transaction.

shipments, mostly from their Kansas City, KS station. CPKC originated {{ }} shipments, mostly from their Kansas City, MO station. In total, UP and NS combined to originate {{ }} of Motor Vehicles traffic originating from the Kansas City BEA (UP originated {{ }} and NS originated {{ }} of this traffic). Because UP and NS each served at least 10% of the originations and combined served more than 50% of originations, this BEA-commodity pair meets the 50/10 screen for originations of this commodity. UP and NS also combined to terminate {{ }} of this traffic to the ultimate destination (UP terminated {{ }} and NS terminated {{ }} of this traffic), which would also meet the 50/10 screen for terminations of this commodity.[203]

131. If UP and NS were to merge, the combined railroad would serve {{ }} of railroad originations of Motor Vehicle traffic from the Kansas City BEA.[204] {{ }} is the largest Motor Vehicle shipper in the Kansas City BEA. {{Ford}} relies on NS, BNSF, CPKC, and UP for originating service to {{ }} destinations. Generally, {{ }} traffic from the Kansas City BEA uses single line service, with the originating carrier for their traffic also performing the terminating service. For example, NS originates shipments from the Kansas City BEA that they then terminate in {{ }} and {{ }} stations; BNSF originates shipments that they then terminate in {{ }} and {{ }} stations; CPKC originates shipments that they then terminate in {{ }} and {{ }}; and UP originates shipments that they then terminate in {{ }} and {{ }}.[205]

132. The destinations that {{ }} can ship to across the railroad network provide a source of destination competition that allows {{ }} to negotiate better rates and terms than it could negotiate if it had only a single destination option. Currently, UP, NS, CPKC, and BNSF must compete with each other, even if not to the same destinations, to gain {{ }} business. If UP and NS were to merge, absent conditions, they would have less incentive to compete against each other for that traffic to their destinations. If UP raised its rates and, in response, {{ }} moved volumes elsewhere, then, based on market shares, NS would be expected to gain 52% of

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203 *See* my Workpaper, "In-Text Figures.py."

204 *See* my Workpaper, "Appendix C.xlsx."

205 *See* my Workpaper, "In-Text Figures.py."

this lost traffic (with BNSF and CPKC gaining 32% and 16% respectively), which could make the price increase profitable.[206]

133. Similarly, in the St. Louis BEA, if UP and NS were to merge, the combined entity would serve {{ }} of originations for STCC 2041 "Flour or Other Grain Mill Products." UP is the larger of the two, and it currently originates {{ }} of flour traffic from St. Louis and terminates {{ }} of this volume to destinations on own network. Traffic using single line service most commonly terminates in {{ }}. NS originates an additional {{ }} of flour traffic from St. Louis and relies on single-line service almost entirely with {{ }} of flour traffic from St. Louis terminating on its own network. The largest destinations for NS, by traffic volume, include {{ }}.[207]

134. Customers originating flour from St. Louis currently benefit from UP and NS competing as separate carriers, each offering access to a different set of customers and destinations. Currently BNSF, CSXT, NS, UP and CN (which originates less than {{ }} of this traffic) can offer different competitive options to customers. Absent the proposed conditions, the merged entity would face less competition as UP and NS would no longer have to compete against each other for this traffic.[208]

135. As described in these examples, when UP and NS control high shares of (origination or destination) traffic for a BEA-commodity pair, customers may be harmed by the Proposed Transaction by the loss of options for originating or terminating their traffic, i.e., by a reduction in source and destination competition.

E. ADDITIONAL COMMODITIES ORIGINATING OR TERMINATING IN KANSAS CITY AND ST. LOUIS MAY ALSO FACE ADVERSE EFFECTS

136. Many commodities originating or terminating in the Kansas City and St. Louis BEAs that do not meet the 50/10 screen still may face adverse competitive effects as a result of increased concentration due to the Proposed Transaction. For example, the U.S. DOJ and FTC Merger Guidelines identify a combined share of 30% and an increase in HHI of more than 100 points as

206 *See* my Workpaper, "In-Text Figures.py."

207 *Id.*

208 *Id.*

the thresholds to presume a merger will substantially lessen competition.[209] BEA-commodity pairs that exceed these thresholds and have at least 365 shipments of UP and NS traffic are included in Figure 21. These include commodities that do not meet all the components of the 50/10 screen but still may face adverse competitive effects if one uses the thresholds used by the U.S. Department of Justice and Federal Trade Commission when assessing mergers. For example, UP and NS terminate {{ }} of Motor Vehicles traffic (STCC 3711) in the Kansas City BEA – below the 50% threshold in the 50/10 screen – with each terminating more than {{ }} of the traffic. If UP and NS compete for the Motor Vehicle traffic to customers within the Kansas City BEA, then the Proposed Transaction would result in a loss of competition for these customers that could result in harm. Similarly, the merged entity would handle {{ }} of Motor Vehicle Parts or Accessories (STCC 3714) traffic both originating and terminating in the Kansas City BEA. UP performed {{ }} of originations and {{ }} of terminations – below the 10% threshold in the 50/10 screen, but the UP-NS combined share is very high. If the options that UP offers act as a competitive restraint on NS for certain traffic, then post-merger there may be competitive harm for that traffic. I identify shares for all BEA-commodity pairs originating or terminating in the St. Louis and Kansas City BEAs in my Appendix C workpaper.

Figure 21: Additional Commodities that Exceed Merger Guidelines Thresholds for Lessened Competition

BEA	STCC4	Commodity	Service	NS Share	UP Share	Combined	HHI Delta
Kansas City, MO-KS	2099	Misc Food Preparations, Nec	Originating	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	3714	Motor Vehicle Parts or Accessories	Originating	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	4021	Metal Scrap or Tailings	Originating	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	4611	Fak Shipments	Originating	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2818	Misc Industrial Organic Chemicals	Originating	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	3312	Primary Iron or Steel Products	Originating	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	3711	Motor Vehicles	Terminating	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	3714	Motor Vehicle Parts or Accessories	Terminating	{{ }}	{{ }}	{{ }}	{{ }}
Kansas City, MO-KS	4611	Fak Shipments	Terminating	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	0113	Grain	Terminating	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2092	Soybean Oil or By-products	Terminating	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	2812	Potassium or Sodium Compound	Terminating	{{ }}	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	3312	Primary Iron or Steel Products	Terminating	{{ }}	{{ }}	{{ }}	{{ }}

[209] See ¶ 15 above.

VII. CN'S PROPOSED CONDITIONS WILL ADDRESS CONCERNS APPLICANTS HAVE ACKNOWLEDGED AS WELL AS ADDITIONAL CONCERNS

137. CN's Proposed Conditions will remedy the loss of competition from the Proposed Transaction in key areas where UP and NS overlap. These conditions will provide a new competitive Class I option for individual affected customers around Des Moines and throughout Illinois and address competitive concerns around the Kansas City and St. Louis areas.

138. CN's Proposed Conditions request that the Board condition the merger on CN access to provide service to 2-to-1 and 3-to-2 customers. Many of these customers are located in the Des Moines, IA area where UP, NS, and BNSF are currently the only Class I options. CN will provide a new Class I option to compete with the combined UP-NS entity and BNSF to serve customers, ensuring those customers continue to have three Class I options. CN operates successfully throughout Iowa, and these rights will allow them to expand their operations to better serve the state.[210]

139. CN's Proposed Conditions will similarly preserve competition for 2-to-1 and 3-to-2 customers throughout Illinois, including Hillsboro Energy in Hillsboro, IL, Macoupin Energy LLC in Carlinville, IL, AgRail LLC in Bloomington, IL, and other customers throughout Illinois. CN already has a substantial network in Illinois that is the base of CN's U.S. operations. CN's existing presence in Illinois, combined with the additional rights requested under the Proposed Conditions, will facilitate the provision of effective access for these customers, allowing customers to benefit from competition among the combined UP-NS entity, CN, and any other serving railroads for those customers' service.

140. CN's Proposed Conditions also request that the Board condition the Proposed Transaction on UP divesting the Kansas City Line to CN. This divestiture will provide a new Class I option between those locations that will allow CN to compete for traffic that utilizes that segment and to introduce a new Class I carrier in Kansas City and expanded Class I access in St. Louis to replace the competition lost in each from the Proposed Transaction. UP and NS have the most direct routes between Kansas City and St. Louis, giving them an advantage over other railroads for service between these points (or for corridors that utilize this segment). CN's

[210] See § VIII for additional details.

acquisition of the Kansas City Line will eliminate the potential for harm to customers utilizing this segment.

141. Other aspects of CN's Proposed Conditions seek additional rights to increase CN's ability to compete for the affected traffic and will improve the effectiveness of CN's requested condition for divestiture of the Kansas City Line. CN's Proposed Conditions include overhead trackage rights on UP's line between Tuscola, IL and East St. Louis, IL. This will allow CN a direct route to East St. Louis from its mainline running through Tuscola, IL. Currently, CN must take a circuitous route into East St. Louis from locations north, limiting its competitiveness in the area. These overhead trackage rights will allow CN to more directly connect to East St. Louis, and through it to the Kansas City Line proposed for divestiture. They will also improve CN's service in St. Louis, positioning it to be able to compete for traffic in St. Louis and preserve the competition lost from the Proposed Transaction.

142. In addition, CN's Proposed Conditions request the lease or acquisition of UP's Neff Yard in Kansas City, MO. This will give CN access to a yard facility that will enable it to serve customers in the Kansas City area effectively, particularly for automotive and intermodal service, where I understand access to a yard facility is needed.[211] I understand that CN plans to invest in this facility to ensure it can compete with the other major rail carriers in and around Kansas City.[212] Similarly, CN's Proposed Conditions request the sale of the former Sarpy Yard property to CN for handling CN's intermodal and automotive traffic. This access will allow CN to serve customers in the St. Louis area more effectively.[213] The Settlement MOU will also result in CN ownership in KCT, which serves customers throughout Kansas City, allowing CN to serve these customers and interchange with other carriers. In addition, I understand that the Proposed Conditions will grant CN access to current UP and NS customers with open switching arrangements, allowing CN to directly market and compete to serve these customers' traffic. These aspects will help ensure that CN can effectively operate with KCT and the combined UP-NS entity as partners to serve customers throughout the Kansas City area.

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211 Nair V.S. at 9–10; Slazinski V.S. at 9–109.

212 Nair V.S. at 9–10; Slazinski V.S. at 9–10.

213 Nair V.S. at 10–11; Slazinski V.S. at 12–13.

A. THE PROPOSED CONDITIONS PROVIDE A REMEDY FOR CUSTOMER FACILITIES FACING A 2-TO-1 OR 3-TO-2 REDUCTION IN CLASS I RAILROAD OPTIONS

143. The proposed conditions CN is seeking and that are agreed upon in the Settlement MOU[214] are designed to remedy competitive harm the Proposed Transaction otherwise would likely impose on 2-to-1 and 3-to-2 customers. The conditions would give CN access to the seven 2-to-1 and eighteen 3-to-2 customer facilities currently served by UP and NS in Des Moines, IA, Danville IL, Chicago IL, Bloomington IL, Hillsboro, IL, Carlinville IL, Mt. Vernon IL, Momence IL, Federal IL, and Granite City IL. Customers who may be harmed by the loss of competition between UP and NS will gain a new Class I railroad option. The combined UP-NS entity can continue to compete for those customers' traffic and serve them as they currently serve them; CN will be an additional Class I option, providing new routes for those customers' traffic. In instances in which one carrier experiences service disruptions, customers would retain another railroad option to serve their traffic. CN will offer a competitive constraint similar to what UP and NS currently impose on each other, while also offering additional new competitive markets, routes and interline opportunities for those customers.[215]

1. Des Moines, IA Customer Facilities

144. With the proposed conditions, CN would obtain access to the 2-to-1 and 3-to-2 customers in Des Moines and Avon, Iowa through trackage rights from Manly and Iowa Falls. These rights will allow CN to operate its own trains and crews along those segments to access the Des Moines area and access the 3-to-2 and 2-to-1 customers. Trackage rights allow CN to create and run its own operations to move that traffic to Des Moines via UP's yard via reciprocal switching. Figure 22 below illustrates CN's proposed overhead trackage rights to Des Moines and Avon.

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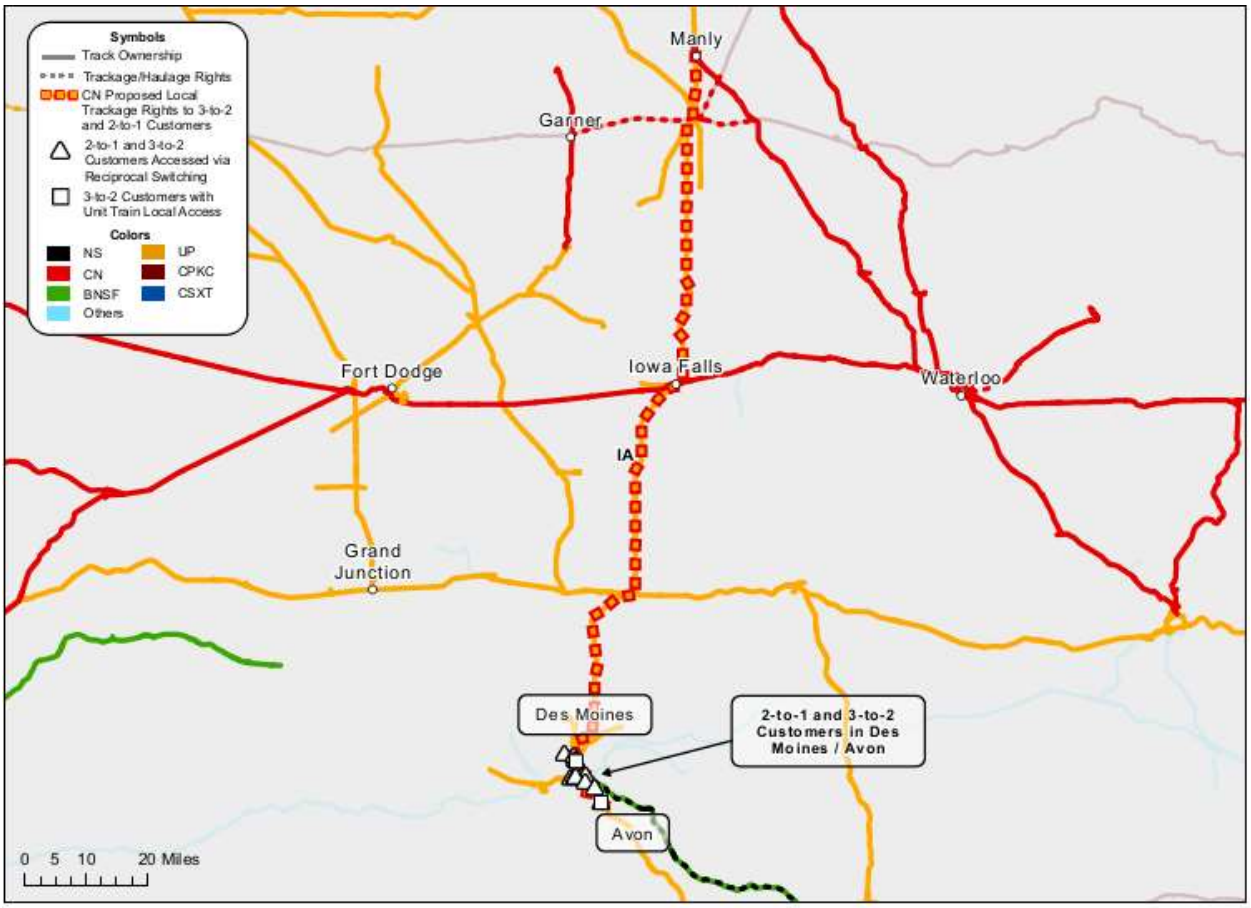
214 Applicants' Second Supplemental Submission at 202–218; Bailey Supplemental Statement at ¶¶ 7, 11.

215 CN operates largely in the overlap area of UP and NS and, as such can, impose a similar constraint that UP and NS provide on each other for customers in these areas.

Figure 22: CN Proposed Overhead Trackage Rights to Reach 3-to-2 and 2-to-1 Customers in Des Moines and Avon



Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

145. Today, 3-to-2 customers in the Des Moines area have a choice of three Class I railroads (UP, NS, and BNSF) for their rail service.[216] As I discuss in § IV.A.2 above, the Proposed Transaction may produce adverse competitive effects even if the customer still has two Class I railroad options post-merger. The conditions allowing CN access to these customers would ensure they have another choice among the Class I railroads to serve their rail needs. CN already operates extensively in other areas of Iowa, with 68 stations in the state. Access through Iowa Falls and Manly will provide a connection to CN's existing network in Iowa, allowing CN to better reach the 3-to-2 customers and serve the state. CN will be able to offer competitive options

216 In addition, Titan Tire is a 2-to-1 customer in Des Moines, IA with access to only UP and NS. The conditions allowing CN access to this customer would ensure Titan Tire maintains a second Class I railroad option. *See* Figure 1 above.

for the 3-to-2 customers, both for their existing routes and for new routes available through CN's network. In this manner, the remedy will preserve competition for the 3-to-2 customers in Des Moines that would otherwise be lost.

2. Hillsboro Energy in Hillsboro, IL and Macoupin Energy LLC in Carlinville, IL

146. In 2025, 2-to-1 customer Hillsboro Energy in Hillsboro, IL shipped traffic to:

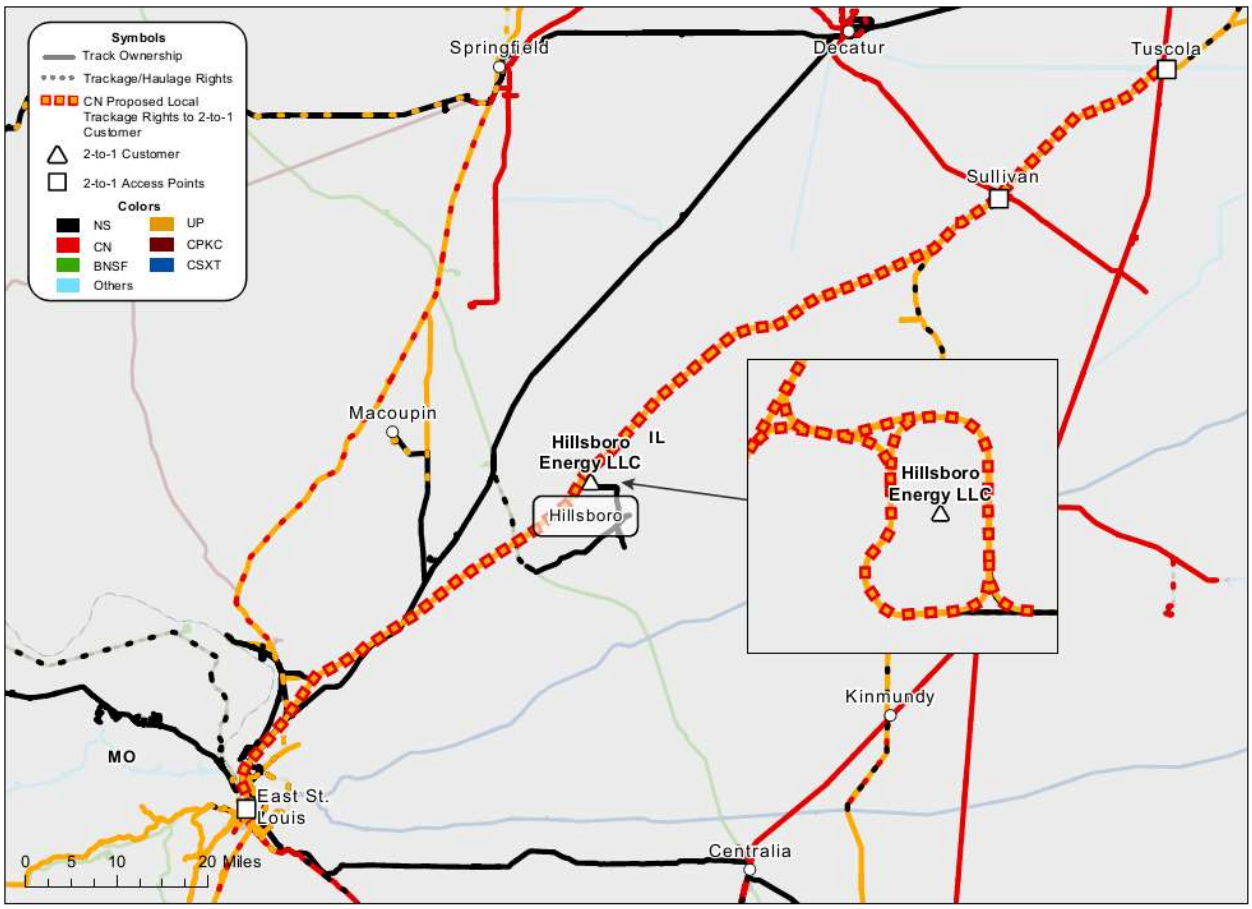
- {{ }} in {{ }} through NS and the EVWR railroads;
- {{ }} in {{ }} through NS;
- {{ }} in {{ }} through UP; and
- {{ }} in {{ }} through UP and the CIC.

147. With the proposed conditions, CN would obtain the trackage rights required to access Hillsboro Energy and can then provide service to all of these destinations. Trackage rights will allow CN to operate its own trains and crews over the trackage rights segment to reach Hillsboro facilities. I understand that coal is particularly well suited to this type of arrangement. Coal is typically shipped in unit trains to a single destination and requires the trains and crews to remain on-site while the loading process is performed. Once loaded, the train will depart from the customer location and travel along the trackage rights segment until it can connect to CN's network.

148. Once it reaches the CN network, CN will bring the traffic to its ultimate destination or interchange location: CN could offer direct service to {{ }} and {{ }} and could market these destinations to Hillsboro Energy and {{ }}; CN could access the {{ }} location in a manner similar to how NS accesses it today, by interchanging with the EVWR railroad at the {{ }} location; and for traffic to {{ }}, CN could interchange with the combined UP-NS entity at Coulterville, IL for UP-NS to provide final service to the {{ }} facilities along the existing UP network. The result is a continuous movement of the traffic over the trackage rights portion, onto CN's network to the customer or interchange point. CN would control the operations around the entire movement up to the customer or interchange point. The CN options enabled by this remedy will preserve

competition for Hillsboro Energy's traffic. In addition, CN could use these trackage rights to market new opportunities to other barge-served facilities, export facilities, and to new customers. Figure 23 below illustrates CN's proposed overhead trackage rights to these customers.

Figure 23: CN Proposed Overhead Trackage Rights for 2-to-1 Customers in Hillsboro



Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

149. Similarly, CN's proposed conditions will allow it to access Macoupin Energy at Carlinville, IL via trackage rights from Springfield, IL. Although currently idle, if operations resume at the mine, CN will have the ability to serve these coal shipments to barge-served facilities, export facilities, and to customers along CN's network and throughout the railroad network via interline service.[217]

[217] *See* Foresight Energy, *Operations*, https://www.foresight.com/operations/ (last visited Nov. 17, 2026).

3. Other 2-to-1 and 3-to-2 Customer Facilities in Illinois

150. For the remaining 2-to-1 and 3-to-2 customers, with the proposed conditions, CN will obtain haulage or switching agreements with the combined UP-NS entity. Under haulage agreements, UP or NS will perform the customer originations or terminations at the customer facilities and then move the traffic to an interchange point with CN. Under switching agreements, UP or NS will also perform the customer originations or terminations and then deliver that shipment to a nearby CN yard or station to incorporate into CN's own operations. These access arrangements are well suited for shipments that go to multiple destinations or have small volumes that must be combined with other traffic to operate efficiently. Shipments received by CN via haulage or switching will need to be classified into appropriate blocks along with other traffic in forming trains according to CN's operating plan. The rates and terms for this access and service will be agreed upon if the conditions are ordered by the Board. CN will be able to negotiate directly with these customers on their potential transportation options available through CN. This will allow CN to market opportunities within their network or in combination with interline partners to meet each customer's needs. Figure 24 below details CN's proposed access to these customers.

Figure 24: CN's Proposed Access for 2-to-1 and 3-to-2

Customer	Location	Access
AgRail LLC	Bloomington, IL	Haulage Rights for CN via NS from Decatur to Bloomington
Midwest Salt LLC	Chicago, IL	Open to switching for CN in Chicago
US Glu-Lam Inc.		
Milano Metals & Recycling	Mt Vernon, IL	Haulage Rights for CN via NS from Centralia to Mt. Vernon
Bunge Milling Inc.	Danville, IL	Haulage Rights for CN via NS from Decatur and/or Tolono to Danville
REG Danville LLC		
The Quaker Oats Co.		
Edmund A Allen Lumber	Momence, IL	Haulage Rights for CN via UP from Yard Center to Momence
Mighty River Recycling LLC	Federal, IL	Open to switching for CN in St. Louis
USS Granite City Works	Granite City, IL	Open to switching for CN in St. Louis

151. For all of these customers, the conditions will preserve competition for the customers. CN's ability to serve these customers will allow for a new Class I option to replace the

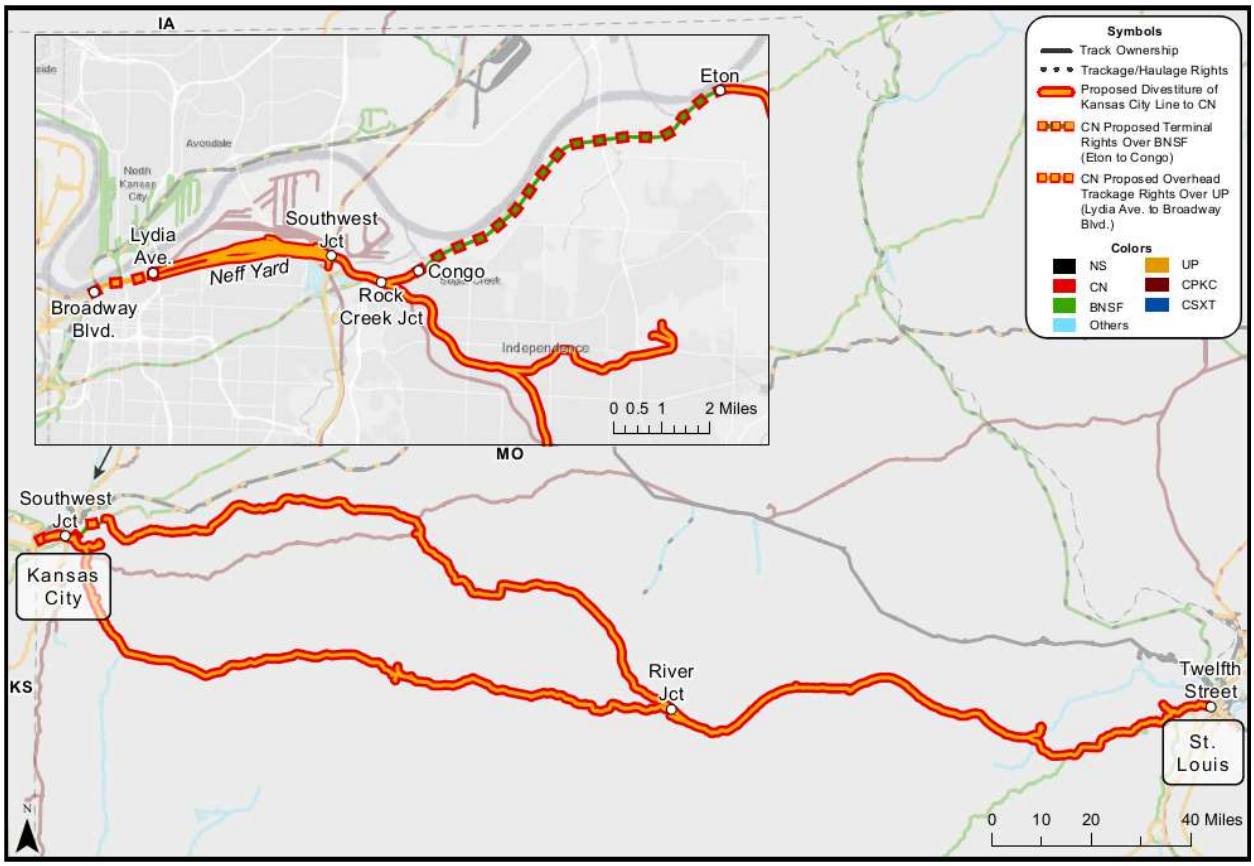
competition lost between UP and NS. CN will be able to compete to serve existing routes either directly or by interlining with additional railroads in a manner similar to how UP and NS currently compete with each other. CN will also be able to provide new customer and export options along the CN network that may not have been competitive in the past without CN having direct access to the customer.

B. THE PROPOSED CONDITIONS PROVIDE A SOLUTION TO THE KEY OVERLAPPING CORRIDOR BETWEEN ST. LOUIS AND KANSAS CITY

152. The divestiture of the Kansas City Line, coupled with CN's improved access to customers in both areas, will provide a solution to the horizontal concerns arising for traffic on corridors involving the Kansas City and St. Louis BEAs. This includes the 30 corridors involving Kansas City or St. Louis BEAs identified as 2-to-1 or 3-to-2 corridors based on the 2019 - 2024 traffic with {{ }} carloads of UP and NS traffic.[218] On these corridors, CN will be a new market entrant that can replace the competition between UP and NS that will be lost post-merger. Figure 25 below identifies the proposed divestiture of the Kansas City Line to CN.

[218] *See* my Workpaper, "Figure 10 and 11.xlsx".

Figure 25: Proposed Divestiture of Kansas City Line to CN



Sources: Federal Railroad Administration Shapefiles; Railinc Centralized Station Master.

153. As discussed above in § V.B, the St. Louis to Kansas City segment is important to traffic originating from or destined to St. Louis or Kansas City for affected corridors and/or commodities. For example, for traffic coming from customers in the St. Louis BEA through Kansas City to points west, CN would originate the traffic in St. Louis, transport it on this segment to Kansas City and then interchange with another rail carrier to take the product further west, just as NS does today. Similarly for traffic coming from customers in the Kansas City BEA through St. Louis to points east, CN would originate traffic in Kansas City, transport it on this segment to St. Louis and then interchange with another rail carrier to take the product further east, just as UP does today. As a result, these access conditions would not only replace the competition between UP and NS, but also give shippers on these corridors access to additional routings not currently available. CN could serve some traffic directly and also partner with other railroads to serve these corridors in the same manner in which they operate today.

154. Consider, for example, the Kansas City BEA to Buffalo-Niagara Falls, NY-PA BEA corridor discussed in § V.C above. In 2023, NS, BNSF, and UP originated shipments in Kansas City on this corridor from customers such as {{ }}, {{ }}, and {{ }}. The conditions CN seeks for improved access in Kansas City include access to customers covered in reciprocal switching tariffs of UP, KCT, and NS and the use of Neff Yard for the service of manifest, intermodal, and automotive traffic. With these conditions, CN will be positioned to compete for each of these customers' traffic, preserving a Class I option on the corridor.[219]

155. On this corridor, {{

}}.[220] For this corridor, and for others from Kansas City that would traverse the parallel UP or NS lines, the lost competition is most directly tied to UP and NS competing for transportation over the Kansas City to St. Louis segment. UP does not compete with NS for the entire movement to Buffalo, but rather for the service between Kansas City and its interchange point with CSXT in East St. Louis. In this case, the customer separately negotiated its terms with CSXT for transportation at interchange in East St. Louis from UP to Buffalo as Rule 11 traffic. CN's conditions for a divestiture of the Kansas City Line, coupled with CN's improved access to serve customers in those areas, will allow CN to replace the lost competition between UP and NS for corridors that use this segment.

156. A divestiture of this line from UP is the most effective remedy for this harm. If UP were to maintain ownership of the line, then it will have less incentive to maintain and invest in its capabilities, particularly if the combined UP-NS entity shifts its traffic to the NS route between Kansas City and St. Louis. A divestiture, on the other hand, would allow CN to invest in the line to compete most effectively with the combined UP-NS entity in the Kansas City BEA. In addition, CN will be less reliant on UP to perform its operations – CN can avoid entanglements related to its operating agreements which could cause disruptions. UP and CN also would share less information with each other – e.g. information about customers and service that may be

219 *See* my Workpaper, "In-Text Figures.py."

220 *See* my Workpaper, "In-Text Figures.py."

sensitive but necessary disclosures to facilitate ongoing relationships. Furthermore, as the owner of the line, CN would have full incentive to compete effectively in the markets it will serve without having to pay ongoing fees related to access.

157. In addition, I understand that if the Board believes it is necessary to preserve competition, CN is willing to jointly acquire the Kansas City Line with another Class I carrier, as long as the combined UP-NS entity does not retain any ownership stake after the Proposed Transaction. CN also plans to grant UP overhead trackage and local haulage rights over the Kansas City Line to ensure that no customers on the Kansas City Line lose an existing option.[221]

158. If CN's proposed conditions are granted, these customers will not lose any options for service–the combined UP-NS entity would now compete for these customers' traffic along the segment with CN.

C. THE PROPOSED CONDITIONS PROVIDE A SOLUTION TO TRAFFIC FACING POTENTIAL SOURCE AND DESTINATION COMPETITION CONCERNS

159. CN's access to customers in the Kansas City area, its additional access to the customers in the St. Louis area, and its improved routing options to reach these markets will provide a solution to the horizontal concerns arising from reduced source and destination competition. These include the 29 originating BEA-commodity pairs identified with potential concerns related to destination competition with {{ }} carloads of UP and NS traffic and 27 terminating BEA-commodity pairs identified with potential concerns related to source competition with {{ }} carloads of UP and NS traffic in the Kansas City and St. Louis areas. These commodities include:

- Commodities shipped using intermodal service (e.g. STCC 4611, Freight All Kinds),
- Automotive commodities (e.g. STCC 3711, Motor Vehicles and STCC 3714 Motor Vehicle Parts Or Accessories),
- Metal and mineral commodities (e.g. STCC 3274 Lime or Lime Plaster and STCC 4021 Metal Scrap or Tailings),

[221] CN-38, FD 36873 "CN's Comments on Amended Application and Request for Conditions" at 9-10 and Figure 1 (filed Nov. 18, 2026).

- Petroleum and chemical commodities (e.g., STCC 2899 Chemical Preparations, Nec and STCC 2911 Petroleum Refining Products), and
- Grain and fertilizer commodities (e.g., STCC 2041 Flour or Other Grain Mill Products, STCC 2042 Prepared Or Canned Feed, STCC 2871 Fertilizers, and STCC 2812 Potassium or Sodium Compound or Potash).[222]

160. These source and destination competition concerns arise because UP and NS each handle a significant share of this traffic and combined would handle more than 50% of the originations and terminations in these BEAs. The Proposed Transaction would eliminate competition between UP and NS to handle this traffic. An appropriate remedy should therefore provide a new rail competitor for this traffic, so that customers have options that do not rely on UP or NS, and so that a new competitive restraint replaces the one the Proposed Transaction would remove. CN's conditions are designed to do exactly that.

161. Consider, for example, the Motor Vehicles traffic (STCC 3711) originating in Kansas City discussed in § VI.D above. CN's ability to operate at Neff Yard and extensive automotive experience will allow it to compete for {{ }} rail traffic. Motor Vehicles traffic from {{ }} Kansas City plants can be driven or trucked to the Neff Yard location for origination on CN. CN can then transport that traffic across its network to customers demanding those products, including other {{ }} locations CN currently services, or to port facilities for export to overseas markets. Many of these opportunities are currently not competitive options for {{ }}, but the proposed conditions would allow CN to offer these competitive options to replace competition lost between UP and NS.

162. Similarly, for shippers of Flour or Other Grain Mill Products (STCC 2041) originating in St. Louis discussed in § VI.D above, the proposed conditions would allow for CN to offer new options within its existing grain network and capabilities that would replace competition lost between UP and NS. Customers of each of the commodities identified with potential concerns due to a loss of source and destination competition would benefit from the additional options that CN could offer them.

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222 *See* my Workpaper, "Figure_15 and 17.xlsx."

VIII. CN WOULD BE AN EFFECTIVE REMEDY CARRIER TO COMBAT THESE CONCERNS

A. CN'S NETWORK EXTENDS AROUND THESE AREAS OF CONCERN AND WILL BE A NATURAL ADJACENT EXTENSION OF ITS OPERATIONS

163. CN's existing network throughout the United States encompasses the areas affected by the proposed conditions, which will allow CN to expand there with minimal disruption to their operations. CN currently operates in eight of the ten BEAs where UP and NS overlap, and the proposed conditions will allow CN to operate in all ten.[223] The proposed conditions will provide CN access to the Kansas City, MO-KS and Columbia, MO BEAs connected through St. Louis, MO, while also strengthening CN's capabilities around St. Louis. In Illinois, CN already employs 1,610 railroaders to support their operations and operates 1,245 route miles.[224] CN has 168 interchange junctions with other railroads throughout Illinois, connecting with all 5 Class I railroads and 38 regional and shortline railroads throughout the state.[225] CN's U.S. operations are centered in the Chicago area including the U.S. headquarters campus in Homewood and the U.S. mechanical hub Markham Yard and Harris Shop.[226] Since CN's base already exists in Illinois, they could readily provide crews, equipment and capacity to respond to service disruptions and unexpected capacity constraints.

164. Across the United States and Canada, CN's network spans 18,600 route miles and provides customers access to markets across seven major ports on three coasts.[227] Figure 26 below describes the volumes that CN originates and terminates in each state, along with the number of stations CN is able to serve within each state. CN extensively serves customers in the Midwest and in the overlap areas of UP and NS, including Illinois, Iowa, Tennessee, Louisiana, Wisconsin, and Michigan.

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223 *See* Bailey Amended Statement Workpaper "Appendix D1, D2.xlsx."

224 *See Network Fact Sheets (Illinois)*, CN, https://www.cn.ca/en/delivering-responsibly/community/network-and-facts (last visited Nov. 17, 2026).

225 *See* my Workpaper "VIII. CN interchanges in IL.do."

226 *See Network Fact Sheets (Illinois)*, CN, https://www.cn.ca/en/delivering-responsibly/community/network-and-facts (last visited Nov. 17, 2026).

227 *See 2026 CN Investor Fact Book*, CN, https://www.cn.ca/-/media/files/investors/investor-fact-book/2026-cn-investor-fact-book-en.pdf (last visited Nov. 17, 2026).

Figure 26: CN Customer Originations and Terminations within United States

State	CN Origination Volume	CN Termination Volume	Number of Stations
MN	{{ }}	{{ }}	{{ }}
IL	{{ }}	{{ }}	{{ }}
LA	{{ }}	{{ }}	{{ }}
WI	{{ }}	{{ }}	{{ }}
MI	{{ }}	{{ }}	{{ }}
TN	{{ }}	{{ }}	{{ }}
IA	{{ }}	{{ }}	{{ }}
MS	{{ }}	{{ }}	{{ }}
IN	{{ }}	{{ }}	{{ }}
OH	{{ }}	{{ }}	{{ }}
PA	{{ }}	{{ }}	{{ }}
AL	{{ }}	{{ }}	{{ }}
ME	{{ }}	{{ }}	{{ }}
KY	{{ }}	{{ }}	{{ }}
NY	{{ }}	{{ }}	{{ }}
MO	{{ }}	{{ }}	{{ }}
VT	{{ }}	{{ }}	{{ }}
NE	{{ }}	{{ }}	{{ }}
NH	{{ }}	{{ }}	{{ }}

B. CN SERVES MANY CUSTOMERS OF THESE COMMODITIES ON THEIR NETWORK IN CLOSE PROXIMITY

165. CN already serves many of the commodities identified as having potential horizontal concerns. The existing U.S. customers that CN serves are located throughout its U.S. network, both in and around areas that UP and NS overlap. These customers are served directly by CN and offer options for source and destination competition that can replace the competition lost between UP and NS as a result of the Proposed Transaction.

166. As described in § VI.B, 24 unique commodities exceed the 50/10 screen for originations in the Kansas City or St. Louis BEAs, and 22 exceed the 50/10 screen for terminations. For each of these commodities, the relevant question is whether the remedy railroad could offer shippers and receivers competitive alternatives to replace the competition between UP and NS. CN's existing customer base indicates that it can. For traffic flagged by the 50/10 screen originating in

the Kansas City or St. Louis BEAs, CN provides terminating service for all 24 commodities within its U.S. network. Of the 22 unique commodities exceeding the 50/10 screen for terminations in the Kansas City or St. Louis BEAs, CN provides originating service to shippers of all 22 of those commodities within its U.S. network. These options – along with CN's export capabilities, producers and receivers in their Canadian network, and partnerships with other railroads – will allow CN to compete for the traffic affected by a loss in competition from the Proposed Transaction.

167. In Figure 27 below, I identify the top 25 BEAs where CN performed the most originations and terminations of this traffic, along with the number of CN stations in each BEA that served this traffic.[228] These are areas and CN stations that could provide alternative source and destination competition for the traffic with potential source and destination competitive concerns.

[228] Figure 15 identifies the commodities I examine for CN terminating service. Figure 17 identifies the commodities I examine for CN originating service.

Figure 27: CN Originations and Terminations of Flagged Traffic

	Flagged Commodities Serviced by CN		
BEA of CN Network	**Originations**	**Terminations**	**FSACs**
Chicago-Gary-Kenosha, IL-IN-WI	{{ }}	{{ }}	{{ }}
Detroit-Ann Arbor-Flint, MI	{{ }}	{{ }}	{{ }}
Baton Rouge, LA-MS	{{ }}	{{ }}	{{ }}
Memphis, TN-AR-MS-KY	{{ }}	{{ }}	{{ }}
New Orleans, LA-MS	{{ }}	{{ }}	{{ }}
Jackson, MS-AL-LA	{{ }}	{{ }}	{{ }}
Green Bay, WI-MI	{{ }}	{{ }}	{{ }}
Indianapolis, IN-IL	{{ }}	{{ }}	{{ }}
Wausau, WI	{{ }}	{{ }}	{{ }}
Minneapolis-St. Paul, MN-WI-IA	{{ }}	{{ }}	{{ }}
Des Moines, IA-IL-MO	{{ }}	{{ }}	{{ }}
La Crosse, WI-MN	{{ }}	{{ }}	{{ }}
Champaign-Urbana, IL	{{ }}	{{ }}	{{ }}
Appleton-Oshkosh-Neenah, WI	{{ }}	{{ }}	{{ }}
Milwaukee-Racine, WI	{{ }}	{{ }}	{{ }}
St. Louis, MO-IL	{{ }}	{{ }}	{{ }}
Sioux City, IA-NE-SD	{{ }}	{{ }}	{{ }}
Toledo, OH	{{ }}	{{ }}	{{ }}
Mobile, AL	{{ }}	{{ }}	{{ }}
Grand Rapids-Muskegon-Holland, MI	{{ }}	{{ }}	{{ }}
Duluth-Superior, MN-WI	{{ }}	{{ }}	{{ }}
Cedar Rapids, IA	{{ }}	{{ }}	{{ }}
Peoria-Pekin, IL	{{ }}	{{ }}	{{ }}
Madison, WI-IA-IL	{{ }}	{{ }}	{{ }}
Bangor, ME	{{ }}	{{ }}	{{ }}

C. CN'S CAPABILITIES AROUND THESE COMMODITIES

168. The Verified Statements of CN executives describe CN's substantial experience and capabilities serving traffic with potential horizontal concerns. I highlight a few points of the Verified Statements reflecting these capabilities below. In these statements, CN officials have described CN's capabilities to be an effective remedy carrier both for the traffic identified as facing horizontal concerns and for other traffic originating or terminating in the Kansas City and St. Louis areas that the Proposed Transaction could also affect.

1. Grain Traffic

169. David Przednowek, Assistant Vice President of Grain for CN, describes how the Proposed Conditions would allow CN to efficiently service grain customers in Kansas City, St. Louis, and Des Moines areas.[229] Mr. Przednowek details examples of numerous investments that CN makes in infrastructure to support grain business and describes the success CN has serving grain customers throughout the US.[230] He explains that the Proposed Condition's access to the 2-to-1 and 3-to-2 customers and trackage rights between Manly and Des Moines will allow CN to offer service to several grain customers in the Des Moines area and connect them to CN's network.[231] These customers include grain elevators, soybean processors, and food and feed manufacturers.[232] He also explains that the access over the UP line between Tuscola and East St. Louis will provide a much more efficient routing to offer more competitive service to grain customers in the St. Louis area, included to barge facilities on the Mississippi River.[233] Additionally, Mr. Przednowek describes that, with access to Kansas City enabled by the Proposed Conditions, CN will be able to compete and offer new grain opportunities to customers in the Kansas City area.[234]

2. Coal, Potash, and Sulfur Traffic

170. Sandra Ellis, Vice President of Bulk for CN, describes how the Proposed Conditions allow CN to be an effective alternative option for 2-to-1 customers Foresight Energy in Hillsboro IL and Macoupin Energy near Carlinville, IL.[235] Ms. Ellis describes CN's existing relationship with the parent owner Foresight Energy and CN's network and capabilities to serve that coal traffic to its current destinations.[236] Ms. Ellis also describes new coal opportunities that CN could

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229 Verified Statement of David Przednowek (November 18, 2026) at 3–6 [hereinafter "Przednowek V.S."].

230 Przednowek V.S. at 77–8.

231 Przednowek V.S. at 10–16.

232 Przednowek V.S. at 10.

233 Przednowek V.S. at 16–18.

234 Przednowek V.S. at 19-21.

235 Verified Statement of Sandra Ellis (November 18, 2026) at 5–10 [hereinafter "Ellis V.S."].

236 Ellis V.S. at 8–10.

competitively offer to Foresight with their access, including transportation to Gulf export terminals, river transload facilities, and utilities on the CN network.[237]

171. Ms. Ellis also describes CN's capabilities transporting potash and other fertilizers needed by customers in the Kansas City and Midwest regions.[238] The Proposed Conditions would allow CN to improve service to Kansas City and serve local customers along the Kansas City Line.[239] Trackage rights over the Tuscola Line would allow CN to offer more competitive service to customers in the St. Louis area as well.[240] Ms. Ellis also describes CN's capabilities for customers of sulfur products and similar competitive benefits to customers in the Kansas City and St. Louis areas.[241]

3. Intermodal Traffic

172. Girish Nair, Vice President of Intermodal & Automotive for CN, describes how the Proposed Conditions would allow CN to compete in the Kansas City and St. Louis areas for intermodal traffic. Mr. Nair describes CN's intermodal capabilities as covering 23 intermodal terminals across North America and three coasts, a fleet that can support a range of products, and efficient operations that are resilient to disruptions.[242] Mr. Nair describes that access to Kansas City and the use of Neff Yard, more efficient routing enabled by the trackage rights between Tuscola and East St. Louis, and the use of Sarpy Yard in St. Louis would allow CN to immediately begin intermodal operations to compete for business with the merged UP-NS entity in those areas.[243] Mr. Nair describes this as opening "new doors for intermodal customers" and identifies several opportunities CN anticipates competing for in that area.[244]

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237 Ellis V.S. at 8–9.

238 Ellis V.S. at 11–12.

239 Ellis V.S. at 13–14.

240 Ellis V.S. at 14–15.

241 Ellis V.S. at 15–16.

242 Nair V.S. at 3–6.

243 Nair V.S. at 7–11.

244 Nair V.S. at 11–15.

4. Automotive Traffic

173. Sarah Slazinski, Assistant Vice President of Automotive for CN, describes how the Proposed Conditions would allow CN to compete in the Kansas City area for automotive traffic. Ms. Slazinski describes CN's existing automotive customer base and their reach to major population centers in Canada, the U.S. Midwest, and the Gulf region.[245] She details recent investments in this business including opening a new automotive and intermodal terminal in New Richmond, WI in 2021 and opening a new automotive facility in New Orleans following a closure of NS operations.[246] She also highlights CN's extensive customer service and ability to work with customers to meet their rail needs.[247] Ms. Slazinski describes that access to Kansas City and the use of Neff Yard, along with the more efficient routing enabled by the trackage rights between Tuscola and East St. Louis, would allow CN to offer competitive options to automotive customers.[248]

5. Metals and Minerals Traffic

174. Kelly Levis, Vice President of Industrial Products for CN, describes how the Proposed Conditions would allow CN to compete for customers of metals and minerals products affected by the Proposed Transaction. She describes CN's capabilities in serving steel, aluminum, iron ore, and base metal ore products.[249] She describes that the Proposed Conditions will enable CN to access 2-to-1 and 3-to-2 customers of these products as well as other customers located in the Kansas City and St. Louis areas, allowing CN to compete for these customers' traffic. [250]

D. CN'S RECENT ACQUISITION OF IOWA NORTHERN DEMONSTRATES ITS SUCCESS WITH EXPANSIONS

175. As an example of CN's ability to compete in new markets, David Przednowek also detailed CN's success in acquiring and integrating the Iowa Northern Railway Company to the

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245 Slazinski V.S. at 3–6.

246 Slazinski V.S. at 5.

247 Slazinski V.S. at 5–6.

248 Slazinski V.S. at 9–16.

249 Verified Statement of Kelly Levis (November 18, 2026) at 3–5 [hereinafter "Levis V.S."].

250 Levis V.S. at 5–8.

benefit of consumers.[251] The Proposed Conditions provide a similar opportunity to that of acquiring Iowa Northern in terms of new markets, customers, and opportunities to expand and improve operations. CN invested in infrastructure, equipment, and service quality within the legacy Iowa Northern network to provide better service and devoted additional resources to support new customers by providing options to existing and new markets at competitive prices, all while preserving access to alternative gateways.[252] As a result, grain traffic has grown while operations and transit times have improved to the benefit of the customers.[253]

E. DIVERSION RESULTS

176. I understand that Dr. Henry Kahwaty has developed a diversion model to estimate traffic that CN expects to gain as a result of the Proposed Conditions.[254] This includes traffic I have identified as likely to face competitive harms as a result of the Proposed Transaction, that the Proposed Conditions are designed to address. These results for Dr. Kahwaty's Rail-To-Rail Diversion Analysis are presented in Figure 28 below.[255]

Figure 28: Estimated Diverted Rail Traffic to CN as a Result of the Proposed Conditions[256]

Business Unit	Diverted Volume
General Merchandise	8,549
Intermodal	20,096
Bulk	6,559
Auto	8,389
Total	**43,593**

177. Dr. Kahwaty's results indicate that, as a result of the Proposed Conditions, many customers facing competitive harms due to the Proposed Transaction would choose a CN option

251 Przednowek V.S. at 8–9.

252 Przednowek V.S. at 8-9.

253 Przednowek V.S. at 9.

254 Verified Statement of Henry J. Kahwaty (November 18, 2026) [hereinafter "Kahwaty V.S."], §§ VI-VII.

255 I note that Dr. Kahwaty also identifies additional diversions likely to result from trucking modes and from the Port of Montreal as a result of the Proposed Conditions. *See* Kahwaty V.S.at Table 1 for additional details.

256 Kahwaty V.S. at Table 1.

enabled by the Proposed Conditions over the combined UP-NS entity and other railroad options. He identifies diverted traffic for various commodities that face competitive harms – including intermodal, auto, grain, potash, metals & minerals, and coal.[257]

IX. SUMMARY

178. The Proposed Transaction presents horizontal competitive concerns. It will reduce some individual customers' access to Class I railroads from 2-to-1 or 3-to-2, will reduce competition in areas where UP and NS overlap, and will reduce within corridor and between corridor railroad competition related to the Kansas City and St. Louis BEAs. The Applicants' Expert, Dr. Elizabeth Bailey, has identified some of the potential harms, but her assumptions and analytical methods cause her to under-identify harms and dismiss the potential harm to certain traffic.

179. CN's Proposed Conditions will remedy the loss of competition from the Proposed Transaction in key areas and prevent the harms I have identified. The Proposed Conditions: (1) provide a remedy for customer facilities facing a reduction in Class I railroad options from 2-to-1 or 3-to-2 and for the Kansas City and St. Louis SPLCs, which would otherwise experience significant concentration; (2) provide a solution to the horizontal concerns arising for traffic on corridors involving the Kansas City and St. Louis BEAs; and (3) provide a solution to traffic facing potential source and destination competition concerns. CN's request for a divestiture of the Kansas City Line would allow CN to independently operate and compete most effectively with the combined UP-NS entity in the Kansas City and St. Louis BEAs.

180. CN would be an effective remedy carrier. Its network extends around the areas of concern so that the conditions provide a natural extension of the CN network. In addition, CN has the infrastructure and experience handling the commodities that are at issue in the affected areas and can offer options for source and destination competition that can replace the competition lost due to the Proposed Transaction. CN's acquisition and integration of the Iowa Northern Railway Company, which similarly involved new market opportunities, customers, and opportunities to expand and improve operations, demonstrates that CN would be a strong remedy carrier to address the horizontal competitive issues.

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257 Kahwaty V.S. at ,§ VII. These include commodities discussed in § VI above facing concerns related to source and destination competition.

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

Executed on this 18th day of November, 2026.

Mary Coleman, Ph.D.

Appendix A

MARY T. COLEMAN, PhD

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AREAS OF EXPERTISE

- Antitrust Agency Investigations
- Competitive effects of mergers and acquisitions
- Antitrust litigation including price fixing, monopolization claims and horizontal and vertical agreements

INDUSTRIES OF EXPERTISE

- Building Materials
- Chemicals
- Consumer Products
- Energy
- Entertainment
- Food/Agriculture
- Healthcare/Veterinary Services
- Manufacturing
- Medical Devices
- Pharmaceuticals
- Publishing
- Retail
- Tech Hardware and Software
- Telecom
- Transportation

EDUCATION

1990, *PhD in Economics*, Stanford University

Dissertation: "Movements in the Earnings-Schooling Relationship: 1940 – 1988" Advisor: Professor John Pencavel, Department of Economics

1986, *BA in Economics, summa cum laude*, Stonehill College

PROFESSIONAL EXPERIENCE

2025 - Present, *Senior Managing Director and Head of US Antitrust Practice*, Compass Lexecon, Boston, MA 2013 - 2025, *Executive Vice President*, Compass Lexecon, Boston, MA

2009 - 2013, *Senior Vice President*, Compass Lexecon, Boston, MA

2004 - 2009, *Director/Managing Director of Mergers and Acquisitions Practices*, LECG, LLC, Washington, DC 2002 - 2004, *Deputy Director for Antitrust*, Bureau of Economics, Federal Trade Commission

2001 - 2002, *Associate Director for Competitive Analysis*, Bureau of Economics, Federal Trade Commission 2000 - 2001, *Practice Director, Mergers and Acquisitions Group*, LECG, LLC, Washington, DC

1993 - 2000, *Senior Economist/Principal*, LECG, LLC, Washington, DC

1990 - 1993, *Economist*, Bureau of Economics, Federal Trade Commission, Washington, DC

TESTIMONY

Trial and deposition testimony: *In re Carnival v. DeCurtis Corporation and DeCurtis LLC,* U.S. Dist. Court, Civil Action N. 20-22945-CIV-SCOLA, Southern District of Florida. Provided expert oral testimony regarding patent and antitrust claims, 2021. Litigation win.

Deposition testimony: *In re Online DVD Rental Antitrust Litigation*, U.S. Dist. Court, M:09-cv-2029 PJH, 2010. Case won on summary judgement.

Submission of expert affidavit in settlement hearing in *Shawn Sullivan et al v. DB Investments Inc., De Beers SA et al*, Civil Action Index No. 04-02819, United States District Court, District of New Jersey (2008).

FTC Hearing testimony, "'Oil Pipelines' Effects on Refined Products Prices," Federal Trade Commission Conference, *Factors that Affect Prices of Refined Petroleum Products,* August 2, 2001.

PUBLICATIONS AND PAPERS

"PBMs and Prescription Drug Distribution: An Economic Consideration of Criticisms Levied Against Pharmacy Benefit Managers," with Dennis W. Carlton, Nauman Ilias, Theresa Sullivan, and Nathan Wilson, research funded by Caremark, Express Scripts, and Optum Rx, October 2024.

"Economic Analysis of Merger Remedies," with David Weiskopf, jointly authored chapter Global Competition Review's *Guide to Merger Remedies, 2020*.

"Joint Purchasing: Efficiency Enhancing or Cause for Concern? It Depends?" with Jonathan Bowater, submission for ABA Antitrust Section Spring Meeting 2020.

"Summary of Selected Literature re: Product Hopping and REMS," with John Hore and David Weiskopf, submission for Antitrust in Healthcare Conference, May 2018

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"Economic Analysis of Merger Remedies," with David Weiskopf, jointly authored chapter Global Competition Review's, *Guide to Merger Remedies, 2018*.

"Are Pharmaceutical Companies Product Hopping Down an Anti-Competitive Trail?", submission for Antitrust in Health Care Conference, May 2014.

"Buyer Power in Merger Review" with Dennis Carlton and Mark Israel, jointly authored chapter in *The Oxford Handbook of International Antitrust Economics* 529-550 (R. Blair and D. Sokol ed.), 2014.

Co-editor (with Bruce Hoffman) of ABA's Section of Antitrust Law, *Market Power Handbook*, 2012.

"Market Definition in Consumer Products Industries," with David Weiskopf, jointly authored chapter in ABA Section of Antitrust Law, *Market Definition Handbook*, 2012.

"Natural Experiments," with James Langenfeld, in 1 Issues in Competition Law and Policy 743 (ABA Section of Antitrust Law 2008).

"Key Issues in Proving Unilateral Effects after Oracle," *Antitrust*, Spring 2005, 19(2), p. 26-30.

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"The Use of Natural Experiments in Antitrust Analysis," presented at ABA Fall Forum, November 2004, available upon request.

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"Dialogue and Consultation Facilitates Convergence in Analyses of Mergers in the EU and US," *ABA M&A Committee Newsletter*, 2003, http://www.ftc.gov/be/convergence.pdf

"Quantitative Analyses of Potential Competitive Effects from A Merger," with David Scheffman, 2003, George Mason Law Review, Winter 2003, 12, p. 319-370.

"Best Practices for Interacting with the Federal Trade Commission, Re: Data and Empirical Analyses in Antitrust Investigations," *ABA Economics Committee Newsletter*, 2003, http://www.ftc.gov/be/bestpractices.pdf

"FTC Perspectives on the Use of Econometric Analyses in Antitrust Cases," with David Scheffman, 2002, http://www.ftc.gov/be/ftcperspectivesoneconometrics.pdf

"Current Economic Issues at the FTC" with David Scheffman, *Review of Industrial Organization*, 21: 357-371, 2002.

"Oil Pipelines' Effects on Refined Products Prices," with George Schink and James Langenfeld, presented Federal Trade Commission conference, *Factors that Affect Prices of Refined Petroleum Products*, August 2, 2001.

"The Meaning of Monopoly: Antitrust Analysis in High Technology Industries," with David Teece, *Antitrust Bulletin*, Fall/Winter 1998, p. 801-857.

The Merger Guidelines in the United States, Australia and New Zealand: An Economic Perspective," with Christopher Pleastsikas and David Teece, *Trade Practices Journal*, 6(3), September 1998, pp. 153 – 171.

"Antitrust Analysis and remedies in high-tech industries," with James Langenfeld, *Global Competition Review*, June/July 1998, pp. 42 – 43.

"Movements in the Earnings-Schooling Relationship: 1940-1988," *Journal of Human Resources*, July 1993, pp. 660 – 680.
"Trends in Market Work Behavior of Women Since 1940," with John Pencavel, *Industrial and Labor Relations Review*, July 1993, pp. 653 – 676.

"Changes in Work Hours of Male Employees Since 1940," with John Pencavel, *Industrial and Labor Relations Review*, January 1993, pp. 262 – 283.

"Small Children, Small Pay: Why Child Care Pays So Little," with Victor Fuchs, *American Prospect*, Winter 1990.

MEMBERSHIPS IN PROFESSIONAL SOCIETIES

Associate Member, Antitrust Section, American Bar Association (Vice Chair, Finance Committee, Former Chair Women.Connected Committee and Economics Committee)

AWARDS AND HONORS

Lexology (formerly *Who's Who Legal)* – Thought Leader in Competition

Global Competition Review

Appendix B

List of Materials Considered

Applicants' Submissions

1. UP-1/NS-1, FD 36873 (filed July 30, 2025).
2. UP-13/NS-11, FD 36873 (filed Dec. 19, 2025).
3. UP-39/NS-37, FD 36873 (filed Apr. 30, 2026).
4. UP-68/NS-66, FD 36873 (filed July 7, 2026).
5. UP-80/NS-78, FD 36873 (filed July 27, 2026).

CN's Filings

1. CN-6, FD 36873 (filed Dec. 29, 2025).
2. CN-15, FD 36873 (filed May 8, 2026).
3. CN-38, FD 36873 "CN's Comments on Amended Application and Request for Conditions" (filed Nov. 18, 2026).

Verified Statements

Amended Application Verified Statements

1. Am. Appl. Vol. 2, Verified Statement of David T. Hunt (April 29, 2026).
2. Am. Appl. Vol. 2, Verified Statement of Dr. Elizabeth Bailey (April 27, 2026).
3. Am. Appl. Vol. 2, Verified Statement of Mark A. Israel (April 24, 2026).
4. Applicants' Second Supplemental Submission, Supplemental Verified Statement of Dr. Elizabeth Bailey (July 17, 2026).

CN Application Verified Statements

1. Verified Statement of Dr. Mary Coleman (December 29, 2025).
2. Verified Statement of Dr. Mary Coleman (May 8, 2026).
3. Verified Statement of David Przednowek (November 18, 2026).
4. Verified Statement of Girish Nair (November 18, 2026).
5. Verified Statement of Henry J. Kahwaty (November 18, 2026).
6. Verified Statement of Kelly Levis (November 18, 2026).
7. Verified Statement of Sandra Ellis (November 18, 2026).
8. Verified Statement of Sarah Slazinski (November 18, 2026).

Prior Verified Statements

1. Verified Statement of Christopher A. Vellturo, *Canadian National Railway Company, Grand Trunk Corporation, and WC Merger Sub, Inc. – Control – Wisconsin Central*

Transportation Corporation, Wisconsin Central Ltd, Fox Valley & Western Ltd, Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link Ltd., FD 34000 (Apr. 6, 2001).
2. Verified Statement of Christopher A. Vellturo, *Canadian National Railway Company and Grand Trunk Corporation – Control – EJ&E West Company*, FD 35087 (Oct. 29, 2007).
3. Verified Statement of W. Robert Majure, FD 36500 (Oct. 29, 2001).

STB/ICC Decisions

1. Decision No. 9, FD 36873 (STB served Jan. 16, 2026).
2. Decision No. 21, FD 36873 (STB served May 28, 2026).
3. Decision No. 11, *Canadian Pac. Ry.—Control—Dakota, Minn. & E. R.R.*, FD 35081, slip op. (STB served Sep. 30, 2008).
4. Decision, *CSX Corp.—Control & Merger—Pan Am Sys., Inc.*, FD 36472, slip op. (STB served May 26, 2021).
5. *Burlington Northern Inc.—Control and Merger—Santa Fe Pacific Corp.*, 10 I.C.C.2d 661, 728 (1995).
6. *Major Rail Consol. Proc.*, 5 S.T.B. 539, 561 (2001).
7. *Mkt. Dominance Streamlined Approach*, EP 756, slip op. (STB served Aug. 3, 2020).
8. *Rail Gen. Exemption Auth.—Exemption of Hydraulic Cement*, Ex Parte No. 346 (Sub-No. 34) (STB served Dec. 4, 1996).
9. *Rail Gen. Exemption Auth.—Transp. Equip*, 9 I.C.C.2d 1, 1–2 (1992).
10. *Reciprocal Switching for Inadequate Serv.*, EP 711 (Sub-No. 2), slip op. (STB served Apr. 30, 2024).
11. *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, 1 S.T.B. 233, 365 (1996).
12. *WTL Rail Corp.—Petition for Partial Revocation of Exemption*, Ex Parte No. 230 (Sub-No. 9), slip op. (STB decided Feb. 15, 2006).

Depositions

1. Transcript of Elizabeth Bailey Deposition (Oct. 29, 2026).
2. Transcript of Jeffrey Pincock Deposition (Oct. 8, 2026).

Dr. Bailey's Amended Application Workpapers

1. Appendix D1, D2.xlsx.
2. Class 1 Reductions Carloads.xlsx.
3. Exhibit 12.xlsx.
4. SCRS 3-to-2 and 2-to-1 customer notes.xlsx.
5. UPRR_SCRS_Full_Desc_20250815.txt.

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1. *2026 CN Investor Fact Book*, CN, https://www.cn.ca/-/media/files/investors/investor-fact-book/2026-cn-investor-fact-book-en.pdf.
2. 49 U.S.C..
3. *Choosing a Rail Served Site*, NS, https://www.norfolksouthern.com/en/rail-development-property/industrial-rail-development/site-location-services/choosing-a-rail-served-site.
4. Chuck Marias, *Freight Customers Will Always Have Competitive Options*, UP-NS (Oct. 20, 2026) https://www.up-nstranscontinental.com/news-details/freight-customers-will-always-have-competitive-options/.
5. CN, *CN's Acquisition of Iowa Northern Approved by STB* (Jan. 14, 2025), https://www.cn.ca/en/news/2025/01/cns-acquisition-of-iowa-northern-approved-by-stb.
6. CN, *Union Pacific and CN Reach Agreement to Expand Customer Opportunities in Connection with Merger*, (July 22, 2026), https://www.cn.ca/en/news/2026/07/union-pacific-and-cn-reach-agreement-to-expand-customer-opportun/.
7. CPKC, *Canadian Pacific and Kansas City Southern Combine to Create CPKC*, (Apr. 14, 2023) https://investor.cpkcr.com/news/press-release-details/2023/Canadian-Pacific-and-Kansas-City-Southern-combine-to-create-CPKC/default.aspx.
8. CSX, *CSX Completes Acquisition of Pan Am Railways* (June 1, 2022), https://www.csx.com/index.cfm/about-us/media/press-releases/csx-completes-acquisition-of-pan-am-railways/.
9. David Lassen, *CEOs of UP, NS, say latest additions to merger application further enhance competitive aspects*, TrainsPro, https://www.trains.com/pro/freight/class-i/ceos-of-up-ns-say-latest-additions-to-merger-application-further-enhance-competitive-aspects/.
10. *Evansville Western Railway*, https://evwr.com/.
11. *Final Redefinition of the BEA Economic Areas*, Bureau of Transportation Statistics, https://www.bts.gov/archive/publications/federal_register/1995/bts_19950310.
12. *Focus Sites on the Union Pacific Network*, UP, https://www.up.com/shipping/connect-to-rail/premier.
13. Foresight Energy, *Operations*, https://www.foresight.com/operations/.
14. *Freight Tariff (TRRA 3023-V)*, Terminal Railroad Association of St. Louis (effective January 1, 2026).
15. Jim Vena, UP Q2 2026 Earnings Call (July 23, 2026), https://fortune.com/company/union-pacific/earnings/q2-2026/.
16. *Local Switching and Terminal Tariff (KCTL 8036-A)*, Kansas City Transportation Company (effective February 1, 2026).
17. *MFA Rail Facility*, http://www.mfarailfacility.com/index.cfm?show=10&mid=29.
18. *Network Fact Sheets*, CN, https://www.cn.ca/en/delivering-responsibly/community/network-and-facts.

19. *NS 8001 Section 5 - Industries Open to Switching*, NS, https://www.norfolksouthern.com/content/dam/nscorp/pdf/tariffs/8-1-2026/NS%208001%20Section%205%2008-01-26.pdf.
20. *NS 8001 Switching and Absorption Tariff*, NS (effective August 1, 2026), https://www.norfolksouthern.com/content/dam/nscorp/pdf/tariffs/8-1-2026/NS%208001%2008-01-26.pdf.
21. *Ray-Carroll County Grain Growers*, https://www.ray-carroll.com/index.cfm?show=10&mid=43.
22. Russell Pittman, *Three Economist's Tools for Antitrust Analysis: A Non-Technical Introduction*, https://www.justice.gov/atr/page/file/925641/dl.
23. *Serving Carrier/Reciprocal Switch*, Railinc, https://public.railinc.com/products-services/serving-carrierreciprocal-switch.
24. *Standard Point Location Code (SPLC) User Guide*, Railinc, https://public.railinc.com/sites/default/files/documents/UG_SPLC.pdf (last updated January 2026).
25. *Switching and Terminal Tariff (ALS 8002-N)*, The Alton & Southern Railway Company (effective March 1, 2023).
26. U.S. Dep't of Justice & the Fed. Trade Comm'n, *Merger Guideline*.
27. *UP Reciprocal Switching Circular (UP 8005 K)*, UP (effective July 1, 2026).

Data

1. 2023 Surface Transportation Board Carload Waybill Sample, *STB*, WB2023_913_Unmasked.txt.
2. CN Railway Traffic Tape Data, *CN*, HC - WB Exc Canada Domestic - 1H 2025.csv.
3. CN Railway Traffic Tape Data, *CN*, HC - WB Exc Canada Domestic - 1H 2025.csv.
4. STCC7 Commodity Code Mapping to CN Business Unit, *CN,* Commodity List STCC7 to CN Business Unit etc.xlsx.
5. Junction Interchange File, *Railinc*, interchanges.xlsx, https://public.railinc.com/resources/junction-interchange-file.
6. Intermediate analysis table generated in development of SCRS Master and SCRS Database (as described in Hunt workpapers), src_up.UPRR_AAR_Location_Master_20250815.csv.

Other

1. Binding Settlement Memorandum of Understanding Regarding Proposed UP/NS Transaction (July 22, 2026).

2. All documents and data cited in the Verified Statement of Mary Coleman (November 18, 2026) and referenced workpapers.
3. Documents and data cited in the Amended Application.
4. Documents and data cited in Dr. Bailey's Amended Application Workpapers.

Exhibit 2

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

-- CONTROL --

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

(SUB-NO. 2) ILLINOIS CENTRAL RAILROAD COMPANY – DIVESTITURE – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN ST. LOUIS, MO. AND KANSAS CITY, MO.

(SUB-NO. 3) ILLINOIS CENTRAL RAILROAD COMPANY – TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN ST. LOUIS, MO. AND KANSAS CITY, MO.

(SUB-NO. 4) ILLINOIS CENTRAL RAILROAD COMPANY – OVERHEAD TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN LYDIA AVENUE AND BROADWAY BOULEVARD IN KANSAS CITY, MO.

(SUB-NO. 5) ILLINOIS CENTRAL RAILROAD COMPANY – TERMINAL TRACKAGE RIGHTS – OVER LINE OF BNSF RAILWAY COMPANY BETWEEN ETON, MO. AND CONGO, MO.

(SUB-NO. 6) ILLINOIS CENTRAL RAILROAD COMPANY – LEASE AND PURCHASE – UNION PACIFIC RAILROAD COMPANY NEFF YARD IN KANSAS CITY, MO.

(SUB-NO. 7) ILLINOIS CENTRAL RAILROAD COMPANY – OVERHEAD TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN TUSCOLA, ILL. AND EAST ST. LOUIS, ILL.

(SUB-NO. 8) ILLINOIS CENTRAL RAILROAD COMPANY – OVERHEAD TRACKAGE RIGHTS – OVER LINE OF THE ALTON & SOUTHERN RAILWAY COMPANY BETWEEN MITCHELL, ILL. AND EAST ST. LOUIS, ILL.

(SUB-NO. 9) ILLINOIS CENTRAL RAILROAD COMPANY – LOCAL TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY TO SERVE HILLSBORO, ILL.

(SUB-NO. 10) IOWA NORTHERN RAILWAY COMPANY AND CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY – TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN MANLY/IOWA FALLS, IOWA AND DES MOINES/AVON, IOWA

(SUB-NO. 34) ILLINOIS CENTRAL RAILROAD COMPANY – LOCAL TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY TO SERVE CARLINVILLE, ILL.

VERIFIED STATEMENT OF HENRY J. KAHWATY, PH.D.

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I. INTRODUCTION AND SUMMARY OF CONCLUSIONS

A. Introduction

1. My name is Henry J. Kahwaty. I am a Managing Director with Berkeley Research Group, LLC ("BRG"). I have been retained by counsel for Grand Trunk Corporation on behalf of itself and its U.S. rail operating subsidiaries (collectively, "CN").[1] I filed a Verified Statement dated March 23, 2026 (the "First Kahwaty Diversion V.S.") concerning the proposed merger (the "Proposed Transaction") between Union Pacific Corporation and Union Pacific Railroad Company ("UP") (collectively, "Union Pacific") and Norfolk Southern Corporation and Norfolk Southern Railway Company ("NS") (collectively, "Norfolk Southern"). Union Pacific and Norfolk Southern are referred to collectively as "Applicants."[2] In the First Kahwaty Diversion V.S., I discussed Applicants' initial rail-to-rail diversion analysis.[3] Applicants' rail-to-rail diversion analysis has been updated several times, with the most recent update being detailed in Mr. David Hunt's Second Errata Verified Statement dated September 4, 2026, and the workpapers associated with it (the "Updated Hunt UP/NS Diversion Study").[4] That Verified Statement included both an updated rail-to-rail diversion analysis (the "Updated Hunt R2R Analysis") and an updated truck-to-rail diversion analysis (the "Updated Hunt T2R Analysis"). These analyses are referred to collectively as the "Updated Hunt Analyses." I submitted a second Verified Statement in this proceeding on May 8, 2026, related to Applicants' proposed Committed

[1] Bessemer and Lake Erie Railroad Company; Cedar River Railroad Company; Chicago, Central & Pacific Railroad Company; Grand Trunk Western Railroad Company; Illinois Central Railroad Company; Iowa Northern Railway Company; The Pittsburgh & Conneaut Dock Company; and Wisconsin Central Ltd.

[2] I incorporate by reference my qualifications, which I summarized in the First Kahwaty Diversion V.S. A copy of my curriculum vitae is provided as Attachment A to the First Kahwaty Diversion V.S. Applicants filed their initial merger application on December 19, 2025. *See* UP-13/NS-11, FD 36873 (filed Dec. 19, 2025) [hereinafter the "Initial Application" or "Init. Appl."]; UP-14/NS-12, FD 36873 (filed Dec. 19, 2025) ("Volume 2"); UP-15/NS-13, FD 36873 (filed Dec. 19, 2025) ("Volume 3"); and UP-16/NS-14, FD 36873 (filed Dec. 19, 2025) ("Volume 4"). Applicants' initial diversion analysis was detailed in the Verified Statement of David Hunt and Matthew Schabas dated December 18, 2025, Init. Appl. Vol. 2 at 309–489 [hereinafter "Hunt/Schabas December 2025 V.S."]. This analysis was updated by Mr. Hunt several times, and his most recent update was filed on September 4, 2026 (Verified Statement of David T. Hunt dated September 4,2026 [hereinafter "Hunt September 2026 V.S."]).

[3] First Kahwaty Diversion V.S. at § I.C.

[4] The workpapers associated with Hunt September 2026 V.S. were updated on October 22, 2026.

Gateway Pricing ("CGP") program. When referring to the "Kahwaty Workpapers" in this Verified Statement, I am referring to the backup material supporting this Verified Statement.

2. In its responsive applications, CN is seeking certain trackage rights and access to related facilities, among other remedies. In addition, CN is asking the Surface Transportation Board (the "Board") to impose the haulage and other remedial proposals described in CN's Comments on the Amended Application and Requests for Conditions ("Comment").[5] I refer to these remedial conditions on the proposed UP/NS merger as "CN's proposed conditions." I detail CN's proposed conditions in **Section II** of this Verified Statement, and their commercial rationale, operational feasibility, and anticipated customer benefits are discussed in the Verified Statements of Sarah Slazinski, David Przednowek, Girish Nair, Sandra Ellis, Kelly Levis, and Janet Drysdale, and the joint Verified Statement of Patrick Whitehead and Kim Hillenbrand.[6] CN's proposed conditions generally improve CN's access to the St. Louis gateway and provide access to the Kansas City gateway, a gateway which CN cannot access using its existing rail lines or rights on other carrier lines. CN's proposed conditions would also provide CN new access to certain shipper facilities whose Class I service options would drop from two to one ("2-to-1") or from three to two ("3-to-2") and that would therefore experience a loss in direct competition among independent Class I railroads as a result of the Proposed Transaction. CN's proposed conditions also seek new access to customers of Kansas City Terminal Railway Company ("KCT") as part of the KCT share transfer, and access UP and NS reciprocal switch customers in Kansas City.

[5] On July 22, 2026, CN entered into a binding Memorandum of Understanding with Union Pacific (the "Settlement MOU"). Under the Settlement MOU, Union Pacific agreed to request that the Board designate CN as the remedy carrier for various conditions. As of the date of this Comment, CN continues to cooperate with Union Pacific to finalize the numerous, complex definitive agreements required to give effect to the Settlement MOU.

[6] *See* Verified Statement of Janet Drysdale at 9–15 [hereinafter "Drysdale V.S."]; Exhibit 13, CN Responsive Applications, FD 36873 (Sub-Nos. 2–4; 6–8; 10) and Exhibit 15, CN Responsive Applications, FD 36873 (Sub-Nos. 9, 34), at 13–19, 98–105 [hereinafter the "Operating Plan"]; Verified Statement of Sarah Slazinski at 6–17 [hereinafter "Slazinski V.S."]; Verified Statement of David Przednowek at 9–11, 15–17 [hereinafter "Przednowek V.S."]; Verified Statement of Girish Nair at 7–15 [hereinafter "Nair V.S."]; Verified Statement of Sandra Ellis at 5–15 [hereinafter "Ellis V.S."]; and Verified Statement of Kelly Levis at 5–7 [hereinafter "Levis V.S."].

3. Mr. Hunt has prepared diversion analyses in other Board proceedings, including a study for CN related to its proposed acquisition of the Kansas City Southern Railway Company ("KCS") Springfield Line as a divestiture remedy associated with the proposed Canadian Pacific ("CP") merger with KCS (the "Springfield Diversion Study"). The Springfield Line connects Springfield, Illinois, with Kansas City, Missouri, and East St. Louis, Illinois. Acquiring the Springfield Line would have provided CN access to Kansas City and improved its access to East St. Louis. CN had planned to make investments in intermodal and automotive terminals in Kansas City and East St. Louis had the Board granted CN's proposed CP/KCS merger conditions.[7] Therefore, acquiring the Springfield Line would have had effects similar to certain aspects of CN's proposed conditions: providing access to the Kansas City gateway, improving access to the St. Louis gateway, and supporting automotive and intermodal customers in both areas via new facility investments (among other effects).

4. Recognizing this similarity between the effects on CN's business anticipated due to the Springfield Line divestiture in CP/KCS and CN's proposed conditions related to the Proposed Transaction, in this Verified Statement, I have been asked by counsel for CN to:

    a. Use the Springfield Diversion Study as a starting point to assess the level of traffic CN could expect to divert from other railroads due to CN's proposed conditions if they are approved by the Board and if CN invests in developing appropriate infrastructure to support its expanded businesses. Where I have made any deviations from the Springfield Diversion Study methodology, I explain those deviations and why they are sensible and consistent with commercial or economic realities.

    b. Use the Springfield Diversion Study as a starting point to assess the level of traffic CN could expect to divert from trucking companies to rail due to CN's proposed

[7] *See* CN-14, FD 36500 (Sub-Nos. 1, 2, 3, 4), at 34 (filed Feb. 28, 2022) [hereinafter "CN's CP/KCS Responsive Application"] ("CN has also committed to spend $250 million to (i) upgrade the Springfield Line and CN's adjacent line between Springfield and Gilman IL, where the new route will connect with CN's mainline to Chicago; and (ii) construct new intermodal and automotive facilities in Kansas City and East St. Louis.")

conditions if they are approved by the Board and if CN invests in infrastructure to support its expanded businesses. Where I have made any deviations from the Springfield Diversion Study methodology, I explain those deviations and why they are sensible and consistent with commercial or economic realities.

c. Assess the potential diversion of traffic to CN due to diversion of shipping volumes between ports and incorporate into my diversions estimated volumes generated by CN.

d. Consider the potential for diversion based on whether the Board requires UP to divest the Kansas City Line to CN or, in the alternative, requires UP to grant CN overhead trackage rights over the Kansas City Line, including trackage rights access to the former Sarpy Yard property.

e. Assess the extent to which the proposed acquisition by CN of rail lines, trackage rights, haulage rights, and other assets and/or rights from UP as detailed in CN's proposed conditions would resolve potential competitive concerns arising from the Proposed Transaction.

f. Identify the set of existing CN interchange traffic (based on 2023 volumes) that could shift its gateway to Kansas City as a result of CN's proposed conditions.

g. Assess whether Applicants' proposed open gateway conditions are likely to be sufficient to prevent full or partial vertical foreclosure in Kansas City and St. Louis and, if not, assess the likely impact of any such foreclosure on the proposed remedies detailed in CN's proposed conditions.

5. As detailed in the First Kahwaty Diversion V.S., the traffic projections resulting from a diversion analysis are used as an input into developing operating plans, assessing environmental impacts, and studying the financial impacts of a proposed transaction. I understand my traffic projections have been used to develop the operating plan for CN's network with CN's proposed conditions and to assess any environmental and financial implications of these conditions.

6. For consistency, I use certain definitions throughout this Verified Statement ("V.S.") and incorporate by reference the terms defined in the First Kahwaty Diversion V.S. A list of the defined terms used in this V.S. is provided as **Attachment A**.

7. Any Highly Confidential information included in this Verified Statement is enclosed in double braces {{ }} and is redacted from the public version of this V.S. filed with the Board. No material designated "Confidential" by the Protective Order is contained or addressed in this V.S.

8. To facilitate comparisons with work from Applicants, my analysis of diversion is for the 2023 Base Year. It will take time for CN to compete for shipper business and build volume using the assets and rights it seeks to acquire under its proposed conditions. Based on prior CN experience and the time estimated to build out certain facilities, I assume that building out CN's business using its new assets and rights can be accomplished within three years. Thus, while I report traffic volumes based on 2023 data, these volumes would be expected to be achieved three years after CN acquires the assets and rights requested by CN's proposed conditions. If these assets and rights, for example, are acquired on January 1, 2027, the resulting traffic volumes would be expected to be reflected in CN's and the railroad industry's performance by January 1, 2030 – three years later – though the effects of CN's proposed conditions would be reflected at least partially in the marketplace sooner. Revenues are reported in 2023 dollars.

9. My analysis utilizes several standard analytical techniques that I detail in subsequent sections of this V.S. It also utilizes various materials and data from Applicants together with information and data from CN, other railroads, and public sources. The sources used are detailed in this V.S.'s sources for Tables and Figures, footnotes, Attachments, and supporting workpapers.

B. Summary of Conclusions

10. **CN's Proposed Conditions Provide Access to Customers and Geographies to Resolve Competitive Harms.** CN proposes a series of conditions to resolve competitive concerns arising from the Proposed Transaction. These conditions would provide CN access to

customer locations in Des Moines and Avon, Iowa, and throughout Illinois that can currently be served by both UP and NS, and to traffic moving between the St. Louis and Kansas City gateways—two of the largest gateways in the country. They include the divestiture of UP's line between St. Louis and Kansas City (the "Kansas City Line"); a combination of trackage rights, haulage rights, and reciprocal switch access rights to permit CN to serve individual customer facilities; and rights to lease or purchase facilities such as the Neff Yard in Kansas City and the former Sarpy Yard property in St. Louis that CN can use to develop or expand existing intermodal and finished vehicle distribution terminals.

11. **Vertical Foreclosure Would Inhibit the Effectiveness of CN's Conditions.** CN can serve as an effective remedy carrier only if it can operate at the Kansas City gateway without facing full or partial vertical foreclosure by the merged UP/NS railroad. Partial foreclosure post-merger could include slowing interchange functions, pricing to discourage interline service, or pricing to short-haul CN that would result in a larger share of a route on the UP/NS network.

12. The Board has expressed concerns about vertical foreclosure in other merger reviews, including the most recent prior Class I railroad merger—Canadian Pacific/Kansas City Southern. The Board required open gateway conditions to prevent vertical foreclosure due to the CP/KCS merger. Applicants have offered to apply the same open gateway conditions to the Proposed Transaction.

13. **Retrospective Analysis of Prior Railroad Mergers Demonstrates the Importance of Robust and Effective Open Gateway Protections.** A common analytical tool used by economists to study the potential for competitive effects resulting from a merger is to complete a retrospective study of the results caused by a prior merger. Applicants' economic expert, Dr. Mark Israel, opines that theories of vertical harm are not well suited to the railroad industry. I test that proposition with a merger retrospective study of the CP/KCS merger at the {{ }} gateway, where UP's economic expert in that proceeding, Dr. Steven Salop, opined there was a substantial risk of foreclosure. I find evidence of partial foreclosure: the merged CP/KCS railroad increased prices for traffic from Mexico interlining at {{ }}, and its single line volumes through {{ }}

increased while volumes for other railroads and total volume through the gateway decreased. If the CP/KCS merger's effects were purely driven by efficiency gains, total volume through {{ }} would increase, not decrease. Volumes through an alternative gateway ({{ }}) increased post-transaction, indicating that some shippers shifted traffic to at least partially avoid these effects; captive shippers would not have had that option.

14. These findings demonstrate the importance of having robust and enforceable open gateway conditions, especially in the context of a merger like the Proposed Transaction, which is larger than CP/KCS and presents more opportunities for foreclosure by the merged railroad.

15. **Diversion Analysis Demonstrates CN Will Be a Strong and Effective Remedy Carrier.** Absent partial vertical foreclosure, CN's proposed conditions would provide CN access to Kansas City, a gateway it cannot directly access now, and improve its access to East St. Louis by providing a more direct route into the city from the north. My diversion analyses find that these options would draw significant traffic from other railroads and from trucks.

16. **CN estimated to divert over 43,593 carloads from other railroads because of its new service offerings.** My rail-to-rail diversion analysis finds that CN can expect to divert over 43,000 carloads of traffic from other railroads annually, including general merchandise, intermodal, bulk, and auto traffic. CN's planned new intermodal terminals in Kansas City and St. Louis are expected to result in the diversion of over 20,000 intermodal units annually, with Kansas City – Detroit and Kansas City – Chicago the highest volume lanes, and its planned finished vehicle distribution terminals are expected to result in the diversion of over 8,300 carloads of finished vehicles annually.

17. **CN estimated to divert over 62,509 carloads from trucks.** My truck-to-rail diversion analysis finds that the largest diversion estimates are in the intermodal category, with nearly 49,000 carloads diverted annually, and that the largest lanes include Kansas City – Detroit and Kansas City – Chicago.

18. **CN estimated to divert an additional 30,000 units due to port diversion.** CN's proposed conditions would provide optionality to shippers. In addition to transporting coal and grain to river terminals, CN can also ship products by rail directly to Gulf Coast ports. CN has a successful grain business, for example. St. Louis is a large hub for grains, and CN's improved access to St. Louis will give shippers improved access to river ports, while also having the option to ship grains by rail directly to U.S. Gulf Coast ports to reach export markets. Gaining access to additional, competitively priced options for the distribution of commodities and products will benefit U.S. businesses ranging from large industrial plants to smaller rural farmers.

19. CN's proposed conditions would also make new export paths available, and the resulting reduction in logistics costs would benefit U.S. manufacturers, farmers, and other shippers.

20. **CN estimated to re-route 34,542 carloads to its new hub in Kansas City.** Absent vertical foreclosure harm, CN's proposed conditions will allow CN to effectively grow its business at the Kansas City gateway, allowing it to develop its own hub to be used to interchange with other carriers. Driving traffic through Kansas City will allow CN to develop density and achieve scale economies, allowing it to improve its competitiveness with other railroads.

21. **Overall, CN estimated to divert a total of 170,643 units annually. Table 1** summarizes total estimated traffic diversion to CN's rail network resulting from CN's proposed conditions, broken out by service type and type of diversion (rail, truck, port).

Table 1
Summary of the Traffic Diversion Analysis Results
Traffic Diverted, by Service Type

Service Type	Rail-to-Rail Units		Truck-to-Rail Units	Port of Montreal Units	Total Units
	Regular Markets	Shifted Markets			
General Merchandise	8,549	13,450	-	-	21,999
Intermodal	20,096	5,460	48,751	30,000	104,307
Bulk	6,559	22	-	-	6,581
Auto	8,389	15,610	807	-	24,806
Other	-	-	12,951	-	12,951
Total Units	43,593	34,542	62,509	30,000	170,643

Source: Kahwaty Workpapers "Diversion Units (Base)."

22. In total, I estimate that diverted traffic would generate approximately $367 million in annual revenue for CN within three years of divesting the Kansas City Line to CN and implementing CN's other proposed conditions. **Table 2** presents these revenue estimates by service type and type of diversion.

Table 2
Summary of the Traffic Diversion Analysis Results
Revenue for Traffic Diverted, by Service Type

Service Type	Rail-to-Rail Revenue		Truck-to-Rail Revenue	Port of Montreal Revenue	Total Revenue Impact
	Regular Markets	Shifted Markets			
General Merchandise	$ 33,606,314	$ 42,312,960	$ -	$ -	$ 75,919,274
Intermodal	$ 12,602,490	$ 2,850,871	$ 31,987,619	$ 34,108,736	$ 81,549,717
Bulk	$ 25,317,953	$ 90,275	$ -	$ -	$ 25,408,228
Auto	$ 57,720,954	$ 58,478,219	$ 3,431,387	$ -	$ 119,630,561
Other	$ -	$ -	$ 64,298,010	$ -	$ 64,298,010
Total	$ 129,247,712	$ 103,732,326	$ 99,717,017	$ 34,108,736	$ 366,805,790

Source: Kahwaty Workpapers "Revenue Impact (Base)."
Notes: Revenue calculated using 2023 traffic data for CN shipments and applied to diverted units on a per-car-mile basis. Additional details underlying my calculation are provided in Section XI and the Kahwaty Workpapers.

23. **Diversions relate to several distinct areas and can be allocated across them.** CN's growth from its proposed conditions can be broken down into several categories:

- Request for Kansas City access via the acquisition of the Kansas City Line and gaining access to the Neff Yard (149,822 units);
- Request for improved access to East St. Louis via Tuscola Line trackage rights (2,422 units);
- The planned development of intermodal and automotive yards in St. Louis (9,509 units);
- Request for access to the Hillsboro coal mine via Hillsboro Line trackage rights (6,204 units), and
- Request for access to 3-to-2 and 2-to-1 customer locations via Des Moines Line trackage rights (1,227).

24. **CN's effectiveness as a competitor will be diminished if access to Kansas City is via trackage rights instead of acquisition of the Kansas City Line.** CN will have higher

marginal costs and lose operational control over the Kansas City Line if it gains access to Kansas City via trackage rights instead of acquiring the Kansas City Line from UP. With a 20% route impedance penalty from trackage rights, diversions fall by about 55% to 75,416 units.

II. CN'S RESPONSIVE APPLICATIONS AND PROPOSED CONDITIONS

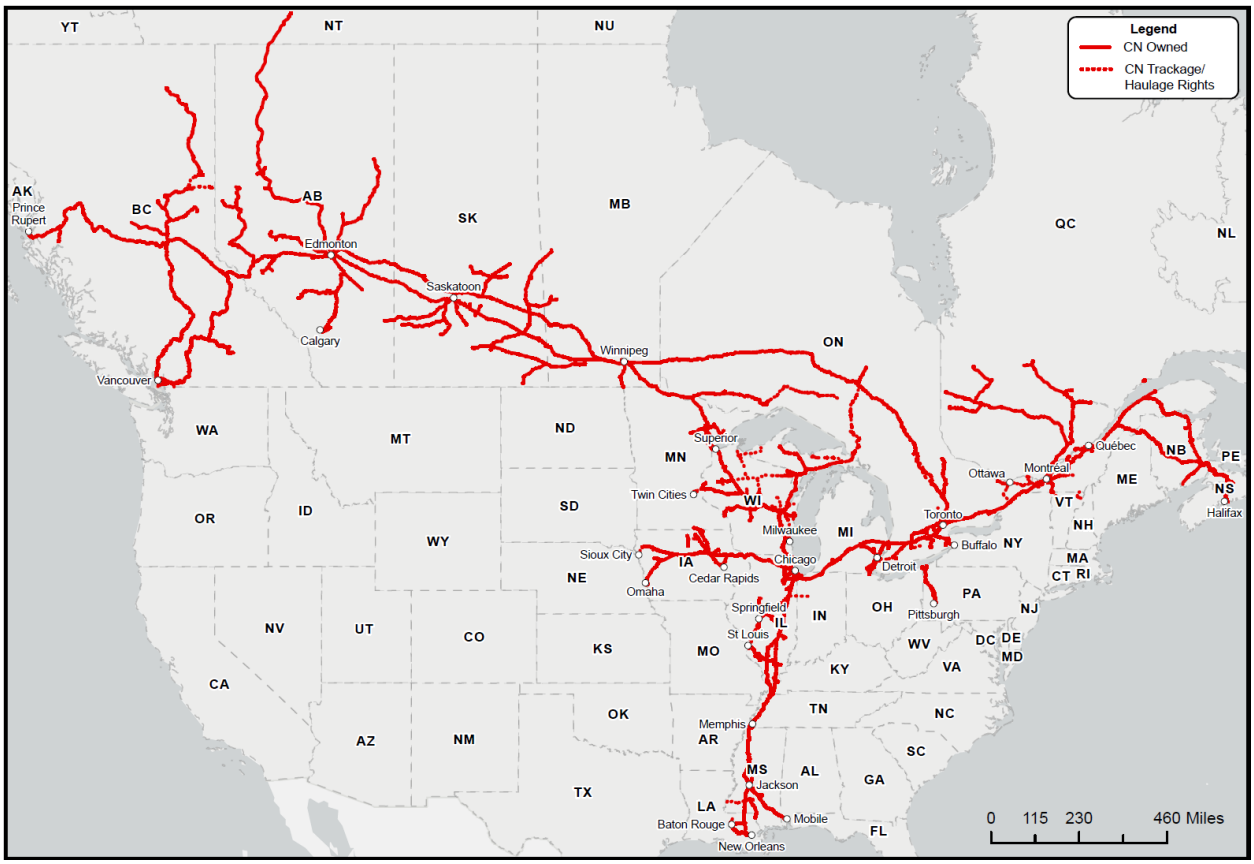
A. Background

25. CN's existing approximately 18,600 mile rail network connects nine of Canada's provinces with the U.S. Midwest and Gulf Coast.[8] It serves large U.S. urban areas, such as Detroit, Chicago, Memphis, and New Orleans, along with all the major population centers in Canada, including Montreal, Toronto, Ottawa, Quebec City, Winnipeg, Edmonton, Calgary, and Vancouver. CN handled over 300 million tons of freight in 2025, serving both manufacturing centers and resource markets.[9] It serves Atlantic, Pacific, and U.S. Gulf Coast ports. A map of CN's current rail network is provided as **Figure 1**.

[8] *See Network Efficiencies,* CN, https://www.cn.ca/en/about-cn/network-efficiencies/ (last visited Nov. 17, 2026).

[9] *CN 2025 Annual Report* at II, https://www.cn.ca/-/media/files/investors/investor-annual-report/2025-cn-annual-report.pdf (last visited Nov. 12, 2026).

Figure 1
CN's Current Rail Network



Source: Kahwaty Workpapers; *See also* Federal Railroad Administration Shapefiles; Railinc Centralized Station Master.

26. If approved, CN's proposed conditions would expand CN's network by improving CN's access to the St. Louis gateway – including both St. Louis, Missouri, and East St. Louis, Illinois – while gaining access to the Kansas City gateway, both of which are large U.S. rail hubs. CN's proposed conditions, therefore, provide a new means for U.S. Gulf Coast traffic, as well as traffic to or from eastern, western, and central Canada and the U.S. Midwest, including Chicago and Detroit, to reach Kansas City via single line service, and, via interline service, places beyond Kansas City, such as California, Arizona, and Texas. In addition, CN's proposed conditions seek to prevent the loss of competition for 2-to-1 and 3-to-2 customers.

27. On July 22, 2026, CN and UP reached a binding Memorandum of Understanding ("Settlement MOU") reflecting that UP agreed to grant CN access to certain customers and geographies.

28. As agreed in the Settlement MOU and detailed in CN's proposed conditions, UP will provide CN access to two contiguous parts of UP's network: (1) UP's line from Tuscola to East St. Louis, Illinois (the "Tuscola Line"),[10] and (2) UP's line from St. Louis to Kansas City, Missouri (the "Kansas City Line").[11] In addition, the Settlement MOU describes granting CN access to serve 2-to-1 and 3-to-2 customer locations, and sale of shares in the Kansas City Terminal ("KCT").[12]

29. CN's proposed conditions include trackage rights to serve the 3-to-2 and 2-to-1 customers acknowledged by Applicants in the Second Supplemental Submission in Response to Decision No. 21, including customer facilities located in or near Des Moines, Iowa; Hillsboro, Illinois; and Carlinville, Illinois.[13] CN also requests the Board condition its approval of the Proposed Transaction on the grant of CN access to additional 3-to-2 and 2-to-1 customer locations in Illinois, including in Chicago, Bloomington, Mt. Vernon, Granite City, Momence, Federal, Alton, and Danville.[14] Because CN is seeking only haulage and/or switching rights to access these additional 3-to-2 and 2-to-1 customer locations, they are not addressed in detail in this V.S. Nevertheless, principles detailed in this V.S. regarding maintaining competition for 2-to-1 and 3-to-2 customers, such as the pricing of haulage rights, apply equally to these other customer locations as they do to customer locations addressed in this V.S.

30. CN's Proposed Conditions are summarized in **Figure 2**.

[10] Settlement MOU at 2–3 and app. C. *See also* CN's Comments on Amended Application and Request for Conditions at 10, 49-50, FD 36873 [hereinafter the "Comment"].

[11] Settlement MOU at 2–3 and app. D. *See also* Comment at 9–10 and n. 18.

[12] Settlement MOU at 1–2.

[13] Comment at 10–11, 73–76.

[14] Comment at 10–11, 73–76]].

Figure 2

CN's Proposed Conditions Summary	
Kansas City Access	• Divestiture of the Kansas City Line to CN; o In the alternative (i.e., if the Board declines to order divestiture), trackage rights and local haulage rights on the Kansas City Line. • Lease or purchase of Neff Yard, including the Neff intermodal terminal; • Terminal trackage rights over ~7.5-miles of BNSF track near Kansas City; • Trackage rights between Lydia Avenue and Broadway Boulevard in Kansas City; • Sale of NS's KCT ownership interest to CN; and • Access to Kansas City customers open to UP or NS reciprocal switching.
Expanded St. Louis / East St. Louis Access	• Overhead trackage rights over the Tuscola Line; • Overhead trackage rights over A&S; and • Former Sarpy Yard property (part of the Kansas City Line).
Des Moines 2-to-1 and 3-to-2 Customer Access	• Trackage rights over UP's line between Manly, Iowa and Des Moines and Avon, Iowa to access or serve 2-to-1 and 3-to-2 customer facilities in and around Des Moines, including direct access to two unit train customers; and • Reciprocal switching access to 2-to-1 and 3-to-2 customer facilities in the Des Moines area.
Illinois 2-to-1 and 3-to-2 Customer Access	• Trackage rights to reach the Foresight Energy facilities at Hillsboro and Carlinville, Illinois; and • Haulage or switching access to the remaining 2-to-1 and 3-to-2 customer facilities in Illinois.
Robust and Enforceable Gateway Protections	• Robust and enforceable open gateway protections.

B. CN's Proposed Conditions for Kansas City Access

31. CN requests the Board condition any approval of the Proposed Transaction on granting CN access to serve Kansas City.[15] CN is seeking the following conditions for Kansas City access:

- The divestiture of UP's Kansas City Line to CN (the "Kansas City Line Divestiture");[16]
- In the alternative to divestiture, if the Board determines divestiture is not warranted, (i) the grant of trackage rights including access to the former Sarpy Yard property in St. Louis; (ii) local haulage rights on the Kansas City Line as well as interim overhead haulage rights on the line for use until the trackage rights are activated over the Kansas City Line (collectively, the "Kansas City Line Trackage

[15] Comment at 9–11.

[16] Comment at 9–10, 43–48.

Rights"), and (iii) a Board order requiring sale of the former Sarpy Yard property to CN;[17,18]

- The grant of terminal trackage rights over 7.5 miles of BNSF Railway Company ("BNSF") track between Eton and Congo, Missouri;[19]
- The lease of UP's Neff Yard, including the Neff intermodal terminal, in Kansas City, in whole or in part, and with the option to purchase;[20]
- The grant of trackage rights on UP's line between Lydia Avenue and Broadway Boulevard in Kansas City, Missouri;[21] and
- Access for CN to Kansas City customers in Applicants' reciprocal switching tariffs, and access to KCT's customers as part of the sale of NS's KCT ownership interest to CN.[22]

32. I refer to the Kansas City Line Divestiture, the terminal trackage rights over BNSF, and the trackage rights on the Lydia Avenue to Broadway Boulevard segment collectively as the "Kansas City Divestiture." I refer to the Kansas City Line Trackage Rights, the terminal trackage rights over BNSF, and the trackage rights on the Lydia Avenue to Broadway Boulevard segment collectively as the "Kansas City Trackage Rights."

33. An overview of CN's proposed conditions for Kansas City access is provided in **Figure 3**.

[17] Comment at 10–11 n. 18, 49; Operating Plan at 134–136.

[18] CN also seeks the sale of the former Sarpy Yard property by UP to CN for handling intermodal and automotive traffic. This property is located on the Kansas City Line but is in St. Louis and is sought by CN to support its business operations in St. Louis. Therefore, I address this property more fully in my St. Louis access discussion.

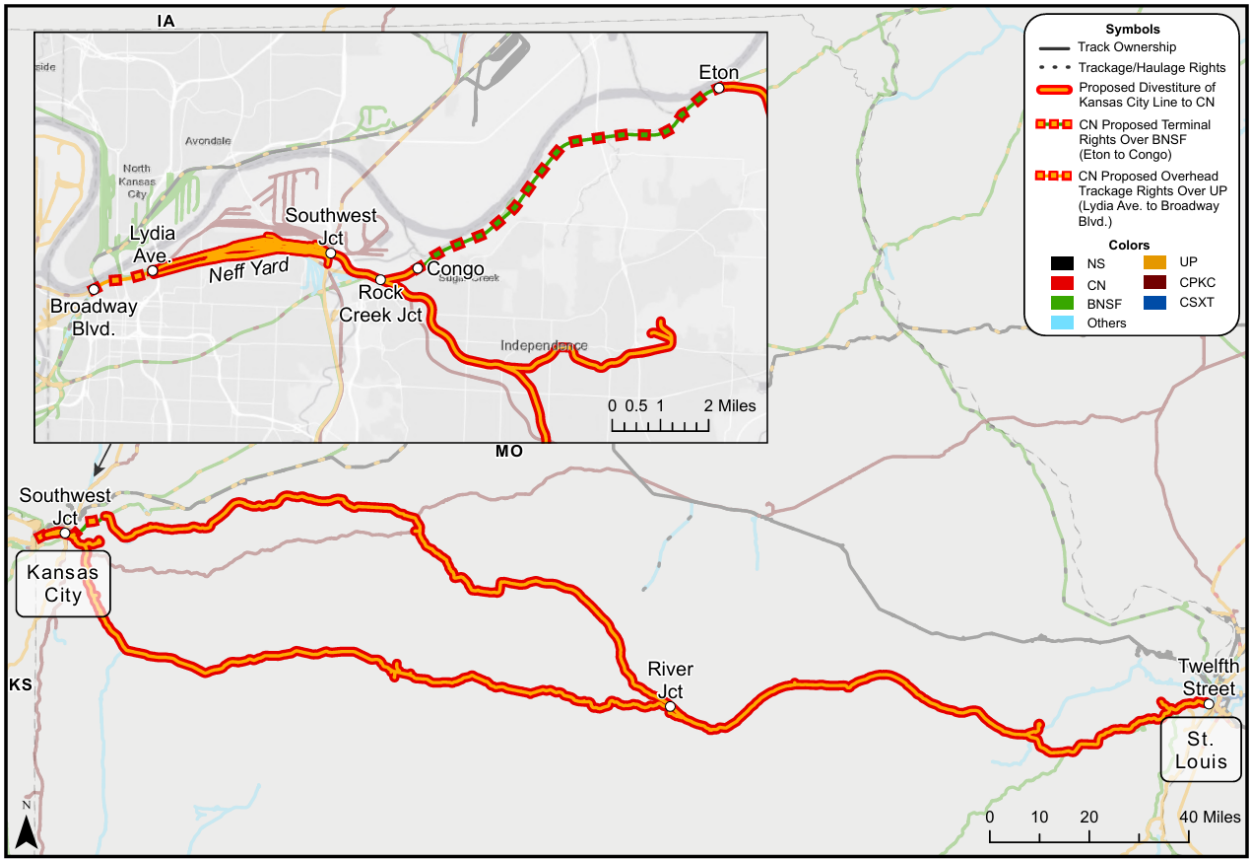
[19] Comment at 9–10, 52–54.

[20] Comment at 9–10, 51.

[21] Comment at 9–10–11, 55.

[22] Comment at 9–10, 56–57.

Figure 3
Overview of CN's Proposed Conditions for Kansas City Access



Source: Kahwaty Workpapers; *See also* Federal Railroad Administration Shapefiles; Railinc Centralized Station Master.

1. Divestiture of UP's Kansas City Line to CN

34. CN is seeking the divestiture of UP's Kansas City Line, which it proposes to purchase. UP would retain overhead trackage rights and local haulage rights on the Kansas City Line.

35. In the alternative to divestiture, CN seeks trackage rights and local haulage rights on the Kansas City Line as well as interim overhead haulage rights on the line for use until the trackage rights are activated over the Kansas City Line.[23] If divestiture is not granted, CN

[23] In my diversion analyses, I only consider the scenario in which CN is permitted to acquire the Kansas City Line or granted overhead trackage rights and local haulage rights over the Kansas City Line. I do not consider diversion for the case where CN only has local and overhead haulage rights on the Kansas City Line.

also seeks trackage rights, including access to reach the former Sarpy Yard property, and a condition requiring UP to sell the former Sarpy Yard property to CN.

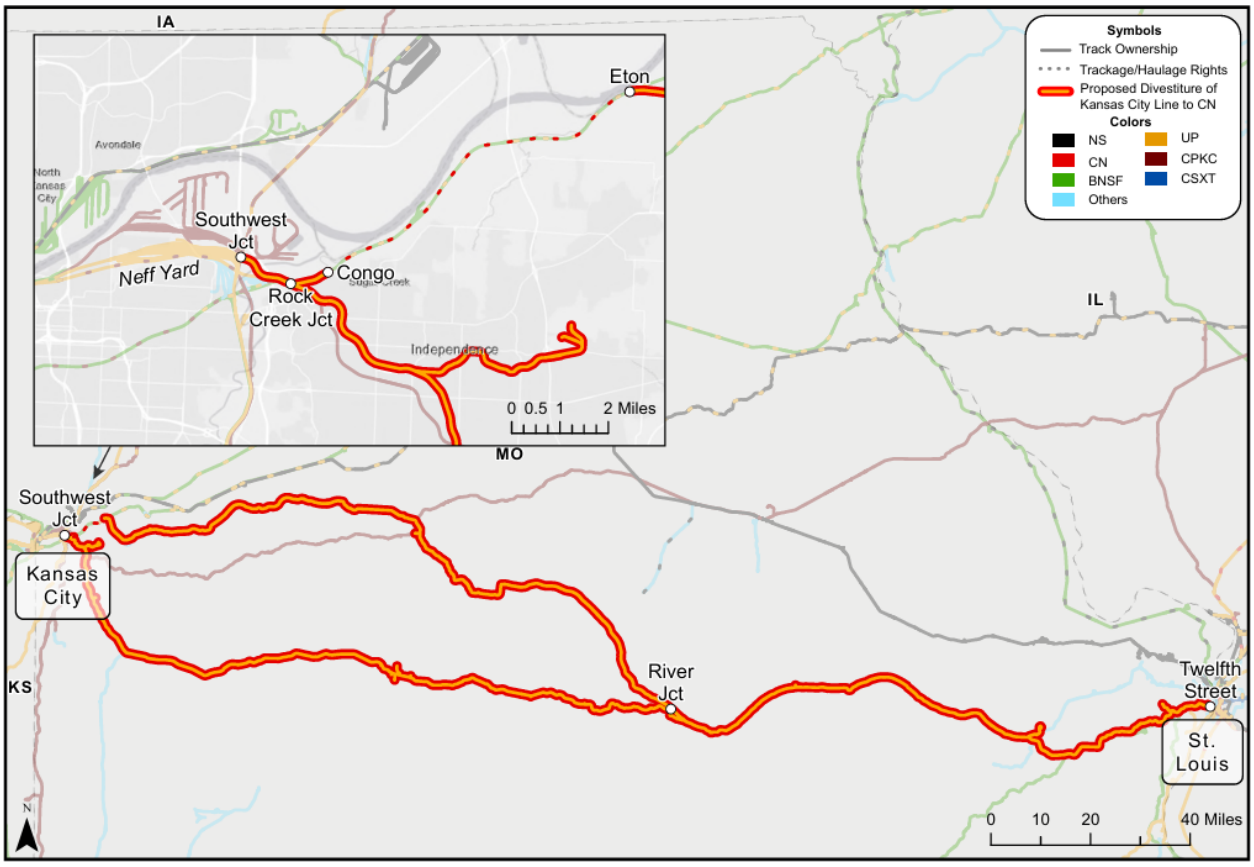
36. The Kansas City Line extends from Twelfth Street in St. Louis (MP 0.36), via 23rd Street Yard, Grand Ave., the former Sarpy Yard property, and River Junction (MP 128.0), to Rock Creek Junction (MP 276.9), Southwest Junction (MP 278.2), and Neff Yard in Kansas City. It also includes the route via Eton (UP MP 276.1/BNSF MP 436.6), continuing from Congo (BNSF MP 444.1) to Rock Creek Junction, Southwest Junction, and Neff Yard, together with all yards, sidings, and auxiliary tracks along the solely UP-owned right of way.[24] It also includes 5 industrial lead lines.[25] I understand that UP has historically operated the two segments of the Kansas City Line west of River Junction directionally, with the southern segment moving traffic east to west towards Kansas City, and the northern segment west to east towards St. Louis.[26] A map depicting the Kansas City Line is provided as **Figure 4**.

[24] Operating Plan at 42–44, 135–137.

[25] Operating Plan at 44.

[26] Operating Plan at 42–44, 110–111.

Figure 4
The Kansas City Line
CN's Proposed Condition: Divestiture or, in the Alternative, Trackage and Haulage Rights



Source: Kahwaty Workpapers; *See also* Federal Railroad Administration Shapefiles; Railinc Centralized Station Master.

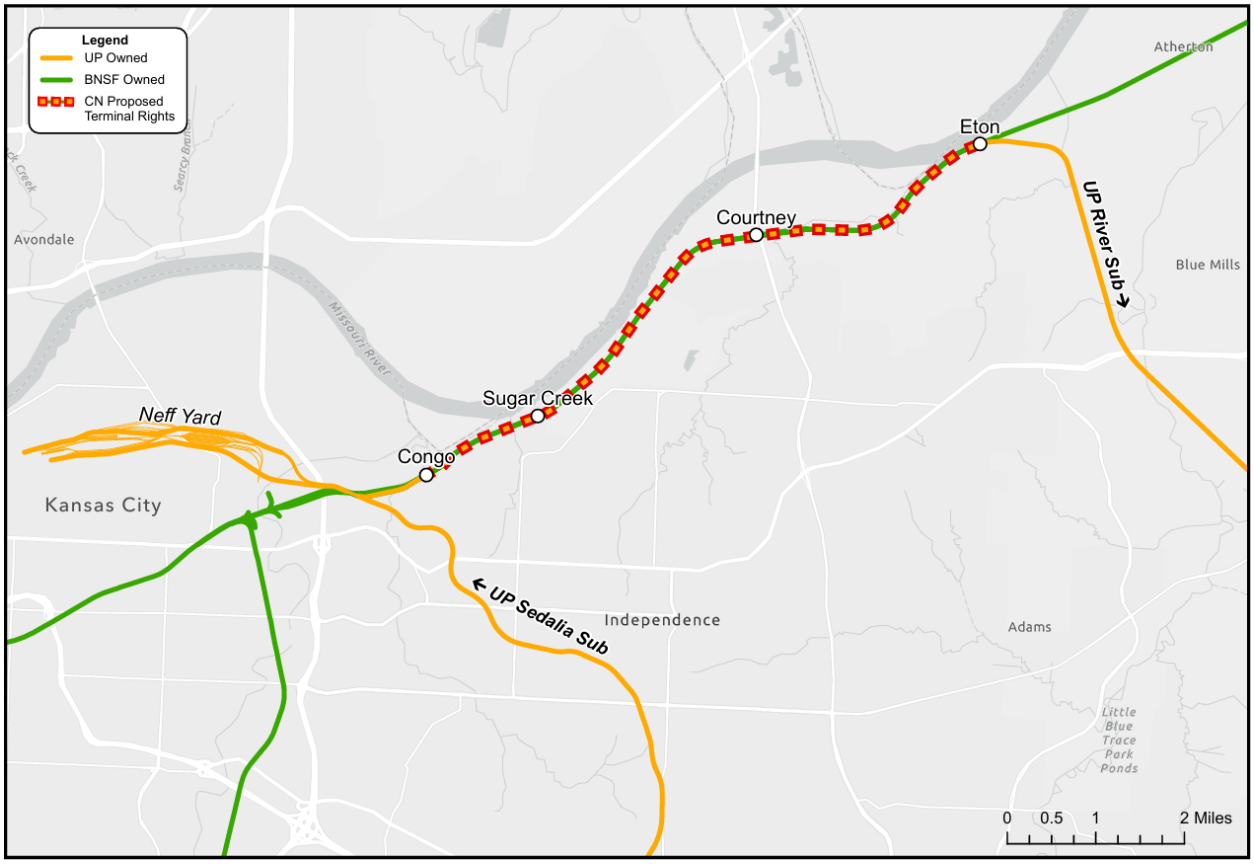
2. Terminal Trackage Rights Over the BNSF Line Between Eton and Congo, Missouri

37. In connection with Kansas City access, CN is seeking terminal trackage rights over about 7.5 miles of track owned by BNSF on BNSF's Marceline Subdivision between Eton at MP 436.6 and Congo at MP 444.1, Missouri (the "Eton to Congo Segment").[27] The track over

[27] Operating Plan at 57–58, 137.

which these rights are sought is shown in **Figure 5.** These terminal trackage rights are necessary for CN to bridge a gap in the Kansas City Line, connecting it to the Neff Yard.[28]

Figure 5
BNSF Track between Eton and Congo, Missouri
CN's Proposed Condition: Terminal Trackage Rights



Source: Kahwaty Workpapers; *See also* U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

3. The Lease or Purchase of UP's Neff Yard

38. CN is seeking to lease UP's Neff Yard, including the Neff intermodal terminal, in whole or in part, and with the option to purchase. The Neff Yard is in Kansas City, and leasing or purchasing the Neff Yard is necessary for CN to support its operations in Kansas City. CN

[28] Though they are similar, the southern branch of the Kansas City Line is shorter than the northern branch. The routing software used in my analysis, therefore, generally routes traffic over the southern branch. While it may be operationally significant, the northern branch and the line between Eton and Congo do not, therefore, have a material effect on my diversion estimates. *See also* Operating Plan at 57–58, 137; Comment at 46–49.

and UP agreed to this in the Settlement MOU.[29] Further, CN and UP agreed that "[i]f needed, UP will provide other carriers with access to Neff Yard to interchange with CN."[30] The location of the Neff Yard is shown in **Figure 3** and **Figure 4**.

4. Trackage Rights Over UP's Track Between Lydia Avenue and Broadway in Kansas City, Missouri

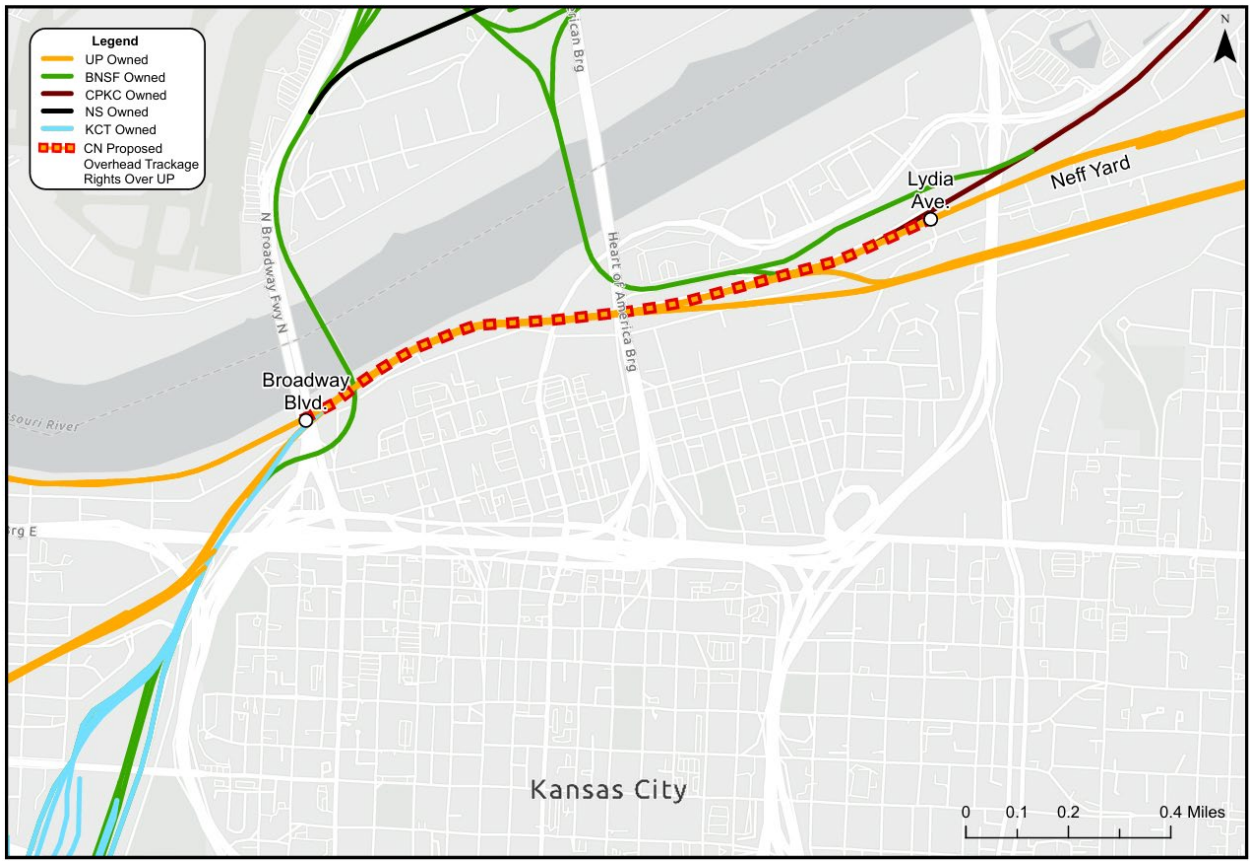
39. CN is seeking trackage rights on UP's K.C. Metro (Neff) Subdivision between Lydia Avenue at MP 281.7 and Broadway Boulevard at MP 283.1 in Kansas City, Missouri (the "Lydia Avenue to Broadway Boulevard Segment").[31] I understand that these trackage rights, which connect to the west side of the Neff Yard, are necessary for CN to access the KCT track and interchange with other carriers operating in the Kansas City gateway. This is shown in **Figure 6**.

[29] Settlement MOU at 3–4.

[30] Settlement MOU at 12, app. B.

[31] Operating Plan at 135–136. *See also* Comment at 55.

Figure 6
UP Track Between Lydia Avenue and Broadway Boulevard, Kansas City, Missouri
CN's Proposed Condition: Trackage Rights



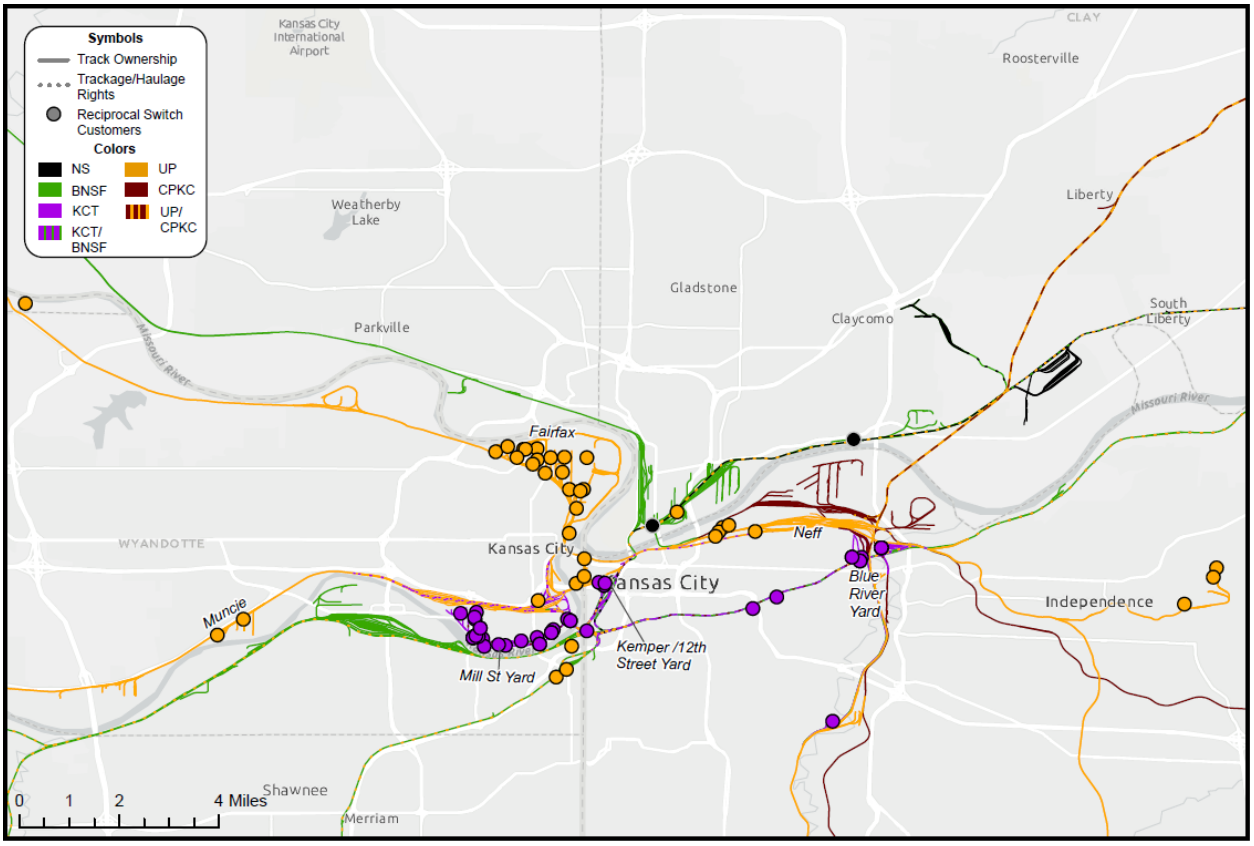
Source: Kahwaty Workpapers; *See also* U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

5. UP, NS, and KCT Customers

40. CN is requesting (i) access to KCT's customers as part of the sale of NS's ownership interest in KCT to CN, and (ii) that CN be granted reciprocal switching access to the Kansas City customers currently open to reciprocal switching under the UP and NS tariffs.[32] Access under these tariffs would allow CN to serve captive rail shippers by having UP or NS move the shippers' railcars to interchange points from which they can be provided service by CN. **Figure 7** illustrates this access.

[32] Comment at 56–57.

Figure 7
UP, NS, and KCT Customers in Kansas City
CN's Proposed Condition: Access to Serve



Source: Kahwaty Workpapers; *See also* U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

C. CN's Proposed Conditions for Improved Access to St. Louis and East St. Louis

41. CN requests the Board condition any approval of the Proposed Transaction on granting CN improved access to the St. Louis gateway, including St. Louis, Missouri, and East St. Louis, Illinois. CN's network currently only reaches East St. Louis, Illinois. CN does not have access to St. Louis, Missouri, nor does CN have any current location for handling intermodal or automotive traffic in St. Louis. CN requests the following conditions:

- The grant of overhead trackage rights over UP's Tuscola Line;[33]

[33] Comment at 10, 49–50.

- The grant of overhead trackage rights over the lines of UP's wholly owned subsidiary The Alton & Southern Railway Company ("A&S") between Lenox in Mitchell, Illinois, and Valley Junction in East St. Louis, Illinois, for connection to Terminal Railroad Association of St. Louis ("TRRA");[34] and

- The purchase of UP's former Sarpy Yard property for handling CN's intermodal traffic and automotive traffic in the St. Louis/East St. Louis area, whether through divestiture of the Kansas City Line, or alternatively, if divestiture is not granted, trackage rights on the Kansas City Line and a condition requiring the sale of said yard to CN.[35]

42. CN also requires trackage rights over the TRRA between East St. Louis, Illinois, and St. Louis, Missouri, for which CN would seek authority outside this proceeding.[36]

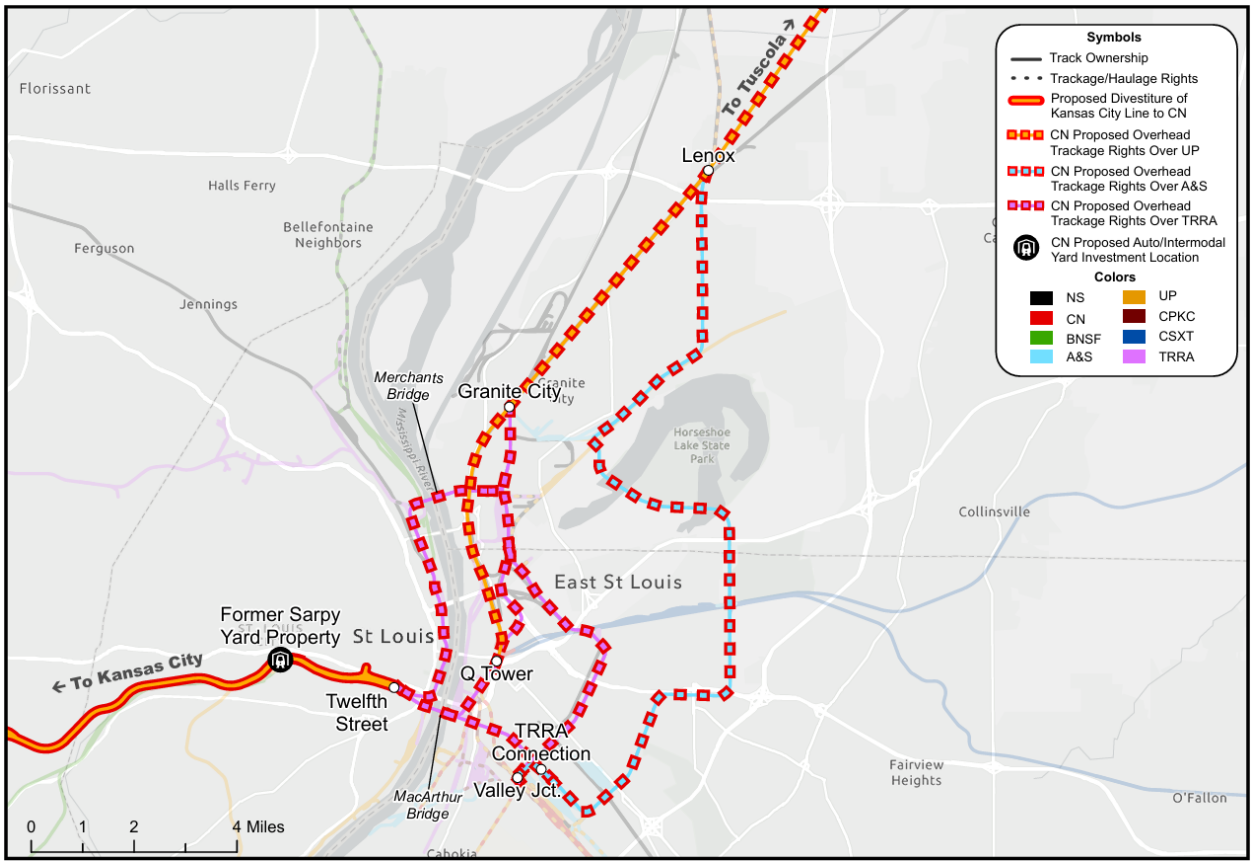
43. An overview of CN's proposed conditions for improved access to St. Louis / East St. Louis is provided in **Figure 8**.

[34] Comment at 10, 49–50.

[35] Comment at 10, 51–52; *see also* Operating Plan at 13–14, 46–47, 100–101, 135.

[36] Comment at 49–50 n. 170. I understand that, due to CN's existing ownership interest in TRRA, CN expects to seek these rights directly from the TRRA.

Figure 8
Overview of CN's Proposed Conditions for Improved Access to St. Louis and East St. Louis



Source: Kahwaty Workpapers; *See also* U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

44. CN's proposed conditions for improved access to the St. Louis gateway are also important for CN's ability to serve Kansas City. For example, trackage rights over the TRRA's bridges in St. Louis are necessary for CN to access the Kansas City Line. In addition, overhead trackage rights on UP's Tuscola Line will reduce the mileage for CN trips from or to Kansas City that originate or terminate on CN's network north of Tuscola. Mr. Nair, CN's Vice President, Intermodal & Automotive, Sales and Marketing, explains, "CN's current route from the north runs south past East St. Louis to Du Quoin, Illinois, and then doubles back to reach the St. Louis gateway, adding significant mileage and additional transit time." In addition, "[t]his more direct route would eliminate approximately 70 miles

from CN's route between Chicago and St. Louis or Chicago and Kansas City."[37] For example, overhead trackage rights on the Tuscola Line would reduce a CN single line trip from Chicago to East St. Louis by 72.8 miles (20.2%) in comparison to the same CN trip without access to the Tuscola Line.[38] This reduction in mileage will allow CN to compete more effectively with other Class I single lines connecting St. Louis with locations to the north (and connecting Kansas City with these locations).

1. Overhead Trackage Rights on the Tuscola Line

45. CN is seeking overhead trackage rights on UP's Tuscola Line (the "Tuscola Trackage Rights").[39] The Tuscola Line connects to CN's network in Tuscola and extends from Tuscola at MP 153.49 through Sullivan at MP 176.2 and Lenox in Mitchell at MP 275.4/269.70, via WR Tower in Granite City at MP 275.39, to Q Tower TRRA in East St. Louis at MP 281.00, all in Illinois.[40]

46. UP agreed to grant overhead trackage rights to CN on the Tuscola Line in the Settlement MOU, with CN being able to get on/off the Tuscola Line at the following locations in Illinois: Tuscola, Sullivan, Lenox/Mitchell, Granite City, and Q Tower.[41] A map depicting the Tuscola Line is provided in **Figure 9**.

[37] Nair V.S. at 10.

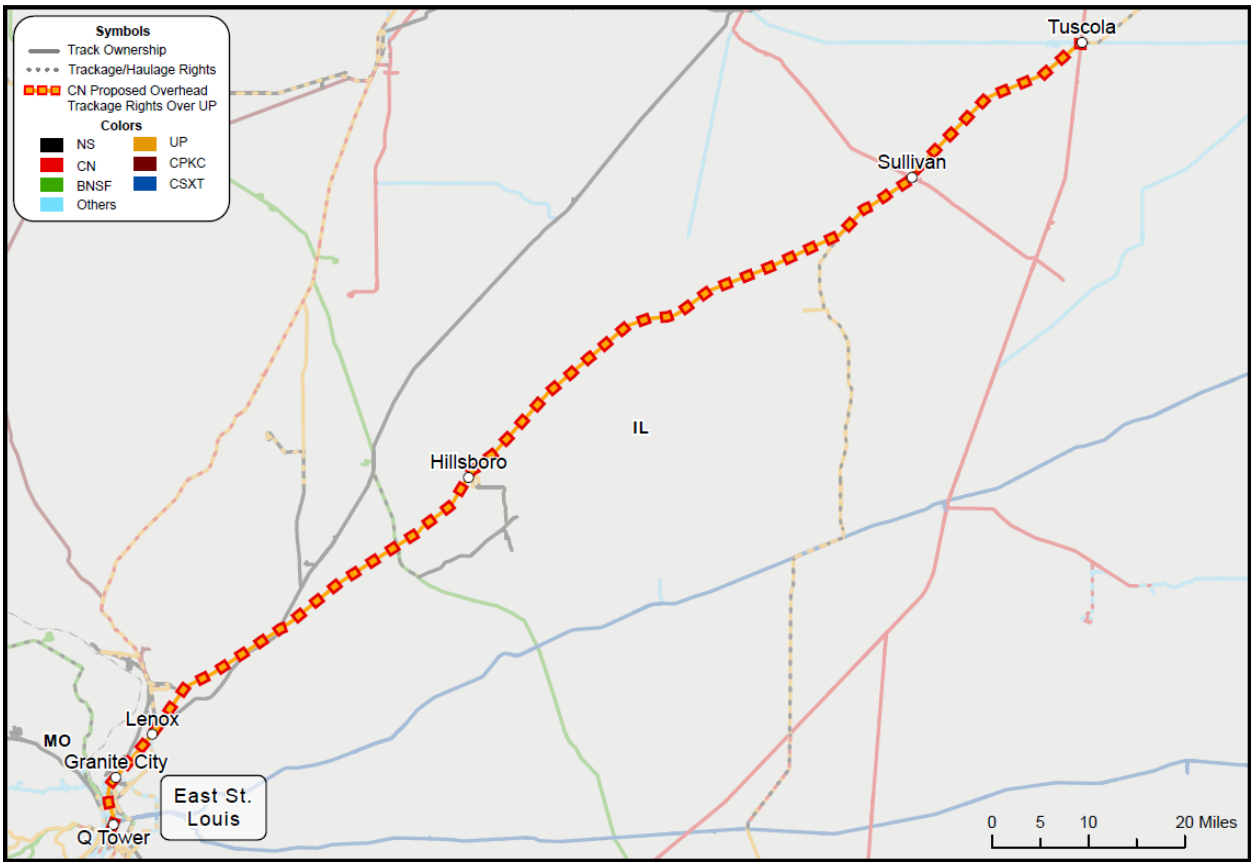
[38] Kahwaty Workpapers "Mileage_Calculations.xlsx."; *see also* Levis V.S. at 6 ("Today, CN trains from the north move south past East St. Louis to Du Quoin, Illinois, and then double back." She adds that the Tuscola Line rights will reduce transit time "by shortening the route by approximately 70 miles."); Comment at 49–50; Operating Plan at 136.

[39] Comment at 10–11, 49.

[40] Operating Plan at 66, 136.

[41] Settlement MOU at 2–3, 13, app. C.

Figure 9
The Tuscola Line
CN's Proposed Condition: Overhead Trackage Rights



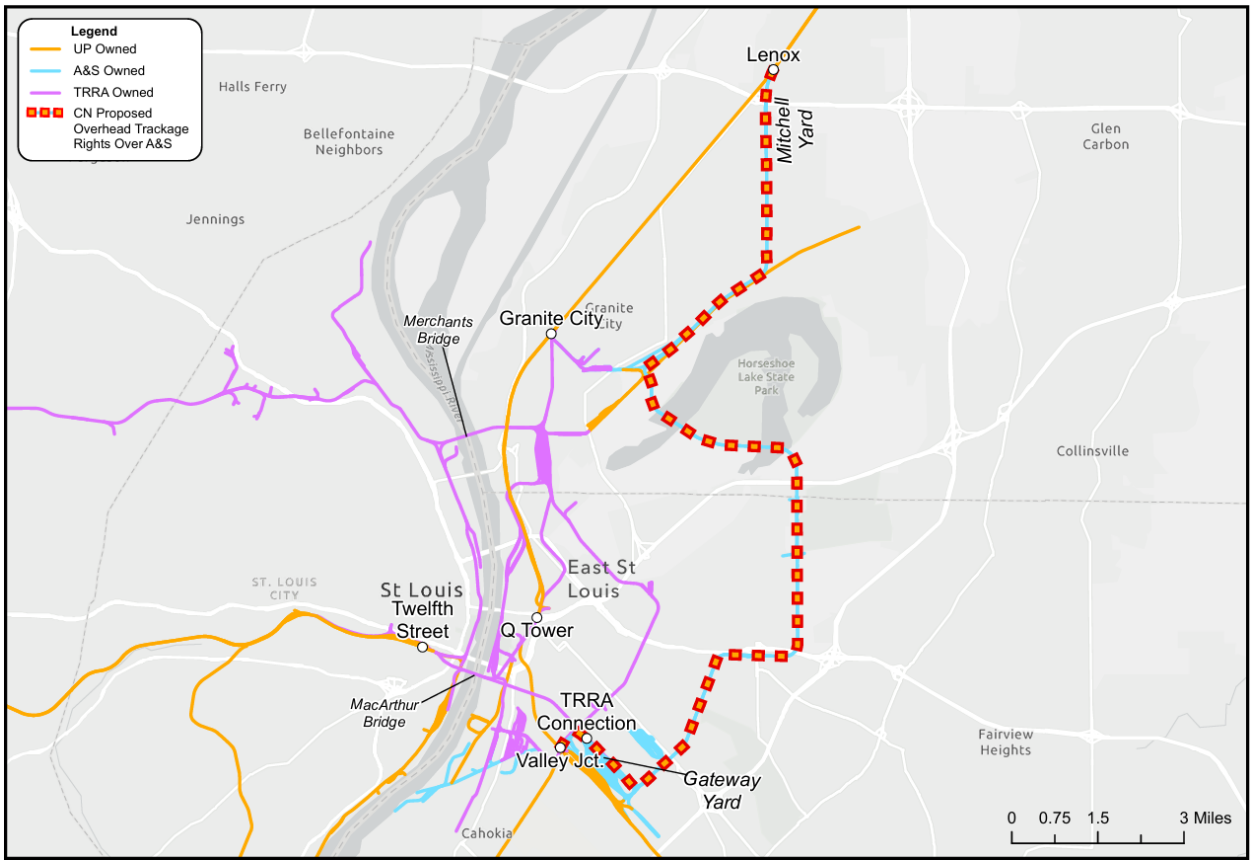
Source: Kahwaty Workpapers; *See also* U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

2. Overhead Trackage Rights on the A&S

47. CN is also seeking overhead trackage rights on the A&S between Lenox in Mitchell, Illinois, and Valley Junction in East St. Louis, Illinois (the "Lenox to East St. Louis Segment"), via Mitchell Yard, Gateway Yard, and the connection to TRRA's MacArthur Bridge route. UP agreed to give CN access to the A&S track in the Settlement MOU.[42] A&S is a wholly owned subsidiary of UP, and these trackage rights are intended for CN to connect the Tuscola Line with the TRRA in East St. Louis. A map of the relevant A&S track segment is provided as **Figure 10**.

[42] Settlement MOU at 13, app. C; *see also* Comment at 44; Operating Plan at 66, 137.

Figure 10
A&S Track Between Lenox in Mitchell, Illinois, and Valley Junction in East St. Louis
CN's Proposed Condition: Overhead Trackage Rights on the A&S



Source: Kahwaty Workpapers; *See also* U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

3. Trackage Rights Over the TRRA

48. Overhead trackage rights over the TRRA are needed by CN to access the Kansas City Line because the TRRA controls both rail bridges over the Mississippi River between East St. Louis and St. Louis. Further, CN requires overhead trackage rights over the TRRA to facilitate and improve interchanges with other railroads in the vicinity of St. Louis and East St. Louis. I understand that these requested rights will be addressed separately and that, by virtue of its existing ownership interest in TRRA, CN is entitled to such trackage rights over TRRA track.[43] The rights requested over TRRA track are critical to CN's single line

[43] Comment at 96–99 n. 170; Operating Plan at 19, 66, 71, 136–137.

access to Kansas City and will improve CN's service offering for traffic moving through the St. Louis gateway. Therefore, these trackage rights affect the ability of CN to divert traffic flowing through this gateway. For the purposes of my diversion analysis, I assume that these rights will be requested and granted so that they do not block CN's single line access to Kansas City or CN's ability to interchange in St. Louis.[44]

4. The Purchase of UP's Former Sarpy Yard Property

49. CN will require a facility or facilities in the St. Louis/East St. Louis area to handle intermodal and finished automotive traffic. If CN is granted its condition for the divestiture of the Kansas City Line, CN would utilize the existing but inactive yard along this line in St. Louis at 23rd Street and Sarpy Avenue. I understand that with investments, CN could use the former Sarpy Yard property to handle both finished automotive and intermodal traffic. If the Board does not order divestiture, CN is seeking a condition for trackage rights over the Kansas City Line, including access to the former Sarpy Yard property and a condition from the Board requiring the sale of the former Sarpy Yard property to CN. The location of the former Sarpy Yard property is shown in **Figure 8**.

D. CN Proposed Conditions for Access to Customers in Des Moines and Avon, Iowa

50. CN requests the Board condition any approval of the Proposed Transaction on granting CN trackage rights or, in the alternative, haulage over UP's line between Manly, Iowa and Des Moines and Avon, Iowa; trackage rights to access 2-to-1 and 3-to-2 customer facilities requiring unit train service; and switching access to serve the remaining 2-to-1 and 3-to-2 customer facilities in and around Des Moines from UP's Short Line Yard.[45] According to Ms. Levis, CN's Vice-President, Industrial Products, "In Des Moines, Iowa, numerous customers, including metals customers, would see their Class I options reduced from three

[44] I understand that CN expects to seek these rights directly from the TRRA as a TRRA member. *See* Comment at 49 n. 170.

[45] CN's requested trackage rights would extend from Manly to UP's Short Line Yard in Des Moines and, for unit train service, to a facility currently operated by ADM in Des Moines and a facility currently operated by Heartland Co-Op in Avon. *See* STB Docket No. FD 36873 (Sub-No. 10). For manifest service customers, CN requests a condition requiring reciprocal switching access from Short Line Yard to any 2-to-1 and 3-to-2 customer facilities in the Des Moines area. *See* STB Docket No. FD 36873 (Sub-No. 10) at 26-27.

to two or from two to one, including Alter Trading Corp./Alter Metal Recycling."[46] To serve these customers, CN is seeking trackage rights over UP's Albert Lea, Mason City and Trenton Subdivisions between Manly and Avon, and UP's Perry Subdivision to Short Line Yard in Des Moines (the "Des Moines Line"), all of which is in Iowa.

51. Trackage Rights are a more suitable remedy than haulage rights. As Mr. Przednowek, CN's Assistant Vice President – Grain, explains, "Under a haulage arrangement, CN would depend on a competitor's crews, locomotives, operating priorities, and capacity." He further states, "Trackage rights eliminate this dependency and allow CN to manage crew staffing, car supply, train frequency, and service commitments directly."[47]

52. The Des Moines Line runs for 136.4 miles and connects with CN's Iowa Northern Railway Company ("Iowa Northern") line in Manly, Iowa, with entry and exit also permitted at a future connection near Iowa Falls, Iowa.[48] As explained by Mr. Przednowek, "the existing UP-CN connection at Iowa Falls is a short, 15-car spot interchange track through the middle of a grain elevator that is not suitably configured for the movement of CN trackage rights trains." Accordingly, "Upon completion of a new connection at Iowa Falls, CN contemplates that its trackage rights trains to and from Des Moines would operate via Iowa Falls."[49] A map depicting the Des Moines Line and the locations of the 2-to-1 and 3-to-2 customers is provided as **Figure 11**.

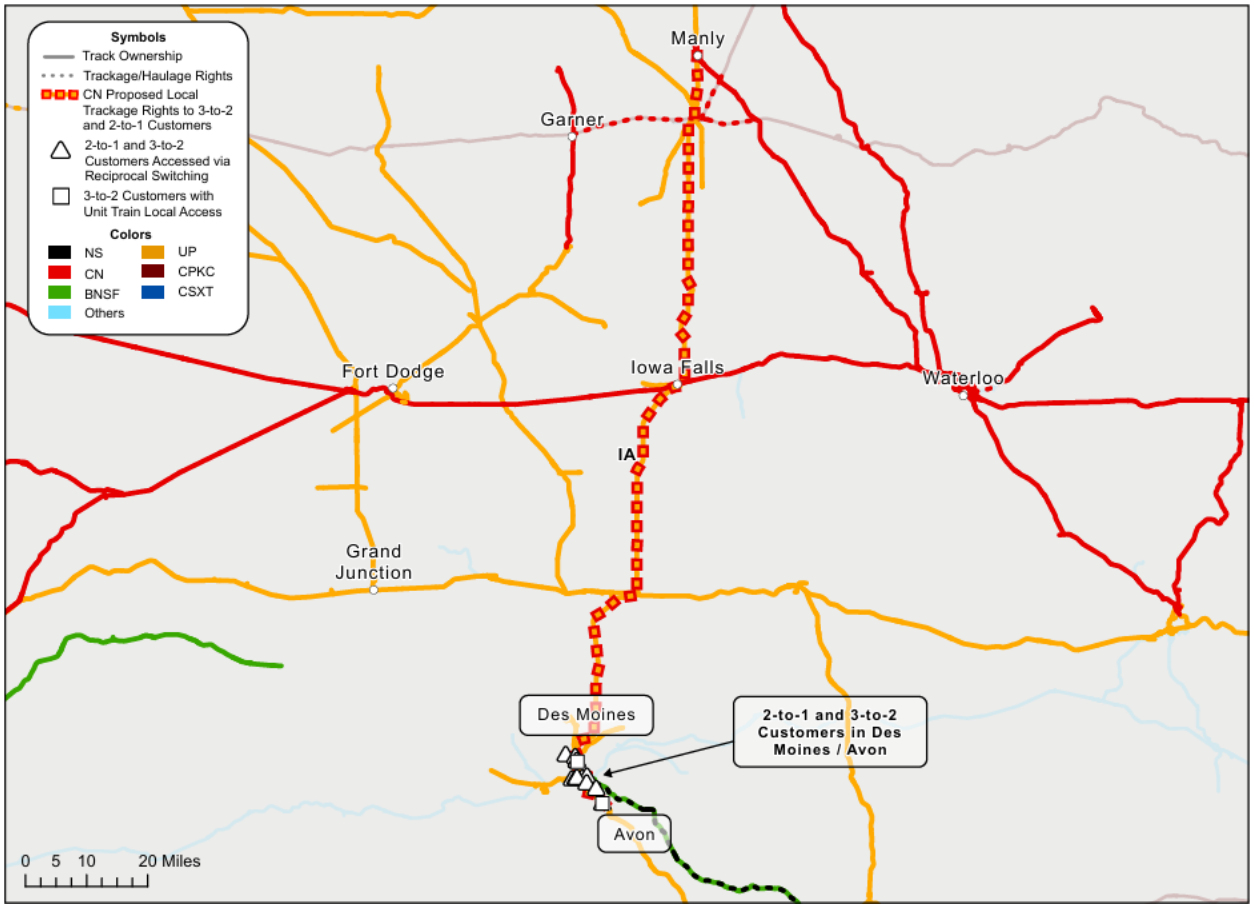
[46] Levis V.S. at 5.

[47] Przednowek V.S. at 12–13.

[48] The distance between Manly and Avon, Iowa is 136.4 miles. *See* Kahwaty Workpapers "Mileage_Calculations.xlsx" for more details on mileage for the Des Moines region.

[49] Przednowek V.S. at 13.

Figure 11
The Des Moines Line and
2-to-1 and 3-to-2 Customers in the Vicinity of Des Moines and Avon, Iowa
CN's Proposed Condition: Overhead and Limited Local Trackage Rights



Source: Kahwaty Workpapers; *See also* U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

E. CN Proposed Conditions for Access to Foresight Energy Facilities at Hillsboro and Carlinville, Illinois, and Other 2-to-1 and 3-to-2 Customer Facilities in Illinois

53. Finally, CN requests the Board condition any approval of the Proposed Transaction on granting CN trackage rights or haulage to serve the Foresight Energy facilities in Hillsboro

and Carlinville, Illinois.[50] UP agreed to grant rights to serve Foresight Energy 2-to-1 customer locations to another Class I carrier in the Second Supplemental Submission.[51]

1. Trackage Rights to Hillsboro, Illinois

54. The Foresight Energy facility in Hillsboro, Illinois (Hillsboro Energy, LLC), is located just east of the Tuscola Line and is currently served by both UP and NS. CN proposes to access this facility via local trackage rights. The "Hillsboro Line" consists of approximately 133.2 miles of UP track between Hillsboro, Illinois to Sullivan and Tuscola, and from Hillsboro through Lenox in Mitchell and WR Tower in Granite City to Q Tower TRRA in East St. Louis.[52] Granting access to CN will enable Hillsboro Energy to maintain its direct access to two Class I railroads.[53] A map depicting rail access to the Hillsboro Energy facility is provided as **Figure 12**.

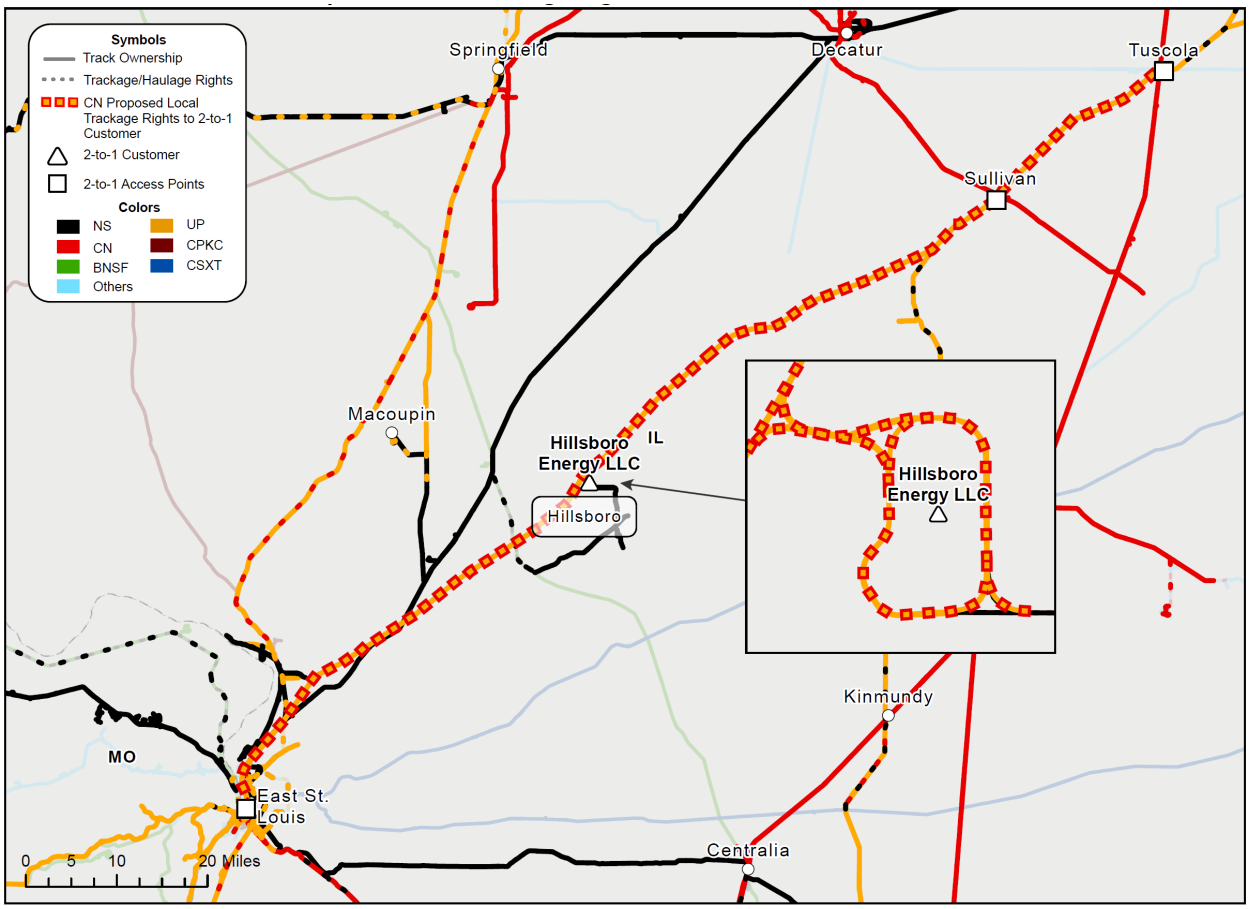
[50] Comment at 10, 103; Operating Plan at 138–139.

[51] UP-80/NS-78 at SUPP. PAGE 58, FD 36873 (filed July 27, 2026) [hereinafter "Second Supplemental Submission"]. *See also* Comment at 86–87.

[52] Kahwaty Workpapers "Mileage_Calculations.xlsx."

[53] Comment at 86–87; Operating Plan at 138.

Figure 12
Rail Access to the Hillsboro Energy Facility
CN's Proposed Condition: Local Trackage Rights



Source: Kahwaty Workpapers; *See also* U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

2. Trackage Rights to Carlinville, Illinois

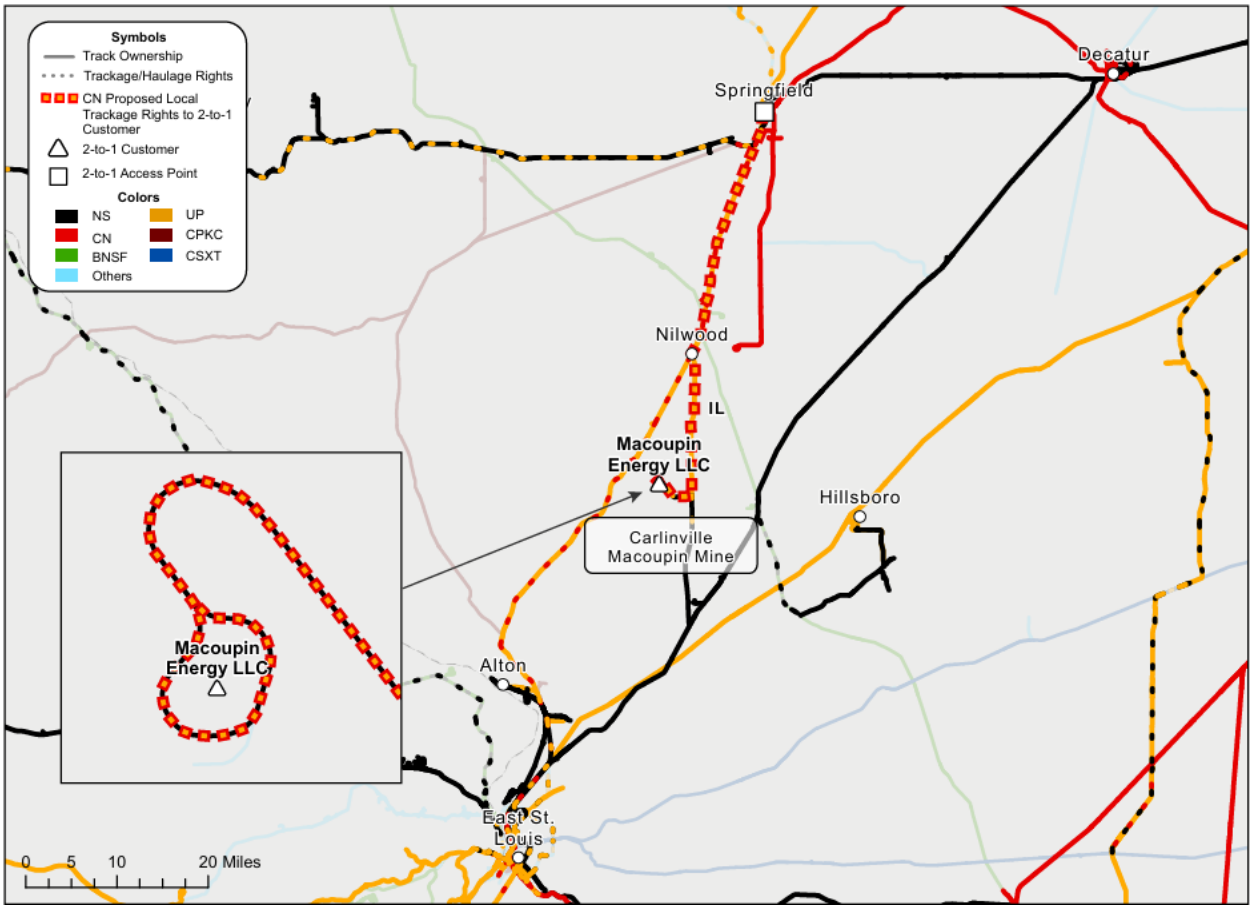
55. The Foresight Energy facility near Carlinville, Illinois (Macoupin Energy LLC, identified by Ms. Ellis, CN's Vice President, Bulk, Business & Industrial Development and Interline Relationships, as "Macoupin Energy Shay #1 Mine, formerly Monterey Mine No. 1") is between Springfield and East St. Louis, Illinois, and has rail access to UP and NS.[54] I understand that this facility is currently idle and was idle in the 2023 Base Year.[55]

[54] Ellis V.S. at 5.

[55] *Operations,* Foresight Energy, https://www.foresight.com/operations/ (last visited Nov. 17, 2026). EIA data do not report coal being delivered to generating stations from this mine in 2023; *2019 Annual Report (Form 10-K),*

Nevertheless, granting CN access to Macoupin Energy via limited local trackage rights would enable this facility to maintain its direct access to two Class I railroads in the event of a future restart to mining at this facility. It would be served by CN via limited local trackage rights from Springfield, Illinois.[56] A map depicting rail access to the Macoupin Energy facility is provided as **Figure 13**.

Figure 13
Limited Local Trackage Rights to Serve the Macoupin Energy Facility
CN's Proposed Condition: Limited Local Trackage Rights



Source: Kahwaty Workpapers; *See also* U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

Note 3, Foresight Energy LP, https://www.sec.gov/Archives/edgar/data/1540729/000156459020015553/felp-10k_20191231.htm, (last visited Nov. 17, 2026). ("In March 2020, we idled operations at our Macoupin complex, owing to the significant challenges in the thermal coal markets…")

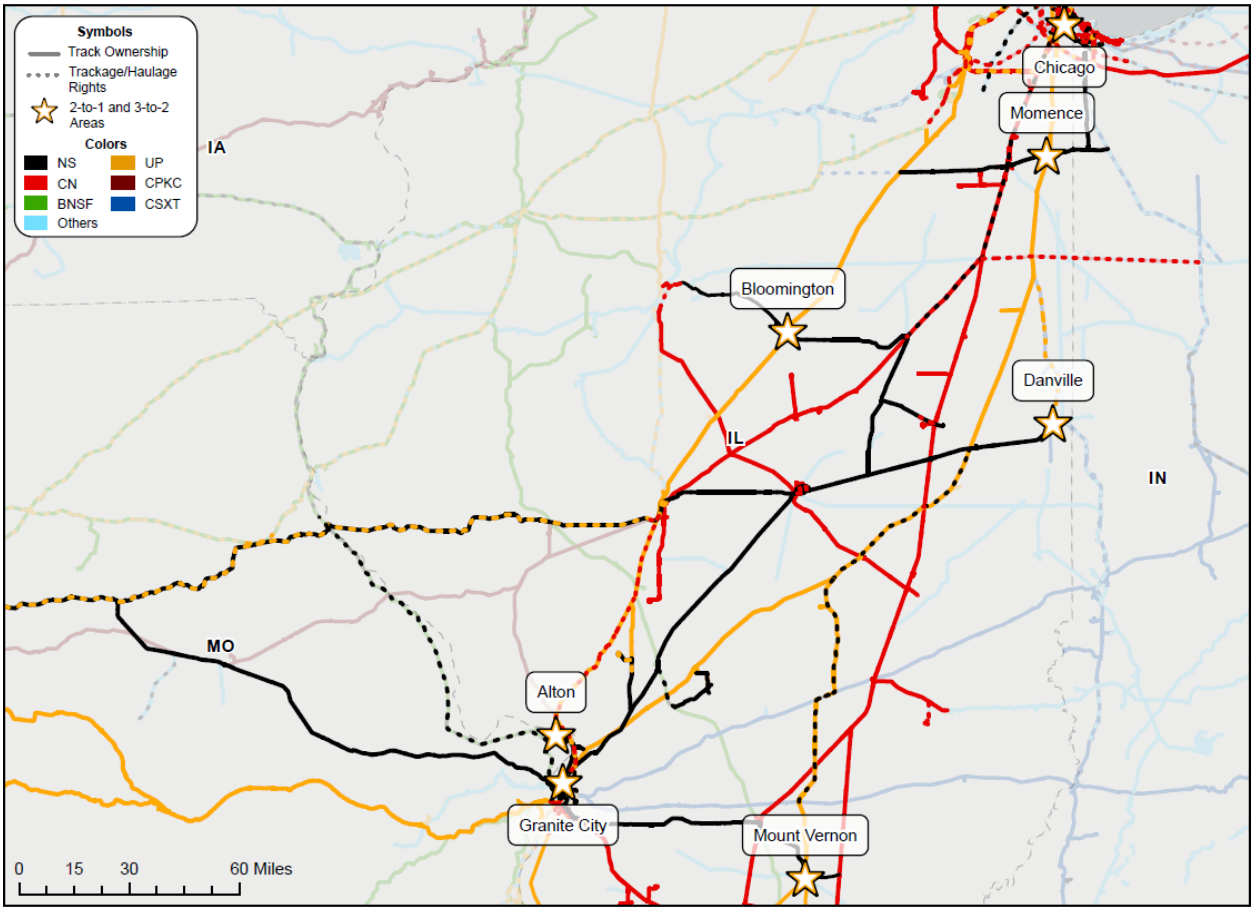
[56] Comment at 86–87; Operating Plan at 138–139.

F. Haulage or Switching Access to Remaining Illinois 2-to-1 and 3-to-2 Customer Facilities

56. There are additional 2-to-1 and 3-to-2 customer facilities in Chicago, Bloomington, Mt. Vernon, Granite City, Momence, Federal/Alton, and Danville, Illinois. CN is seeking haulage or switching access to these customers. Ms. Levis identifies a specific example, "USS Granite City Works is a 3-to-2 customer in Granite City, Illinois." She states, "CN and Union Pacific agree that the preferred remedy for this customer facility is that the facility should be opened to switching for CN in St. Louis."[57] I do not model traffic flows on Applicants' track needed for CN to provide service to these customers due to the types of access sought, but I do include the traffic diverted from Applicants to CN on track owned by CN or accessed via proposed trackage rights. A map depicting the locations of these 2-to-1 and 3-to-2 customers is provided as **Figure 14**.

[57] Levis V.S. at 5–6. Ms. Levis also states, "CN has the ability to access USS Granite City Works via a switch from the TRRA at East St. Louis, Illinois, which means CN would not be dependent on UP to effectuate the proposed remedy." (Levis V.S. at 5–6.)

Figure 14
Additional 2-to-1 and 3-to-2 Customer Facilities in Illinois

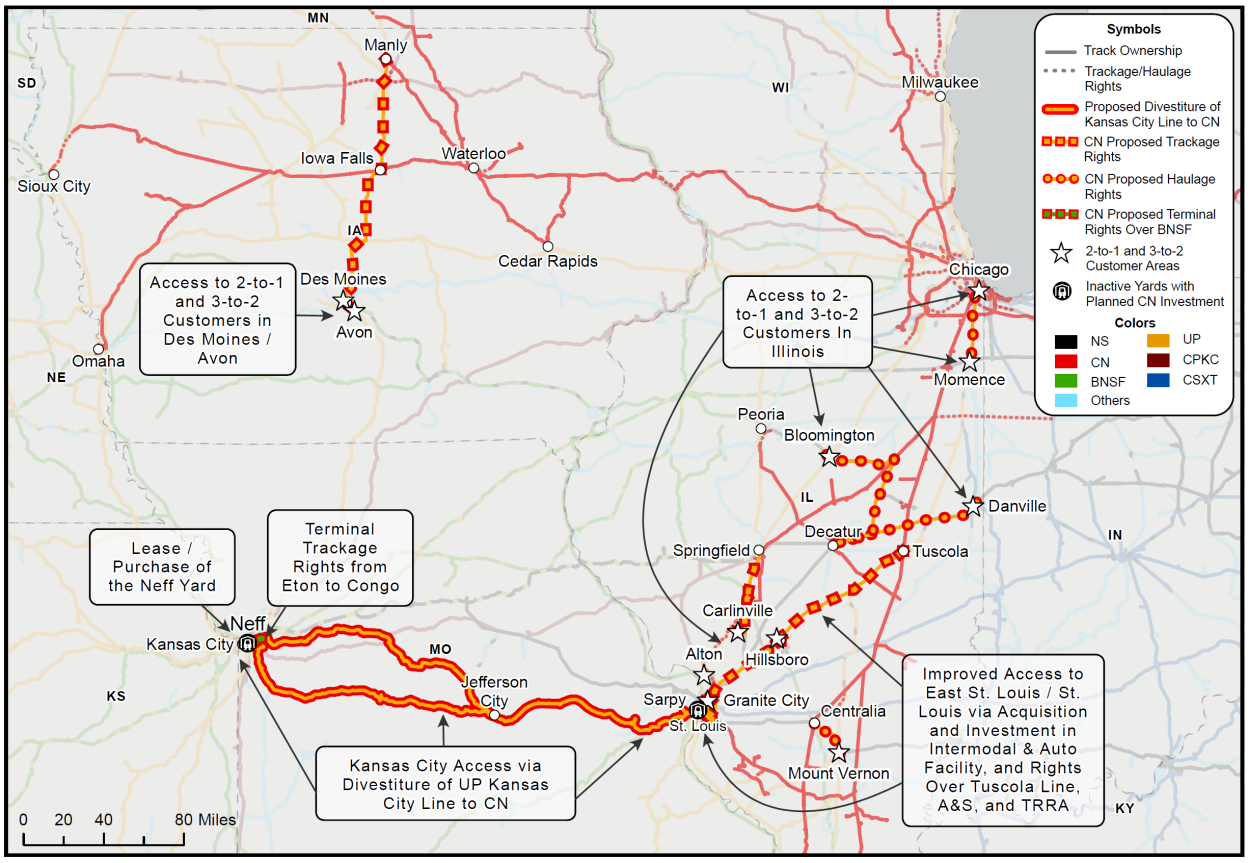


Source: Kahwaty Workpapers; *See also* U.S. Bureau of Transportation Statistics, National Transportation Atlas Database.

G. All CN's Proposed Conditions Relating to Track Access

57. A map depicting CN's network in the Midwest as augmented by the Tuscola Line, the Kansas City Line, the Des Moines Line, the Hillsboro Line, and access to Foresight Energy's Macoupin Energy facility is provided as **Figure 15.**

Figure 15
CN's Expanded Midwest Rail Network Assuming All CN's Proposed Conditions Relating to Track Access Are Approved by the Board



Source: Kahwaty Workpapers; *See also* U.S. Bureau of Transportation Statistics, National Transportation Atlas Database.

58. Overall, CN's proposed conditions would provide CN access to the Kansas City gateway, improve its access to the St. Louis gateway, and provide it with rights to serve shippers that now have access to both UP and NS, either alone or with a third Class I railroad. These are 2-to-1 and 3-to-2 shippers. Each of these shippers would otherwise lose access to a direct competitive alternative post-transaction without the proposed remedies. After the implementation of CN's proposed conditions, CN would be able to provide new or improved service between parts of both Canada and the northern and southern U.S. Midwest and the St. Louis and Kansas City areas, and via these gateways to other parts of the United States.

H. Open Gateway Conditions

59. The open gateway commitments Applicants offered in their Amended Application are based on those approved by the Board for the CP/KCS merger.[58] In CP/KCS, the Board found that open gateway commitments are an "important foundation to mitigate the potential for competitive harm."[59] As the remedy carrier, having effective open gateway requirements is important for ensuring that CN is able to maintain competition in the markets most likely to result in competitive harm due to the Proposed Transaction.

60. CN's proposed conditions request that the Board impose robust and enforceable open gateway protections.

61. In the next section, I address the potential for foreclosure resulting from the Proposed Transaction and the need for robust and enforceable open gateway protections to prevent such foreclosure. I then present my analysis of diversions.

III. OPEN GATEWAY CONDITIONS ARE CRITICAL

A. Vertical Foreclosure Concerns in the Rail Industry

62. CN plans to invest significant resources purchasing the Kansas City Line and making investments in intermodal facilities and automobile ramps in both St. Louis and Kansas City, among other investments. *See* **Section IV** and Operating Plan at 41–42, 45, 48, 57, 62, 67. To ensure that CN can preserve the competition that would be lost due to the Proposed Transaction, CN will need adequate traffic volumes to run over the Kansas City Line to make its planned investments commercially viable.

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[58] UP-39/NS-37, FD 36873, Vol. 1 at 91 (filed Apr. 30, 2026) [hereinafter the "Amended Application" or "Am. Appl."]; *see also* Comment at 70.

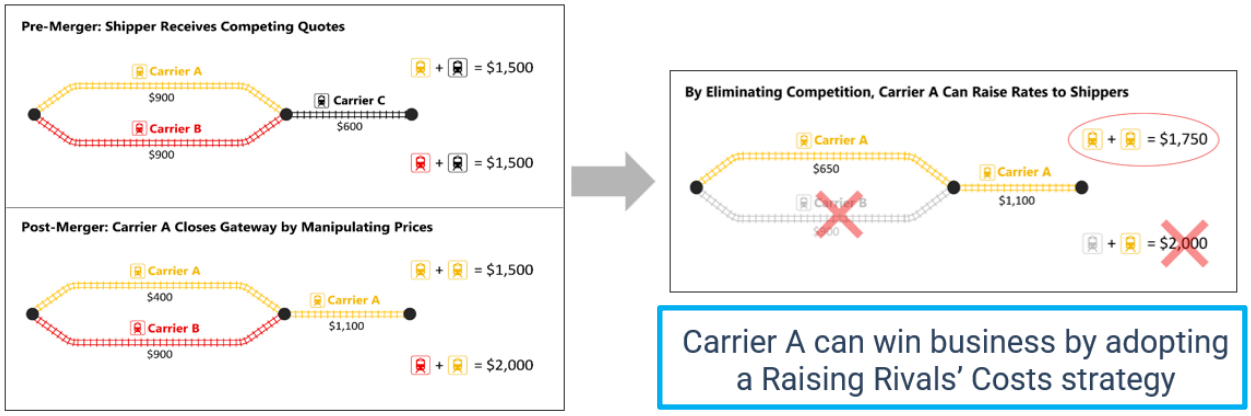
[59] Decision No. 35, *Canadian Pac. Ry.—Control—Kan. City S.*, FD 36500, slip op. at 4, 62 (STB served Mar. 15, 2023) [hereinafter "*CP/KCS*"]. ("The Board finds that these three commitments [including open gateway commitments] are an important foundation to mitigate the potential for competitive harm and will condition its approval of the Transaction on the requirements specified below, which use Applicants' core commitments as a starting point but clarify and expand on them in various ways.")

63. The diversion results reported in **Section VI** (**Table 4)** show that CN has the potential to convert substantial traffic volumes to its new and expanding businesses in St. Louis and Kansas City, including along the Kansas City Line and at the automobile and intermodal terminals in St. Louis and Kansas City. Some of CN's traffic on the Kansas City Line will terminate in Kansas City, but other traffic will be interchanged for onward conveyance to its destination.[60] Achieving these volumes of business would only be possible, however, if CN's anticipated traffic volumes are not foreclosed at gateways, preventing or inhibiting CN traffic from reaching its ultimate destination. Foreclosure of CN traffic would inhibit CN's traffic growth and could undermine CN's investments in the area as well as its ability to compete.

64. Foreclosure can be either full or partial and can involve both price and non-price elements. Suppose a firm supplies a critical input to itself to manufacture a product and to rivals that manufacture the same product. The firm supplying such an input would engage in full foreclosure if it blocked a rival's access to the input as shown in **Figure 16**. This Figure illustrates potential foreclosure in the railroad industry: if a merger between Carrier A and Carrier C enables the merged entity to close a gateway used by Carrier B via price manipulation or outright refusal to supply a downstream rival, the merged entity can raise prices to shippers. Such foreclosure can result in increased prices for shippers post-merger and have longer-term effects (e.g., reduced route density) for the disfavored carrier.

[60] I estimate that over 70% of CN's traffic to Kansas City will interchange with another carrier for onward conveyance. *See,* Kahwaty Workpapers "KCITY_Gateway_v_KCITY_Termination.ipynb".

Figure 16
Example of Full Input Foreclosure



Source: Adapted from BNSF Railway Company, *CP–KCS Merger Hearing: BNSF Presentation*, FD 36500, Exhibit 305429, at slides 16–18 (entered Oct. 5, 2022). Carrier labels and illustrative dollar amounts modified. *See also* Verified Statement of Steven Salop, *Canadian Pac. Ry.—Control—Kansas City S.*, FD 36500 [hereinafter "Salop V.S."], at 11, Figure 1.

65. A firm would engage in partial input foreclosure if it continued to supply the input to the rival but at a higher price, lower quality, or under less favorable terms. Supplying inputs to rivals at a higher price is one form of a "raising rivals' cost" strategy.[61] Non-price foreclosure involves disfavoring rivals based on input quality, features, supply assurance, or any other strategy based on factors other than price. Each of these types of foreclosure can have an adverse impact on competition.

66. Such foreclosure concerns are present in the rail industry generally, and for the proposed UP/NS merger specifically. The merged UP/NS potentially could disadvantage an interline rival without completely foreclosing an interchange point. In the railroad industry, examples of price-based partial foreclosure strategies include an increase in trackage rates charged to the rival railroad or an increase in the price of a leg on an interline movement.

67. Examples of partial foreclosure strategies include, for example, increasing the time needed to complete interchanges or reducing a rival's role in an interline movement ("short hauling"). A potential post-merger short-hauling strategy by UP/NS would affect interline

[61] Steven C. Salop and David T. Scheffman, *Raising Rivals' Costs*, American Economic Review, Vol. 73, No. 2, at 267–271 (May 1983). *See also* Adekola Oyenuga, *Vertical Mergers, Raising Rivals' Costs and Foreclosure in a Network Industry*, Modern Economy, Vol. 5, at 443–460 (2014).

rivals via pricing that effectively would compel a shipper to select an interchange point which lengthens UP/NS's portion of the haul (thereby increasing the merged railroad's miles and revenue). Other partial foreclosure tactics could include manipulating pricing to steer interchange to a less efficient location, adding cost, dwell, and handling for the shipper, or otherwise delaying rate quotes or interchange handling, or degrading the frequency and quality of interchange service. Each of these tactics would leave shippers with slower, less reliable service or otherwise increase the rival's costs and push traffic toward the merged carrier's routing. As a result, shippers lose the competitive discipline that alternatives would otherwise provide.

68. Short hauling can result from a connecting carrier's raising rivals' cost strategy. For example, the connecting carrier (e.g., the merged UP/NS) could offer the same price to a customer or interline partner for a shorter leg of an interline movement (e.g., UP/NS leg from Kansas City to Las Vegas) as it does for its preferred haul of an interline movement (e.g., UP/NS leg from Chicago to Las Vegas) to encourage the use of the longer leg offered. Since transportation costs are a function of distance, a strategy of forcing shippers onto longer UP/NS routes potentially can raise shippers' costs and increase transit times, ultimately harming both shippers and the foreclosed interline rival.

B. Economic Theory Does Not Dispel Vertical Foreclosure Concerns - Studying the CPKC Merger Empirically is Relevant

69. Dr. Israel argues, largely based on theoretical propositions, that vertical foreclosure is unlikely to occur following the Proposed Transaction due to certain railroad industry characteristics.[62] He states that "[t]he main theories of vertical foreclosure that have been

[62] Am. Appl. Vol. 2, Verified Statement of Mark Israel at 12 [hereinafter "Israel V.S."] ("However, any such theory of foreclosure would at most apply to a very limited set of cases: those where shippers do not negotiate non-linear pricing terms with railroads, where they do not obtain pricing directly from the sole-served railroad in the pre-merger case, and—at least according to any economic papers I am aware of—where they do not use Rule 11 pricing. They would also depend on restrictions on firm behavior and other assumptions that do not fit the facts of the railroad industry").

developed in the economic literature are ill-matched to this transaction and the railroad industry."[63] He elaborates on this as follows:

> In some prior vertical mergers, the STB has indicated a concern that the conditions for vertical foreclosure may be present and questioned whether the merging railroad could foreclose competition post-merger. In particular, the STB has expressed concern regarding foreclosure on routes with one sole-served segment and one competitive segment served by two or more carriers. … I perform a detailed economic analysis of the characteristics of the railroad industry to assess whether any such foreclosure concerns are valid. … I find that the economic theories of foreclosure that have been developed in the literature are ill-matched for the railroad industry.[64]

70. Just a few years ago, in March 2023, the Board approved the merger of Class I railroads CP and KCS to form Canadian Pacific Kansas City Railway Company ("CPKC"), a merger that was consummated in April 2023.[65] The potential for vertical foreclosure was a central issue in the Board's review of the CP/KCS merger.[66] UP's economic expert Dr. Salop explained in his V.S. related to that merger that there are economic incentives resulting from a vertical merger for the merged entity to engage in foreclosure and increase prices, as well as for the merged entity to reduce prices.[67] How these incentives balance out is an

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[63] Israel V.S. at 6.

[64] Israel V.S. at 10 (footnote omitted, emphasis added). Similarly, Israel V.S. at 12 states, "…an economist opposing this transaction may nevertheless be able to come up with a theory under which foreclosure is possible. In the economic literature on vertical contracting, nearly anything is theoretically possible given enough restrictions on the form of contracting and firm behavior. However, any such theory of foreclosure would at most apply to a very limited set of cases: those where shippers do not negotiate non-linear pricing terms with railroads, where they do not obtain pricing directly from the sole-served railroad in the pre-merger case, and—at least according to any economic papers I am aware of—where they do not use Rule 11 pricing. They would also depend on restrictions on firm behavior and other assumptions that do not fit the facts of the railroad industry. I deal with many such "edge cases" … explaining why they are ill-suited for the railroad industry and should not raise concerns. More generally, such edge cases based on economic models that do not fit the railroad industry certainly should not serve as the basis to block such a beneficial transaction."

[65] *See Canadian Pacific and Kansas City Southern Combine to Create CPKC,* CPKC, April 14, 2023, https://investor.cpkcr.com/news/press-release-details/2023/Canadian-Pacific-and-Kansas-City-Southern-combine-to-create-CPKC/default.aspx (last visited Nov. 10, 2026).

[66] *CP/KCS*, slip op. at 66 ("Even evidence submitted by the Applicants here confirms that there is sound reason for the Board to be concerned about vertical foreclosure.").

[67] *See, for example,* Salop V.S., at ¶ 12 regarding incentives to engage in foreclosure by increasing prices ("Specifically, CPKC will have the incentive and ability to drive traffic to CPKC by raising the rates that KCSM charges for interline movements on routes where KCSM has an effective monopoly and CPKC competes with UP. As a result of the merger, foreclosure will generate incremental revenue and profits earned by the merged firm on

empirical question. However, on balance, Dr. Salop concluded that there was a substantial risk of vertical foreclosure from the proposed CP/KCS merger.[68] In addition to Dr. Salop, concerns about vertical foreclosure were also raised in the CP/KCS merger proceeding by UP's Kenny Rocker (Executive Vice President, Marketing and Sales) and John Turner (Vice President, Network Planning and Operations), as well as by NS's Michael R. McClellan (Senior Vice President and Chief Strategy Officer).[69]

71. Given the expressed concerns about the potential for vertical foreclosure due to the CP/KCS merger, including by UP's own economic expert and from industry executives, a retrospective analysis of that merger is relevant in assessing whether vertical foreclosure effects are a concern in the railroad industry generally, and whether evidence indicates that

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those routes where KCS can interline with CP, over and above what KCS would earn before the merger if it foreclosed UP and BNSF with higher rates.") and Salop V.S. at ¶ 17 regarding incentives to reduce prices ("Vertical mergers can also lead to downward pricing pressure from elimination of double marginalization (EDM)."). *See also* Salop V.S. at ¶ 47 ("But in the middle ground, the multitude of factors that enter into the determination of the impact of the merger on shippers means that it is not possible to make definitive general predictions") and more generally, Salop V.S. at ¶¶ 47–49.

[68] Salop V.S. at ¶ 13 ("The evidence presented later in this report indicates substantial foreclosure concerns from the proposed CPKC merger.").

[69] *See* UP-10, FD 36500 (filed Feb. 28, 2022), Verified Statement of Kenny Rocker and John Turner at 12. ("KCSM's rates are probably the most important factor in preserving competition at the Laredo Gateway. UP could have the most efficient routes north of the border, receive equal treatment at the Laredo Bridge, and have its traffic treated fairly in Mexico, but if the rates KCSM charges shippers for UP-KCSM movements are too high, shippers would lose the benefits of UP competition. If CP acquired control of KCS, CPKC would have the power to manipulate KCSM's rates to make competing UP-KCSM service more expensive for shippers, forcing them to switch to less desirable CPKC offerings, or at least causing them to pay more to CPKC if they continued using UP-KCSM service.").

Verified Statement of Kenny Rocker and John Turner at 14, ("Although rate-based strategies would provide the most direct opportunities for CPKC to force traffic diversions, CP control of KCS would also provide opportunities to divert traffic by making UP-KCSM transportation offerings more costly or less attractive in other ways. As explained above, today's competitive UP-KCSM service is built upon, and continues to depend upon, cooperation between the two carriers on a wide variety of operational matters. KCSM would have radically different incentives with respect to cooperation as part of CPKC. CPKC's potential strategies for making KCSM-UP service less attractive would be as broad and as simple as reducing the high level of cooperation that exists today.").

See also NS-12, FD 36500 (filed June 9, 2022), Exhibit B, Amended Verified Statement of Michael R. McClellan at 7, 9 ("**Serious Competitive Harm Is Likely to Result From the CP-KCS Transaction** …[W]ithout effective gateway protections imposed by the Board, the CP-KCS Transaction has the potential to effectively eliminate routes where NS is dependent on current KCS gateways, including the Meridian Gateway. If the combined CPKC pursues lengthening hauls instead of protecting the most efficient gateways, then non-intermodal traffic on these routes may be diverted to more circuitous CPKC routes and intermodal traffic could be diverted to trucks or longer rail routes…. Second, the CP-KCS Transaction has the unique potential to harm shippers that rely on NS intermodal service." (emphasis in original)).

vertical foreclosure effects occurred following the CP/KCS merger specifically, despite the presence of open gateway conditions. If no vertical foreclosure effects are found in a retrospective study of the CP/KCS merger, that would indicate either that vertical foreclosure effects did not emerge for economic reasons or that the open gateway conditions prevented foreclosure from emerging. On the other hand, if a merger retrospective study found evidence of vertical foreclosure effects, it would indicate both that the railroad industry could potentially experience such vertical competitive effects and that vertical foreclosure effects emerged following the CP/KCS transaction despite the open gateway conditions. A merger retrospective is particularly relevant for the Proposed Transaction because Applicants' proposed open gateway conditions are the same as those previously adopted by the Board for the CP/KCS merger.

72. Dr. Israel has conducted merger retrospective analyses in the past, including a retrospective of the litigated 2018 AT&T/Time Warner vertical merger and a study of airline mergers—an industry with characteristics substantially similar to the rail industry.[70,71] However, he conducted no such study for the Proposed Transaction, confirming in testimony that his opinions are not based on any empirical analysis of vertical foreclosure using actual rail market performance.[72] Dr. Israel stated that he did not conduct a retrospective analysis of prior mergers in this case because he did not think there was a {{ }}

[70] Dennis Carlton, Mark Israel, Ian MacSwain, and Eugene Orlov, *Are legacy airline mergers pro- or anti-competitive? Evidence from recent U.S. airline mergers,* International Journal of Industrial Organization, Vol. 62, at 58–95 (2019) [hereinafter "Carlton, Israel, MacSwain, and Orlov (2019)"]; Dennis W. Carlton, Georgi V. Giozov, Mark A. Israel, and Allan L. Shampine, *A Retrospective Analysis of the AT&T/Time Warner Merger*, Journal of Law and Economics, Vol. 65, No. 6, Article 6, at S461-S498 (2022) [hereinafter "Carlton, Giozov, Israel, and Shampine (2022)"].

[71] The rail and airline industries share many characteristics. From an industrial organization perspective, both are network industries characterized by high fixed costs, congestion, and capacity constraints; operate in an environment of imperfect competition; and face issues related to economies of scale, scope, and route density. Further, competition in both industries can occur on many levels, including on service between individual origins and destinations, and between networks, based on price and service quality measures (e.g., on-time performance). Given these common characteristics, if retrospective merger analysis techniques can usefully be applied to airline mergers, they can likely also usefully be applied to rail mergers.

[72] Deposition of Mark Israel at 206:10–16 (Oct. 15, 2026) [hereinafter "Israel Dep. Tr."] ({{ }}) *See also* Israel Dep. Tr. at 217:11–24.

and {{ }}[73] Dr. Israel testified that there were no other mergers he could study as a retrospective because the Proposed Transaction was a {{ }}[74] He further testified explicitly that he had not studied whether Dr. Salop's conclusions regarding the CP/KCS merger had merit.[75]

73. Dr. Israel's decision to ignore the CP/KCS merger on the basis that it is insufficiently comparable to test his theoretical propositions does not withstand scrutiny. The Proposed Transaction has the potential to create long, single line hauls. The CP/KCS merger did so too, allowing for hauls between Mexico and all the major population centers in Canada, along with U.S. cities such as Chicago, Detroit, and Minneapolis. The difference is that the CP/KCS merger created opportunities for long hauls that largely run north and south in the U.S., while the Proposed Transaction would create long hauls that generally run east-west. However, since pricing is lane-specific, not national, and foreclosure is possible at individual gateways, differences in haul direction and length provide no justification for concluding that a CP/KCS merger retrospective is not relevant for assessing the potential for vertical foreclosure as a result of the Proposed Transaction.

74. Furthermore, Dr. Israel agrees that the open gateway commitments offered by Applicants "mirror those imposed in the CP-KCS merger" and include:

- Keeping all existing gateways open in perpetuity on commercially reasonable terms (including both rates and service), for both existing and new traffic;

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[73] Israel Dep. Tr. at 323:22–324:3 ({{ }}) Israel Dep. Tr. at 324:15–24 ({{ }}).

[74] Israel Dep. Tr. at 324:4–13 ({{ }}).

[75] Israel Dep. Tr. at 325:20–326:5 ({{ }}).

- Offering connecting carriers commercially reasonable rate divisions and negotiating in good faith regarding disagreements;
- Ensuring no new regulatory bottlenecks that could limit STB rate review;
- Providing (upon request) written justification of price increases in excess of inflation; and
- Submitting monthly reports on interchange volumes at gateways during the oversight period.[76]

The fact that the CP/KCS open gateway conditions "mirror" those for the Proposed Transaction makes a retrospective study of that merger particularly relevant.

75. Several years have passed since the CP/KCS merger was consummated, and the effects of the CP/KCS transaction—including vertical foreclosure effects—can now be evaluated by looking at market outcomes in the industry since then. Simply put, there is no basis to conclude that a retrospective study of the CP/KCS merger cannot inform an analysis of pricing or foreclosure on individual lanes or regarding individual gateways relevant to the Proposed Transaction.

76. In the following subsections, I describe my retrospective study of the CP/KCS merger. Before doing so, I note that Mr. Richard Miller, CEO of Spearpoint Logistics, an intermodal freight broker and logistics provider, submitted comments regarding his experience with foreclosure by CPKC, stating:

> Most importantly, critical competitive gateways to/from Mexico have been closed to competing railroads. I spent over a decade leading BNSF's Mexico business, in which time BNSF successfully partnered with the KCS and the KCS de Mexico to provide shippers highly efficient and competitive service offerings to/from Mexico over the Laredo, Texas gateway. At its peak, BNSF was moving more than 10,000 units over Laredo every single month. We feared that a merged CPKC would have every incentive to commercially foreclose that gateway and shift that traffic to its own single-line service, and that is exactly what happened. Even before the merger was

[76] Israel V.S. at 225.

> approved, KCS and KCS de Mexico refused to continue our highly successful interline service offerings under the terms we had in place for years. And after the merger was approved, the merged CPKC simply refused to enter into any sort of interline agreement at all. This foreclosed BNSF's ability to offer competing service over the Laredo gateway, reducing our 10,000 monthly units to zero. While BNSF has since developed alternative service with the FXE over the Eagle Pass gateway, routing over Eagle Pass is significantly disadvantaged compared to Laredo for many important Mexican markets, thus eliminating an excellent commercial option for rail shippers wanting to serve those markets.[77]

C. Merger Retrospective Methodology Studying Foreclosure at the {{ }} Interchange to Assess the Adequacy of the Proposed Open Gateway Conditions

77. Economists and other researchers often study "natural experiments" which are based on real-world events as opposed to controlled laboratory experiments.[78] A merger presents one such type of natural experiment to study. Mergers like the Proposed Transaction represent a structural change in the rail industry. If there are a relatively small number of industry participants, such a structural event can change the number of competitors vying for business, the products and services offered to customers, prices, product or service quality, and production and consumption patterns (among other effects). Markets react to such structural events, and the study of prior transactions can produce important insights regarding those reactions. In short, a merger retrospective analyzes the real-world market responses of economic variables—such as prices and output—to an event like a merger.

78. Conducting a retrospective study of the CP/KCS merger—the only recent merger among Class I railroads—is a natural economic approach to evaluate whether the CP/KCS open gateway conditions are sufficient to counteract or deter potential vertical competitive effects arising from the Proposed Transaction. One can study whether the CP/KCS merger

[77] Letter from Richard Miller to the Board dated November 11, 2026, at 2.

[78] Economists generally cannot conduct randomized controlled experiments—like those done to test the efficacy of a new drug—to analyze the effects of a given event on outcomes. They can, however, observe and study the effects of natural experiments such as unexpected plant outages, the entry or exit of key competitors, a change in the economic or regulatory environment, or, as in this case, a previous industry merger.

produced vertical foreclosure effects of the type anticipated by Dr. Salop and UP and NS executives or if there were no such effects as indicated by Dr. Israel in his V.S. submitted in the current proceeding. A finding of vertical foreclosure effects would indicate that Dr. Israel's conclusions (largely based on theoretical considerations) are inconsistent with industry facts and experience. Further, a finding of vertical foreclosure would mean that these effects emerged despite the presence of the same open gateway conditions that Applicants propose to apply to the Proposed Transaction.

79. I perform a merger retrospective of the CP/KCS merger using an analytic technique called a "difference-in-differences" or "DiD" analysis. The DiD analytical framework is a preferred methodology for analyzing the competitive effects, if any, from mergers. For example, in his expansive meta-analysis of merger retrospective studies (nearly 50 papers evaluating over 3,000 mergers), economist John Kwoka states:

> As demonstrated by this discussion and by example, difference in differences analysis substantially lessens the burden of controlling for other influences in merger and policy analysis. It has been the methodology of choice for most merger retrospectives in recent years, and those retrospectives constitute the foundation of present research.[79]

Economist Daniel Greenfield similarly states:

> Difference in differences regression is the standard methodology for estimating the effects of mergers. In its simplest form, it effectively and efficiently controls for fixed omitted variables, that is, factors that are time invariant for a given subject and factors that are fixed across subjects at a given period in time.[80]

Similarly, Applicants' economic expert, Dr. Israel, has conducted merger retrospectives including (as described above) a retrospective study of airline mergers and the 2018

[79] John Kwoka, *Mergers, Merger Control, and Remedies - A Retrospective Analysis of U.S. Policy*, MIT Press, 2015 at 51 (emphasis added).

[80] Daniel Greenfield, *Guide to Merger Analysis Using Difference in Differences*, in John Kwoka, *Mergers, Merger Control, and Remedies - A Retrospective Analysis of U.S. Policy*, MIT Press, 2015 at 69–70 (emphasis added).

AT&T/Time Warner vertical merger using the same DiD technique I use here and describe further below.[81]

80. The DiD methodology studies the impact of an intervention (or "treatment") on an outcome of interest for two groups—one that was exposed to the intervention (the "treatment group") and one that was not (the "control group") over two periods, one before and one after the treatment.[82] I use a DiD analysis to study the CP/KCS merger by comparing the changes in prices before and after the merger for a treatment group to the changes in prices before and after the merger for a control group.[83] I discuss how the treatment group and control groups are defined for the purposes of my study in the following section, which also specifies the DiD analysis I conduct and presents the results of my analysis. **Attachment B** provides a detailed description of how a DiD methodology works more

[81] Carlton, Israel, MacSwain, and Orlov (2019); Carlton, Giozov, Israel, and Shampine (2022). In the 2022 AT&T/Time Warner paper, Dr. Israel and his co-authors implement a difference-in-differences regression methodology presented by the AT&T expert (both unweighted and weighted by 2010 affiliate revenues) based on prior analysis in the Comcast/NBCU merger.

In the 2019 airline study, Dr. Israel and his co-authors analyze the effects of three airline mergers—Delta/Northwest, American/US Airways, and United/Continental—by comparing how the variables of interest changed between pre- and post-merger periods. Their analysis draws conclusions by studying routes for which the airline mergers were expected to have the strongest competitive effects (i.e., overlapping routes), and comparing the changes in certain variables seen for those routes to changes in those variables seen for routes not expected to be affected by the mergers.

[82] Though applied in various situations and under different circumstances, all DiD models share the same basic framework. That is, to investigate the impact of an event ("the treatment"), a comparison of outcomes is done between the treatment group and a control group that did not experience the event but is otherwise similar to the treatment group. Doing so ensures that, by construction, the DiD methodology (implicitly) accounts for the effect of common influences (i.e., factors affecting both the treatment and control groups) on the treatment group that would have occurred absent the event under study. For example, the basic experimental design for an investigation of the efficacy of a prescription drug involves comparing the experience of a treatment group (those who receive the test drug) and a control group (those who do not receive the test drug). The control group is structured to be similar in all significant respects to the treatment group. This allows the control group to be used as a benchmark against which to measure any effect of the drug on the treatment group. *See, for example*, Jeffrey M. Wooldridge, *Introductory Econometrics: A Modern Approach*, 6th Edition, 2016 at 410–411; and William H. Greene, *Econometric Analysis*, Pearson, Eighth Edition, 2018 at 167–175.

[83] The use of a control group allows one to study price changes in the treatment group while taking into account effects due to other, non-merger factors affecting prices (e.g., inflation, fuel prices, wage rates, etc.). These other non-merger factors may affect railroad pricing, but they affect pricing for both the treatment group and the control group. *See*, Jeffrey M. Wooldridge, *Introductory Econometrics: A Modern Approach*, 6th Edition, 2016 at 410–411; and William H. Greene, *Econometric Analysis*, Pearson, Eighth Edition, 2018 at 167–175.

generally, as well as the results of certain diagnostic tests and sensitivity analyses performed as part of my DiD study.

D. The CP/KCS Merger Retrospective Study Shows Potential Foreclosure in the Railroad Industry, Even with Open Gateway Conditions

81. Dr. Salop hypothesized that the price charged for movements from Mexico to {{ }} for onward conveyance into the U.S. would increase after the CP/KCS transaction.[84] Consider a movement from Mexico to Chicago, for example. Even if the total price for the movement were unchanged, Dr. Salop hypothesized that the merged CPKC would have incentives to increase the prices for the Mexico to {{ }} leg for interlining partners, encouraging shippers to use the merged entity's single line option.

82. My retrospective study analyzes interline pricing and volume for movements originating in Mexico and interlining at the {{ }} gateway compared with a set of comparable CPKC movements.[85] My treatment and control groups are defined as follows:

- "Treatment Group" – shipments originated in Mexico by KCS (pre-merger) or CPKC (post-merger) and interlining at the {{ }} gateway with UP.[86]
- "Control Group" – CP or KCS interline shipments (pre-merger) and CPKC interline shipments (post-merger) that do not pass through any of the 13 gateways subject to the CPKC open gateway conditions.[87]

83. An example of a carload in the Treatment Group is one that originates in Mexico City and interchanges with UP at {{ }}, for further passage to Kansas City, Missouri. An example of a carload in the Control Group is one that originates on UP in Wyoming and

[84] Salop V.S. at § 5.

[85] The traffic tape data produced in this docket regarding the Proposed Transaction allow me to calculate separately prices for different "legs" of each shipment. I calculate the relevant price related to CP and/or KCS (pre-merger) and CPKC (post-merger) as CP and/or KCS revenue divided by total carloads pre-merger and as CPKC revenue divided by total carloads post-merger.

[86] Such movements would have been handled by KCS's Mexico affiliate, Kansas City Southern de Mexico or "KCSM" pre-merger. For ease of exposition and consistency, I refer to KCSM movements as KCS movements.

[87] The gateways subject to the merger's open gateway conditions are Beaumont, Chicago, Dallas, East St. Louis, Eastport, Jackson, Kansas City, Laredo, Meridian, Minneapolis/St. Paul, New Orleans, Robstown, and Shreveport. *See CP/KCS* at 81-82.

interchanges with CPKC at Clinton, IA, for further passage to Columbia, Wisconsin. Note that I exclude shipments passing through the 13 gateways from the Control Group in my study because pricing (volume) at these gateways was subject to the open gateway conditions and so are not independent of the event defining the Treatment Group.

84. The underlying data for the merger retrospective cover the period 2019–2025. However, the CPKC merger process proceeded in several steps: the proposed merger was announced in March 2021, the merger application was filed with the Board in October 2021, the merger was approved by the Board in March 2023, and the merger was ultimately consummated in April 2023.[88] To account for the transition between the pre- and post-merger periods and potential merger-related "announcement effects" on prices, I report as my main results the findings from an analysis that excludes data from March 2021 through April 2023. I also report results using data for the entire 2019 – 2025 period in **Attachment B**.

85. This framework allows me to test Dr. Salop's vertical foreclosure concerns regarding potential price effects (and volume changes) for movements interchanging at the {{ }} gateway. Before presenting the regression results from the DiD model, I present in **Figure 17** a comparison of changes in prices in the Treatment and Control Groups between the pre-merger and post-merger periods.[89] Price is calculated for specific combinations of shipper-origin-destination. I calculate the percentage price change in these prices from the pre-merger period (January 2019–February 2021) to the post-merger period (May 2023–December 2025), a comparison which excludes the transition period.[90]

[88] *See Canadian Pacific and Kansas City Southern combine to create CPKC,* CPKC, https://www.cpkcr.com/en/media/canadian-pacific-and-kansas-city-southern-combine-to-create-cpkc (last visited Nov. 13, 2026).

[89] Kahwaty Workpapers, "CPKC Retrospective."

[90] Raw CPKC data exhibit sharp declines in revenues and carloads in December 2020 and December 2023. For December 2020, KCS reported that fourth-quarter volumes were adversely affected by service interruptions in Mexico, including an extended outage associated with protests affecting portions of its network. *Kansas City Southern Reports Fourth Quarter and Full-Year 2020 Results*, Ex. 99.1 to Form 8-K (Jan. 22, 2021). For December 2023, I observe an apparent absence of KCSM-sourced observations and therefore treat the observed decline as reflecting a data anomaly rather than underlying traffic conditions. The exchange rate coefficient used in this adjustment is based on Model 1 in **Figure B5**.

Figure 17
Price Increases after the CPKC Merger for Mexico Originated Shipments Interchanging at {{ }} Compared with a Control Distribution of Price Changes Pre-Merger to Post-Merger
{{

}}

86. **Figure 17** shows the distribution of price changes for Treatment Group shipments originating in Mexico and interchanging at the {{ }} gateway compared with shipments in the Control Group. These price change distributions show that, on average, prices for Treatment Group shipments interchanging at {{ }} experienced a larger increase than prices for Control Group shipments. While prices for movements at the shipper-origin-destination level increased by approximately {{ }} for the Control Group, prices increased by approximately {{ }} for shipments in the Treatment Group

originating in Mexico and interchanging at {{ }}.[91] This simple comparison indicates that prices for interline movements originating in Mexico and interchanging at {{ }} increased by approximately {{ }} than prices for movements in the Control Group. This difference is statistically significant at the 99% level of confidence.[92]

87. The price changes in **Figure 17** are consistent with Dr. Salop's expressed concerns about vertical foreclosure. While this direct comparison shows price increases, a formal DiD regression can test whether this differential change is attributable to the merger and whether the change is statistically significant. As described generally above, a DiD regression controls for cross-sectional differences across shipments as well as factors that impact prices over time for shipments generally. In other words, the regression accounts for price differences across shipments involving different commodities, routes, and other characteristics. In doing so, my DiD analysis estimates the change in prices for KCS or CPKC interline movements originating in Mexico and interchanging at {{ }} that are attributable to the merger while controlling for these other explanatory factors.

88. The revenues reported for KCS (pre-merger) and CPKC (post-merger) are denominated in U.S. dollars. Available documentation does not detail the extent to which reported revenues for shipments originating in Mexico may be affected by the conversion of Mexican-peso-denominated amounts into U.S. dollars. Accordingly, movements in the U.S. dollar/Mexican peso exchange rate may affect measured prices for the Treatment Group independently of changes in underlying prices. In addition, Mexican-specific events could affect interline movements originating in Mexico, thereby impacting prices in the Treatment Group in ways that are distinct from the Control Group. Because the Treatment Group consists of interline shipments originating in Mexico, I account for such factors by including a control variable for the exchange rate. Specifically, this control variable is the

[91] Kahwaty Workpapers, "CPKC Retrospective."

[92] Kahwaty Workpapers, "CPKC Retrospective."

natural logarithm of the U.S. dollar/Mexican peso exchange rate for Treatment Group observations (which might be impacted by such factors), as shown below.[93]

89. I estimate the following regression specification using monthly data:

{{

}}

90. The dependent variable in my DiD regression analysis is the natural logarithm of $price_{it}$, for route *i* in month *t* which is defined as revenue divided by carloads for CP and/or KCS (pre-merger) and CPKC (post-merger) for shipments in the Treatment Group or Control Group. The U.S. dollar/Mexican peso exchange rate measures the Mexican Peso value of one U.S. Dollar.[94] The year-month fixed effects are defined as indicator variables for each year-month, equal to 1 for observations in that year-month and 0 otherwise.[95] The shipment fixed effects are defined as separate indicator variables for each unique combination of origin, destination, car type, commodity type, shipper, railroad, intermodal status, contract type, whether the shipment is under Rule 11 pricing, whether the shipment is in the Treatment Group or Control Group, and car ownership type.[96] The inclusion of these fixed

[93] Such a control is called an interaction variable, as it is a variable (here, the exchange rate) multiplied by an indicator variable identifying observations for which the variable is relevant (here, equal to "1" for the Treatment Group and equal to "0" for the Control Group).

[94] Federal Reserve Bank of St. Louis, *Mexican Pesos to U.S. Dollar Spot Exchange Rate (DEXMXUS)*, FRED Economic Data, https://fred.stlouisfed.org/series/DEXMXUS (last visited Nov. 15, 2026).

[95] Because my model includes these separate year-month fixed effects, I do not (in fact, cannot) add a separate variable that is a post-merger indicator variable, as described in **Attachment B**. That is, my post-dummy indicator variable is subsumed in my year-month fixed effects controls.

[96] As with my post-merger variable, because I define my shipment fixed effects as whether that shipment is in the Treatment Group or Control Group, I do not (in fact, cannot) add a separate Treatment Group indicator variable in my analysis, as described in **Attachment B**. My Treatment Group indicator variable is subsumed within my shipment fixed effects controls.

effects controls for factors like commodity type (*e.g.*, higher prices for transporting hazardous chemicals), distance (*e.g.*, higher prices for longer hauls), and car ownership (*e.g.*, higher prices for rented cars). The error term, ϵ_{it}, shows the difference between the actual price and the price predicted by the regression model.[97]

91. The parameter of interest is β, which measures the average relative change in prices for Treatment Group movements relative to the average change in prices for movements in the Control Group. A positive and statistically significant estimate of β would be consistent with Dr. Salop's predicted vertical foreclosure effect in {{ }} following the CP/KCS merger. The results of my DiD analysis are reported in **Figure 18**.

Figure 18
Higher Prices Post-CP/KCS Merger for Movements Originating in Mexico and Interchanging at {{ }} Relative to Control Group
Difference-in-Differences Regression
January 2019 – February 2021 and May 2023 – December 2025
{{

}}

[97] A regression specification of this form is identical to the one presented in **Attachment B** and similar to that used in Carlton, Israel, MacSwain, and Orlov (2019).

92. In **Figure 18**, I report results for two variations of the DiD analysis – results from both unweighted and weighted regressions. The unweighted regression counts each observation as having the same level of importance, or "weight," in the regression analysis. The weighted regression uses the number of carloads as weights, thereby counting observations as having greater importance, or "weight," in the regression analysis based on the numbers of cars for each observation. The regression results show a positive and statistically significant price effect for Treatment Group movements interchanging at {{ }} relative to the Control Group for both variations of the analysis. The estimated average price effects in the weighted and unweighted regressions are approximately {{ }}, respectfully.[98,99]

93. I further study whether the observed price effects for the Treatment Group, the leg of the movement controlled by KCS (pre-merger) and CPKC (post-merger), are also observed in the leg of the movement controlled by interlining partner in the U.S. (*i.e.*, UP at {{ }}). **Figure 19** shows price indexes of these legs over the 2019 to 2025 period relative to controls. The price indexes incorporate all cross-sectional controls described in my regression analysis. Thus, this figure can be thought of as a visual representation of my DiD analysis (the red lines), though also including the leg of the interlining partner, UP.

[98] The percentage is calculated as 100 * [exp(0.0583)-1] for the unweighted regression and 100 * [exp(0.0494)-1] for the weighted regression.

[99] If this regression is estimated without the exchange rate variable, there continues to be a positive and statistically significant price effect for Treatment Group movements interlining at {{ }} relative to the Control Group in each specification, with the estimated price effect being larger than the results presented here. *See* **Attachment B** for these results.

Figure 19
Price Increases on Post-Merger CPKC Leg Higher than UP Leg for Movements Originating in Mexico, Interchanging at {{ }}
{{

}}

94. The red lines show the price indices for the CP and/or KCS (pre-merger) and CPKC (post-merger) leg of interline shipments for the Treatment Group and Control Group, calculated as revenue divided by carloads. The green lines show the price indices for the non-CP and non-KCS (pre-merger) or non-CPKC (post-merger) leg of the Treatment Group moves and non-CP or KCS (pre-merger) and non-CPKC (post-merger) for the Control Group. The dotted lines represent the Treatment Group, and the solid lines represent the Control Group.

95. As the figure shows, and consistent with my DiD analysis, legacy KCS (pre-merger) and CPKC (post-merger) prices in the Treatment Group, consisting of shipments originating in Mexico and interchanging at {{ }}, increased more than prices in the Control Group

(dotted red line compared with solid red line) post-merger. In addition, prices for the non-CP and non-KCS (pre-merger) and non-CPKC (post-merger) portion of shipments in the Treatment and Control Groups generally followed similar trends over the 2019-2025 period. Such results are consistent with the presence of partial vertical foreclosure, as prices on the CPKC (post-merger) leg of shipments originating in Mexico and interlining at {{ }} increased by substantially more than prices for the corresponding leg of these shipments in the U.S.

96. It is further instructive to examine what happened to the volume of cars passing through {{ }} before and after the CP/KCS merger. With partial vertical foreclosure, I would expect to see volumes through {{ }} increase for CPKC post-merger relative to interline CP-KCS movements pre-merger, and volumes decrease for interline movements where KCS movements to {{ }} interline with other railroads for onward transit to their destinations. **Figure 20** shows car counts in total passing through {{ }} in the dotted black line, car counts for joint KCS-CP movements (pre-merger) and CPKC single line movements (post-merger) in the red line, and car counts for movements interlining with KCS pre-merger and CPKC post-merger in the blue line. As seen in this figure, while overall volume has declined somewhat, CPKC single line movements increased substantially post-merger (red line) compared with KCS-CP interline pre-merger. At the same time, KCS (pre-merger) and CPKC (post-merger) interline movements declined markedly post-merger (blue line). These car count patterns are consistent with the emergence of partial vertical foreclosure following the CP/KCS merger.

Figure 20
Reduction in Interchanges at {{ }} and Increase in Single-Line KCS-CP (Pre-merger) and CPKC (Post-merger) Compared with Interchanges at {{ }}
{{

}}

97. **Figure 21** reports results from a DiD analysis (similar to the study above using price) using car counts as the outcome variable studied. Model 1 uses car counts as the dependent variable, while Model 2 uses the natural logarithm of car counts. The shipment fixed effects are defined as *separate indicator variables* for origin and destination, car type, commodity type, shipper, railroad, intermodal status, contract type, whether the shipment is under Rule 11 pricing, whether the shipment is in the Treatment Group or Control Group, and car ownership type.[100] The estimated treatment effect is negative and statistically significant in both specifications, consistent with the pattern in total car counts reported in **Figure 20**.

[100] Note that my DiD analysis studying price effects defines fixed effects as the unique combination of the fixed effects. In my DiD analysis studying output effects, I use each of the fixed effects included in the price regression,

Figure 21
Reduction in Car Counts Interchanging at {{ }} for
Movements Originating in Mexico Relative to Control Group
Difference-in-Differences Regression
January 2019 – February 2021 and May 2023 – December 2025
{{

}}

98. I would expect third parties to attempt to at least partially mitigate the effects of any partial foreclosure by shifting shipping patterns to use other gateways for movements out of Mexico instead of the {{ }} gateway. Interchange at {{ }} represents a potential alternative for at least some shippers as it sits on the U.S.–Mexico border approximately 100 miles northwest of {{ }} "as the crow flies." {{ }} would not be an option for a shipper captive to CPKC, and even if it were an option, it might result in suboptimal routing for shippers.

99. In examining traffic patterns at {{ }} and {{ }}, I looked at a specific category of traffic (transportation equipment) and found that volumes decreased at

but not the unique combination of each. This is to allow measurement of changes in volumes more generally rather than within routes only.

Because I define my shipment fixed effects as whether that shipment is in the Treatment Group or Control Group, I do not (in fact, cannot) add a separate Treatment Group indicator variable in my analysis, as described in **Attachment B**. My Treatment Group indicator variable is subsumed within my shipment fixed effects controls.

{{ }} and correspondingly increased at {{ }} post-merger (2024-2025). By looking at a specific product type, I rule out growth at {{ }} coming from other types of products. **Figure 22** shows transportation equipment volumes at {{ }} and {{ }}. These patterns are consistent with some transportation equipment shippers seeking alternatives to higher prices at {{ }} and shifting to {{ }} as an entry point into the U.S. However, based on my merger retrospective results addressed above, any such shipper responses were insufficient to defeat the price increases observed for traffic originating in Mexico and interlining at {{ }} after the CP/KCS merger.

Figure 22
Transportation Equipment Volumes Shifted from {{ }} to {{ }} After the CP/KCS Merger
{{

}}

100. In the absence of partial vertical foreclosure effects, I would expect to see volume at {{ }} increase for the merged railroad, decrease for third parties, and increase overall as interline shipments transition or divert to single line shipments. If the CP/KCS merger's effects were purely driven by efficiency gains, total volume through {{ }} would increase, not decrease. Instead, actual volume decreased at {{ }} and increased at {{ }} as third parties shifted volume to an alternative gateway to at least partially avoid the effects of the foreclosure for shipments through the {{ }} interchange.[101]

101. The two largest railroads in Mexico are CPKC and Ferromex. Some shippers have access to both railroads and so have the option to shift volumes away from {{ }} to {{ }}. Others, however, are captive to CPKC. Shifting volume to {{ }} is more difficult or not economically feasible for captive shippers. Shippers that continued to ship volume through {{ }} (including those captive to that option) faced price increases. All such effects are consistent with the emergence of partial vertical foreclosure following the CP/KCS merger.

E. Implications of the CP/KCS Merger Retrospective Analysis for UP/NS Merger Remedies

102. Applicants have proposed the same open gateway conditions be applied to the Proposed Transaction as were applied to the CP/KCS merger.[102] Given my CP/KCS merger retrospective analysis findings, I conclude that there is a potential for partial vertical foreclosure in the railroad industry as a result of the Proposed Transaction. Because of this risk, it is critically important that any open gateway conditions the Board imposes be strong enough to protect CN's shippers and traffic from partial foreclosure. Those protections are needed to ensure that CN has enough traffic on the Kansas City Line, and enough use of its intermodal and automotive facilities in the region, to make its acquisition of and investment in these facilities financially viable and to allow it to compete effectively. If

[101] *See* Kahwaty Workpapers "Transportation Equipment Volumes Shifted from {{ }} to {{ }} After the CP-KCS Merger.ipynb."

[102] *See* Second Supplemental Submission at 155, n.296, 208.

these facilities do not achieve sufficient volume, CN will be limited in its ability to preserve competition in the area over time.

103. Partial vertical foreclosure risks are even greater for the Proposed Transaction than the CP/KCS merger given Applicants' significant post-merger combined share of the U.S. Class I rail industry. **Table 3** summarizes the shares of the domestic Class I rail industry represented by each Class I railroad. It provides shares based on several different metrics. Based on 2025 data, the merged railroad would represent 43.2 percent of domestic Class I railroad revenue and 40.4 percent of Class I railroad revenue ton miles.[103]

Table 3
U.S. Class I Railroad Summary Statistics
2025
{{

}}

104. Furthermore, the merged UP/NS interchanges with third-party railroads at numerous gateways across the country—more gateways than the merged CP/KCS interchanges with third parties. This means that the merged UP/NS will have greater reach, more opportunities to foreclose rival railroads, and a greater ability and incentive to engage in partial vertical foreclosure than CPKC. CN and either or both of UP and NS are both present at gateways like Chicago, Memphis, New Orleans, and others. A full list of

[103] Railroad "Revenue Share" does not always sum to "UP/NS Combined Share" in the table due to rounding.

gateways and interchanges where CN overlaps with UP and/or NS is provided as **Attachment C** and includes:

- CN interchange overlap with UP and NS includes Chicago, Illinois; New Orleans, Louisiana; Memphis, Tennessee; Peoria, Illinois; and East St. Louis, Illinois.
- CN interchange overlap with UP includes Baton Rouge, Louisiana; Cedar Rapids, Iowa; Council Bluffs, Iowa; Sioux City, Iowa; Waterloo, Iowa; Superior, Wisconsin; Omaha, Nebraska; St. Louis, Missouri; Minneapolis/St. Paul, Minnesota; and Salem, Illinois, among others.
- CN interchange overlap with NS includes Toledo, Ohio; Buffalo, New York; Decatur, Illinois; Detroit, Michigan; and Mobile, Alabama, among others.

These are all potential points where the merged UP/NS can potentially foreclose CN—in addition to Kansas City—if the Board does not approve robust and enforceable open gateway protections.

105. The enhanced potential for vertical foreclosure arising from the Proposed Transaction as compared to the CP/KCS merger makes it even more important that the open gateway conditions applied are robust and enforceable to ensure that Applicants cannot exercise market power post-merger through the use of vertical foreclosure tactics.

106. Finally, the potential for partial vertical foreclosure post-merger highlights the necessity for the divestiture of the Kansas City Line as opposed to providing CN access to the Kansas City Line via trackage rights. Elevating trackage rates is one way the merged UP/NS could engage in partial foreclosure.[104] The divestiture of the Kansas City Line would prevent the merged railroad from engaging in foreclosure via the trackage rates charged to CN, in addition to removing the ability of the merged railroad to self-preference its own traffic or otherwise degrade CN service. The risk of partial vertical foreclosure necessitates

[104] UP CEO Jim Vena reportedly made comments at an investor conference indicating that if trackage rights were required, UP would just raise trackage right rates to make their use uneconomic: "If we allowed X railroad to run on our railroad for 800 miles, we would charge them a per car-mile charge that actually would make it more expensive for them to get to that destination." *Union Pacific blasts rival railroads' trackage rights requests: BNSF, CSX, CPKC seek widespread network access*, Trains.com (Sept. 18, 2026), https://www.freightwaves.com/news/union-pacific-blasts-rival-railroads-trackage-rights-requests (last visited Nov. 15, 2026).

divestiture to guard against the exercise of market power by the merged railroad and would enhance the effectiveness of the open gateway protections ordered by the Board.

IV. CN'S INVESTMENT PLANS

107. CN plans to invest substantial resources to build out its capabilities in both the St. Louis and Kansas City areas. These investments are designed to support its business plan, which is to grow its traffic at both gateways, and are detailed in multiple CN Verified Statements. CN's Operating Plan identifies that CN is proposing $81.5 million of investment over three years, which will improve transit times, expand capacity, and provide improved connections.[105] CN's investment plans include projects at the following locations:

- Neff Yard: expanded intermodal and operating capacity with track and yard upgrades.[106]
- Tuscola connection at Champaign: new connection on the Tuscola Line near milepost 153.76 – estimated investment of {{ }}.[107]
- Sullivan Station new track: connecting track added at milepost 176.2 on the Tuscola Line for coal trains – estimated investment of {{ }}.[108]
- Iowa Falls connection: new connection along the Des Moines Line at Mason City Subdivision – estimated investment of {{ }}.[109]
- Former Sarpy Yard property: improve UP's inactive former Sarpy Yard property in St. Louis for automobile operations.[110]

108. Investments relevant to my diversion analysis are summarized further below and discussed in other sections of this V.S. that detail my diversion estimates.

[105] Operating Plan at 150, Figure 52.

[106] Operating Plan at 150.

[107] Operating Plan at 151.

[108] Operating Plan at 152.

[109] Operating Plan at 153.

[110] Operating Plan at 154.

109. CN seeks to acquire the Kansas City Line, which includes about 427 miles of track.[111] At this time, no purchase price has been agreed between UP and CN for the Kansas City Line. In addition to purchasing the Kansas City Line, CN will need to invest in facilities to allow CN to access the Kansas City Line track.

110. CN expects to lease (with the option to purchase) the Neff intermodal terminal and begin using the Neff Yard to serve Kansas City and surrounding geographies immediately after the completion of the Proposed Transaction, divestiture of the Kansas City Line to CN, and commencement of CN's lease or completion of its purchase of Neff Yard.[112] CN does not expect that significant upfront investment at Neff Yard will be necessary to begin serving its intermodal traffic; however, CN does plan to make significant investments at Neff Yard to improve and expand its intermodal operations in Kansas City over time.[113] Mr. Nair states that CN anticipates adding "equipment, such as trucks and cranes."[114] CN also plans to use Neff Yard to serve automotive traffic. As detailed by Sarah Slazinski, CN's Assistant Vice-President, Automotive, "CN plans to use existing pavement and track where possible, which makes the site workable, but will otherwise invest as needed to convert the yard for automotive handling."[115] The Operating Plan identifies "track and other yard upgrades, such as equipment, fencing, repair tracks, lighting and security cameras" to expand intermodal and automotive capacity at Neff Yard.[116]

111. CN plans to develop intermodal and finished auto facilities in St. Louis as well. Specifically, CN is planning to build its own intermodal and finished auto distribution facility at UP's former Sarpy Yard property, which is in St. Louis on the Kansas City Line.[117] CN identifies an investment area of approximately 20 acres at the property and

[111] *See* Kahwaty Workpapers "Mileage_Calculations.xlsx."

[112] Nair V.S. at 8–9. *See also* Slazinski V.S. at 9–10.

[113] Nair V.S. at 9–10.

[114] Nair V.S. at 9.

[115] Slazinski V.S. at 10–11.

[116] Operating Plan at 150.

[117] Operating Plan at 101, 106–107, 154–155; Nair V.S. at 10–11; Slazinski V.S. at 12–13.

anticipates that improvements will occur within the yard's existing boundary.[118] CN plans to invest in the property to open automotive and intermodal terminals and expects intermodal capacity to become available once the planned infrastructure improvements are completed; CN can begin marketing that capacity before completion.[119] CN's five-year projections anticipate 30.2 intermodal trucks and 8.9 automotive trucks per day at the former Sarpy Yard property.[120]

112. CN has recently made and is planning additional investments in its intermodal business. Mr. Nair states that CN "is adding capacity to provide resilience" and "is also developing a Chicago logistics hub that is approximately 900 acres to reach the southwest side of the Chicago market near consumer distribution centers to address growing demand in Chicagoland and the Midwest and improve access to North American and international markets." He also states that CN is pursuing integrated logistics hubs "such as those in Grundy County, Illinois; Calgary, Alberta; and Milton, Ontario."[121] In 2019, CN added TransX, "a refrigerated intermodal specialist with a leased network of 11 distribution centers and approximately 1,400 temperature-controlled containers."[122] In its March 2026 infrastructure report to the Board, CN identified the development of a new intermodal terminal in Grundy County, Illinois, with anticipated expenditures exceeding {{ }}, major construction expected in 2027 and 2028, and completion expected in

[118] CN, Supplemental Letter to OEA at 2, § II & Exhibit B, "Former Sarpy Yard Property – CN Investment Area" (Nov. 13, 2026) [hereinafter "Supplemental OEA Letter"].

[119] Slazinski V.S. at 13 & n.11; Nair V.S. at 10–11.

[120] Supplemental OEA Letter, Exhibit D-1, "Intermodal & Auto Ramps," Sarpy rows, "CN Year 5 Trucks Per Day with Transaction."

[121] Nair V.S. at 6.

[122] Nair V.S. at 4.

2029.[123] CN is also building a new intermodal facility in Milton, Ontario, southwest of Toronto at a cost of {{ }}.[124] This facility is anticipated to open in 2027.[125]

V. TRAFFIC DIVERTIBLE TO CN

A. U.S. Shippers Would Benefit from CN's Proposed Conditions Related to New Kansas City Access and Improved St. Louis Access

113. CN's proposed conditions provide CN access to one additional gateway (Kansas City) and improve its access to another gateway (St. Louis). These are both important gateways – they are the second and third largest rail hubs in the U.S., after Chicago,[126] and they provide CN with significant improvements and expansions to its rail network and ability to serve more U.S. shippers. Large volume commodities and manufactured goods passing through the Kansas City gateway include nonmetallic minerals, coal, farm products, and food/kindred goods, among others.[127] The St. Louis gateway handles large volumes of grain, coal, chemicals, steel, aggregates and finished autos, and auto parts, and is served by

[123] *See* Christopher K. Diamond, *Rail Infrastructure Projects, 49 C.F.R. § 1250.4*, STB, Mar. 2, 2026, at 1, https://www.stb.gov/wp-content/uploads/CN-Infrastructure-Report-2026.pdf (last visited Nov. 10, 2026). ("In 2025, CN began early earthwork activities for the construction of a new intermodal terminal in Grundy County, Illinois. These activities will continue throughout 2026. CN currently anticipates major construction occurring in 2027 and 2028, with project completion expected in 2029."); *CN to Invest Approximately $170 Million in Illinois to Build Capacity and Power Sustainable Growth*, CN, June 11, 2025, https://www.cn.ca/en/news/2025/06/cn-to-invest-approximately-$170-million-in-illinois-to-build-cap/ (last visited Nov. 10, 2026) ("[CN] plans to invest approximately US$170 million in Illinois, as part of its 2025 capital investment program. This investment will support track maintenance and strategic infrastructure initiatives in the state. This includes investments towards the construction of the Chicago Logistics Hub and projects to upgrade technology and training facilities at CN's Homewood Campus, as well as network improvements"); *Chicago Logistics Hub: Intermodal Terminal and Logistics Park,* CN, https://cnchicagologisticshub.com/ (last visited Nov. 10, 2026).

[124] *See Milton Logistics Hub,* CN, https://www.cn.ca/en/about-cn/milton-logistics-hub/ (last visited Nov. 10, 2026).

[125] *See Milton Logistics Hub,* CN, https://www.cn.ca/en/about-cn/milton-logistics-hub/ (last visited Nov. 10, 2026).

[126] Ted Abernathy and Greg Payne, *Transportation 2030: Making Missouri a Leading Logistics Hub*, Missouri Chamber Foundation, 2022, at 26, https://mochamber.com/wp-content/uploads/2022/07/Transportation2030-report-DIGITAL.pdf (last visited Nov. 15, 2026) ("Kansas City and St. Louis are ranked as the second- and third-largest rail hubs in America, based on number of freight trains daily.").

[127] MoDot, *Missouri State Freight & Rail Plan: Commodity Flow Profile*, MODOT, 2022, at 42, https://www.modot.org/sites/default/files/documents/Commodity%20Flow%20Profile%20FINAL.pdf (last visited Nov. 15, 2026) ("By tonnage, nonmetallic minerals, coal, farm products and food/kindred goods rounded out the top four with more than 58 million tons.").

all six Class I railroads.[128] My analysis reflects the importance of these two gateways when identifying the extent of traffic that one could expect to be diverted to CN if the Board were to approve CN's proposed conditions.

114. In addition to new or improved access at the Kansas City and St. Louis gateways, CN's proposed conditions would provide CN with the ability to serve 3-to-2 and 2-to-1 customers in Hillsboro, Illinois, and Des Moines, Iowa. Through this new access, CN would restore lost independent competition for Foresight Energy coal traffic and Iowa customers, respectively.

115. Taken together, CN's proposed conditions would allow it to provide single-line service between Kansas City and places like Chicago, Detroit, and cities across Canada, while improving CN's access to St. Louis by shortening its route between Chicago and St. Louis by about 70 miles and offering competitive services for Iowa and the U.S. Gulf Coast.[129] As detailed in my analyses of diversion, these network improvements would provide significant benefits to U.S. shippers located both in CN's service territory and elsewhere.

B. Traffic Diversion Scenarios

116. Traffic diversion studies evaluate how a proposed rail transaction will change the routing of existing traffic and inform the operating plans, network investments, environmental analysis, and competitive analysis of a proposed rail transaction. They also assess the capabilities of a potential remedy carrier by illustrating how the remedy carrier would be able to increase traffic volumes on the new line. My diversion study finds that CN's proposed conditions would attract volume or expand the usage of CN's rail network by roughly 169,000 cars annually, currently moving with other rail carriers or with trucks, to its proposed network because of new or improved access the conditions would make available. The areas in which CN has requested new or improved access are natural

[128] AECOM Technical Services, Inc. et al., *St. Louis Regional Freight Study*, 2013 at 4-48, 8-169, https://www.ewgateway.org/transportation-planning/freight/ ("St. Louis is one of a small number of places in the U.S. where six Class I railroads connect").

[129] Kahwaty Workpapers "Mileage_Calculations.xlsx."; *see also* Nair V.S. at 10-11.

extensions of its existing network, would improve CN's competitiveness with other railroads, and provide additional optionality for rail customers in the U.S. and Canada.

117. I consider the potential for diversion under two scenarios that differ based on the specific conditions approved by the Board. The Base Case models the Kansas City Divestiture, Tuscola Trackage Rights, Des Moines Trackage Rights, Hillsboro Trackage Rights, and access to certain reciprocal switch customer facilities. I refer to the CN rail network under this set of conditions as the "Base Case CN Rail Network."

118. The alternative scenario considered modifies the Base Case by considering CN being given access to Kansas City via trackage rights over the Kansas City Line as opposed to acquiring the Kansas City Line from UP (the "Trackage Rights Alternative"). The other conditions included under the Trackage Rights Alternative scenario are unchanged (*e.g.*, the Board approves granting CN trackage rights over the Tuscola Line). CN's rail network in the Trackage Rights Alternative scenario is identical to that in the Base Case. In the alternative scenario, CN has trackage rights over the Kansas City Line instead of ownership of that line, but it would still have access to the same track and customer locations.

119. In addition to modeling and reporting results for the Base Case and the Trackage Rights Alternative scenarios, I disaggregate these scenarios and break out the diversions attributable to each of the separate requests in CN's proposed conditions.[130] I present all Trackage Rights Alternative tables in **Attachment D**.

120. I understand that additional requests for conditions are being filed contemporaneously by other Class I railroads. I do not consider these other requests for conditions in the diversion analyses detailed in this V.S.[131]

[130] *Union Pacific Corp.—Control—Norfolk Southern Corp.*, FD 36873, Decision No. 45 (STB served Nov. 4, 2026) [hereinafter "Decision No. 45"].

[131] I note that CN and UP have discussed providing each other access to parts of their networks as part of a separate commercial negotiation, though no definitive agreement has been reached related to such access to date. I understand that any such access granted to CN would not materially affect CN's business in the St. Louis and Kansas City area, and, therefore, I do not address this in my diversion analysis.

VI. DIVERSION STUDY RESULTS

121. In the next sections, I describe and apply my approach for estimating the diversion of rail (**Section VII**) and truck (**Section VIII**) traffic to CN rail service due to the changes in CN's network and service offerings that would be brought about by CN's proposed conditions. I also consider the potential for port diversion, and I address the implications of port diversion for CN's traffic (**Section IX**). Finally, I identify existing CN interchange volume that could shift its interchange gateway from locations like Chicago and Superior, Wisconsin, to Kansas City, due to the changes in traffic patterns, business strategies, and other operational planning that are anticipated to occur on CN's network once it gains access to facilities and interchange options in Kansas City **(Section X**). I refer to this eligible volume as "Interchange Shift Volume."[132] In **Section XII**, I report a disaggregation of traffic diversions across CN's proposed conditions.

122. As detailed in the summary of my assignment, counsel for CN has asked me to use the Springfield Diversion Study as the starting point for my diversion analysis because the effects on CN's business anticipated to occur due to the Springfield Line divestiture in CP/KCS and CN's proposed conditions in UP/NS are similar. Specifically, I was asked to estimate the traffic CN could divert from other railroads and trucking companies if the Board approves CN's proposed conditions and if CN invests in developing the appropriate infrastructure to support its expanded businesses. This Section summarizes the results of these diversion studies.

123. CN's current business includes several service types, including but not limited to merchandise, bulk, automotive, and intermodal traffic. Within its service type offerings, CN operates dedicated business units that manage the day-to-day marketing strategies for specific commodity groups like coal, grain, potash, finished vehicles, and vehicle parts (among others). The set-up of my rail-to-rail and truck-to-rail diversion studies follows the Springfield Diversion Study to estimate diversions for these service types and for certain

[132] Generally, when I use the term "Interchange Shift," I am referring to an existing CN interline arrangement where the interchange handoff between carriers occurs outside of Kansas City (at locations like Chicago or Superior, Wisconsin) and where, once CN's proposed conditions have been approved, CN would strive to interchange this traffic in Kansas City.

business units more granularly, though I make various adjustments to both the rail-to-rail and truck-to-rail models used to predict diversions. These adjustments are summarized in this V.S.

124. Both my rail-to-rail and truck-to-rail diversion analyses are based on models that are intended to apply broadly across the rail industry. After modeling diversions using a common or broadly applicable framework applied to the relevant traffic, I make market- and commodity-specific adjustments, where appropriate, based on CN's business plans for using the assets and rights covered by its proposed conditions, and other market- and customer-specific information relevant for traffic diversion. These commodity- and customer-specific adjustments are appropriate because the general diversion modeling frameworks cannot take into consideration, for example, the potential for existing routes to be redirected by customers from a given origin to different rail-served destinations. Rather, the models consider traffic flowing from a given origin to a given destination and consider how that traffic will be split among different railroads or between trucks and rail. In this V.S., for example, I examine CN's proposed access to Foresight Energy Facilities at Hillsboro, Illinois, outside of the general diversion modeling framework developed in the Springfield Diversion Study. Specifically, my approach considers how CN's existing relationship with Foresight Energy and its distinct single line access to Gulf ports could influence the customer to use a different mode of transportation to reach its ultimate destination in export markets.

125. Overall, CN's proposed conditions, if approved by the Board, would provide CN with opportunities to expand the business it already operates by gaining access to more customers, adding new single line services, and providing an additional opportunity to interchange at a key gateway. CN has completed other, similar expansions, such as its acquisition of Iowa Northern, which was operationally completed on March 1, 2025. The new or improved access that CN's proposed conditions would provide represents natural extensions in CN's network and business. *See* **Figure 15**. My analysis reflects these natural extensions.

126. **Table 4** provides a summary of the annual traffic expected to be diverted due to CN's proposed conditions.[133] The Base Case generates about 170,000 diverted carloads or units overall. It provides diversion information for the Base Case broken out by service type. It provides total cars or units to be diverted and reflects eligible Interchange Shift traffic.[134] **Table 5** provides CN's total revenue to be derived from the traffic reported in **Table 4**. It is also broken down by service type. The Base Case is anticipated to generate about $360 million annually for CN (measured in 2023 dollars). The analyses supporting the results summarized in these tables are presented in subsequent sections and Attachments to this V.S. The materials supporting my analyses are provided in the Kahwaty Workpapers.

Table 4
Summary of the Traffic Diversion Analysis Results
Traffic Diverted, by Service Type

Service Type	Rail-to-Rail Units		Truck-to-Rail Units	Port of Montreal Units	Total Units
	Regular Markets	Shifted Markets			
General Merchandise	**7,144**	**13,450**	**-**	**-**	**20,594**
Intermodal	**20,096**	**5,460**	**48,751**	**30,000**	**104,307**
Bulk	**6,504**	**22**	**-**	**-**	**6,526**
Auto	**8,389**	**15,610**	**807**	**-**	**24,806**
Other	**-**	**-**	**12,951**	**-**	**12,951**
Total Units	**42,133**	**34,542**	**62,509**	**30,000**	**169,184**

Source: Kahwaty Workpapers "Diversion Units (Base).xlsx"

[133] Table 4 and subsequent tables summarizing the results of my rail-to-rail diversion study and discussion of results do not include 1,459 units related to rail-to-rail grain diversion associated with Des Moines Trackage Rights and shippers ADM and Heartland. Those shippers are discussed separately below and the 1,459 incremental diverted units associated with those shippers are included in my diversion results presented in Table 1 and Table 2.

[134] Though intentional Interchange Shift routing changes may not typically be considered to be "diversions," I include them in my aggregate diversion estimates because they represent extended lengths of haul on CN's network and, correspondingly, shortened lengths of haul on other carrier networks. Correspondingly, these shifts have operational and revenue impacts.

Table 5
Summary of the Traffic Diversion Analysis Results
Revenue for Traffic Diverted, by Service Type

Service Type	Rail-to-Rail Revenue		Truck-to-Rail Revenue	Port of Montreal Revenue	Total Revenue Impact
	Regular Markets	Shifted Markets			
General Merchandise	$ 26,887,029	$ 42,312,960	$ -	$ -	$ 69,199,988
Intermodal	$ 12,602,490	$ 2,850,871	$ 31,987,619	$ 34,108,736	$ 81,549,717
Bulk	$ 25,268,199	$ 90,275	$ -	$ -	$ 25,358,475
Auto	$ 57,720,954	$ 58,478,219	$ 3,431,387	$ -	$ 119,630,561
Other	$ -	$ -	$ 64,298,010	$ -	$ 64,298,010
Total	$ 122,478,673	$ 103,732,326	$ 99,717,017	$ 34,108,736	$ 360,036,751

Source: Kahwaty Workpapers "Revenue Impact (Base).xlsx."
Notes: revenue calculated using 2023 traffic data for CN shipments and applied to diverted units on a per car-mile basis. Additional details underlying my calculation are provided in Section XI and the Kahwaty Workpapers.

127. The traffic diversion reported in **Table 4** is consistent with the anticipated benefits of the new or improved access that would be brought about by CN's proposed conditions. CN's enhanced network would provide new competitive single line service connecting Midwest intermodal and auto markets, coal traffic to the Gulf Coast, and grain customers between Kansas City and St. Louis and on other grain lanes. CN's enhanced network would also improve U.S. customer access to Canadian-origin products. For example, CN would more efficiently serve potash demand in the St. Louis area and provide a new competitive single line option connecting Kansas City with traffic diverted from East Coast ports to the Port of Montreal. As discussed in **Sections VII – X**, these estimated traffic diversions reflect an effective use of the assets under consideration to reach new customers, span multiple important CN business units, and enhance CN's rail offerings and customer service by reshaping and re-optimizing CN's rail network for the future. This all benefits U.S. shippers.

128. CN has developed an Operating Plan for the assets and rights it would acquire if CN's proposed conditions were approved.[135] CN's Base Operating Plan incorporates Applicant's

[135] Operating Plan at 29 ("The CN Operating Plan for the Kansas City Line, the Tuscola Line, Hillsboro Line, Macoupin Line, and the Des Moines Line (collectively the "Lines") was developed by a team of experienced CN operating employees, under the supervision of Mr. Whitehead, in conjunction with Kim Hillenbrand at Berkeley Research Group ("BRG"). This "Operating Plan team" focused on train scheduling, network capacity and capability,

Growth Plan as the post-transaction analytical baseline, which includes the traffic estimated by Applicants to divert to the merged UP/NS. To assess the impact of diverted traffic based on CN's proposed conditions, the CN diverted traffic is added to the CN Base Operating Plan to develop the CN Growth Plan.[136] This plan assesses the infrastructure and assets required to operate CN's network after the imposition of any of CN's proposed conditions (e.g., capacity available and levels of congestion). The assessment of any environmental concerns also depends on this aggregation of traffic.

VII. RAIL-TO-RAIL DIVERSION ANALYSIS

129. This section addresses the level of traffic CN's network can expect to attract from other railroads after the approval and implementation of CN's proposed conditions and related CN investments. In the First Kahwaty Diversion V.S., I stated: "The methodology adopted to study rail-to-rail diversions should capture the scope and effects of the proposed transaction it seeks to model while grounding the analysis in relevant market and industry facts."[137] I implement this by starting with the general modeling framework used in the Springfield Diversion Study, as tasked by CN, before adapting it and supplementing it to fit the circumstances relevant for CN's proposed conditions. In doing so, I consider CN's planned operational and commercial strategies if its proposed conditions are granted and assess market dynamics for certain key commodity groups. My analysis of these factors and the related adjustments to the general modeling framework are consistent with the types of modifications made when preparing prior rail-to-rail diversion analysis. *See Rail-to-Rail Diversion Methodology Workpaper* for additional detail on my rail-to-rail diversion analysis methodology. **Attachment E** provides detail on the baseline rail network and traffic I analyze to conduct my analysis.

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yard and terminal operations, and existing plant and facilities, as well as capital improvements necessary to execute the Operating Plan and maintain fluid train service. CN's current standards for train operations, maintenance, and equipment utilization were applied in developing this Operating Plan.").

[136] Operating Plan at 36–40.

[137] First Kahwaty Diversion V.S. at 76.

130. This section is organized as follows:

- First, I present an overview of rail-to-rail diversions estimated under my Base Case scenario.
- Next, I present my estimates of Base Case rail-to-rail diversion by service type and key commodity group.
- Lastly, I estimate rail-to-rail diversions under the Trackage Rights Alternative scenario.

A. Summary of Rail-to-Rail Diversion Results

131. As previewed in **Section V**, I have studied the expected traffic diversion that can occur for two independent scenarios: (1) The Base Case, which models the Kansas City Divestiture (Sub-No. 2),[138] Tuscola Trackage Rights (Sub-No. 7), Des Moines Trackage Rights (Sub-No. 10), Hillsboro Trackage Rights (Sub-No. 9), and access to certain reciprocal switch customers; and (2) the Trackage Rights Alternative which substitutes CN trackage rights over the Kansas City Line instead of CN ownership of that line. Under this Base Case scenario, I report the diversions attributable to each of these components of the Base Case as these components relate to the sub-dockets covered in the Comment. These results can be found in **Section XII**. As detailed further in this Section, the results of my diversion analyses are consistent with my conclusion that CN is ideally situated to serve as a strong remedy carrier, and that divestiture of the Kansas City Line to CN would better preserve the competition that would otherwise be lost due to the Proposed Transaction than would CN trackage rights over that line. Trackage rights over the Kansas City Line would effectively limit CN's ability to operate as an unencumbered and independent alternative carrier for shippers. Among other factors, the per-use trackage rights fees that CN would be required to pay to UP represent a marginal cost that CN would not otherwise need to bear if it were to acquire the line. This additional cost tends to diminish CN's impact on

[138] CN's CP/KCS Responsive Application, Sub-No. 3 at 7.

the market, making it a less effective competitor and suppressing diversions relative to the Base Case.[139]

132. In the following sections, I describe my Base Case rail-to-rail diversion results for each service type studied and, in some cases, present more granular analysis of specific commodity types for which CN's responsive applications have dedicated Verified Statements.[140, 141] I first address the markets I studied within the general modeling framework described above and then describe my analysis of CN's proposed access to Foresight Energy Facilities at Hillsboro, Illinois, which extends outside of the general modeling framework developed in the Springfield Diversion Study. Lastly, I discuss the implications of trackage rights on diversions over the Kansas City Line.

B. Base Case Rail-to-Rail Diversion Study

133. I estimate that 42,133 annual rail cars or containers ("units") would divert to the CN network because of CN's new or improved competitive service offerings involving Kansas City, St. Louis, Des Moines, and Hillsboro. An additional 34,542 units may divert to CN's network as the result of interchange shifts to the Kansas City gateway, as discussed in **Section X**. Relevant lanes to and from these locations include Michigan, the Gulf Coast, and Eastern Canada (among others). These diversions would be realized in the form of either extended hauls or new traffic ("haul type") and be expected across four service types: general merchandise, intermodal, bulk, and auto.[142] **Table 6** presents estimated rail-to-rail

[139] *See* Steven C. Salop and David T. Scheffman, *Raising Rivals' Costs*, American Economic Review 73, no. 2 (May 1983): 267–271, at 269.

[140] Comment at 58 nn. 202–205.

[141] *See* Kahwaty Workpapers "R2R Diversion Analysis Charts (Non-Shifted).xlsx" for a complete tabulation of the commodities underlying the rail-to-rail diversion estimates presented in this section.

[142] The extended haul estimates in this V.S. reflect diversions that increase CN's length of haul in markets where CN already carries traffic. The extended hauls associated with Interchange Shifts to the Kansas City Gateway are a particular subset of these movements. *See* **Section X** on Kansas City as a Gateway.

Most extended hauls result when a new CN single-line enters a market currently served by CN interline service. In these cases, the rail-to-rail diversion model predicts traffic shifting from the interline to the single-line service option, increasing CN's length of haul. Extended hauls can also arise when a new or existing CN interline service attracts additional traffic. This happens, for example, when CN interline routing becomes more efficient due to the use of the Tuscola Line, allowing for shorter trips into the St. Louis area from the North.

diversion results by service type. **Table 7** disaggregates these diversions by haul type and provides the estimated impact of these diversions on other railroads. The largest source of estimated diversion is intermodal traffic, followed by similar divertible traffic amounts for automotive, general merchandise, and bulk traffic. Most of the diversion I estimate that will shift to CN's network would be diverted from UP and/or NS, consistent with the fact that CN is an ideally suited railroad competitor to preserve competition.[143]

Table 6
Estimated Rail-to-Rail Diversion by Service Type
Base Case Diversion Analysis

Service Type Label	% of Total	Diverted Volume
General Merchandise	17%	7,144
Intermodal	48%	20,096
Bulk	15%	6,504
Auto	20%	8,389
	100%	42,133

Source: Kahwaty Workpapers "CN Diversions by Carrier.xlsx."

Table 7
Traffic Diverted from Other Railroads to CN
Base Case Diversion Analysis

	Merchandise		Intermodal		Bulk		Automotive		
Carrier	New to CN	CN Extended Haul	New to CN	CN Extended Haul	New to CN	CN Extended Haul	New to CN	CN Extended Haul	Total
UPNS	2,471	1,182	14,561	1	6,341	17	1,950	3,037	29,560
BNSF	1,238	361	5,870	55	132	0	233	0	7,890
CPKC	2,771	85	176	0	42	0	3,809	0	6,883
CSXT	415	4	101	0	29	0	73	0	622
Shortlines	963	136	7	0	3,614	1	0	923	5,644

Source: Kahwaty Workpapers "CN Diversions by Carrier.xlsx."

Interchange Shifts to the Kansas City Gateway fall into the latter category but are different in that the traffic remains on the same route and with the same CN interline carrier. Instead of moving to a new CN single line service, the existing interchange point is shifted to Kansas City, for onward conveyance elsewhere by a connecting railroad. CN therefore carries the traffic farther before interchanging it to the connecting railroad, increasing CN's length of haul.

[143] Although I utilize 2023 traffic data which does not reflect UP/NS's standing as a merged railroad, I recognize UP/NS as a merged railroad in the baseline traffic period used for my diversion analysis. This is consistent with CN's proposed conditions being conditional on approval of the Proposed Transaction.

Rail-to-Rail Intermodal Traffic Diversion

134. The primary rail-to-rail diversion opportunity I identify is intermodal service. According to Mr. Nair, "CN operates 23 intermodal terminals in North America, including 10 in the United States, with facilities in Chicago and Memphis."[144] If CN's proposed conditions are approved by the Board, CN plans to add two additional U.S. intermodal terminals to its network, one at the Neff Yard in Kansas City and one at the former Sarpy Yard property in St. Louis. The largest source of diversion created by CN's new intermodal service offerings is on the lane connecting Detroit and Kansas City. Mr. Nair identifies the underlying service opportunity, "With access to Kansas City, CN would offer new single-line intermodal service to and from its existing intermodal terminals in places like Detroit and Eastern Canada."[145] Within this lane, CN would expect to serve as a competitive single line rail option for handling vehicle parts shipped from Michigan auto facilities to assembly plants in Kansas City. CN's proposed conditions also render it an effective single line option for domestic containers shipped between Kansas City and Chicago. **Figure 23** identifies the top ten divertible lanes and **Figure 24** provides a map showing the locations of CN's current and proposed two additional intermodal terminals.

[144] Nair V.S. at 3.

[145] Nair V.S. at 11.

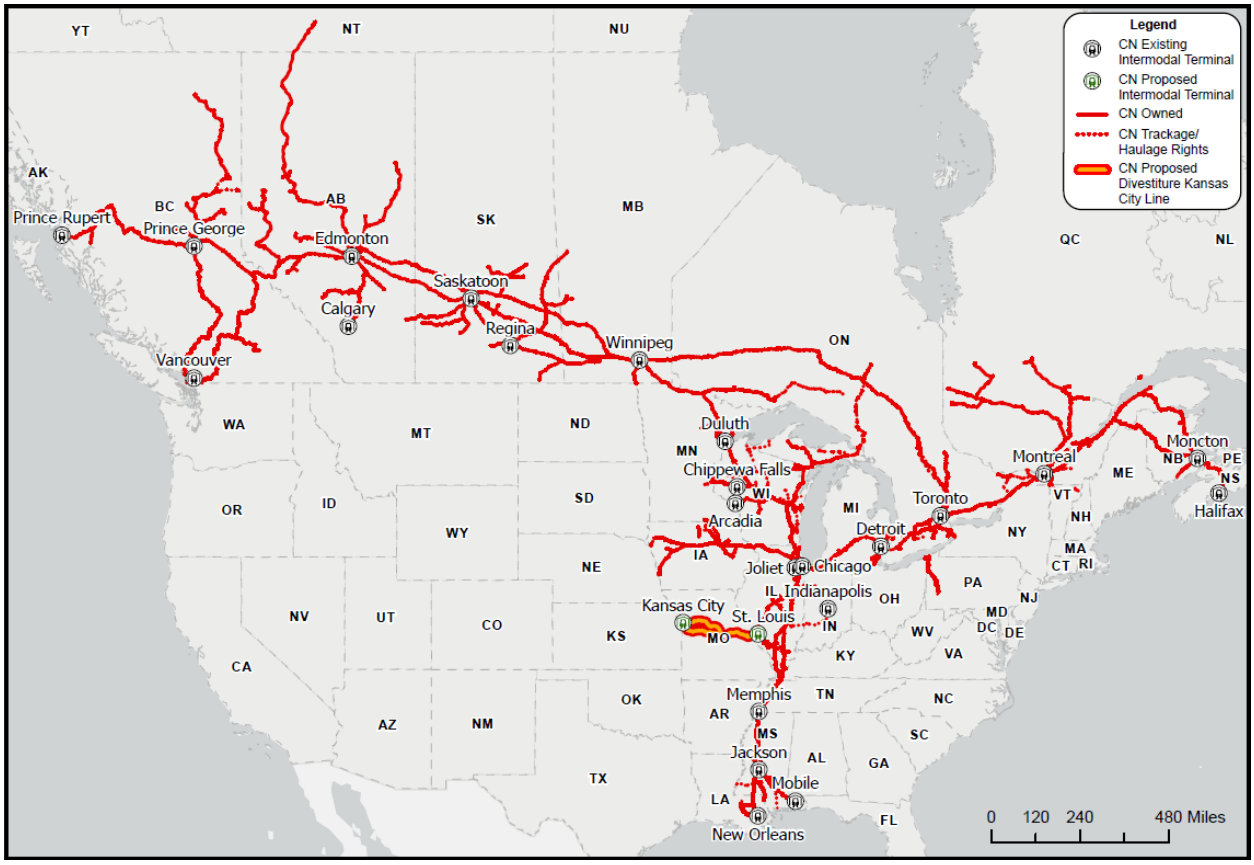
Figure 23
Intermodal Traffic Diversion, Top Lanes

Total Across All BEA/Province Origin-Destination Pairs: 20,096 Units
Top 10 BEA/Province Origin-Destination Pairs: 20,005 Units (100%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Detroit And Toledo	Kansas City, MO-KS.	7,039
Kansas City, MO-KS.	Detroit And Toledo	6,910
Chicago-Gary-Kenosha, IL-IN-WI (CMSA-14).	Kansas City, MO-KS.	3,332
Kansas City, MO-KS.	Chicago-Gary-Kenosha, IL-IN-WI (CMSA-14).	2,080
Kansas City, MO-KS.	Buffalo-Niagara Falls, NY.	314
Buffalo-Niagara Falls, NY.	Kansas City, MO-KS.	124
Atlanta, GA.	Kansas City, MO-KS.	72
St. Louis, MO-IL.	Kansas City, MO-KS.	52
Kansas City, MO-KS.	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH.	41
Jacksonville, FL.	Kansas City, MO-KS.	41

Source: Kahwaty Workpapers "R2R Diversion Analysis Charts (Non-Shifted).xlsx."

Figure 24
CN's Current and Proposed Intermodal Terminals



Source: Kahwaty Workpapers; *See also* Federal Railroad Administration Shapefiles; Railinc Centralized Station Master.

135. I understand the Neff Yard in Kansas City to be "plug and play" for CN because CN does not anticipate needing to make significant investments or improvements at Neff Yard before beginning intermodal operations there. Thus, CN would have the ability to begin intermodal services at Neff Yard on "Day 1" following divestiture of the Kansas City Line and access to Neff Yard.[146] Mr. Nair qualifies the initial investment requirement as, "CN anticipates that it would need to add equipment, such as trucks and cranes, and expects to engage a third-party terminal operator, but does not expect significant investment to be required to begin operations."[147] However, over time, CN plans to expand its intermodal

[146] Nair V.S. at 9.

[147] Nair V.S. at 9.

operations at Neff Yard.[148] CN identifies an approximately 68-acre area within Neff Yard for future automotive and intermodal operations.[149] CN will have marketable intermodal capacity in Kansas City upon the closing of the Proposed Transaction as its lease of the Neff Yard commences or its acquisition of this yard is completed.

136. In St. Louis, the former Sarpy Yard property will provide CN intermodal capacity once CN's proposed infrastructure improvements are completed.[150] CN can start marketing its capacity at the former Sarpy Yard property in advance of the completion of the needed improvements.[151]

137. Although it is not a source of diversion recognized in my analysis, CN's proposed conditions would also give U.S. shippers in the St. Louis area new single-line intermodal service options on all routes between St. Louis and CN's Canadian intermodal terminals. The only other railroad with intermodal terminals in Canada is CPKC. CPKC does not have an intermodal terminal in St. Louis or East St. Louis. Therefore, if CN's proposed conditions are approved and CN begins operating its Sarpy intermodal terminal, CN would be the only railroad able to offer St. Louis-area shippers single-line service to and from a Canadian intermodal terminal.[152] Because there is currently very little interline intermodal service between Canada and St. Louis, these new offerings would primarily benefit U.S. shippers by providing a new rail alternative to truck transportation in these lanes. Any diversions involving St. Louis, therefore, involve truck-to-rail diversion, not rail-to-rail diversion, and are not captured in my rail-to-rail diversion analysis.[153]

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[148] Nair V.S. at 7–11.

[149] CN-36, FD 36873, attached *Kansas City Line and Neff Yard Area Maps* at 5, "CN Planned Investment Area Within Neff Yard" (filed Oct. 29, 2026).

[150] Nair V.S. at 10–11.

[151] Nair V.S. at 10–11.

[152] CN also has intermodal terminals in Prince Rupert, Prince George, Saskatoon, Moncton, and Halifax. CPKC does not have intermodal terminals in these areas, and lanes between these terminals and Kansas City would also be new lanes with single line service made available by CN's proposed conditions.

[153] *See* Kahwaty Workpapers "Canada to St. Louis Intermodal Service.csv."

Rail-to-Rail Auto Traffic Diversion

138. CN ships more than 2 million finished vehicles annually and has over 5,000 multi-level railcars in its fleet to move these vehicles.[154] It currently serves 11 North American vehicle assembly plants, including GM, Ford, Stellantis, and Nissan plants.[155] According to Ms. Slazinski, CN also has direct access to six ports and serves 18 automotive facilities.[156] With CN's proposed conditions, CN plans to add automotive facilities capable of handling both vehicle parts and finished vehicles. In Kansas City, CN will use and invest in UP's Neff Yard to add Kansas City automotive capabilities to its offerings. Similarly, CN will use and invest in the former Sarpy Yard property to adapt that facility for its automotive needs.[157] If approved by the Board, CN's proposed conditions would provide CN the opportunity to compete for finished auto business from either of the two vehicle assembly plants in Kansas City: Ford's Kansas City Assembly Plant ("Ford Kansas City") and General Motors' Fairfax Assembly Plant ("GM Fairfax") and from the General Motors' Wentzville Assembly Center ("GM Wentzville"), which is northwest of St. Louis:[158]

- Ford Kansas City: NS's Voltz Yard is close to Ford Kansas City and can be reached by a short rail link from that plant (about 3 miles).[159] It can also be reached via truck via I-435 (about 10 miles). Similarly, UP's station in Muncie, Kansas, originates Ford Kansas City traffic and can be reached by rail (19 miles) or truck (21 miles).[160] Accessing a CN auto mixing center at Neff Yard would be about a 9 mile trip by truck from Ford Kansas City.

[154] Slazinski V.S. at 3–4; Jason Dunn, *Canadian National Railway appoints Tracy Robinson as new CEO*, Automotive Logistics (Feb. 1, 2022), https://www.automotivelogistics.media/regions/canadian-national-railway-appoints-tracy-robinson-as-new-ceo/187605 (last visited Nov. 13, 2026).

[155] Slazinski V.S. at 3–4.

[156] Slazinski V.S. at 3–4.

[157] Slazinski V.S. at 9–10, 13.

[158] Note that BNSF's Argentine Yard (FSAC = 62000) did not have meaningful originating volume, in 2023, terminating at locations served by CN. Thus, the Argentine Yard was not considered as part of my auto origin catchment exercise for Kansas City.

[159] Kahwaty Workpapers "Mileage_Calculations.xlsx."

[160] UP's Muncie station is FSAC 2048; Kahwaty Workpapers "Mileage_Calculations.xlsx."

- GM Fairfax: GM Fairfax is adjacent to UP's Fairfax station. Accessing a CN mixing center at the Neff Yard would be a 10-mile trip by truck from GM Fairfax.

- GM Wentzville: GM Wentzville is adjacent to NS's Wentzville facility. Accessing GM Wentzville from the former Sarpy Yard property requires drayage trips of about 40 miles.

139. CN's proposed conditions would create new finished vehicles service opportunities for domestic OEMs like GM, Ford, and Nissan. For example, CN could offer a new single line service between St. Louis and Ontario.[161] Such a single-line route is not available today because CPKC does not have an auto facility in the St. Louis area. Ms. Slazinski states that "no other railroad operates an automotive facility in the St. Louis area besides NS and UP."[162] CN's proposed conditions also enable differentiated service for OEMs in Michigan, as CN has access to five auto plants in Michigan and would provide these customers with a new independent single-line alternative.

140. To model finished vehicles diversion to CN in Kansas City consistent with CN's commercial plans, I assume that CN will have the ability to serve the Ford and GM auto plants in Kansas City (via a short and non-prohibitive drayage trip from the plants to Neff Yard). Ms. Slazinski identifies the corresponding commercial opportunity: "CN could originate finished vehicles from the GM and Ford assembly plants in Kansas City, with the traffic shuttled into CN at Neff Yard, and move in single-line service to Canada and Michigan without interchange."[163] The basis for this catchment area adjustment is the driving distance from the plants to Neff Yard which I understand, from discussions with CN's automotive team, is short enough to justify drayage to and from the plants. I make the same assumption, on the same basis, when modeling CN's ability to originate finished vehicles in St. Louis via the former Sarpy Yard property.[164] Ms. Slazinski identifies

[161] *See* Slazinski V.S. at 14–15.

[162] Slazinski V.S. at 7.

[163] Slazinski V.S. at 11.

[164] *See* Kahwaty Workpapers "Catchment Mileages."

finished vehicles originating at GM Wentzville among CN's principal rail-to-rail finished vehicle diversion opportunities.[165]

141. **Figure 25** presents top lanes where CN could divert finished vehicle traffic. The primary rail-to-rail finished vehicles diversion opportunities I identify are on movements traveling between Kansas City or St. Louis and Detroit or Eastern Canada.

Figure 25
Auto Traffic Diversion, Top Lanes
Total Across All BEA/Province Origin-Destination Pairs: 8,389 Units
Top 10 BEA/Province Origin-Destination Pairs: 7,068 Units (84%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Kansas City-Overland Park-Kansas City, MO-KS	Ontario	1,206
Kansas City-Overland Park-Kansas City, MO-KS	Quebec	1,106
St. Louis-St. Charles-Farmington, MO-IL	Ontario	853
Kansas City-Overland Park-Kansas City, MO-KS	Detroit-Warren-Flint, MI	736
Kansas City-Overland Park-Kansas City, MO-KS	Alberta	714
Detroit-Warren-Flint, MI	Kansas City-Overland Park-Kansas City, MO-KS	628
Ontario	Kansas City-Overland Park-Kansas City, MO-KS	626
Kansas City-Overland Park-Kansas City, MO-KS	Chicago-Naperville-Michigan City, IL-IN-WI	585
Lansing-East Lansing-Owosso, MI	Kansas City-Overland Park-Kansas City, MO-KS	308
Kansas City-Overland Park-Kansas City, MO-KS	British Columbia	307

Source: Kahwaty Workpapers "R2R Diversion Analysis Charts (Non-Shifted).xlsx."

Rail-to-Rail Grain and Fertilizers Traffic Diversion

142. In this section, I detail estimated rail-to-rail diversion for CN's Grain and Fertilizers business unit. The primary opportunities identified by my analysis are for soybean meal transversing the Kansas City Line and for potash traveling from Canada to St. Louis to

[165] Slazinski V.S. at 16.

serve U.S. customers. CN's proposed conditions will also impact grain and fertilizer shippers in the Des Moines economic area defined by the U.S. Bureau of Economic Analysis ("BEA"), which would otherwise experience a decrease in independent competition.

a) Rail-to-Rail Grain Traffic Diversion

143. **Figure 26** presents top lanes where CN could divert grain traffic. Top divertible grain commodities on these lanes include soybean meal, soybean oil, ethanol, corn, and wheat (among others).

Figure 26
Grain Diversion, Top Lanes
Total Across All BEA/Province Origin-Destination Pairs: 3,178 Units
Top 10 BEA/Province Origin-Destination Pairs: 2,298 Units (72%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Kansas City-Overland Park-Kansas City, MO-KS	St. Louis-St. Charles-Farmington, MO-IL	1,209
Des Moines-Newton-Pella, IA	Chicago-Naperville-Michigan City, IL-IN-WI	290
Des Moines-Newton-Pella, IA	St. Louis-St. Charles-Farmington, MO-IL	279
Kansas City-Overland Park-Kansas City, MO-KS	New Orleans-Metairie-Bogalusa, LA	119
Chicago-Gary-Kenosha, IL-IN-WI (CMSA-14).	Kansas City, MO-KS.	108
St. Louis-St. Charles-Farmington, MO-IL	Quebec	67
Buffalo-Niagara Falls, NY.	Kansas City, MO-KS.	63
Champaign-Urbana, IL	St. Louis-St. Charles-Farmington, MO-IL	56
Sioux City-Vermillion, IA-NE-SD	Des Moines-Newton-Pella, IA	54
Manitoba	Kansas City-Overland Park-Kansas City, MO-KS	52

Source: Kahwaty Workpapers "R2R Diversion Analysis Charts (Non-Shifted).xlsx."
Note: Quebec destinations refer to Montreal, including CN FSACs 33170 (Montreal) and 33380 (Montreal Wharf).

144. CN's grain opportunities and diversions arise from three primary sources. The first source is new service offerings stemming from CN's ownership of the Kansas City Line and access to the Tuscola Line. The St. Louis area represents an important demand center for grain. Indeed, a 15-mile stretch of the Mississippi River with St. Louis to the west and East

St. Louis to the east is referred to as the "Ag Coast of America" because it is home to 16 barge facilities that can handle in excess of 150 barges per day.[166] According to Mr. Przednowek, customers on A&S and TRRA "are open to all Class I carriers," and he identifies "Bunge-SCF in East St. Louis; Consolidated Grain & Barge, CHS, and Louis Dreyfus in Cahokia; ADM in Sauget; and ADM's North St. Louis facility, which completed an expansion in 2025."[167] Second, the improved access to St. Louis that would result from CN's proposed conditions would provide CN customers with a more direct route to access the barge facilities in the St. Louis area and allow CN to more effectively compete for this traffic. According to Mr. Przednowek, "the Tuscola Line would provide a routing improvement of approximately 70 miles."[168] Shippers moving soybean meal for export, for example, would benefit from a more competitive CN route into St. Louis for transfer to barge and movement to the Gulf.[169] The third primary source of diversion is Des Moines, where CN would help restore competition lost due to the Proposed Transaction. The diversion that my analysis identifies in Des Moines is consistent with the competitive dynamics described by Mr. David Przednowek:

> Grain is a commodity whose transportation economics are driven by distance, routing efficiency, car supply, and access to multiple destination markets. Grain shippers—elevators, processors, ethanol producers, renewable-fuel plants, and feed mills—rely on competitive Class I access to negotiate favorable rates, obtain adequate car supply during peak periods (specific to the type of traffic to be transported), and access the broadest possible range of domestic and export markets. A reduction from three Class I carriers to two, or from two to one, directly diminishes those competitive dynamics.[170]

145. Furthermore, especially in the Des Moines region, CN's acquisition and integration of Iowa Northern is instructive regarding diversions that CN's grain business can achieve if the

[166] *See Ag Coast of America*, St. Louis Regional Freightway, https://www.thefreightway.com/real-estate/featured-corridors/ag-coast-of-america/ (last visited Nov. 13, 2026).

[167] Przednowek V.S. at 18.

[168] Przednowek V.S. at 17.

[169] Przednowek V.S. at 18.

[170] Przednowek V.S. at 10.

Board approves CN's proposed conditions. The Board approved CN's acquisition of Iowa Northern in January 2025,[171] and the transaction closed on March 1, 2025.[172] This transaction added Iowa Northern's approximately 175 route miles to CN's rail network,[173] allowing it to offer single-line service to grains, fertilizers, renewable fuels, and other products from Iowa Northern's service area to locations across CN's rail network.

146. Though the Iowa Northern acquisition was only completed last year, CN reports significant growth in its grain business from the Iowa Northern service area. This growth has come from establishing new destination markets for its shippers through matchmaking and competitive single-line haul pricing. As described by CN's Mr. Przednowek:

> CN has attracted new grain-related traffic in the legacy Iowa Northern network by working hard to understand local market dynamics and commodity flows, as well as investing significant time on the ground meeting customers face-to-face to better understand their business and transportation needs. The amount of grain-related traffic moving by rail from the legacy Iowa Northern rail network has been growing since CN's acquisition of the Iowa Northern. CN has been able to establish new destination markets for legacy Iowa Northern customers through a combination of matchmaking and competitive single-line haul pricing while preserving customer access to alternate rail traffic gateways. {{
>
> }}[174]

[171] *See CN's Acquisition of Iowa Northern Approved by STB*, CN, https://www.cn.ca/en/news/2025/01/cns-acquisition-of-iowa-northern-approved-by-stb/ (last visited Nov. 10, 2026).

[172] *See CN and Iowa Northern Railway Officially Join their Operations*, CN, https://www.cn.ca/en/news/2025/03/cn-and-iowa-northern-railway-officially-join-their-operations (last visited Nov. 10, 2026).

[173] *See CN and Iowa Northern Railway Officially Join their Operations*, CN, https://www.cn.ca/en/news/2025/03/cn-and-iowa-northern-railway-officially-join-their-operations (last visited Nov. 10, 2026).

[174] Przednowek V.S. at 8–9.

147. The proposed Des Moines Trackage Rights would allow CN to compete for grain traffic in and around the Des Moines area. I estimate the Des Moines Trackage Rights would shift 1,227 cars onto CN's proposed network, under the general rail-to-rail modeling framework. However, I understand based on CN's commercial expectations that it may have heightened opportunities to divert traffic from certain shippers in the Des Moines area. {{

176

148.

177

179

[175] Kahwaty Workpapers "Des_Moines_Grain_Customer_Queries.ipynb."

[176] Kahwaty Workpapers "Des_Moines_Grain_Customer_Queries.ipynb."

[177] Kahwaty Workpapers "Quad-Level BRG Diversions for New CN Services (Condensed).csv", at markets {{( )}} and {{( )}}.

[178] Kahwaty Workpapers "Des_Moines_Grain_Customer_Queries.ipynb."

[179] Przednowek V.S. at 13.

}}

Table 8
Additional Diversion Opportunity: Des Moines Grain
{{

}}

149. Kansas City is also an important grain and feed ingredient gateway. Adding Kansas City access to CN's network creates routing options for its existing grain elevator customers and would allow it to expand its grain business into wheat. Mr. Przednowek provides a specific routing comparison: "rail distance from CN-served Rantoul, Illinois to Garden City, Kansas via Memphis, Tennessee is roughly 1,228 rail miles, whereas rail distance from Rantoul, Illinois to Garden City, Kansas via the Kansas City gateway is roughly 838 rail miles (a 390-mile reduction)."[180] Kansas is the leading U.S. wheat producing state.[181] I illustrate the opportunity that CN has in using Kansas City as a gateway for onward conveyance, and there are grain wheat buyers in Kansas City as well. For example, General Mills has a large wheat mill in Kansas City that produces 2.7 million pounds of flour daily.[182] Other grain customers in Kansas City include a Cargill soybean crush plant and the three Bartlett grain terminals.[183] I understand that "most of these customers are in Union Pacific's reciprocal switching tariff and are open to Norfolk Southern."[184] As such,

[180] Przednowek V.S. at 21.

[181] *See Leading wheat producing U.S. states in 2025 (in 1,000 bushels),* Statista, https://www.statista.com/statistics/190376/top-us-states-in-wheat-production/ (last visited Nov. 10, 2026).

[182] *See The Kansas City Mill celebrates 100 years,* General Mills, https://www.generalmills.com/news-and-stories/stories/the-kansas-city-mill-celebrates-100-years (last visited Nov. 13, 2026).

[183] *See Locations,* Bartlett, https://bartlettco.com/locations/ (last visited Nov. 10, 2026); *Find a Location,* Cargill, https://www.cargillag.com/locations (last visited Nov. 10, 2026).

[184] Przednowek V.S. at 19.

as part of my analysis, I modeled CN's ability to divert traffic originating or terminating at two Kansas City {{ }} terminals open to the UP and NS reciprocal switching tariffs.[185]

b) Rail-to-Rail Potash Traffic Diversion

150. The U.S. imports more than 90% of its potash needs, and most of these imports are from Canada.[186] Given the importance of potash to U.S. agriculture, importing potash with lower-cost, more efficient logistics has the potential to benefit a broad range of the U.S. farming economy. **Figure 27** presents top lanes where CN could divert potash traffic. The largest volume origins for diverted shipments are Saskatchewan and Manitoba.

[185] As such, I have taken measures to model the amount of {{ }} reciprocal switch eligible traffic CN could divert from other carriers. My process for doing so included reviewing the reciprocal switching tariffs published by UP and NS and identifying the amount of Kansas City {{ }} traffic eligible for reciprocal switching. I considered {{ }} traffic at the listed reciprocal switching station (SPLC code: 581516) as eligible for diversion to CN when CN could serve the other end of the movement. CN was able to compete for this set of volume even though CN didn't have direct access to the reciprocal switch SPLC code. *See* Kahwaty Workpapers "kc_dest_recip_switch_cn_served.csv."

[186] *See* U.S. Geological Survey, *Mineral Commodity Summaries 2026: Potash* (2026), https://pubs.usgs.gov/periodicals/mcs2026/mcs2026-potash.pdf (last visited Nov. 13, 2026).

Figure 27
Potash Diversion, Top Lanes

Total Across All BEA/Province Origin-Destination Pairs: 1,048 Units
Top 10 BEA/Province Origin-Destination Pairs: 1,048 Units (100%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Saskatchewan	St. Louis-St. Charles-Farmington, MO-IL	758
Manitoba	St. Louis-St. Charles-Farmington, MO-IL	110
Saskatchewan	Kansas City-Overland Park-Kansas City, MO-KS	79
Saskatchewan	Columbia, MO	47
Saskatchewan	Des Moines-Newton-Pella, IA	42
Manitoba	Columbia, MO	9
St. Louis-St. Charles-Farmington, MO-IL	Elkhart-Goshen, IN	1
St. Louis-St. Charles-Farmington, MO-IL	Saginaw-Bay City-Saginaw Township North, MI	0
Saskatchewan	Jonesboro, AR	0
St. Louis-St. Charles-Farmington, MO-IL	Rochester-Batavia-Seneca Falls, NY	0

Source: Kahwaty Workpapers "R2R Diversion Analysis Charts (Non-Shifted).xlsx."

151. CN's proposed conditions would enhance its competitive potash offering to Kansas City and St. Louis customers. These customers rely heavily on Canadian potash supply. By far the largest import lane for expected diversions on CN's proposed network is potash from Canada that satisfies the demand of St. Louis customers. There are also diversions to Kansas City area customers.

152. I understand that potash is one of the commodities raising significant competitive concerns due to the Proposed Transaction.[187] Ms. Sandra Ellis states that "both UP and NS terminate large quantities of potash in Kansas City and throughout the Midwest, and after the merger, potash customers will lose a key competitive alternative for sourcing potash."[188] CN's proposed conditions would allow it to serve St. Louis's potash customers via a more

[187] Ellis V.S. at 12.

[188] Ellis V.S. at 11.

efficient single-line route (over the Tuscola Line) and would expand upon CN's already strong potash franchise. Ms. Ellis explains that "the Tuscola Line trackage rights would save approximately 70 miles, making all fertilizer traffic moving from the north into St. Louis and East St. Louis more competitive."[189] For example, I understand from Ms. Ellis that CN is a leading transporter of potash in North America, and the U.S. fertilizer segment of CN's business is driven primarily by fertilizer consumption in the Midwest.[190] With new direct access into Kansas City that eliminates existing interchange in Superior, Wisconsin, U.S. Midwest customers, especially those using private cars to transport fertilizer, will benefit from CN's proposed conditions.[191]

Rail-to-Rail Metals and Minerals Traffic Diversion

153. I estimate a total of 537 units of steel products diversion as a result of CN's proposed conditions.[192] The primary source for this diversion comes on the lanes between Chicago and Kansas City or St. Louis, where CN can offer new or improved single-line service. According to Kelly Levis, CN's VP of Industrial Products, CN's proposed Kansas City access would allow it to "carry steel and other metals and minerals traffic farther on its own network to extend its length of haul to benefit our customers." She further states: "Access to Kansas City would give CN another gateway for metals and minerals moving south and west, and an alternative to the congested Chicago interchange."[193] **Figure 28** presents the top ten lanes with estimated steel products diversion.

[189] Ellis V.S. at 13.

[190] Ellis V.S. at 11.

[191] Ellis V.S. at 12 ("Today, some potash moving on CN is interchanged with UP at Superior, Wisconsin. Under CN's proposed conditions, that traffic could instead move in CN single-line service all the way to Kansas City, eliminating the interchange and making service more efficient for customers, which is particularly important for customers using private cars to transport fertilizer.").

[192] Kahwaty Workpapers "R2R Diversion Analysis Charts (Non-Shifted).xlsx."

[193] Levis V.S. at 7.

Figure 28
Steel Diversion, Top Lanes

Total Across All BEA/Province Origin-Destination Pairs: 537 Units
Top 10 BEA/Province Origin-Destination Pairs: 516 Units (96%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Chicago-Naperville-Michigan City, IL-IN-WI	Kansas City-Overland Park-Kansas City, MO-KS	208
Chicago-Naperville-Michigan City, IL-IN-WI	St. Louis-St. Charles-Farmington, MO-IL	207
Kansas City-Overland Park-Kansas City, MO-KS	Chicago-Naperville-Michigan City, IL-IN-WI	36
Jonesboro, AR	Detroit-Warren-Flint, MI	24
St. Louis-St. Charles-Farmington, MO-IL	Chicago-Naperville-Michigan City, IL-IN-WI	15
Jonesboro, AR	Chicago-Naperville-Michigan City, IL-IN-WI	8
Alberta	Kansas City-Overland Park-Kansas City, MO-KS	6
Chicago-Naperville-Michigan City, IL-IN-WI	Little Rock-North Little Rock-Pine Bluff, AR	5
Chicago-Naperville-Michigan City, IL-IN-WI	Longview-Marshall, TX	4
Chicago-Gary-Kenosha, IL-IN-WI (CMSA-14).	Kansas City, MO-KS.	4

Source: Kahwaty Workpapers "R2R Diversion Analysis Charts (Non-Shifted).xlsx."

154. Regarding CN's ability to serve additional traffic, Ms. Levis states: "CN maintains strong relationships with car builders and lessors, and cars are readily available if customers need to ramp up." She reports that CN's fleet of railcars consists of {{ }} flatcars and {{ }} gondolas.[194]

Diversion Analysis for Foresight Energy's Hillsboro Coal Mine

155. The Hillsboro Trackage Rights would allow CN to serve the Deer Run Mine located at Foresight Energy's Hillsboro complex (the "Hillsboro Mine").[195] This mine has the

[194] Levis V.S. at 4.

[195] I do not study diversion related to Foresight Energy's Macoupin Energy Monterey Mine 1 in Carlinville, Illinois. I understand this mine was idle in 2023 and continues to be idle today. It could not, therefore, be a source of diverted traffic in the 2023 Base Year.

capacity to produce up to 9 million tons of coal per year and is accessed by both UP and NS.[196] It is, therefore, a 2-to-1 customer facility.[197]

156. The Hillsboro Mine ships coal to only a handful of locations, and most of its volume goes to marine terminals. Using data on shipments and information on specific Hillsboro Mine coal destinations, I study diversions by movement and consider whether CN's proposed conditions create lower costs or new opportunities for coal. The rail-to-rail diversion analysis in the Springfield Diversion Study is not designed to take into consideration customer-specific data and information of the type considered here. As a result, my study of Hillsboro Mine coal departs from the framework I use for my other rail-to-rail diversion analyses. I estimate diversions for Hillsboro coal based on analysis of traffic data, U.S. Energy Information Administration ("EIA") data, CN's commercial plans and existing customer relationships, and its competitive position relative to a merged UP/NS.

c) Coal Traffic Originating at the Hillsboro Mine

157. The Hillsboro Mine shipped coal to {{ }} locations in 2023: {{

}}. Hillsboro coal 2023 shipments are summarized in **Table 9**.

Table 9
{{ }}
{{

[196] *See Operations*, Foresight Energy, https://www.foresight.com/operations/ (last visited Nov. 10, 2026).

[197] Ellis V.S. at 5–6.

}}

158. I discuss each of the destinations for the Hillsboro Mine coal in order from the highest to lowest volume shipments.

a. {{ }}. Over {{ }} of Hillsboro coal from 2019 to 2025 was shipped to {{ }}, which is a transloading facility located on the Ohio River at milepost 817.5. [198] Hillsboro coal shipments to {{ }} during these years were originated on NS, and they reached {{ }} via a connection with the Evansville Western Railroad ("EVWR"). Post-merger, if CN is granted the Hillsboro Trackage Rights, both CN and UP could deliver Hillsboro Mine coal to {{ }}, with UP using the path historically used by NS.

b. {{ }}. {{ }} is a marine transload facility on the Mississippi River in Illinois. It is serviced by UP and can accommodate four 150-car unit trains.[199] Post-merger, UP would continue to serve {{ }} with single line service. Although CN cannot deliver Hillsboro Mine coal directly to {{ }}, it can provide an export route for Hillsboro Mine coal via single line service to Gulf ports.

c. {{ }}. {{ }} requires coal to run both its power and steam generation requirements at this facility.[200] NS has transported all Hillsboro coal movements to {{ }} using single line service. Under CN's proposed conditions, CN could also service the facility via single-line service.

d. {{ }}. Both UP and NS have originated movements of the Hillsboro Mine coal shipped to {{ }}. UP's movements are single-line, and NS's movements are interline with Cedar Rapids & Iowa City Railway Company ("CIC"), a Class III railroad with direct connections to both UP and CN.[201] As with {{ }}, {{ }} requires coal to meet the plant's power and steam generation requirements. I understand from discussions with CN personnel that CN may be less likely to serve {{

[198] *See* Kahwaty Workpapers "Hillsboro Coal Receivers 2019 to 2025.csv."

[199] *See Cora Marine Terminal*, Watco, https://www.watco.com/service/terminals/cora-il-3/ (last visited Nov. 10, 2026).

[200] Ms. Ellis states that ADM plans to transition away from coal at Decatur "around 2030" and that, until then, "Decatur will remain reliant on a consistent supply of coal for its power and steam generation requirements." (Ellis V.S. at 9.)

[201] *See Cedar Rapids & Iowa City Railway Company CIC #111*, Union Pacific, https://www.up.com/customers/shortline/lines/cic/ (last visited Nov. 13, 2026).

}} given the fact that it is primarily supplied by the Powder River Basin and CN does not serve long-haul Powder River Basin shipments, except for last-haul carrier for terminations to end customers like Vistra, WPS, and Southern Company to fuel power plants in Illinois, Wisconsin, Mississippi, and Kentucky. Given the relative size and likelihood of the {{ }} opportunity for CN, I do not consider it further.

e. {{ }} This plant is located at {{ }} in {{ }}. UP was both the originating and terminating carrier for this movement. CN has no reasonable prospect of directly serving this facility, and I do not consider it further.[202]

d) Hillsboro Coal Diversion Summary

159. I estimate that 6,195 units of coal originating at the Hillsboro Coal Mine are expected to divert to new CN service.[203] Over 90% of this estimated diversion is expected on movements that CN would divert away from the {{ }} and {{ }} {{ }} terminals in favor of direct CN rail service to the Gulf, which neither UP nor NS can provide today.[204] The remaining diverted units relative to the Hillsboro Coal Mine originations are on shipments terminating with {{ }} in {{ }}.[205]

160. **Table 10** provides my conversion rates and diversion estimates for the three primary divertible movements from the Hillsboro Coal Mine in 2023. In the following sub-sections, I discuss relevant traffic movements from the Hillsboro Mine and the analysis underlying my estimates.

[202] I note that there were no other volumes of Hillsboro coal shipped to this plant during 2019–2025, nor were there any other shipments of Hillsboro coal sent to California by rail.

[203] Kahwaty Workpapers "Hillsboro Coal.xlsx."

[204] Kahwaty Workpapers "Hillsboro Coal.xlsx."

[205] Note that I do model a small amount of traffic originating in Louisiana and terminating in the Hillsboro SPLC. Market # {{ }}. CN could offer new single line service on this movement, which has a fixed origin and destination.

Table 10
Rail-to-Rail Traffic Diversion for Hillsboro Mine Coal Origination
{{

}}

e) CN is Well Positioned to Serve Hillsboro Mine Export Volumes via Single Line Service to the Gulf Coast

161. CN is in a unique position to offer new single line service for export shipments via movements from the Hillsboro Mine directly to Gulf Coast export terminals. Such a move for export coal would shift the existing rail-served destination away from either or both of the Cora and Sitran river terminals to Gulf Coast terminals. As described by Ms. Ellis, "A key advantage CN can offer coal customers at the Foresight facilities is reliable service with competitive cycle times through single-line access to new destinations."[206]

162. The barge-to-rail diversions I estimate from the {{ }} and {{ }} {{ }} terminal traffic discussed above, of course, are contingent on CN coming to an agreement with Foresight Energy to serve its coal from Hillsboro direct to the Gulf.[207] Foresight Energy is already a CN customer because CN is a service provider to Foresight Energy's Williamson (Pond Creek) and Sugar Camp complexes.[208] Indeed, from discussions with CN personnel, I understand that CN already performs a coal movement from Foresight Energy's Pond Creek Mine to the Gulf. Further, Ms. Ellis identified that CN has performed

[206] Ellis V.S. at 8.

[207] CN can reach {{ }} through an interchange with EVWR but cannot serve {{ }} directly. Ellis V.S. at 8–9.

[208] *See Operations,* Foresight Energy, https://www.foresight.com/operations/ (last visited Nov. 10, 2026); *see also* Ellis V.S. at 7–8.

special moves for Foresight Energy "to keep coal flowing to customers in southern markets."[209] Access to Hillsboro would allow for expansion in CN's business relationship with Foresight Energy. The proposed movement to the Gulf also falls within CN's wheelhouse, as they already provide efficient service to Convent Marine Terminal in Louisiana and consistently execute mine-to-port movements from other mines.[210] Ms. Ellis states that "CN consistently executes the mine-to-port movement from other mines in approximately 96 hours."[211]

163. Taken together, I concur with CN that they have a realistic opportunity to divert export traffic from the Hillsboro Mine from {{ }} service to direct rail service to Gulf export terminals.[212] To estimate diversion for this traffic, I assumed that CN could divert {{ }} of the export traffic on these movements. To inform my assumption, I used data from the EIA and traffic tapes to approximate the percentage of Hillsboro Mine coal shipped to the river for export during the latest full year of data available to me.[213] Comparing volumes from the EIA data and the traffic tapes, I found that around {{ }} of the Hillsboro Mine coal sent to the river in 2025 was destined for export. As such, my final diversion percentage (expressed in terms of expected market share) on traffic CN

[209] Ellis V.S. at 7–8 (Ms. Ellis explains that when Sugar Camp experienced a fire that reduced it to roughly half capacity, "Foresight had to source coal from its other mines to meet its customer demand, and CN performed a special move to keep coal flowing to customers in southern markets.").

[210] Ellis V.S. at 8.

[211] Ellis V.S. at 8.

[212] Ellis V.S. at 8–9.

[213] I analyzed the 2025 survey Form EIA-923, which collects detailed electric power data – monthly and annually – on electricity generation, fuel consumption, fossil fuel stocks, and receipts at the power plant and prime mover level. To identify the tonnage consumed for domestic use, I used the Fuel Receipts and Cost Time Series File (Page 5) where FUEL_GROUP = "Coal" and CoalmineName = "DEER RUN MINE" and Primary Transportation Mode = "RV" (river). My analysis assumed 110 tons per railcar of coal and that the tonnage recorded by the EIA data includes Hillsboro Mine coal sent to both {{ }} and {{ }}. My analysis assumes that coal shipments in the traffic tapes, from the Hillsboro Mine to {{ }} and {{ }}, represent all Hillsboro Mine coal shipments to the river for both domestic consumption and export. *See* Kahwaty Workpapers "Hillsboro Coal for Export.xlsx."; *see also Form EIA-923 Detailed Data with Previous Form Data (EIA-906/920)*, U.S. Energy Information Administration, https://www.eia.gov/electricity/data/eia923/ (last visited Nov. 15, 2026); *Coal Rail Shipping & Logistics: Rates, Railcars, Lanes*, Steel Wheel Logistics, https://steelwheellogistics.com/commodities/coal (last visited Nov. 15, 2026)

could divert from the {{ }} and {{ }} terminals for single line service to the Gulf is {{ }} of {{ }} or {{ }}.

164. In conclusion, CN serving as the remedy carrier for the Hillsboro Mine would maintain the mine's connectivity to its ultimate destinations while, in some cases, lowering the cost of that connectivity. It would also provide the Hillsboro Mine with additional single-line connectivity to the U.S. Gulf Coast via the Convent Marine Terminal in Louisiana or the McDuffie terminal in Mobile.[214] According to a recent report prepared by the National Coal Council, these are the only two terminals in the Gulf Coast region that currently receive coal by rail.[215] CN is the only rail carrier with direct access to the Convent Marine Terminal.[216] CN's rail distance from Hillsboro to the Convent Marine Terminal would be 795.4 miles.[217] Other Class I rails, including NS, have access to the McDuffie terminal in Mobile.[218] However, CN's rail distance to the McDuffie terminal from Hillsboro would be 772 miles, compared to the UP/NS distance of at least 946.8 miles.[219] Thus, access to CN at the Hillsboro Mine would provide Foresight Energy with a more effective option for single-line trips to the Gulf than it has today.

f) CN Service for {{ }}

165. Based on conversations with CN personnel, {{ }} coal needs, and the importance of a second independent carrier in coal markets,[220] I would also expect CN to compete for and attract a fraction of the Hillsboro Mine originations terminating with {{

[214] For purposes of my diversion study, I assume the coal's final rail destination is the Convent Marine Terminal for the Hillsboro Mine coal that CN would divert and that moves to the Gulf. Ellis V.S. at 8.

[215] *See Outlook and Opportunities for U.S. Coal Exports*, National Coal Council, https://nationalcoalcouncil.energy.gov/ncc/sites/default/files/studies/2026/NCC_Coal%20Exports%20Report.pdf (last visited Nov. 10, 2026).

[216] *See Facility Description*, CMT Suncoke Energy, https://cmt.suncoke.com/facility-description (last visited Nov. 10, 2026).

[217] Kahwaty Workpapers "Mileage_Calculations.xlsx."

[218] *See Outlook and Opportunities for U.S. Coal Exports*, National Coal Council, https://nationalcoalcouncil.energy.gov/ncc/sites/default/files/studies/2026/NCC_Coal%20Exports%20Report.pdf(last visited Nov. 10, 2026).

[219] Kahwaty Workpapers "Mileage_Calculations.xlsx."

[220] Ellis V.S. at 9.

}}. CN's single line service to {{ }} would be {{ }}, while the merged UP/NS single line service would be {{ }}.[221] In this lane, CN would have a similar cost and would offer a competitive single-line service and preserve shipper optionality. However, I also acknowledge that a merged UP/NS is likely to compete hard with CN to preserve their relationship with a large shipper. As such, I assume that CN could capture {{ }} of the 2023 traffic traveling from the Hillsboro Mine to {{ }}.

C. Trackage Rights Alternative Rail-to-Rail Diversion Study

166. If the Kansas City Line were to be divested to CN, it would have access to the track with a marginal cost for serving additional traffic that depends on the costs of accessing and maintaining the track and the other marginal costs associated with providing additional rail service (*e.g.*, fuel and personnel costs). When accessing the same track via trackage rights, some of CN's marginal costs associated with providing additional rail service are likely to be largely unchanged. Examples include both fuel and personnel costs. However, instead of accessing track at cost, CN would need to pay UP a rental fee for track access in the form of per car mile trackage rates. If these rates are above the actual marginal cost of accessing and maintaining the relevant track, then access via trackage rights would diminish CN's incentives to compete as compared to the scenario in which CN owns the line outright, and CN would be unlikely fully to replace the competitive pressure lost due to the UP/NS merger.

167. CN and UP have not finalized definitive agreements. As such, I cannot assess the relationship between the agreed trackage rates and UP's marginal cost associated with serving additional traffic on the Kansas City Line. If trackage rates charged to CN mimic UP's internal costs for track access and maintenance, diversion will be similar to that in the Base Case. However, if trackage fees are above the marginal costs for track access and maintenance, CN will compete at a cost disadvantage relative to a world in which it

[221] Kahwaty Workpapers "Mileage_Calculations.xlsx."

acquires the Kansas City Line. It still may be able to achieve traffic diversion, but that diversion will be below that anticipated in the Base Case.

168. CN's proposed conditions also include requests for trackage rights over other areas of Applicants' network including the Des Moines, Hillsboro, and Tuscola lines. Over these lines, we would not expect the cost disadvantage associated with trackage rights to be as high as it would be for moving cargo over the Kansas City Line due to the scheduling and operational control issues inherent to the Kansas City Line and the role that the Kansas City Line plays in CN's proposed network. The Tuscola Line is a less constrained line on which CN would run through trains. The Des Moines and Hillsboro Lines are less constrained lines that CN would use to access specific customers that would otherwise lose a competitive option. By comparison, the Kansas City Line is a major operating corridor connecting two of the nation's largest gateways, St. Louis and Kansas City. In addition to freight volumes, the line is used by Amtrak for passenger service, and such service has priority over freight movements.

169. Under the Trackage Rights Alternative, CN would be relying on UP/NS ownership and infrastructure–and not only for reaching a discrete set of customers facing a loss of competitive options–but for an integral part of its new network. With ownership, CN would control dispatching and schedule service on the line. In comparison, with access via trackage rights, the merged UP/NS would be responsible for scheduling in addition to maintenance and capital expenditures, among other things. For the above reasons, it is reasonable to think of CN's use of the Kansas City Line as embodying a cost disadvantage if it were to operate as a tenant.

170. CN's ability to serve customers over the Kansas City Line (and beyond) is substantially more dependent on the ability for it to control dispatching, maintenance and capital investment decisions, and trackage-rights rates for third party railroads. The Comment

identifies these limitations as an important distinction between ownership of the Kansas City Line and trackage rights over the Kansas City Line.[222]

171. When modeling diversions, for the Des Moines, Hillsboro, and Tuscola Lines, my modeling assumes that trackage rights remedies would allow CN to compete on a basis sufficiently level with the incumbent carrier. As such, the rail-to-rail diversion model's measured relationship between cost and market share applies when modeling diversions under trackage rights. By comparison, for the Kansas City Line, CN would be at a disadvantage when competing for business in the Trackage Rights Alternative, for reasons discussed above.

172. In the rail-to-rail diversion model, competitive disadvantage is measured by an impedance penalty. To operationalize this penalty, I increase the impedance for CN routes utilizing the Kansas City Line. For most movements, the increase in impedance is 20% of route impedance. For auto traffic, the impedance penalty is equal to one additional interchange. [223] I extrapolate the results of the rail-to-rail analysis to truck-to-rail diversions, port diversions, and interchange shift volumes.[224] I use the 20% impedance route penalty to model CN's operational disadvantage because such a penalty represents a disadvantage that is approximately one-half of an interchange penalty for high-volume routes along the Kansas City Line.[225]

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[222] Comment at 44–45.

[223] I adjust auto traffic in this way because the impedance coefficient generated in the Updated Hunt R2R Analysis, and used elsewhere in my analysis, is zero and would therefore not have the intended effect of modeling trackage rights fees on the relevant traffic.

[224] I use the service type specific ratios between the rail-to-rail Base Case and Trackage Rights Alternative scenarios to adjust truck-to-rail diversions, port diversion volumes, and interchange shift volumes.

[225] That is, in a divestiture scenario CN would have no interchange penalty. With no remedy, a CN movement would require an interchange and therefore CN would have a full interchange impedance penalty. The Trackage Rights Scenario represents one between these two outcomes. A penalty of 20% is equivalent to an impedance increase of 200 on a 1,000-mile single-line route (approximate distance from Detroit to Kansas City), or about one-half of an interchange penalty (which is assumed to be 350 for non-intermodal interchanges at East St. Louis but can be as high as 650 in the model generally). I find this a reasonable assumption in the absence of more specific information on trackage rights rates.

173. For an example illustrating the effects of my adjustment, I estimate that intermodal diversions (the largest source of diversion volume I estimate under the Base Case) would decrease from approximately 20,000 annual diverted units to approximately 7,000 annual diverted units (a 65% decrease) under the Trackage Rights Alternative scenario. These results are unsurprising and illustrate the operational disadvantage that trackage rights would bring CN, relative to divestiture.

174. A privately negotiated trackage rights agreement between UP and CN would be influenced by the rate-setting mechanism the Board would use to set trackage fee rates if they were unable to come to an agreement on their own unless the agreement stipulates a different mechanism. Regardless of the mechanism to set the trackage rights rates if the parties could not reach agreement, there is a risk that such a rate could be set or escalated in a way that it is too high for a remedy carrier to compete as effectively as in a divestiture scenario. Under the Board's "SSW Compensation" methodology, including where trackage rights are imposed as a merger condition,[226] that methodology has three components:

(a) the owner's variable cost caused by the tenant's operations over its track;

(b) the tenant's usage-based share of the track's maintenance and operating expenses; and

(c) an "interest rental" charge for the tenant's use of the owner's capital invested in the track.

175. Components (a) and (b) roughly capture the owner's marginal cost of providing access, which is the cost that should drive a competitor's pricing decisions. If component (c) is too large, then it will increase the tenant's marginal cost of providing service to shippers and inhibit the tenant's ability to compete, which would undermine the very competition the merger condition meant to preserve.

[226] Decision No. 16, *BNSF Ry. Co.—Terminal Trackage Rights—Kan. City S. Ry. Co. and Union Pac. Ry. Co.*, FD 32760 (Sub-No. 46), slip op. at 5 (STB served July 21, 2026) [hereinafter "FD 32760 Decision No. 16"].

VIII. TRUCK-TO-RAIL DIVERSION ANALYSIS

A. Introduction

176. In this section, I assess the level of traffic CN's network may attract from the trucking industry after the implementation of CN's proposed conditions. Truck-to-rail diversion can occur due to CN's proposed conditions because the extension of CN's network makes longer single-line runs available than CN currently is able to provide, making CN lanes more competitive with truck than previously available options. CN's addition of new facilities, including intermodal terminals in both Kansas City and St. Louis, will also facilitate the conversion of traffic from trucks to rail.

B. Truck-to-Rail Diversion Results

177. I estimate 62,509 annual rail cars or units would divert from the trucking industry to the CN network because of CN's new or improved access involving Kansas City and St. Louis.[227] This traffic diversion would result in the removal of 101,400 trucks from U.S. highways annually.[228] For the purposes of the analysis, all commodities were classified as either likely to ship by carload or intermodal when converted to rail, following the approach used by the Springfield Diversion Study.[229] These diversions would be expected across five service types: intermodal, auto, dry bulk, liquid gas, and flatbed. **Table 11** summarizes my truck-to-rail diversion results for the Base Case scenario. As with my rail-to-rail analysis, CN gaining access to Kansas City via trackage rights instead of the acquisition of the Kansas City Line would increase its variable costs and reduce its competitiveness, inhibiting CN's ability to compete and lessening its competitive impact. My estimate of truck-to-rail diversions for the Trackage Rights Alternative scenario is provided in **Table D5** in **Attachment D**.

[227] Given traffic flows relevant for the Hillsboro, Illinois market are coal shipments that run in unit trains and are not divertible from truck, CN's requested rights in Hillsboro are not relevant to my truck-to-rail diversion study. Given the nature of CN's new access in Des Moines and the market dynamics in the area, CN's requested rights in Des Moines are not relevant to my truck-to-rail diversion study.

[228] Kahwaty Workpapers "Rail_Units_to_Truck_Units.xlsx" for the conversion of rail units to truck units.

[229] *See Truck-to-Rail Diversion Methodology Workpaper* for a detailed discussion of the data, regression analysis, and counterfactual methodology used to estimate truck-to-rail diversion.

Table 11
Estimated Truck-to-Rail Diversion by Service Type
Base Case Diversion Analysis

Service Type	Percentage of Total	Diverted Volume
Intermodal	78%	48,751
Dry Bulk	13%	8,041
Liquid / Gas	7%	4,078
Flatbed	1%	832
Auto	1%	807
Total	***100%***	***62,509***

Source: Kahwaty Workpapers "T2R Diversions by Service Type, Commodity.xlsx."

178. Intermodal traffic is expected to account for approximately 78% of the diverted traffic that will benefit from CN's proposed conditions, including its investments in its Kansas City and St. Louis intermodal yards. Of the diverted intermodal traffic, approximately 41,000 units are expected to move through the Kansas City area and approximately 7,700 units through the St. Louis area. In total, Kansas City is expected to receive approximately 52,500 units of diverted traffic, while St. Louis is expected to receive approximately 9,850 units.

179. **Figure 29** presents the ten largest lanes for diverted traffic, and **Figure 30** presents the largest lanes for diverted intermodal traffic.[230] The results show that diverted traffic is

[230] Throughout the truck-to-rail diversion analysis, BEA refers to the geographic market areas reported in TRANSEARCH, the database used to obtain truck freight volumes and distances. In the United States, these correspond to Business Economic Areas. In Canada, the analogous TRANSEARCH areas generally correspond to major Census Metropolitan Areas ("CMAs"), with Non-CMA regions representing the remainder of each province. *See* the *Truck-to-Rail Diversion Methodology Workpaper* for additional information regarding the TRANSEARCH data and the geographic area analyzed.

concentrated in several key markets. The Kansas City–Chicago market alone is expected to account for approximately 25% of total diverted traffic. CN is particularly well positioned to serve this traffic because of its extensive intermodal capabilities in the Chicago area and the significant volume of intermodal traffic it currently moves south from Chicago to Memphis, Jackson, and New Orleans.

Figure 29
Truck-to-Rail Diversions: Overall
Top 10 BEA Origin–Destination Pairs

Total Across All BEA/Province Origin-Destination Pairs: 62,509 units
Top 10 BEA/Province Origin-Destination Pairs: 32,514 units (52%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Kansas City, MO	Chicago, IL	10,955
Chicago, IL	Kansas City, MO	5,619
Kansas City, MO	Detroit, MI	4,407
Non-CMA, ON	St. Louis, MO	2,090
Detroit, MI	Kansas City, MO	1,880
New Orleans, LA	Kansas City, MO	1,659
Detroit, MI	St. Louis, MO	1,554
Kansas City, MO	Memphis, TN	1,543
Non-CMA, QC	St. Louis, MO	1,471
St. Louis, MO	Detroit, MI	1,336

Source: Kahwaty Workpapers "T2R Diversions by Service Type, Commodity.xlsx."

Figure 30
Truck-to-Rail Diversions: Intermodal
Top 10 BEA Origin–Destination Pairs

Total Across All BEA/Province Origin-Destination Pairs: 48,751 units
Top 10 BEA/Province Origin-Destination Pairs: 31,161 units (64%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Kansas City, MO	Chicago, IL	10,494
Chicago, IL	Kansas City, MO	5,516
Kansas City, MO	Detroit, MI	4,241
Non-CMA, ON	St. Louis, MO	2,002
Detroit, MI	Kansas City, MO	1,794
New Orleans, LA	Kansas City, MO	1,659
Kansas City, MO	Memphis, TN	1,498
Non-CMA, QC	St. Louis, MO	1,417
Detroit, MI	St. Louis, MO	1,292
St. Louis, MO	Detroit, MI	1,248

Source: Kahwaty Workpapers "T2R Diversions by Service Type, Commodity.xlsx."

180. Kansas City–Detroit is expected to be the second-largest market for diversion, accounting for approximately 10% of total diverted traffic. More than 90% of the diversions in this market are expected to be intermodal. As discussed in the rail-to-rail diversion section, CN's traffic between Kansas City and Detroit is expected to increase substantially, providing additional support for increased intermodal volumes in this market. CN's ability to accommodate this growth is further supported by its large, modern Detroit intermodal hub, which handles approximately 78,000 units annually.[231]

181. The concentration of diverted traffic in the Kansas City–Chicago and Kansas City–Detroit markets is also reflected in the commodities expected to generate the diversions. Grain is expected to be the largest diverted commodity overall, accounting for more than 25,000 units, or approximately 40% of total diverted traffic. *See* **Figure 31**. Approximately 50% of the diverted traffic between Kansas City and Chicago is expected to consist of grain.

[231] CN Traffic Tapes.

Figure 31
Truck-to-Rail Diversions: Grain
Top 10 BEA Origin–Destination Pairs

Total Across All BEA/Province Origin-Destination Pairs: 25,230 units
Top 10 BEA/Province Origin-Destination Pairs: 14,786 units (59%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Kansas City, MO	Chicago, IL	7,329
Kansas City, MO	Memphis, TN	1,304
Kansas City, MO	Detroit, MI	1,037
Omaha, NE	Chicago, IL	1,009
Non-CMA, ON	St. Louis, MO	1,008
Lincoln, NE	Chicago, IL	802
Chicago, IL	Kansas City, MO	616
Detroit, MI	St. Louis, MO	594
St. Louis, MO	Detroit, MI	559
Grand Rapids, MI	St. Louis, MO	527

Source: Kahwaty Workpapers "T2R Diversions by Service Type, Commodity.xlsx."

182. Automotive traffic is expected to play a similar role in the Kansas City–Detroit market. As shown in **Figure 32**, vehicle parts are expected to be the largest diverted product in this market, accounting for approximately two-thirds of the diverted traffic. Kansas City to Chicago is the largest lane for finished vehicle diversion. *See* **Figure 33.**

Figure 32
Truck-to-Rail Diversions: Vehicle Parts
Top 3 BEA Origin–Destination Pairs

Total Across All BEA/Province Origin-Destination Pairs: 5,942 units
Top 3 BEA/Province Origin-Destination Pairs: 5,443 units (92%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Kansas City, MO	Detroit, MI	2,486
Detroit, MI	Kansas City, MO	1,672
Chicago, IL	Kansas City, MO	1,285

Source: Kahwaty Workpapers "T2R Diversions by Service Type, Commodity.xlsx."

Figure 33
Truck-to-Rail Diversions: Auto
Top 10 BEA Origin–Destination Pairs

Total Across All BEA/Province Origin-Destination Pairs: 807 units
Top 10 BEA/Province Origin-Destination Pairs: 779 units (97%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Kansas City, MO	Chicago, IL	452
Detroit, MI	St. Louis, MO	102
Toronto, ON	St. Louis, MO	91
Kansas City, MO	Detroit, MI	37
Detroit, MI	Kansas City, MO	32
Toronto, ON	Kansas City, MO	26
Non-CMA, ON	St. Louis, MO	12
Kansas City, MO	Memphis, TN	12
St. Louis, MO	Winnipeg, MB	8
Non-CMA, ON	Kansas City, MO	7

Source: Kahwaty Workpapers "T2R Diversions by Service Type, Commodity.xlsx."

C. Rail Penetration Increases with the Number of Single Line Rail Carriers in the Market

183. My truck-to-rail diversion model is motivated by several observations regarding rail penetration and its relationship to the number of single-line carriers serving a market. Below, I review the market-level data that illustrate these relationships and provide the basis for my regression analysis.

184. As shown in **Figure 34**, CN's intermodal business is dominated by single line movements. Over {{ }} of CN's intermodal movements in 2023 were single line services.[232]

[232] *See* Kahwaty Workpapers "Breakout of CN's Intermodal Business Between Single Line and Interline Service 2023.ipynb."

Figure 34
CN's Intermodal Business
Single Line and Interline Service
2023
{{

}}

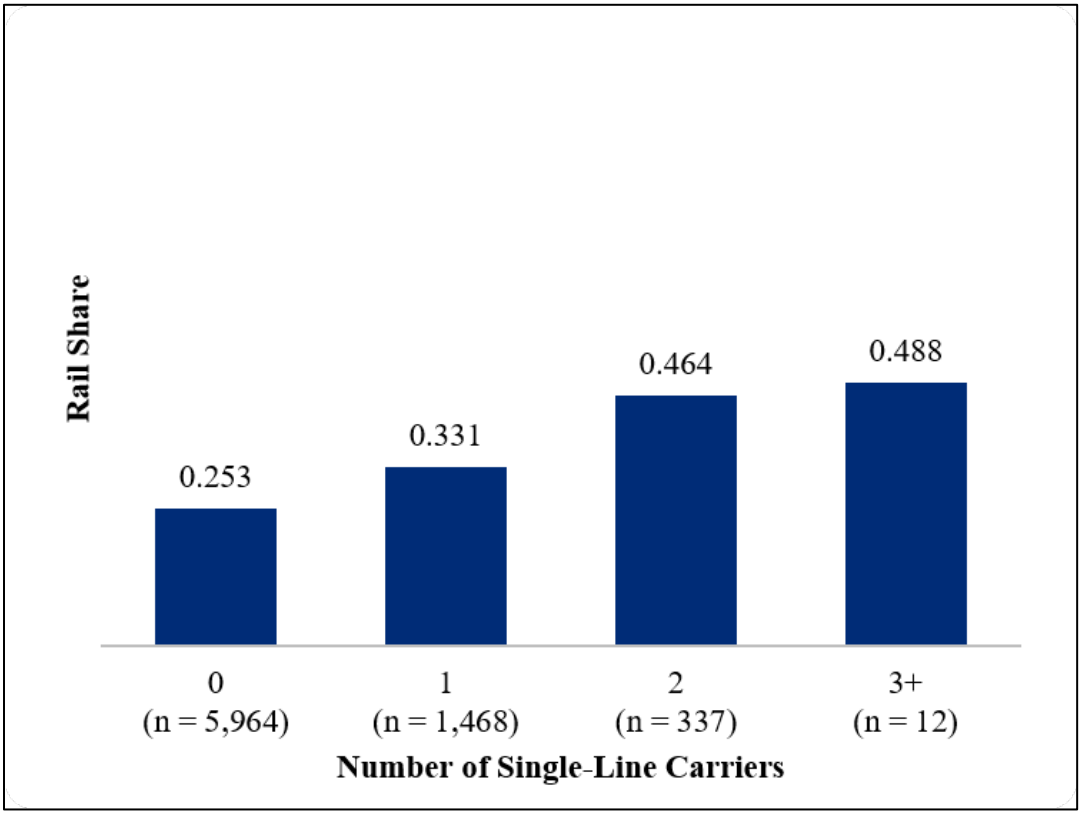
185. In addition, the vast majority of CN's intermodal movements are over 400 miles in length. Only {{ }} of CN's intermodal movements in 2023 were under 400 miles long from the originating intermodal facility to the terminating intermodal facility. *See* **Figure 35**.

Figure 35
CN's Intermodal Business by Length of Haul
2023
{{

}}

Finally, rail's share of movements between BEA pairs by service type typically increases as the number of single line rail carriers increases. For intermodal service, the increase in rail share between markets with no single line carrier and markets with one single line carrier is 7.8 percentage points, and the rail share increase when a second single line carrier is added is an additional 13.3 percentage points. This is shown in **Figure 36**. Similar figures for other service types are provided in **Attachment F**. These relationships are the basis for my regression analysis, which is detailed in the *Truck-to-Rail Diversion Methodology Workpaper*.

Figure 36
Rail Share for Intermodal Shipments Between BEA Pairs
2023



Source: Kahwaty Workpapers "T2R Rail Share by Service Type.xlsx."

IX. PORT DIVERSION ANALYSIS

186. Port diversion occurs when cargo moving between an inland location and a coastal port is re-routed so that the cargo's entry or exit occurs via a different port location than it had previously. Cargo traveling from the U.S. to Europe, for example, can transit via the ports in Philadelphia, New York/New Jersey, Charleston, Baltimore, and Savannah, among others. Canadian ports could also be an option, with the cargo traveling by truck or rail from the origin to, for example, the Port of Montreal or the Port of Halifax. Broadly speaking, port competition can be described as competition between alternative intermodal transport chains that include both the maritime port and its inland connections.[233] If

[233] Barry Zondag, Pietro Bucci, Padideh Gützkow, and Gerard de Jong, *Port competition modeling including maritime, port, and hinterland characteristics*. Maritime Policy & Management, Vol. 37, no. 3 (2010): 179–194.

granted, CN's proposed conditions would provide a new, alternative source of competition for import/export traffic moving between Kansas City and ports. Specifically, the availability of a new single line service may cause shippers to divert shipments from their original port to a new port if the single line service makes available a new, lower-cost transport chain between the origin and the destination.[234]

187. Published research finds port diversion in response to changes in relative shipping costs. Mueller et al. (2020) model European port choice decisions.[235] The authors find that hinterland transport costs are the most important factor affecting port choice.[236] Zondag et al. (2010) also find that hinterland transport and transport costs are important to competition between European ports.[237] The authors estimate that increased transport costs of between 10% and 20% can lead to a reduction in port market share of between 1% and 8%, with volume shifting to competing ports.

188. The waybill data provides additional support that port diversion arises in response to changes in relative transportation costs due to a rail merger. For example, the CP/KCS merger made available new single-line routes between Canada and the {{ }}. One such route is from {{ }}, {{ }}, to the {{ }}. {{ }} has a heavy crude oil processing facility in {{ }}. Before the CP/KCS merger, the {{ }} shipped product to the Gulf Coast via interline service originating with CP and terminating with UP at the {{ }}. It also interlined a {{ }} originating with CP and terminating with NS at the {{ }}. Post-merger, it has interlined a handful of cars originating with CPKC and terminating with BNSF at the {{ }} but

[234] The existence of port diversion is also found when there is disruption to inland transportation or port availability resulting from natural disasters. *See, e.g.,* Felix L. Friedt, *Natural Disasters, Aggregate Trade Resilience, and Local Disruptions: Evidence from Hurricane Katrina*, Review of International Economics 29, no. 5 (2021): 1081–1120.

[235] Michael A. Mueller, Bart Wiegmans, and J. H. R. Van Duin, *The geography of container port choice: modelling the impact of hinterland changes on port choice: MA Mueller et al.*, Maritime Economics & Logistics, Vol. 22, no. 1 (2020): 26–52.

[236] Hinterland transport is the movement between coastal ports and inland regions.

[237] Barry Zondag, Pietro Bucci, Padideh Gützkow, and Gerard de Jong, *Port competition modeling including maritime, port, and hinterland characteristics*, Maritime Policy & Management, Vol. 37, no. 3 (2010): 179–194.

has shipped most of its water-borne export volume via single line service on CPKC to the {{ }}. These shipments are summarized in **Table 12**. With new single line service, {{ }} shifted nearly all its {{ }} export volumes shipped by rail from the {{ }} to the {{ s}}. This is port diversion.[238]

Table 12
{{

}}

189. Port diversion is driven by changes in relative logistics costs, and CN's proposed conditions would make new single line service available for traffic originating or terminating in Kansas City, such as single line service to or from the Port of Montreal. New options that reduce logistics costs may draw traffic away from ports used previously.

190. CN business executives have considered the potential for port diversion resulting from CN's proposed conditions.[239] Their estimates and analysis are presented in the Nair V.S.[240] The Nair V.S. explains how CN will operate as a new competitive option for import and export traffic between Kansas City and the East Coast, potentially diverting up to 15,000

[238] I note that the {{ }} ships product via truck, rail, and pipeline. It serves inland destinations and did not ship product by rail to ports for export during 2021–2024. When it did resume exporting by rail to the U.S. Gulf Coast, it shifted its export modality to CPKC single line service to the Port of New Orleans.

[239] I do not model port diversion using my rail-to-rail, truck-to-rail, or other similar models. These models consider how cargo is shipped between a given origin and a given destination. With port diversion, however, the destination (for export) changes. This possibility is not captured in the other models.

[240] Nair V.S. at 13–14.

annual round-trip carloads through CN-served ports, with Montreal identified as the strongest diversion opportunity. Reductions in the logistics costs U.S. shippers need to bear to get their products to export markets benefit U.S. manufacturers and U.S. workers. This estimate uses current intermodal volumes to calculate an addressable traffic pool equal to the existing port-to-rail traffic moving between Kansas City and Los Angeles-Long Beach, New York-New Jersey, and Norfolk. To arrive at a diversion estimate, this addressable traffic pool is adjusted to account for various factors determining port-to-rail traffic flows and port entry decisions, such as rail mileage and transit time, ocean-routing feasibility, and CN's lived experience diverting traffic between ports (among other factors).[241] As stated above, this estimate is for a flow of up to approximately 15,000 annual round-trip carloads between Kansas City and CN-served ports. For purposes of counting loaded containers, I count 15,000 in both directions for a total of 30,000 loaded containers. This estimate is included in my overall traffic diversion estimates provided in **Section VI**. Because this new traffic will travel over the Kansas City Line, I also provide a Trackage Rights Alternative estimate in **Attachment D.**

X. KANSAS CITY AS A GATEWAY

191. CN views Kansas City, the second largest rail gateway in the country,[242] as a valuable hub which, with access, would reshape and enhance its network, eventually expanding its access to other origins, destinations, and markets. As discussed in **Section IV** and in various CN Verified Statements,[243] CN has detailed plans for investing in and using the Kansas City Line. These plans signal CN's intention of being a good steward of the competitive remedy, should it be permitted to acquire the line. These plans also show the

[241] Nair V.S. at 13–14 (describing the factors considered in developing CN's approximation and its experience diverting traffic from West Coast ports when entering other inland markets).

[242] *See Moving America's Heartland*, KCT, https://kctrailway.com/ (last visited Nov. 10, 2026); *Top 10 Largest Cargo and Freight Railyards in the United States,* Logos Logistics, https://www.logos3pl.com/blog/top-10-largest-cargo-and-freight-railyards-in-the-united-states/ (last visited Nov. 10, 2026); *Kansas City, MO Railyards,* UNIS, https://www.unisco.com/railyards/locations/kansas-city-mo (last visited Nov. 10, 2026); *US Rail Ramp Guide,* Indray, https://indray.com/us-rail-ramp-guide (last visited Nov. 10, 2026).

[243] Drysdale V.S. at 10, 14–16 (Janet Drysdale, CN's Executive Vice President and Chief Commercial Officer); Operating Plan at 102–107, 146–148; Nair V.S. at 8–13; Slazinski V.S. at 12, 14–17; Przednowek V.S. at 19–21; Ellis V.S. at 12; Levis V.S. at 7.

line's importance to the future of the CN rail network. As an owner of the Kansas City Line, CN would have full control over investment, maintenance, dispatch, and other critical decisions related to the line and its features that strengthen CN's east-west presence and capabilities in the United States.[244] As such, it is no surprise that CN has plans for utilizing the line to grow its business while optimizing its network operations around this asset.

192. In the near term, gaining access into Kansas City would allow CN to begin executing on the operational plans detailed in the Operating Plan. One of the strategies detailed in the Operating Plan is shifting existing CN-originated interchanges to the Kansas City Gateway. Where operationally feasible, traffic that CN today hands to western carriers at Chicago could remain on CN trains and move via CN's Champaign Subdivision and the Tuscola Line into Kansas City for onward conveyance to the south and the west by other carriers. The Interchange Shifts would reduce Chicago terminal handlings and congestion, reduce interchange handlings, and create longer CN-controlled hauls while improving CN's locomotive, equipment, and car cycle times.[245] The Operating Plan estimates that rerouting a sufficient density of 6,000-foot trains away from Chicago's Kirk Yard to Champaign could reduce shipping times by an entire day.[246] CN believes it can achieve large volumes of Interchange Shifts within three years,[247] and, as such, I model them in my diversion estimates. **Figure 37** illustrates the concept of the Interchange Shift and identifies two of the primary junctions (Chicago and Superior, Wisconsin) with existing traffic that could continue all the way to Kansas City for onward conveyance elsewhere.

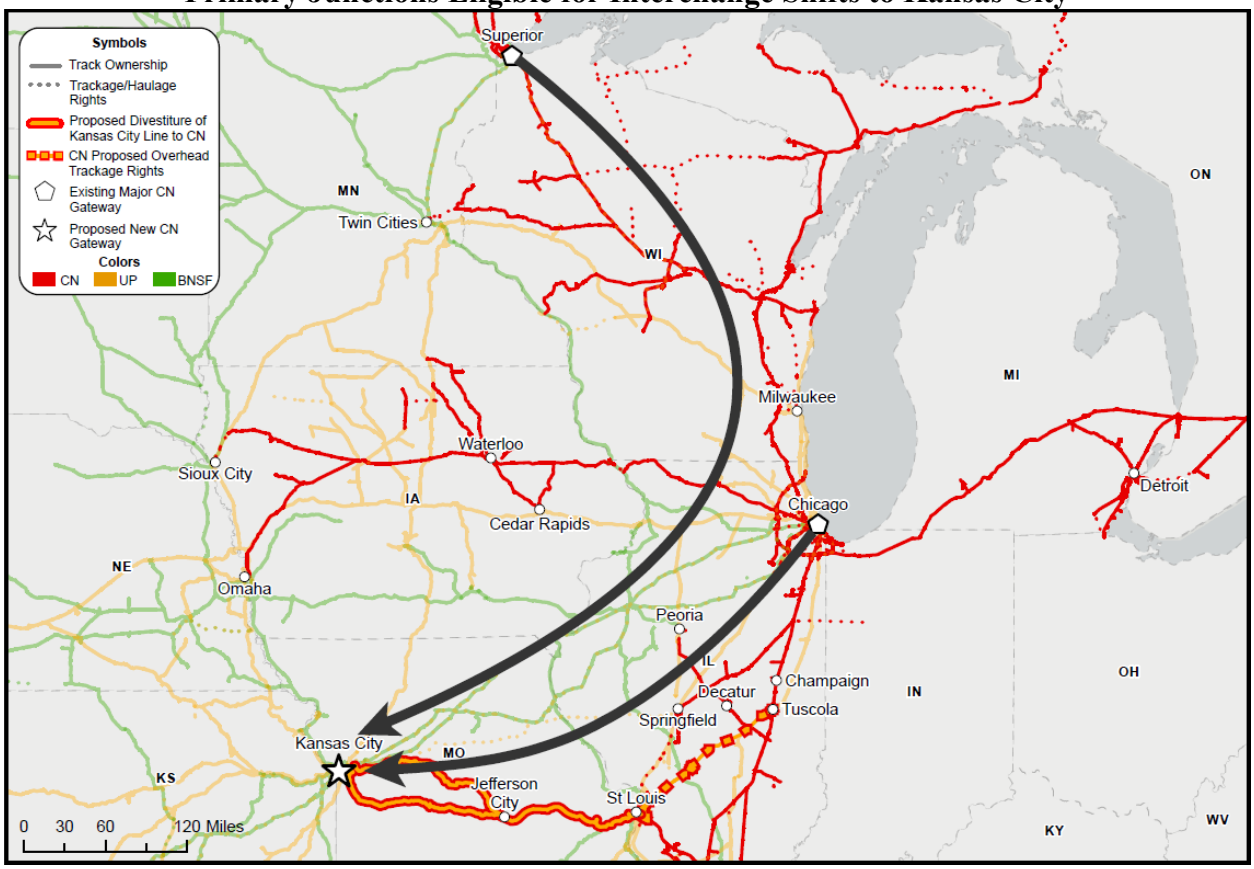
[244] Drysdale V.S. at 10.

[245] *See* Operating Plan at 96–98.

[246] Operating Plan at 96–97.

[247] Operating Plan at 97 ("Based on its operations plans, CN views these shifts as both realistic and achievable by three years post-transaction."); *ee also* Drysdale V.S. at 18–22 ("If the Board grants CN's conditions, CN is committed to investing in the Kansas City Line and related facilities within three years after the Board's approval, consummation of the Proposed Transaction, and divestiture to CN. … CN views them as realistic and achievable in the years following implementation, based on its commercial and operational plans and existing customer relationships.").

Figure 37
Primary Junctions Eligible for Interchange Shifts to Kansas City



Source: Kahwaty Workpapers; *See also* U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

193. CN's operational enhancements can be expected to generate additional traffic for CN over time. In the simplest form, rerouting traffic away from congested areas, decreasing transit times by increasing train velocity, and building density where operationally and commercially feasible allow for more frequent train service and lower per-unit shipping costs. These benefits from building line density will be available to shippers spanning an array of commodity groups across all CN's service types, including CN's Automotive, Intermodal, Grain & Fertilizers, Petroleum & Chemicals, Metals & Minerals, and Forest Products franchises.[248] For example, Ms. Levis confirms the relevance of these gateways for metals and minerals: "Today, CN interchanges much of its traffic to NS or UP at

[248] *See* Kahwaty Workpapers "R2R Diversion Analysis Charts (Shifted).xlsx." for a complete tabulation of the commodities underlying the Interchange Shift diversion estimates presented in this section.

Chicago or Superior." She states: "Chicago and Superior are key interchange locations between CN and UP for all metals and minerals traffic; the traffic in Chicago moves to and from California, New Mexico, Kansas, Georgia and Texas, and the traffic through Superior goes to and from Texas and Wisconsin."[249] I have been asked to identify the CN traffic flows (as they existed in 2023) that could be eligible for an Interchange Shift to Kansas City. Next, I detail my process for doing so, and I identify specific lanes in which the aforementioned commodity groups could, under CN's proposed conditions, eventually shift their interline interchange to Kansas City.[250]

194. I identify existing CN interchange volume that could shift its gateway from locations like Chicago and Superior, Wisconsin, to Kansas City, by first considering the structure of CN's United States rail network and evaluating the traffic tape data available to me in this proceeding. [251] Generally, this traffic is originated by CN in the north or the east of Kansas City before being interlined with another carrier.[252] Specifically, to assess the changes in traffic flows on CN's network resulting from Interchange Shifts, I reviewed traffic patterns and isolated traffic that met the following criteria, which are illustrated in **Figure 38**.[253]

- The traffic represents an existing CN-originated interchange with revenue car volume in 2023.[254]

[249] Levis V.S. at 7.

[250] My analysis of Interchange Shift volumes is not based on my rail-to-rail diversion model. Diversion involves changes in optimal routing due to changes in the rail options available to shippers (*e.g.*, the introduction of a new single line service). Interchange Shift volumes involve changing routings to achieve scale and thereby achieve efficiencies such as shorter transit times due to improved density.

[251] I also rely on the Quantanet routing software produced by Applicants.

[252] *See, for example*, Levis V.S. at 6–7.

[253] Additional guardrails were placed on the above criteria to ensure realistic results and are available for reference in my workpapers. Certain movements were excluded from consideration based on feedback from CN. *See* Kahwaty Workpapers "02 Prepare Lanes for Interchange Shifting.ipynb" and "03 Interchange Shifting.ipynb."

[254] I focus on CN-originated traffic because I understand that, under the relevant case law, the originating railroad is entitled to pick the interchange junction. *See, e.g.*, *Canexus Chem. Canada L.P. v. BNSF Ry. Co.*, NOR 42131, slip op. at 10 (STB served Feb. 8, 2012).

- The traffic did not originate in the Kansas City BEA, Iowa, Tennessee, or states south of Tennessee.[255]

- The Quantanet routing software estimated that the shipment is routed through the Kansas City BEA or along the Kansas City Line.[256]

- The 2023 interchange did not occur at Memphis, Tennessee; East Dubuque, Illinois; Peoria, Illinois; New Westminster, British Columbia; Iowa Falls, Iowa; or Council Bluffs, Iowa.[257]

- The ultimate destination was in one of the following states: Arizona, California, Colorado, Missouri or Kansas (outside of the Kansas City BEA), Nebraska, New Mexico, Nevada, Oklahoma, Texas (with restrictions),[258] or Utah.

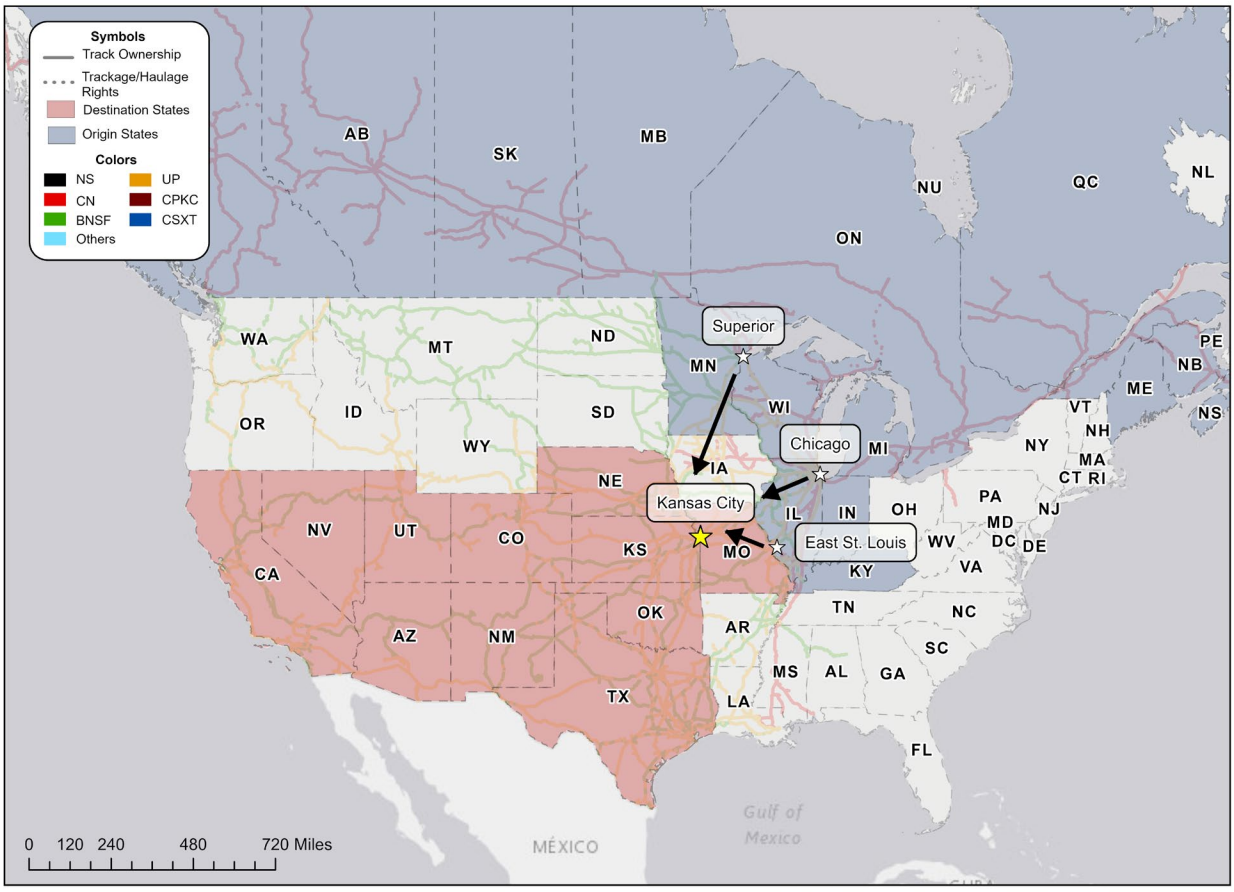
[255] Iowa originations were excluded because BNSF and UP have direct routes to Kansas City. Given its geographic positioning and the presence of UP and BNSF lines, the Memphis area is a natural boundary on the CN network for distinguishing whether a shipment is likely to travel west via Kansas City. Relatedly, originations south of Memphis would not realistically be handed to West Coast carriers in Kansas City due to the routing being more circuitous than competing options.

[256] A review of traffic flows determined that merchandise traffic was generally eligible for interchange shifts if Quantanet estimated the lowest impedance path to move through the Kansas City BEA or along the Kansas City Line. Auto and Intermodal were required to pass through the Kansas City BEA due to automotive and intermodal facility locations.

[257] Decisions regarding which existing interchange junctions to exclude were made based on eligible traffic flagged, the geographic positioning of its junction relative to Kansas City, and existing interline carrier options at those junctions.

[258] Merchandise traffic destined for the Texas panhandle (e.g., Amarillo) which CN interchanges with UP could realistically travel on CN's proposed network until Kansas City before being handed to UP for termination. BNSF, on the other hand, has a more direct route from the St. Louis area to the Texas panhandle; as a result, it is less realistic for CN to shift its gateway on interline arrangements with BNSF for merchandise traffic destined for Texas. Auto traffic destined for Texas and interlining with BNSF was considered eligible, per feedback from CN. Intermodal traffic destined for Texas wasn't relevant due to the concentration of Intermodal destinations on the West Coast.

Figure 38
Illustration of CN Traffic Flows Eligible for Interchange Shifts[259]



Source: Kahwaty Workpapers; *See also* U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master. For illustrative purposes, only BNSF, CN, and UP networks are shown.

195. **Table 13** provides the car counts for each service type with eligible Interchange Shift traffic. CN's primary Interchange Shift opportunities exist in the general merchandise, automotive (finished vehicles), and Intermodal markets. For additional visibility into the relevant general merchandise traffic flows, **Table 14** provides the eligible car counts by CN business unit. It shows Interchange Shift opportunities for CN's Petroleum & Chemicals, Metals & Minerals, Grain & Fertilizers, and Forest Products franchises.

[259] Interchange Shifts are relevant for CN-originated interline traffic only. Additional interchange junctions not shown on the map were considered.

Table 13
Interchange Shift Car Counts by Service Type
2023

Service Type	% of Total	Shifted Volume
Auto	45%	15,610
General Merchandise	39%	13,450
Intermodal	16%	5,460
Bulk	0%	22
Total	100%	34,542

Source: Kahwaty Workpapers "R2R Diversion Analysis Charts (Shifted).xlsx."

Table 14
General Merchandise Business Units with Eligible Interchange Shift Traffic
2023

Business Unit	% of Total	Shifted Volume
Petroleum and Chemicals	39%	5,312
Metals and Minerals	36%	4,783
Forest Products	15%	2,030
Grain and Fertilizers	10%	1,325
Total	100%	13,450

Source: Kahwaty Workpapers "R2R Diversion Analysis Charts (Shifted).xlsx."

196. **Figure 39** provides the car counts for the ten highest volume lanes identified by this analysis. Within these lanes, CN expects it could successfully shift the interchange gateway where it makes commercial and operational sense. For example, CN could interchange Michigan- and Ontario-origin finished vehicles traffic at Kansas City instead of Chicago, including for traffic destined for the Southwest.[260] Similar gateway shifts would be available for Petroleum & Chemicals traffic originating in Wisconsin and Ontario and landing in California, Forest Products originating in Wisconsin and terminating in the

[260] Slazinski V.S. at 11–12, 15.

Southwest, Grain & Fertilizer products traveling between Illinois and Oklahoma, or Metals & Minerals originating in the St. Louis area and Canada and terminating in states like Colorado, California, and Oklahoma.

Figure 39
Top Origin-Destination BEA Lanes with Eligible Interchange Shift Traffic
2023

Total Across All BEA/Province Origin-Destination Pairs: 34,542 Units
Top 10 BEA/Province Origin-Destination Pairs: 20,481 Units (59%)

Origin BEA/Province	Destination BEA/Province	Shifted Volume
Ontario	Los Angeles-Long Beach-Riverside, CA	6,842
Detroit-Warren-Flint, MI	Los Angeles-Long Beach-Riverside, CA	3,285
Detroit-Warren-Flint, MI	Phoenix-Mesa-Scottsdale, AZ	1,763
Ontario	Phoenix-Mesa-Scottsdale, AZ	1,579
Quebec	Los Angeles-Long Beach-Riverside, CA	1,548
Detroit-Warren-Flint, MI	Oklahoma City-Shawnee, OK	1,521
Lansing-East Lansing-Owosso, MI	Los Angeles-Long Beach-Riverside, CA	1,179
Ontario	Dallas-Fort Worth, TX	1,024
Decatur, IL	Oklahoma City-Shawnee, OK	902
Ontario	Oklahoma City-Shawnee, OK	838

Source: Kahwaty Workpapers "R2R Diversion Analysis Charts (Shifted).xlsx."

197. The resulting traffic counts by lane and carrier pair are reported with my diversion results so that they can be included in CN's operational plans for the Kansas City Line. The CN interline partners with the highest number of cars on eligible Interchange Shift routes are a merged UP/NS (CN interline partner on more than 21,000 eligible cars) and BNSF (CN interline partner on more than 12,000 eligible cars).[261]

[261] Kahwaty Workpapers "CN Diversions by Carrier (Interchange Shifts).xlsx."

XI. DIVERTED TRAFFIC IS ESTIMATED TO GENERATE AT LEAST $360M IN ANNUAL REVENUE FOR CN

198. I estimate that after Base Case traffic diversion is fully phased in, CN's proposed conditions will generate $360M in annual revenue for CN. These revenues are summarized in **Table 15.**

Table 15
CN Revenue from Base Case Diverted Traffic

Service Type	Rail-to-Rail Revenue		Truck-to-Rail Revenue	Port of Montreal Revenue	Total Revenue Impact
	Regular Markets	Shifted Markets			
General Merchandise	$ 26,887,029	$ 42,312,960	$ -	$ -	$ 69,199,988
Intermodal	$ 12,602,490	$ 2,850,871	$ 31,987,619	$ 34,108,736	$ 81,549,717
Bulk	$ 25,268,199	$ 90,275	$ -	$ -	$ 25,358,475
Auto	$ 57,720,954	$ 58,478,219	$ 3,431,387	$ -	$ 119,630,561
Other	$ -	$ -	$ 64,298,010	$ -	$ 64,298,010
Total	$ 122,478,673	$ 103,732,326	$ 99,717,017	$ 34,108,736	$ 360,036,751

Source: Kahwaty Workpapers "Revenue Impact (Base)."

199. Revenues are expressed in 2023 dollars (the Base Year) and are not adjusted for inflation. To estimate the annual revenue resulting from traffic diversion, I apply revenue per car-mile metrics to the diverted volumes and do so considering service type and whether the CN service attracting traffic is single line or interline. Note that the "Other" category for truck-to-rail diversion comprises dry bulk, liquid gas, and flatbed service types. Revenue estimates for the Trackage Rights Alternative scenario are reported in **Attachment D**, **Table D7**.

XII. DISAGGREGATION OF DIVERSIONS ACROSS CN'S PROPOSED CONDITIONS

200. Pursuant to Decision No. 46, I disaggregate the traffic diversions I estimate across sub-dockets relevant to the Comment and my diversion analysis. [262] Specifically, I focus on identifying whether traffic diversions that I estimate are attributed to:

[262] Decision No. 46, FD 36873, slip op. at 5 (STB served Nov. 4, 2026) ("…any responsive application that includes more than one sub-docket should provide sufficient clarity and detail on each individual transaction so that the Board may easily discern the impact of each transaction included in the application both on the primary transaction and the rail network generally.")

a. Sub-Nos. 2, 4, 5, 6: CN's request for Kansas City access, including UP's divestiture of the Kansas City Line and CN's acquisition of that line and access to Neff Yard;[263]

b. Sub-No. 3: CN's planned development of intermodal and automotive yards in the St. Louis area;

c. Sub-Nos. 7 and 8: CN's request for improved access to East St. Louis via the Tuscola Trackage Rights;[264]

d. Sub-No. 9: CN's request for Hillsboro Trackage Rights;[265] or

e. Sub-No. 10: CN's request for Des Moines Trackage Rights.[266]

201. **Table 16** disaggregates units of rail-to-rail, truck-to-rail, and port diversion best attributable to each of these components of CN's proposed conditions.[267] The primary source of diverted traffic is CN's request for Kansas City access, as analyzed under the assumption that CN acquires the Kansas City Line.

[263] *See* Comment at 9–11; Operating Plan at 18–23, 93–98 (divestiture of UP's line between St. Louis, Mo. and Kansas City, Mo.); Operating Plan at 14, 128–18 (overhead trackage rights over UP's line between North Lydia Avenue and Broadway Boulevard in Kansas City, Mo.); Operating Plan at 54–55, 130 (terminal trackage rights over BNSF Railway Company's line between Eton, Mo. and Congo, Mo.); and Operating Plan at 18, 129 (lease/purchase of UP's Neff Yard in Kansas City, Mo.).

[264] *See* Comment at 10–11, 41–42, 49–50; Operating Plan at 129 (overhead trackage rights over UP's line between Tuscola, Ill. and East St. Louis); and Operating Plan at 65–66, 129–139 (overhead trackage rights over The Alton & Southern Railway Company's line between Lenox/Mitchell, Ill. and East St. Louis, Ill.)

[265] Comment at 10–11, 85– 87; Operating Plan at 138 (local trackage rights for access to Foresight Energy facilities at Hillsboro, Ill.)

[266] *See* Comment at 10–11, 76–83; Operating Plan at 139 (trackage rights for UP line between Manly, Iowa/Iowa Falls, Iowa and Des Moines, Iowa).

[267] *See* Kahwaty Workpapers "01 Diversion Estimation.ipynb" and "06 Prep for Operating Plan and Revenue Impact (Regular).ipynb" at the cells labeled "Disaggregation methodology" (R2R), for detail underlying my disaggregation methodology.

Table 16
Disaggregation of Diverted Units by CN's Proposed Conditions

Condition	Rail-to-Rail Units		Truck-to-Rail Units	Port of Montreal Units	Total Units
	Regular Markets	Shifted Markets			
Kansas City Line	32,622	34,542	52,658	30,000	149,822
New St. Louis Facilities	1,549	-	7,960	-	9,509
Tuscola Line	532	-	1,890	-	2,422
Hillsboro Line	6,204	-	-	-	6,204
Des Moines Line	1,227	-	-	-	1,227
Total Units	42,133	34,542	62,509	30,000	169,184

Source: Kahwaty Workpapers "Diversion Units (Base)."
Note: The Kansas City Line and the New St. Louis Facilities diversions include traffic moving over the Tuscola Line and those volumes are not double counted on the Tuscola Line.

Table 17
Disaggregation of Diverted Units
Revenue Impact by CN's Proposed Conditions

Condition	Rail-to-Rail Revenue		Truck-to-Rail Revenue	Port of Montreal Revenue	Total Revenue Impact
	Regular Markets	Shifted Markets			
Kansas City Line	$ 88,729,775	$ 103,732,326	$ 85,106,420	$ 34,108,736	$ 311,677,257
New St. Louis Facilities	$ 4,122,126	$ -	$ 6,274,722	$ -	$ 10,396,848
Hillsboro Line	$ 24,369,793	$ -	$ -	$ -	$ 24,369,793
Tuscola Line	$ 668,936	$ -	$ 8,335,874	$ -	$ 9,004,810
Des Moines Line	$ 4,588,042	$ -	$ -	$ -	$ 4,588,042
Total	$ 122,478,673	$ 103,732,326	$ 99,717,017	$ 34,108,736	$ 360,036,751

Source: Kahwaty Workpapers "Revenue Impact (Base)."
Note: The Kansas City Line and the New St. Louis Facilities diversions include traffic moving over the Tuscola Line and those volumes are not double counted on the Tuscola Line.

202. The Kansas City Line and the New St. Louis Facilities diversions include traffic moving over the Tuscola Line and those volumes are not double counted on the Tuscola Line. I note the following regarding these results.

- CN's request for Hillsboro Trackage Rights will not result in truck-to-rail diversion. Coal moving from the Hillsboro Mine is transported via unit train service. It is not transported by truck and cannot, therefore, represent truck-to-rail diversion.

- CN's proposed Des Moines Trackage Rights are intended to remedy the loss of access to an independent, Class I railroad by 3-to-2 and 2-to-1 rail customers. Furthermore, unlike in Kansas City and St. Louis, no new intermodal or automotive facilities are planned for the Des Moines area. Any diversion due to new intermodal or automotive facilities would be captured by CN's new Kansas City and/or St. Louis facilities. Lastly, grain customers comprise many of the

customers losing access to an independent Class I railroad. Shipments of grain typically start on trucks with movements to elevators before ultimately using rail service to reach their final destinations. The diversion analysis, therefore, focuses on rail-to-rail diversions for grain and other agricultural products after their short-haul truck movements from farms.

XIII. CONCLUDING COMMENTS ON THE DIVESTITURE OF THE KANSAS CITY LINE

203. In general, divestitures are structural remedies and are preferred to the alternative of behavioral (or conduct) remedies to alleviate competition concerns related to mergers. The Federal Trade Commission ("FTC") explains that it "prefers structural relief in the form of a divestiture"[268] and that divestiture of an "autonomous, on-going business" to a viable buyer will, in the majority of cases, "immediately create a competitor comparable to the competitor that would have been or was lost after the merger."[269] In his empirical study that examined consummated mergers and remedies, Kwoka (2015) concluded that "of the two types of remedies [structural and conduct], the conduct approach has shown itself to be particularly ineffective."[270]

204. The effectiveness of a divestiture remedy depends on the buyer of the divested assets being a viable, independent competitor. A transfer of assets to a buyer without the incentive or capacity to compete effectively will not be sufficient. In a joint submission to the OECD, the U.S. Department of Justice and FTC state that "the purchaser of the divested assets must possess both the means and the incentive to preserve competition" and that the

[268] Richard Feinstein, *Negotiating Merger Remedies*, Statement of the Bureau of Competition of the Federal Trade Commission, January 2012 at 5.

[269] Richard Feinstein, *Negotiating Merger Remedies*, Statement of the Bureau of Competition of the Federal Trade Commission, January 2012 at 15.

[270] John Kwoka, *Mergers, Merger Control, and Remedies - A Retrospective Analysis of U.S. Policy*, MIT Press, 2015 at 160. *See also* John Kwoka, *Revisiting Structural Remedies*, Antitrust, Fall 2024 at 38 ("Over the past several years, the case against conduct remedies seems largely to have prevailed. Experience has shown that supposed remedies that are essentially rules seeking to prohibit profitable actions by merged companies will predictably elicit efforts to circumvent them. Both evidence and anecdotes confirm that firms routinely succeed in these efforts, resulting in failures of competition policy relying on such remedies.")

divestiture must include "all the assets, physical and intangible, necessary for the purchaser to effectively compete with the merged entity."[271]

205. To be a viable, independent competitor, CN will need to be able to build density in the areas served, and in particular along the Kansas City Line. Interchange traffic brought by CN to Kansas City is part of the pool of traffic CN will need to support its Kansas City facilities, and foreclosure has the potential to depress CN's interchange volumes in Kansas City. Having robust and enforceable open gateway protections is critical for the success of CN as the remedy carrier.

206. To be a viable, independent competitor, CN will also need to have a competitive cost structure. Giving CN access to Kansas City through trackage rights over the Kansas City Line is not a purely structural remedy. As I have already noted, UP management recognizes that it can manipulate such a remedy by raising trackage rates to reduce or eliminate use of the line. This is a classic raising rivals' costs strategy, and it would undermine the very competition that CN's proposed conditions are intended to promote. CN cannot compete if it must pay trackage or haulage rates that are cost-prohibitive. Where divestiture options are generally unavailable, the use of either trackage or haulage rights to serve customers may be the only option to restore some of the competition likely to be lost due to the Proposed Transaction. Where divestiture is feasible, however, it avoids the problems associated with behavioral solutions and is the preferred approach for competition remedies.

207. Divestiture also avoids UP being able to foreclose CN via the use of non-price vertical foreclosure strategies. If the Kansas City Line were divested to CN, CN would schedule the line, negating concerns that UP would be able to disadvantage CN by reducing CN's service quality or prioritizing the scheduling of UP's trains over CN's trains on the Kansas City Line.

[271] The Antitrust Division of the United States Department of Justice and the United States Federal Trade Commission, *Remedies in Merger Cases*, OECD, Working Party No. 3 on Co-operation and Enforcement at ¶ 10, https://www.ftc.gov/sites/default/files/attachments/us-submissions-oecd-and-other-international-competition-fora/1106usremediesmergers.pdf (last visited Nov. 13, 2026).

208. CN is well positioned to operate the Kansas City Line. It represents a natural geographic extension of CN's rail network into an adjoining region, extending CN's network several hundred miles to the west from St. Louis to Kansas City and connecting the large Kansas City gateway to CN's north-south corridor. CN's proposed conditions include all the track and associated rights needed for CN to operate the line effectively (*e.g.*, the terminal trackage rights on BNSF between Eton and Congo, Missouri).[272] CN's Operating Plan demonstrates that it has the necessary assets to compete *(e.g.*, engines, staff) or plans to develop the needed assets or capabilities (*e.g.*, making improvements to the Neff Yard to support its intermodal and finished vehicle distribution businesses). [273]

[272] Comment at 9–10, 52–54; Operating Plan at 13–14, 133–37.

[273] Operating Plan at 136, 140–145.

VERIFICATION

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

Executed on this 18th day of November, 2026.

Henry J. Kahwaty, Ph.D.

Attachment A
Defined Terms

- **2-to-1 / 3-to-2** — Facilities whose Class I service options drop from two to one or from three to two as a result of the Proposed Transaction
- **A&S** — The Alton & Southern Railway Company
- }}
- }}
- **Ag Coast of America** — A 15-mile stretch of the Mississippi River with St. Louis to the west and East St. Louis to the east
- **Amended Application** – The Amended Application filed by Union Pacific to acquire control of Norfolk Southern in STB Docket No. FD 36873
- **Applicants** — Norfolk Southern together with Union Pacific, collectively
- **Base Case** — The scenario modeling the Kansas City Divestiture, Tuscola Trackage Rights, Des Moines Trackage Rights, Hillsboro Trackage Rights, and access to certain reciprocal-switch customer facilities
- **Base Case CN Rail Network** — CN's rail network under the conditions modeled in the Base Case
- **Base Case Rail Network** — The Baseline Rail Network updated to reflect the track ownership and access-right changes modeled in the Base Case
- **Base Year** — 2023
- **Baseline Rail Network** — The post-UP/NS-merger rail network before imposition of conditions or remedies requested by third parties or imposed by the Board, with no other assumed track ownership, access-right, or railroad-business changes
- **BEA** — An economic area defined by the U.S. Bureau of Economic Analysis; in the truck-to-rail analysis, a geographic market area reported in TRANSEARCH, including analogous Canadian areas
- **BNSF** — BNSF Railway Company

- **Board/STB** — Surface Transportation Board
- **BRG** — Berkeley Research Group, LLC
- **CGP** — Committed Gateway Pricing
- **CIC** — Cedar Rapids & Iowa City Railway Company
- **CMA** — Census Metropolitan Area
- **CN** — Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries
- **CN Base Operating Plan** — CN's operating plan incorporating Applicants' Growth Plan as the post-transaction analytical baseline, including post-2023 traffic adjustments and Applicants' estimated diversions to the merged UP/NS railroad
- **CN Growth Plan** — The operating plan developed by adding estimated CN diverted traffic and existing CN traffic rerouted through the Kansas City and St. Louis interchanges to the CN Base Operating Plan
- **CN's proposed conditions** — The remedial proposals described in the Comment
- **Comment** — CN's Comments on the Amended Application & Requests for Conditions
- **Control Group** — CP and/or KCS interline shipments pre-merger and CPKC interline shipments post-merger that do not pass through any of the 13 gateways subject to the CPKC open gateway conditions
- **Cora** — Watco's Cora River Terminal in Cora, Illinois
- **CP** — Canadian Pacific
- **CPKC** — Canadian Pacific Kansas City Railway Company
- **Des Moines Line** — UP's Albert Lea, Mason City and Trenton Subdivisions from MP 201.87 in Manly, Iowa to MP 66.80 at Avon, Iowa; and UP's Perry Subdivision from the connection with the Mason City Subdivision at MP 73.61/355.8 in Des Moines, Iowa to MP 354.50 at Short Line Yard in Des Moines, Iowa

- **Des Moines Trackage Rights** — The proposed overhead and limited local trackage rights or alternative haulage over the Des Moines Line, with trackage-rights access for facilities requiring unit train service and switching access for the remaining 2-to-1 and 3-to-2 customer facilities in Des Moines and Avon, Iowa

- **DiD** — Difference-in-differences

- **EIA** — U.S. Energy Information Administration

- **Eton to Congo Segment** — About 7.5 miles of BNSF's Marceline Subdivision between Eton, Missouri (MP 436.6) and Congo, Missouri (MP 444.1)

- **EVWR** — Evansville Western Railroad

- **Ford Kansas City** — Ford's Kansas City Assembly Plant

- **Former Sarpy Yard property** — UP's inactive Sarpy Yard property on the Kansas City Line

- **FRA** — Federal Railroad Administration

- **FTC** — Federal Trade Commission

- **GM Fairfax** — General Motors' Fairfax Assembly Plant

- **GM Wentzville** — General Motors' Wentzville Assembly Center, northwest of St. Louis

- **Hillsboro Line** — UP's line from Hillsboro, Illinois (MP 233) to Sullivan, Illinois (MP 176.2) and Tuscola, Illinois (MP 153.49), and from Hillsboro to Lenox in Mitchell, Illinois (MP 275.4/269.70) to WR Tower in Granite City, Illinois (MP 275.39) to Q Tower TRRA in East St. Louis, Illinois (MP 281.00)

- **Hillsboro Mine** — The Deer Run Mine at Foresight Energy's Hillsboro complex

- **Hillsboro Trackage Rights** — The proposed local trackage rights allowing CN to serve the Hillsboro Energy facility via UP's line between Tuscola and Hillsboro, Illinois

- **IANR or Iowa Northern** — Iowa Northern Railway Company

- **Impedance** — Route mileage augmented by penalties, such as additional mileage assigned to interchanges

- **Interchange Shift** — Rerouting an existing CN-originated interline movement so that the interchange handoff occurs in Kansas City instead of another gateway, such as Chicago or Superior, Wisconsin

- **Interchange Shift Volume** — Existing CN-originated interchange volume that could shift its gateway from locations like Chicago and Superior, Wisconsin, to Kansas City, due to the changes in traffic patterns, business strategies, and other operational planning that is anticipated to occur on CN's network once it gains access to facilities and interchange options in Kansas City

- **Junction Frequency** — The number of interchanges required to move a railcar from its origin to destination when handled by a given pair of origin and destination railroads

- **Kansas City Divestiture** — The Kansas City Line Divestiture together with terminal trackage rights over BNSF and trackage rights on the Lydia Avenue to Broadway Boulevard Segment

- **Kansas City Line** — UP's line from Twelfth Street, St. Louis, Missouri (MP 0.36), to 23rd Street Yard (at or near MP 0.8), to Grand Ave., St. Louis, Missouri (MP 2.5), to the former Sarpy Yard property (at or near MP 2.6), to River Junction (MP 128.0) West of Jefferson City, Missouri to Rock Creek Junction (MP 276.9) to Southwest Junction (MP 278.2) into Neff Yard, Kansas City, Missouri, or from Twelfth Street, St. Louis, Missouri (MP 0.36) to 23rd Street Yard (at or near MP 0.8), to Grand Ave., St. Louis, Missouri (MP 2.5), to the former Sarpy Yard property (at or near MP 2.6), to River Junction, Missouri (MP 128.0) to Eton, Missouri (MP 276.1 (BNSF MP 436.6)) and from Congo, Missouri (BNSF MP 444.1) to Rock Creek Junction (MP 276.9) to Southwest Junction (MP 278.2) into Neff Yard, Kansas City, Missouri including but not limited to, any and all yards, sidings, auxiliary tracks located along the UP solely owned right of way

- **Kansas City Line Divestiture** — The proposed divestiture of UP's Kansas City Line to CN if the Board orders divestiture or UP decides to sell the line

- **Kansas City Line Trackage Rights** — The proposed trackage rights and local haulage rights on UP's Kansas City Line, with interim overhead haulage rights until the trackage rights are activated, as an alternative to divestiture

- **Kansas City Trackage Rights** — The Kansas City Line Trackage Rights together with terminal trackage rights over BNSF and trackage rights on the Lydia Avenue to Broadway Boulevard Segment

- **KCS** — The Kansas City Southern Railway Company

- **KCSM** — Kansas City Southern de Mexico, KCS's Mexico affiliate before the merger

- **KCT** — Kansas City Terminal Railway Company

- **Lenox to East St. Louis Segment** — A&S's line from Lenox in Mitchell, Illinois (MP 21.09) to the connection to the Terminal Railroad Association of St. Louis's (TRRA) MacArthur Bridge route (MP 2.4) to Valley Jct. in East St. Louis, Illinois (MP 2.2), via Gateway Yard (MP 4.16) and Mitchell Yard (MP 19.9)

- **Lydia Avenue to Broadway Boulevard Segment** — UP's K.C. Metro (Neff) Subdivision from Lydia Avenue, Kansas City, Missouri (MP 281.7) to Broadway Boulevard, Kansas City, Missouri (MP 283.1)

- **MP** — Milepost

- **NARN** — North American Rail Network

- **Norfolk Southern** — Norfolk Southern Corporation and NS, collectively

- **NS** — Norfolk Southern Railway Company

- **OEA** — The Board's Office of Environmental Analysis

- **Proposed Transaction** — Union Pacific's acquisition of control of Norfolk Southern

- **PSR** — Precision scheduled railroading

- **Quantanet** — Oliver Wyman's path-finding software module used to calculate the least-impeded path between origin and destination nodes on a rail network

- **SCRS** — Serving Carrier & Reciprocal Switching
- **Settlement MOU** — Binding Memorandum of Understanding between CN and Union Pacific (July 22, 2026)
- {{ }}
- **Springfield Diversion Study** — Mr. Hunt's diversion study for CN concerning its proposed acquisition of the KCS Springfield Line as a divestiture remedy in the CP/KCS merger proceeding
- **SSW** — St. Louis Southwestern Railway Company
- **Trackage Rights Alternative** — The scenario in which CN is given access to Kansas City via trackage rights over the Kansas City Line as opposed to acquiring the Kansas City Line from UP
- **TRANSEARCH** — The database used to obtain truck freight volumes and distances for the truck-to-rail analysis
- **Treatment Group** — Shipments originated in Mexico by KCS (pre-merger) or CPKC (post-merger) and interlining at the {{ }} gateway with UP
- **TRRA** — Terminal Railroad Association of St. Louis
- **Tuscola Line** — UP's line from Tuscola, Illinois (MP 153.49) to Sullivan, Illinois (MP 176.2) to Lenox in Mitchell, Illinois (MP 275.4/269.70) to WR Tower in Granite City, Illinois (MP 275.39) to Q Tower TRRA in East St. Louis, Illinois (MP 281.00)
- **Tuscola Trackage Rights** — The proposed overhead trackage rights for CN on UP's Tuscola Line
- **Union Pacific** — Union Pacific Corporation and UP, collectively
- **UP** — Union Pacific Railroad Company
- **Units** — Rail cars or containers
- **Updated Hunt Analyses** — The Updated Hunt R2R Analysis and Updated Hunt T2R Analysis, collectively

- **Updated Hunt R2R Analysis** — The updated rail-to-rail diversion analysis included in Mr. Hunt's September 4, 2026 Second Errata Verified Statement

- **Updated Hunt T2R Analysis** — The updated truck-to-rail diversion analysis included in Mr. Hunt's September 4, 2026 Second Errata Verified Statement

- **Updated Hunt UP/NS Diversion Study** — Mr. Hunt's Second Errata Verified Statement dated September 4, 2026, and its associated workpapers

Attachment B
Difference-in-Differences Technical Discussion

1. The DiD methodology I use in **Section III.D** is an empirical tool widely used in economics (e.g., merger retrospectives, damages analysis, price-fixing cases, public policy/regulatory analysis)—as well as other disciplines—to investigate the impact of an event by comparing outcomes in a Treatment Group to a Control Group.[274]

2. **Figure B1** provides a visualization of the DiD framework used in my analysis. Let P represent the price for a Treatment Group movement and C represent the price for a Control Group movement. The subscript B refers to the price before the merger and the subscript A refers to the price after the merger. The change in the price for the Treatment Group movement over time is (P_A – P_B) and the change in the price for the Control Group movement is (C_A – C_B). The DiD estimate (sometimes referred to as the "treatment effect") is the "difference-in-differences" of (P_A - P_B) - (C_A - C_B).

[274] For applications of the type of DiD methodology I use, *see, e.g.*, R. Forrest McCluer and Martha A. Starr, *Using Difference in Differences to Estimate Damages in Healthcare Antitrust: A Case Study of Marshfield Clinic*, Int. J. of the Economics of Business, 2013, Vol. 20, No. 3 at 447–469 (a DiD model is used to estimate damages in a healthcare antitrust matter); Kai Hüschelrath, Kathrin Müller, and Tobias Veith, *Concrete Shoes for Competition: The Effect of the German Cement Cartel on Market Price*, Journal of Competition Law and Economics, 2013, 9(1) at 97–123 (data from a German cement cartel are used to analyze – in a DiD framework – the change in price for a cartelized market over time compared to the change in price in a non-cartelized, benchmark market); Graeme Hunter, Gregory K. Leonard, and G. Steven Olley, *Merger Retrospective Studies: A Review*, 2008, Vol. 23, No. 1 at 34–41 (describes the widespread use of the DiD approach for estimating price effects of a merger in a retrospective analysis); David Card and Alan B. Krueger, *Minimum Wages and Employment: A Case-Study of the Fast Food Industry in New Jersey and Pennsylvania*, American Economic Review, 1994, 84(4) at 772–793 (the effect on employment of a minimum wage increase in New Jersey is analyzed in a DiD framework relative to Pennsylvania where there was no change in the minimum wage); Ulrich Laitenberger and Florian Smuda, *Estimating Consumer Damages in Cartel Cases*, Journal of Competition Law and Economics, 2015, 11(4) at 955–974 (damage suffered by German consumers due to a detergent cartel in eight European countries is quantified using a DiD model); and Justin B. Dimick, MD, MPH and Andrew M. Ryan, PhD, *Methods for Evaluating Changes in Health Care Policy The Difference-in-Differences Approach*, JAMA Guide to Statistics and Methods, 2014, 312(22) at 2401–2402 (discusses the popularity of the DiD approach to evaluate changes in outcomes associated with health care policy implementation).

Figure B1
Difference-in-Differences Framework

	Pre-Merger Price	Post-Merger Price	Price Change
Treatment Group	P_B	P_A	$P_A - P_B$
Control Group	C_B	C_A	$C_A - C_B$
		DiD Estimate:	$(P_A\text{-}P_B) - (C_A\text{-}C_B)$

3. When analyzing the price effects (if any) due to a merger, the change in the price for the Control Group before and after the merger provides a measure of the effect on prices of factors other than the merger (*i.e.*, changes in supply, demand, costs, or other market factors). The change in the price charged by the Control Group can be subtracted from the change in the price charged by the Treatment Group, and the impact of the merger on prices can be estimated by analyzing this difference.

4. The DiD estimate is interpreted as the effect of the merger on the price for the Treatment Group "over and above" any change that would have occurred absent the merger (as proxied by the change in price for the Control Group). If the DiD estimate is positive, then prices for the Treatment Group increased relative to those for the Control Group subsequent to the merger; if it is negative, then prices for the Treatment Group decreased relative to those for the Control Group.

5. The above DiD method can be implemented in a regression model specified in its simplest form as follows:[275]

$$Price_{it} = \alpha + \beta * (Post\ Merger_{it} * Treatment_{it}) + \gamma * Post\ Merger_{it} + \delta * Treatment_{it} + \epsilon_{it}$$

[275] This basic DiD regression model can be augmented with additional explanatory variables to account for different economic and other market factors on prices between the Control and Treatment Groups should they exist and is equivalent to the regression specification in the text. As explained in **Section III.D**, I control for the cross-sectional differences across shipments using an indicator variable for each combination of origin, destination, car type, commodity type, shipper, railroad, intermodal status, contract type, and car ownership type.

Where $Treatment_{it} = 1$ if observation *i* at time *t* is a Treatment Group price and 0 if a Control Group price, and $Post\ Merger_{it} = 1$ if the price is observed after the merger (and 0 if before). The estimated coefficient β gives the DiD estimate of the effect of the merger on the Treatment Group price relative to the Control Group price. It is identical to the DiD estimate illustrated in **Figure B1**. This can be seen in **Figure B2** by substituting a 0 or 1 as appropriate in the DiD regression equation shown above.

Figure B2
Difference-in-Differences Regression Framework

	Pre-Merger Price	**Post-Merger Price**	**Price Change**
Treatment Group	$\alpha + \delta$	$\alpha + \beta + \gamma + \delta$	$\beta + \gamma$
Control Group	α	$\alpha + \gamma$	γ
Difference	δ	$\beta + \delta$	$\boldsymbol{\beta}$

6. The focus of the DiD analysis is the estimated regression coefficient β associated with the "interaction term" (*i.e.*, $Post\ Merger_{it} * Treatment_{it}$).[276] This measures the additional change in the outcome (price) for the Treatment Group relative to the Control Group pre- and post-merger. When studying the effect of a merger on prices, if β is not statistically different from zero, then there is no statistically significant difference in the prices charged to customers in the Treatment Group relative to the Control Group.

7. The underlying assumption of a DiD regression analysis is that the outcomes for the Treatment and Control Groups would have followed similar patterns but for the event under

[276] The coefficients in **Figure B2** correspond to those in the regression model in ¶ 5 above. The coefficient $\boldsymbol{\alpha}$ is the baseline pre-merger price for the Control Group. The coefficient $\boldsymbol{\delta}$ is the estimated difference in pre-merger prices between the Treatment and Control Groups, and the coefficient $\boldsymbol{\gamma}$ is the change in the post-merger and pre-merger price for the Control Group.

study, here, the CP/KCS merger. If the Control and Treatment Groups are similar in all significant respects (*i.e.*, the same market factors affect both types of movements), then significant differences in the change in pricing between the groups before and after the merger can reasonably be attributed to the merger. The DiD regression relies on the assumption that, in the absence of the treatment under study, the Treatment and Control Groups would have had similar trends in outcome. The "parallel trends" assumption is a condition for interpreting the DiD estimate as related to the event. That is, if trends in outcomes experienced by the Control and Treatment Group before the treatment are sufficiently similar, it is reasonable to assume that this relationship would have continued absent the event. If this assumption is satisfied, the trend in outcome of the Control Group after the event can serve as a reliable estimate of the counterfactual trend for the Treatment Group.

8. The price indices and total car count charts reported in **Section III** visually indicate similar trends for the Treatment and Control Groups prior to the announcement of the CP/KCS merger. The following figures report the results of formal parallel-trends tests.[277] **Figure B3** visually shows the parallel trends using all monthly prices (January 2019 to December 2025) and **Figure B4** uses car counts (January 2019 to December 2025). The results indicate that the parallel trends assumption is reasonably upheld whether using prices or volumes (car counts) in the DiD regressions.[278]

[277] For the price regression, I account for the estimated relationship between Treatment Group prices and the USD/MXN exchange rate in conducting the parallel trends test. Specifically, I adjust Treatment Group prices by multiplying them by $(\frac{USD}{MXN})^{-0.4955}$ and then perform the parallel trends test using the adjusted prices.

[278] Differences in the pre-merger period coincide with COVID-19 in Spring 2020. Differences in early 2019 coincide with periods in which KCS made substantial operational improvements such as full adoption of precision scheduled railroading (PSR) and customs process improvements at the Mexican border in early 2019.

See Ari Ashe, *Rails Work to Reduce Houston Congestion*, J. of Com., April 18, 2019 ("During first-quarter earnings calls, KCS and UP identified Houston as key to fixing their networks through precision scheduled railroading (PSR). The operating model focused on injecting speed and efficiencies into networks hinges on running fewer but longer train sets."), s*ee also* Bill Stephens, *KCS, UP Clear a Path Through Houston*, Newswire, May 14, 2019 ("KCS also is working to smooth operations at Laredo, North America's busiest international freight rail gateway. By the end of May, KCS expects customs process improvements to eliminate the current six-hour directional windows that govern movements across the International Railway Bridge that spans the Rio Grande. American and Mexican customs officials will begin sharing x-ray images of trains for trains moving in both directions…KCS has consolidated

Figure B3
Parallel Trends Test for Treatment and Control Prices
(January 2019 to December 2025)
{{

}}

southbound cross-border intermodal trains at its Sanchez Yard in Nuevo Laredo, Mexico, including traffic interchanged with UP at Laredo. Train lengths are up 30%, to 8,500 feet, as train starts were reduced by nearly a third, Fahmy says.").

Figure B4
Parallel Trends Test for Treatment and Control Car Counts
{{

}}

9. The following regression results use data for the entire 2019-2025 period, including the transition period excluded from the analysis in **Section III**. **Figure B5** reports the price DiD regression results, and **Figure B6** reports car count DiD regression results. While the estimated effects are smaller in absolute magnitude, the results remain consistent with those reported in **Section III**.

Figure B5
Price Changes for KCS or CPKC Movements Originated in Mexico and Interlining in {{ }} Relative to Control Group
Difference-in-Differences Regression Results
January 2019 – December 2025
{{

}}

Figure B6
Car Count Changes for KCS or CPKC Movements Originated in Mexico and Interlining in {{ }} Relative to the Control Group
Difference-in-Differences Regression Results
January 2019 – December 2025
{{

}}

10. The following regression results do not include a control for the US/MEX Exchange Rate variable in the price DiD regression as described in **Section III**. **Figure B7** reports the regression results where I exclude the transition period; these estimated DiD effects are consistent with (and larger than) those reported in **Section III**, at approximately 11%–12%. **Figure B8** reports the regression results using the entire period; these estimated DiD effects are also consistent with (and larger than) those reported in **Section III**, at approximately 9% to 11%.

Figure B7
Price Changes for KCS or CPKC Movements Originated in Mexico and Interchanging at {{ }} Relative to Control Group
Difference-in-Differences Regression Results (No Exchange Rate Control)
January 2019-February 2021 and May 2023 – December 2025
{{

}}

Figure B8
Price Changes for KCS or CPKC Movements Originated in Mexico and Interchanging at {{ }} Relative to Control Group
Difference-in-Differences Regression Results (no Exchange Rate Control)
January 2019 – December 2025
{{

}}

11. Finally, **Figures B9** and **B10** report corresponding DiD regressions for car counts, excluding the US/MEX Exchange Rate control for both regressions. **Figure B9** reports the regression results where I exclude the transition period and **Figure B10** reports the regression results using the entire period. These estimated DiD effects are consistent with those reported in **Section III**.

Figure B9
Car Count Changes for KCS or CPKC Movements Originated in Mexico and Interchanging at {{ }} Relative to Control Group
Difference-in-Differences Regression Results (No Exchange Rate Control)
January 2019-February 2021 and May 2023 – December 2025
{{

}}

Figure B10
Car-Count Changes for KCS or CPKC Movements Originated in Mexico and Interchanging at {{ }} Relative to Control Group
Difference-in-Differences Regression Results (No Exchange Rate Control)
January 2019-– December 2025
{{

}}

Attachment C
CN-UP/NS Gateways and Interchange Locations Subject to Gateway Protections

{{

}}

Attachment D
Trackage Rights Alternative Scenario

This provides traffic diversions and associated revenue impacts from the Trackage Rights Alternative Scenario discussed in **Section VII**.

Table D1
Summary of the Traffic Diversion Analysis Results
Traffic Diverted, by Service Type
Trackage Rights Alternative Scenario

Service Type	Rail-to-Rail Units		Truck-to-Rail Units	Port of Montreal Units	Total Units
	Regular Markets	Shifted Markets			
General Merchandise	5,404	9,196	-	-	14,600
Intermodal	6,708	1,823	21,431	10,015	39,976
Bulk	6,468	18	-	-	6,486
Auto	2,252	1,711	284	-	4,247
Other	-	-	10,107	-	10,107
Total Units	20,832	12,748	31,822	10,015	75,416

Source: Kahwaty Workpapers "Diversion Units (Trackage Rights).xlsx."

Table D2
Summary of the Traffic Diversion Analysis Results
Revenue for Traffic Diverted, by Service Type
Trackage Rights Alternative Scenario

Service Type	Rail-to-Rail Revenue		Truck-to-Rail Revenue	Port of Montreal Revenue	Total Revenue Impact
	Regular Markets	Shifted Markets			
General Merchandise	$ 17,748,957	$ 28,930,870	$ -	$ -	$ 46,679,827
Intermodal	$ 4,184,546	$ 951,674	$ 8,200,059	$ 11,386,133	$ 24,722,412
Bulk	$ 25,115,734	$ 72,404	$ -	$ -	$ 25,188,139
Auto	$ 7,077,499	$ 6,410,009	$ 1,086,378	$ -	$ 14,573,886
Other	$ -	$ -	$ 39,220,338	$ -	$ 39,220,338
Total	$ 54,126,736	$ 36,364,958	$ 48,506,775	$ 11,386,133	$ 150,384,602

Source: Kahwaty Workpapers "Revenue Impact (Trackage Rights).xlsx."

Table D3
Estimated Rail-to-Rail Diversion by Service Type
Trackage Rights Alternative Scenario

Service Type Label	% of Total	Diverted Volume
General Merchandise	26%	5,404
Intermodal	32%	6,708
Bulk	31%	6,468
Auto	11%	2,252
	100%	20,832

Source: Kahwaty Workpapers "CN Diversions by Carrier, TR.xlsx."

Table D4
Traffic Diverted from Other Railroads to CN
Trackage Rights Alternative Scenario

	Merchandise		Intermodal		Bulk		Automotive		
Carrier	New to CN	CN Extended Haul	New to CN	CN Extended Haul	New to CN	CN Extended Haul	New to CN	CN Extended Haul	Total
UPNS	1,808	761	4,788	0	6,327	17	380	1,813	15,893
BNSF	608	952	1,985	17	119	0	59	0	3,739
CPKC	1,806	64	167	0	30	0	321	0	2,389
CSXT	250	3	19	0	29	0	0	0	301
Shortlines	696	148	0	0	3,613	0	0	890	5,348

Source: Kahwaty Workpapers "CN Diversions by Carrier, TR.xlsx."

Table D5
Estimated Truck-to-Rail Diversion by Service Type
Trackage Rights Alternative Scenario

Service Type	Percentage of Total	Diverted Volume
Intermodal	67%	21,431
Dry Bulk	20%	6,255
Liquid / Gas	10%	3,204
Flatbed	2%	648
Auto	1%	284
	100%	31,822

Source: Kahwaty Workpapers "Diversions by Service Type (Trackage Rights).xlsx."

Table D6
Disaggregation of Diverted Units by CN's Proposed Conditions
Trackage Rights Alternative Scenario

Condition	Rail-to-Rail Units		Truck-to-Rail Units	Port of Montreal Units	Total Units
	Regular Markets	Shifted Markets			
Kansas City Line	11,347	12,748	21,971	10,015	56,080
New St. Louis Facilities	1,522	-	7,960	-	9,483
Tuscola Line	532	-	1,890	-	2,422
Hillsboro Line	6,204	-	-	-	6,204
Des Moines Line	1,227	-	-	-	1,227
Total Units	20,832	12,748	31,822	10,015	75,416

Source: Kahwaty Workpapers "Diversion Units (Trackage Rights).xlsx."

Table D7
Disaggregation of Diverted Units
Revenue Impact by CN's Proposed Conditions
Trackage Rights Alternative Scenario

Condition	Rail-to-Rail Revenue		Truck-to-Rail Revenue	Port of Montreal Revenue	Total Revenue Impact
	Regular Markets	Shifted Markets			
Kansas City Line	$ 20,384,160	$ 36,364,958	$ 33,896,179	$ 11,386,133	$ 102,031,429
New St. Louis Facilities	$ 4,115,805	$ -	$ 6,274,722	$ -	$ 10,390,527
Hillsboro Line	$ 24,369,793	$ -	$ -	$ -	$ 24,369,793
Tuscola Line	$ 668,936	$ -	$ 8,335,874	$ -	$ 9,004,810
Des Moines Line	$ 4,588,042	$ -	$ -	$ -	$ 4,588,042
Total	$ 54,126,736	$ 36,364,958	$ 48,506,775	$ 11,386,133	$ 150,384,602

Source: Kahwaty Workpapers "Revenue Impact (Trackage Rights).xlsx."

Attachment E
Rail-to-Rail Diversion: Overview of the Baseline Rail Network and Traffic Analyzed

1. This Attachment provides an overview of the baseline rail network and traffic data I analyze for modeling rail-to-rail diversion. It details the steps, data, and assumptions I used to effectuate CN's proposed conditions over the existing rail network.

2. The baseline rail network used in my analysis reflects the post-UP/NS merger rail network, and the traffic volumes and patterns considered are the 2023 actual traffic volumes and flows from the consolidated 100% traffic tapes used in the Updated Hunt UP/NS Diversion Study.[279] CN's proposed conditions are conditional on the Proposed Transaction being approved by the Board. As such, my analysis of the divertible traffic likely to result from CN's proposed conditions allows UP/NS to compete as a merged railroad. In addition, CN's proposed conditions, once approved, would be enacted at the same time as the Proposed Transaction closes. Thus, it is appropriate for the baseline rail traffic flows to exclude diverted traffic resulting from the Updated Hunt UP/NS Diversion Study, which is estimated to be realized three years after the close of the Proposed Transaction.[280] The diversions associated with CN's proposed conditions reflect changes in traffic patterns relative to this baseline.

3. The "Baseline Rail Network" assumes the Proposed Transaction has closed and does not reflect the imposition of any conditions or remedies requested by third parties or imposed by the Board on Applicants. Other than ownership changes due to the Proposed Transaction, it assumes no other track ownership or rights changes, and no changes in the businesses of other railroads. The baseline rail network I model reflects the post-merger rail network that the Updated Hunt UP/NS Diversion Study uses.[281] To model CN's

[279] Additional data sources are described in the *Rail-to-Rail Diversion Methodology Workpaper*.

[280] Hunt September 2026 V.S., Appendix C at 184–185; Second Errata Joint Verified Statement of Eric Gehringer and John F. Orr, Operating Plan (Exhibit 13), at ¶ 15 [hereinafter "Gehringer/Orr V.S."] ("Third, Applicants designed operations that would accommodate the traffic growth projected to be achieved by a fully integrated UP/NS three years after the transaction. We call this the 'Growth Plan.'")

[281] Certain adjustments were made to the markets comprising the post-merger rail network that the Updated Hunt UP/NS Diversion Study uses. However, it is consistent with the Updated Hunt UP/NS Diversion Study in that it treats UP and NS as one merged railroad.

proposed conditions, I first update the Baseline Rail Network to reflect the changes in track ownership and rights that would be brought about by these conditions. In particular, I update the rail network to reflect the Base Case scenario described in **Section VII**. I refer to this rail network as the "Base Case Rail Network."

4. Broadly, my process for effectuating the Base Case Rail Network involves using Oliver Wyman's Quantanet software and other backup materials and data produced by Mr. Hunt on behalf of Applicants. Quantanet is a "path-finding software module" that calculates the least impeded path between origin and destination nodes on a rail network built using Federal Railroad Administration ("FRA") North American Rail Network ("NARN") Rail Lines data.[282] By updating the NARN and other station access data used by the Updated Hunt UP/NS Diversion Study, I am able to model CN access at stations and over lines consistent with CN's proposed conditions included in the Base Case. In generating the Baseline Rail Network, I make the following assumptions:

    a. CN has access to route trains over UP owned NARN segments and local access to serve all UP stations along the Kansas City Line between St. Louis (Twelfth Street) and Kansas City (Broadway), including all industrial leads.

    b. CN has access to route trains over all UP owned NARN segments between Tuscola and East St. Louis and has access to serve the Foresight Energy facility at Hillsboro, Illinois.

    c. CN has access to route trains over TRRA and A&S owned NARN segments in the East. St. Louis and St. Louis area, including over the TRRA MacArthur Bridge and the A&S track between Lenox in Mitchell, Illinois to Valley Jct., Illinois.

[282] Applicants describe how Quantanet works in the Hunt September 2026 V.S. (*see e.g.*, Section A.6).

d. CN has access to route trains over UP owned NARN segments between Manly, Iowa and Des Moines, Iowa and has access to serve local customers at the Des Moines and Avon, Iowa stations.

e. CN will provide bi-directional service over the Kansas City Line.

f. CN is granted terminal trackage rights over BNSF between Eton and Congo, Missouri.

g. CN can interchange with other carriers using the KCT.

h. CN can serve A&S and TRRA traffic when moving shipments through St. Louis (either from CN's existing entry via East St. Louis or from the north via the Tuscola Line), and does not require an interchange impedance (because this interchange impedance is applicable to all carriers moving such traffic);

i. After the Kansas City Line is divested to CN, CN grants local haulage rights and overhead trackage rights to UP over this line.

j. CN will handle finished vehicles and intermodal shipments at the Neff Yard in Kansas City and will have the ability to originate traffic from Kansas City Ford and GM auto plants (via a short and non-prohibitive drayage trips from the plants to Neff Yard).

k. CN will handle finished vehicles and intermodal shipments at the former Sarpy Yard property and will have the ability to originate traffic from the Wentzville, Missouri GM auto plant (via a short and non-prohibitive drayage trips from the plant to the auto yard).[283]

[283] Note that the station data and rail network data I have access to do not indicate a precise station code (e.g., Freight Station Accounting Code or Standard Point Location Code) for the former Sarpy Yard property. As such, for purposes of modeling CN's ability, under its proposed conditions, for acquiring automotive and intermodal facilities (and serving traffic in/out of those facilities), I assign proxy access that permits CN to serve out of Grand Avenue,

l. CN can serve Kansas City customers in the KCT reciprocal switching tariffs and certain customers in the UP and NS reciprocal switching tariffs.

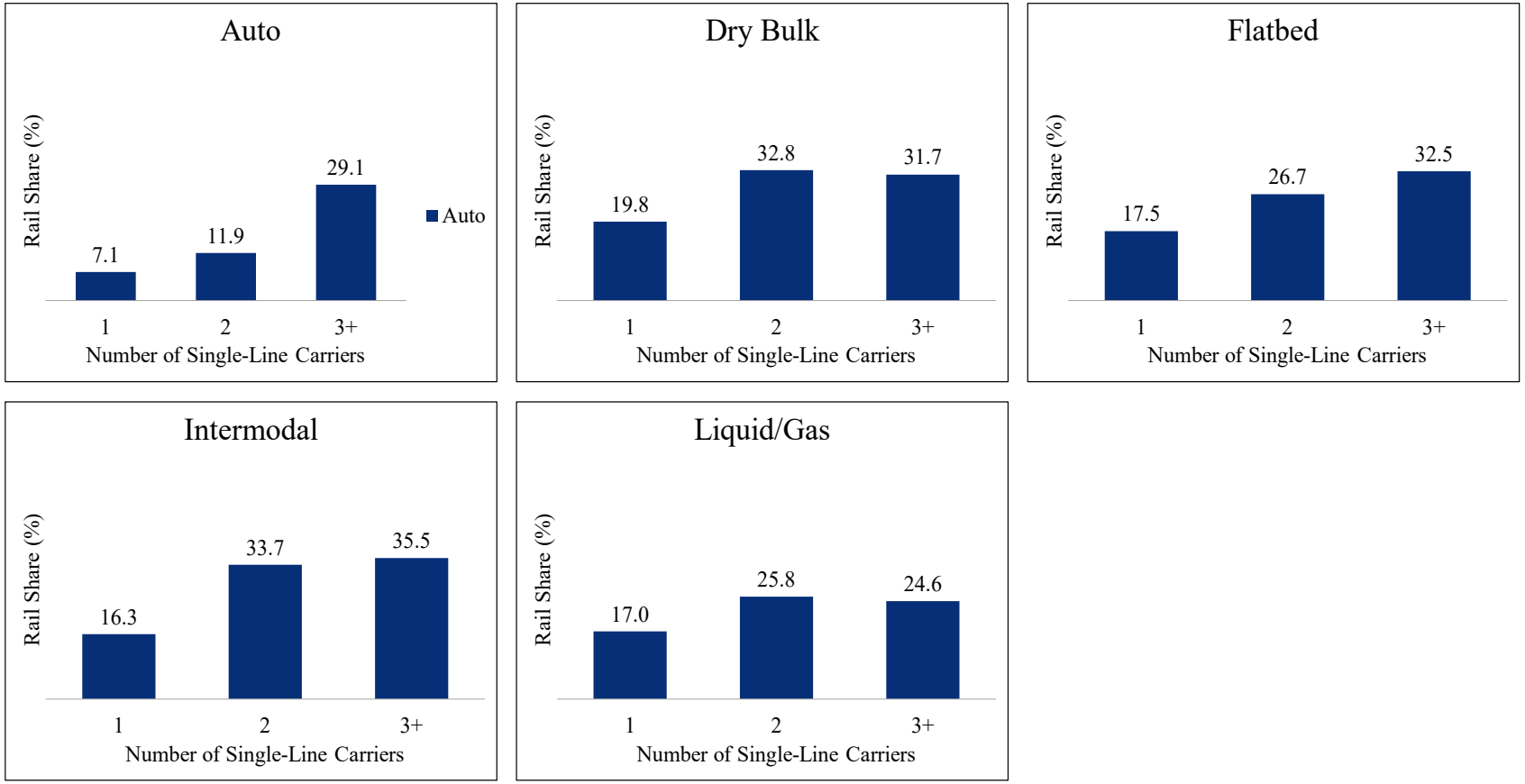
m. There are no meaningful capacity restrictions in place over any segment(s) of the rail network to which traffic is diverted to CN.

n. Once the Base Case Rail Network is constructed, I use it in my modeling of the rail-to-rail diversions anticipated to result from CN's proposed conditions.

Missouri (SPLC = 567509) and Centreville, Illinois (SPLC = 396637) for automotive traffic service and at Dupo Yard (SPLC = 396658) for intermodal traffic service.

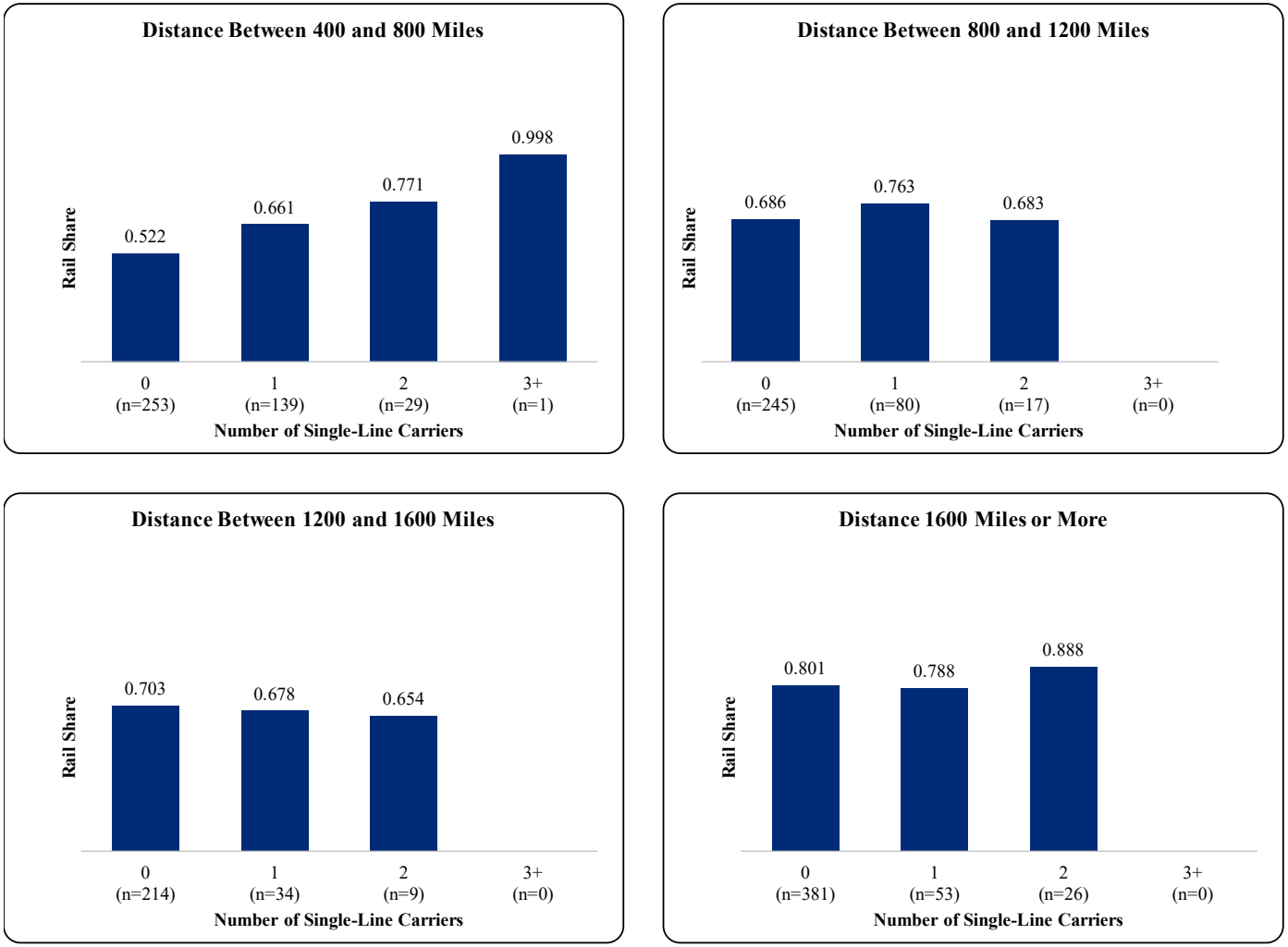
Attachment F
Additional Truck-to-Rail Share Figures

Figure F1
Rail Share for Shipments Between BEA Pairs 2023



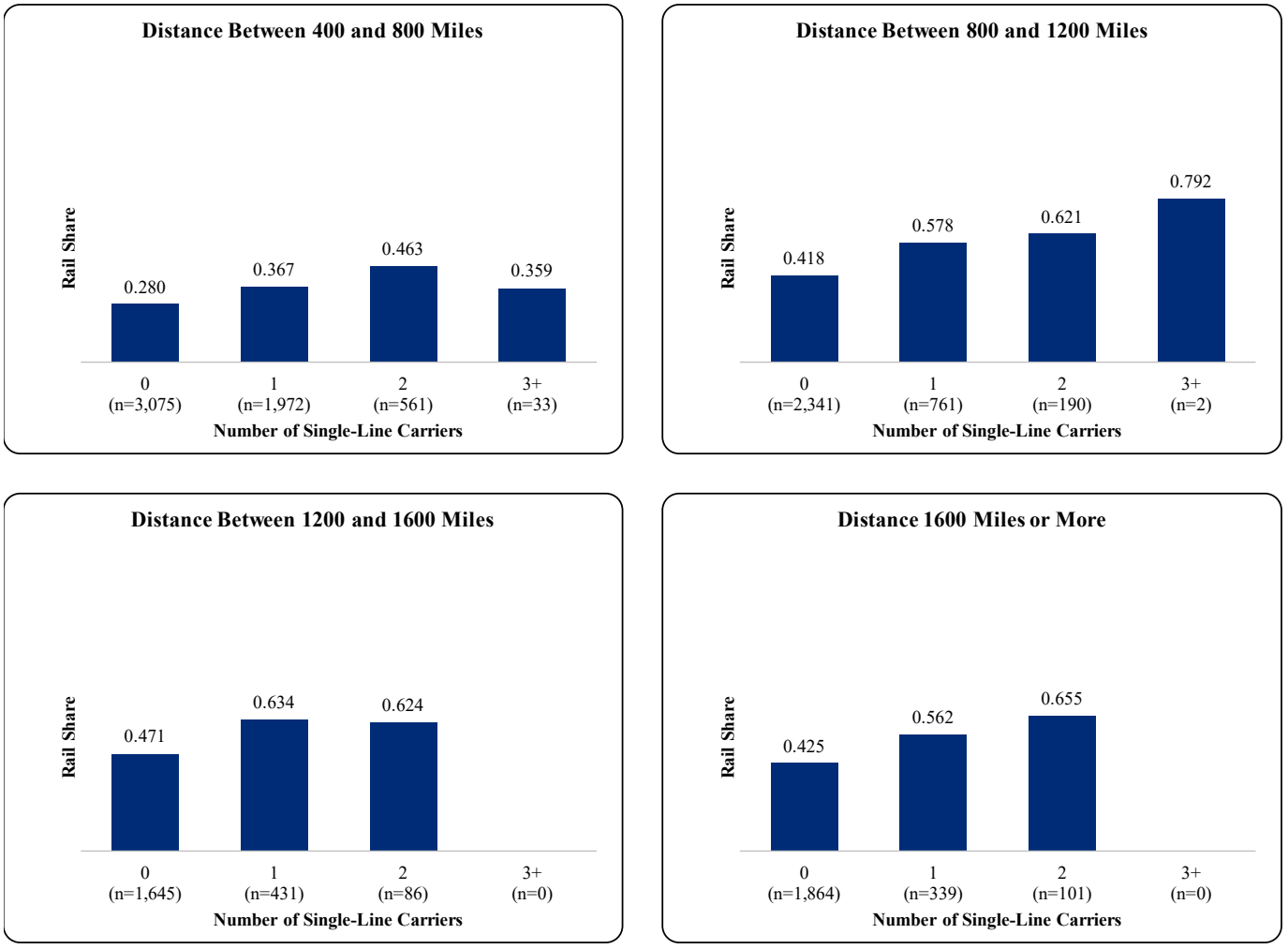
Source: Kahwaty Workpapers "T2R Marginal Effects by Service Type.xlsx."

Figure F2
Rail Share by Number of Single-Line Carriers
Auto



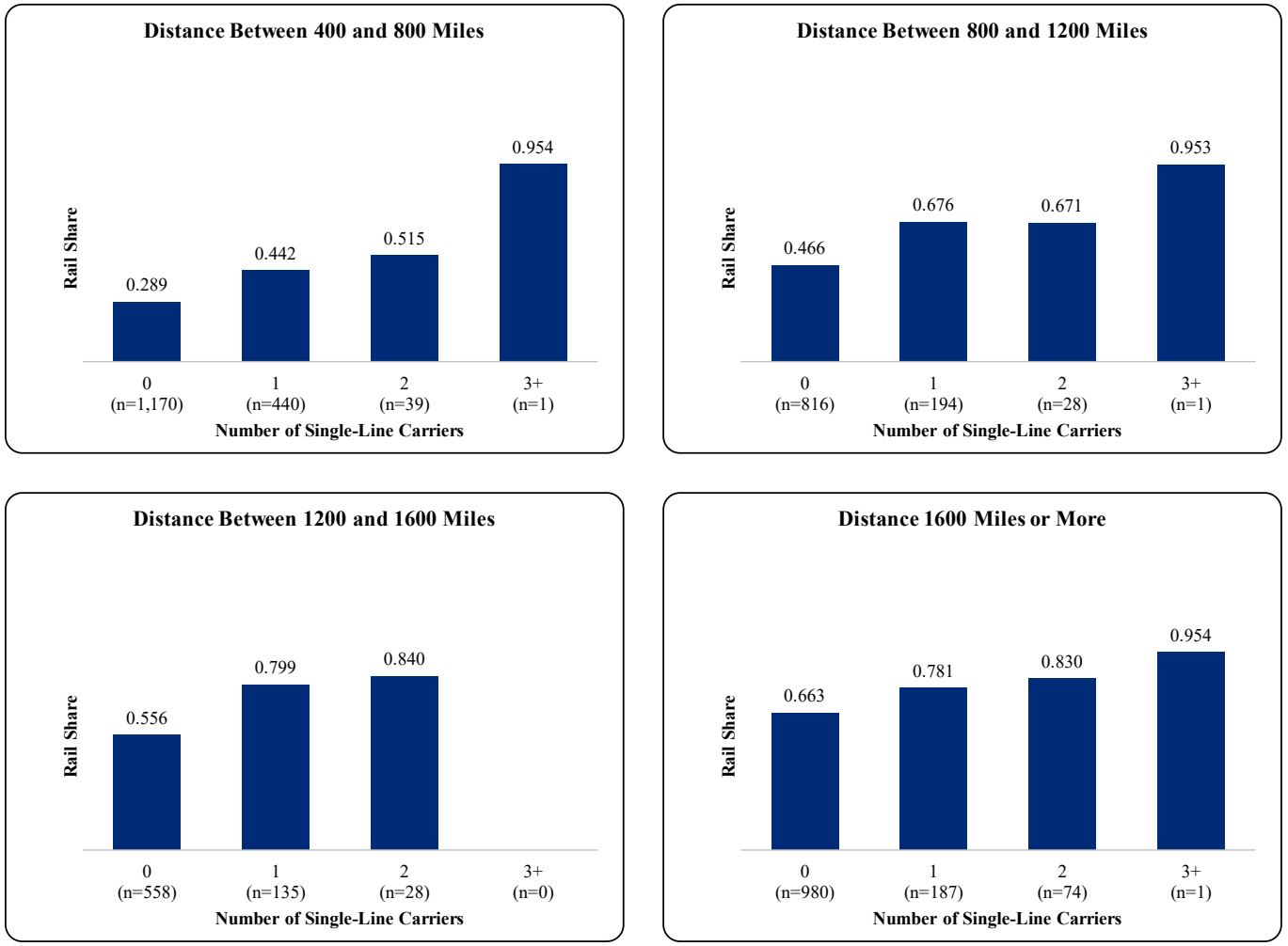
Source: Kahwaty Workpapers "T2R Rail Share by Service Type.xlsx."

Figure F3
Rail Share by Number of Single-Line Carriers
Dry Bulk



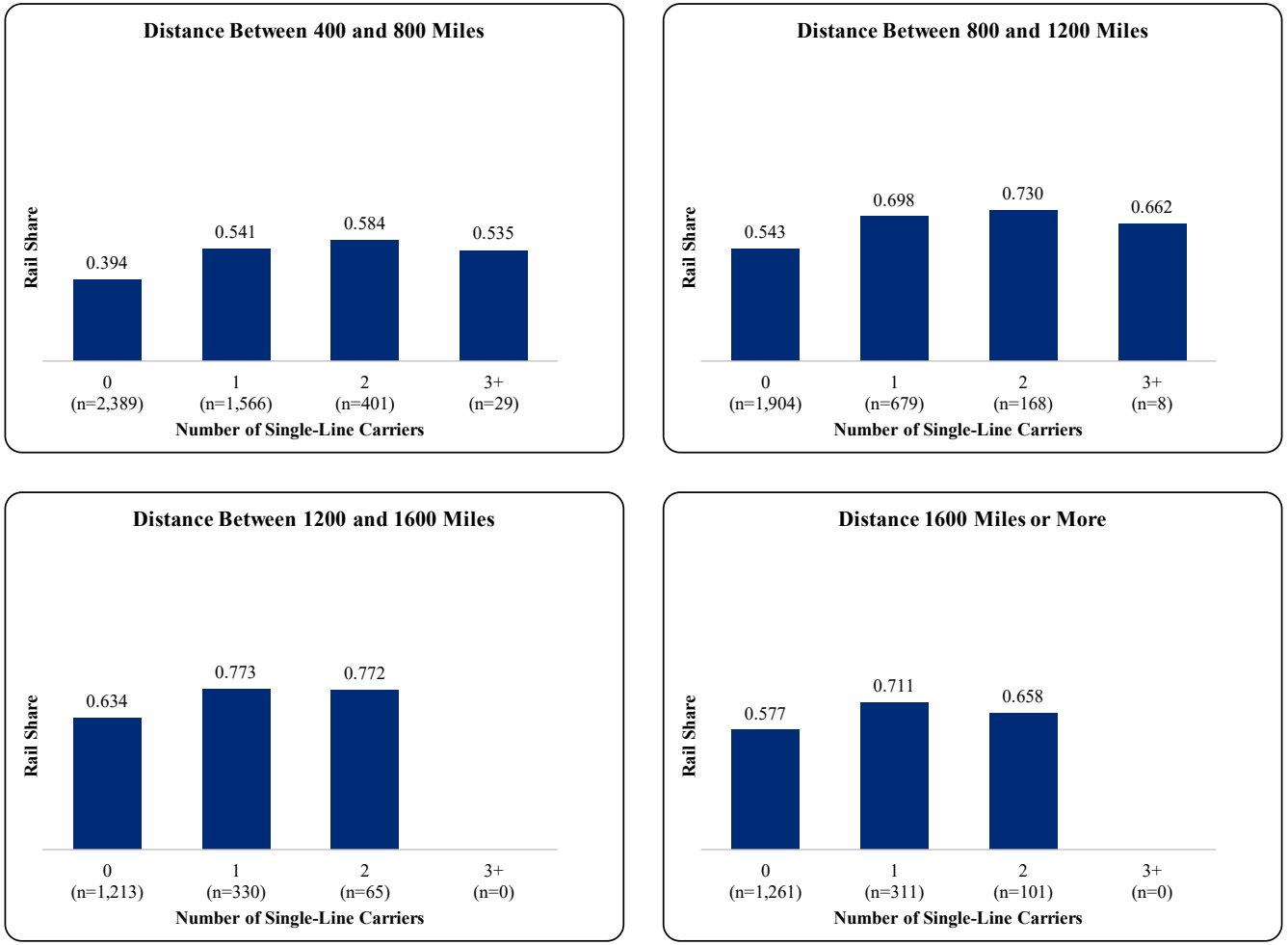
Source: Kahwaty Workpapers "T2R Rail Share by Service Type.xlsx."

Figure F4
Rail Share by Number of Single-Line Carriers
Flatbed



Source: Kahwaty Workpapers "T2R Rail Share by Service Type.xlsx."

Figure F5
Rail Share by Number of Single-Line Carriers
Liquid/Gas



Source: Kahwaty Workpapers "T2R Rail Share by Service Type.xlsx."

Figure F6
Truck-to-Rail Diversion, Dry Bulk Top 10 Lanes

Total Across All BEA/Province Origin-Destination Pairs: 8,041 units
Top 10 BEA/Province Origin-Destination Pairs: 3,288 units (41%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Omaha, NE	Chicago, IL	641
Des Moines, IA	Grand Rapids, MI	403
Omaha, NE	New Orleans, LA	351
Chicago, IL	Springfield, MO	348
Wichita, KS	New Orleans, LA	324
Des Moines, IA	Detroit, MI	316
Topeka, KS	New Orleans, LA	312
St. Louis, MO	Grand Rapids, MI	217
Omaha, NE	Grand Rapids, MI	208
Chicago, IL	Joplin, MO	168

Source: Kahwaty Workpapers "T2R Diversions by Service Type, Commodity.xlsx."

Figure F7
Truck-to-Rail Diversion, Flatbed Top 10 Lanes

Total Across All BEA/Province Origin-Destination Pairs: 832 units
Top 10 BEA/Province Origin-Destination Pairs: 458 units (55%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Chicago, IL	Omaha, NE	110
Chicago, IL	Kansas City, MO	103
Des Moines, IA	Non-CMA, ON	40
Non-CMA, AB	Des Moines, IA	38
Des Moines, IA	Winnipeg, MB	36
Non-CMA, AB	Lincoln, NE	33
Des Moines, IA	Detroit, MI	33
Edmonton, AB	Des Moines, IA	26
Milwaukee, WI	Kansas City, MO	22
Non-CMA, ON	St. Louis, MO	19

Source: Kahwaty Workpapers "T2R Diversions by Service Type, Commodity.xlsx."

Figure F8
Truck-to-Rail Diversion, Intermodal Top 10 Lanes

Total Across All BEA/Province Origin-Destination Pairs: 48,751 units
Top 10 BEA/Province Origin-Destination Pairs: 31,161 units (64%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Kansas City, MO	Chicago, IL	10,494
Chicago, IL	Kansas City, MO	5,516
Kansas City, MO	Detroit, MI	4,241
Non-CMA, ON	St. Louis, MO	2,002
Detroit, MI	Kansas City, MO	1,794
New Orleans, LA	Kansas City, MO	1,659
Kansas City, MO	Memphis, TN	1,498
Non-CMA, QC	St. Louis, MO	1,417
Detroit, MI	St. Louis, MO	1,292
St. Louis, MO	Detroit, MI	1,248

Source: Kahwaty Workpapers "T2R Diversions by Service Type, Commodity.xlsx."

Figure F9
Truck-to-Rail Diversion, Auto Top 10 Lanes

Total Across All BEA/Province Origin-Destination Pairs: 807 units
Top 10 BEA/Province Origin-Destination Pairs: 779 units (97%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Kansas City, MO	Chicago, IL	452
Detroit, MI	St. Louis, MO	102
Toronto, ON	St. Louis, MO	91
Kansas City, MO	Detroit, MI	37
Detroit, MI	Kansas City, MO	32
Toronto, ON	Kansas City, MO	26
Non-CMA, ON	St. Louis, MO	12
Kansas City, MO	Memphis, TN	12
St. Louis, MO	Winnipeg, MB	8
Non-CMA, ON	Kansas City, MO	7

Source: Kahwaty Workpapers "T2R Diversions by Service Type, Commodity.xlsx."

Figure F10
Truck-to-Rail Diversion, Liquid/Gas Top 10 Lanes

Total Across All BEA/Province Origin-Destination Pairs: 4,078 units
Top 10 BEA/Province Origin-Destination Pairs: 2,188 units (54%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Des Moines, IA	Detroit, MI	489
Des Moines, IA	Baton Rouge, LA	411
Des Moines, IA	Grand Rapids, MI	299
Omaha, NE	Baton Rouge, LA	218
Wichita, KS	Baton Rouge, LA	207
Paducah, KY	Chicago, IL	147
St. Louis, MO	Non-CMA, ON	116
Kansas City, MO	Baton Rouge, LA	112
Omaha, NE	New Orleans, LA	97
Baton Rouge, LA	Wichita, KS	92

Source: Kahwaty Workpapers "T2R Diversions by Service Type, Commodity.xlsx."

Figure F11
Truck-to-Rail Diversion, Vehicle Parts Top 3 Lanes

Total Across All BEA/Province Origin-Destination Pairs: 5,942 units
Top 3 BEA/Province Origin-Destination Pairs: 5,443 units (92%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Kansas City, MO	Detroit, MI	2,486
Detroit, MI	Kansas City, MO	1,672
Chicago, IL	Kansas City, MO	1,285

Source: Kahwaty Workpapers "T2R Diversions by Service Type, Commodity.xlsx."

Figure F12
Truck-to-Rail Diversion, Steel Top 10 Lanes

Total Across All BEA/Province Origin-Destination Pairs: 1,564 units
Top 10 BEA/Province Origin-Destination Pairs: 924 units (59%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Chicago, IL	Kansas City, MO	266
Non-CMA, ON	St. Louis, MO	152
Chicago, IL	Omaha, NE	112
Chicago, IL	Wichita, KS	75
Non-CMA, QC	St. Louis, MO	69
Kansas City, MO	Detroit, MI	57
Non-CMA, ON	Kansas City, MO	53
Kansas City, MO	Chicago, IL	49
Detroit, MI	St. Louis, MO	49
Non-CMA, ON	Omaha, NE	43

Source: Kahwaty Workpapers "T2R Diversions by Service Type, Commodity.xlsx."

Figure F13
Truck-to-Rail Diversion, Grain Top 10 Lanes

Total Across All BEA/Province Origin-Destination Pairs: 25,230 units
Top 10 BEA/Province Origin-Destination Pairs: 14,786 units (59%)

Origin BEA/Province	Destination BEA/Province	Diverted Volume
Kansas City, MO	Chicago, IL	7,329
Kansas City, MO	Memphis, TN	1,304
Kansas City, MO	Detroit, MI	1,037
Omaha, NE	Chicago, IL	1,009
Non-CMA, ON	St. Louis, MO	1,008
Lincoln, NE	Chicago, IL	802
Chicago, IL	Kansas City, MO	616
Detroit, MI	St. Louis, MO	594
St. Louis, MO	Detroit, MI	559
Grand Rapids, MI	St. Louis, MO	527

Source: Kahwaty Workpapers "T2R Diversions by Service Type, Commodity.xlsx."

Exhibit 3

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

-- CONTROL --

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

(SUB-NO. 2) ILLINOIS CENTRAL RAILROAD COMPANY – DIVESTITURE – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN ST. LOUIS, MO. AND KANSAS CITY, MO.

(SUB-NO. 3) ILLINOIS CENTRAL RAILROAD COMPANY – TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN ST. LOUIS, MO. AND KANSAS CITY, MO.

(SUB-NO. 4) ILLINOIS CENTRAL RAILROAD COMPANY – OVERHEAD TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN LYDIA AVENUE AND BROADWAY BOULEVARD IN KANSAS CITY, MO.

(SUB-NO. 5) ILLINOIS CENTRAL RAILROAD COMPANY – TERMINAL TRACKAGE RIGHTS – OVER LINE OF BNSF RAILWAY COMPANY BETWEEN ETON, MO. AND CONGO, MO.

(SUB-NO. 6) ILLINOIS CENTRAL RAILROAD COMPANY – LEASE AND PURCHASE – UNION PACIFIC RAILROAD COMPANY NEFF YARD IN KANSAS CITY, MO.

(SUB-NO. 7) ILLINOIS CENTRAL RAILROAD COMPANY – OVERHEAD TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN TUSCOLA, ILL. AND EAST ST. LOUIS, ILL.

(SUB-NO. 8) ILLINOIS CENTRAL RAILROAD COMPANY – OVERHEAD TRACKAGE RIGHTS – OVER LINE OF THE ALTON & SOUTHERN RAILWAY COMPANY BETWEEN MITCHELL, ILL. AND EAST ST. LOUIS, ILL.

VERIFIED STATEMENT OF SARAH SLAZINSKI

My name is Sarah Slazinski. I serve as Assistant Vice-President, Automotive, for Illinois Central Railroad Company ("ICRR") in Troy, Michigan, a role I assumed in March 2021. I am submitting this statement on behalf of Grand Trunk Corporation ("GTC") and its rail carrier affiliate, ICRR (collectively, "CN"), which are indirect subsidiaries of Canadian National Railway Company. Immediately prior, I served as Director of Marketing, Director of Sales, and Account Manager for Automotive at CN, where I have worked for over a decade. Before joining CN, I worked for Union Pacific ("UP") for six years as an automotive account manager and spent five years purchasing vehicle transportation directly for a large U.S. automotive manufacturer. I earned a Bachelor of Arts in Supply Chain Management from Michigan State University and a Master of Business Administration with an emphasis on Marketing from Oakland University in Michigan.

My role at CN is to serve our customers, offer a resilient supply chain, and develop innovative solutions as the automotive industry evolves. In the automotive context, "supply chain" for CN goes beyond production parts, finished vehicles, and aftermarket parts: CN is also working with customers to transport raw materials from mines to support battery production. We are evolving our service to align strategically and sustainably with our customers' future needs.

Given my role and experience, I am familiar with CN's importance to the automotive supply chain, our work with automotive vehicle production and parts suppliers, and the general

North American and global automotive markets. I submit this Verified Statement on behalf of CN in support of its Comment on the Amended Application & Requests for Conditions ("Comment") and its concurrently filed responsive applications in Docket No. FD 36873, relating to the proposed acquisition by Union Pacific Corporation and Union Pacific Railroad Company of control of Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "Applicants") (the "Proposed Transaction").[1] The purpose of my statement is to explain, from the perspective of CN's automotive business and its customers, why the conditions set forth in the responsive applications and the binding Memorandum of Understanding between CN and UP (the "Settlement MOU")—particularly those relating to Kansas City and St. Louis/East St. Louis access—are necessary to preserve competition for automotive shippers in the region affected by the Proposed Transaction. As described in detail below, CN's proposed conditions are critical to preserving competitive options for automotive customers. Without these conditions, the Proposed Transaction would reduce the number of competitive Class I railroad options available to automotive shippers in the Kansas City-St. Louis corridor and the Kansas City and St. Louis markets, to the detriment of those shippers and the public interest.

I. CN CONNECTS THE NORTH AMERICAN AUTOMOTIVE MARKET

CN is proud to connect the North American automotive market. CN currently serves 11 vehicle assembly plants and 18 automotive facilities, and handles more than 2 million finished vehicles annually, with over 5,000 multilevel railcars in its fleet to move these vehicles. In addition, CN has direct access to six ports, handling automotive parts shipments, vehicle

[1] For the purposes of this statement, certain other terms are defined as follows: Union Pacific Railroad Company ("UP"); Union Pacific Corporation and UP (together, "Union Pacific"); Norfolk Southern Railway Company ("NS"); and Norfolk Southern Corporation and NS (together, "Norfolk Southern").

shipments, or both. CN's network reach allows us to transport finished vehicles and auto parts to major population centers in the U.S. Midwest, the Gulf region, and Canada. Our extensive network enables customers to import and export raw materials, production parts, and finished vehicles around the globe.

CN values all of our automotive customers, and we serve both vehicle assembly and parts plants for GM, Ford and Stellantis, many of which are located throughout Michigan and Ontario. We also access two assembly plants in Ohio via a short line partner. CN also directly serves a Nissan assembly plant in Mississippi, reflecting CN's reach into the Southeast. With access into Kansas City via the Kansas City Line, CN will be able to offer these customers a second direct rail option to the Kansas City gateway and local markets. With CN's expanded access to St. Louis via the Tuscola Line trackage rights, CN will be able to offer these customers another direct rail option to the St. Louis gateway and local markets.

Even beyond the directly served customers, CN's intermodal network also offers an efficient option for transporting auto parts for domestic and international suppliers. CN handles containerized auto parts through the ports at Prince Rupert, Vancouver, Montreal, Halifax, Mobile, and New Orleans, as well as inland intermodal terminals in Chicago, Memphis, and Detroit. CN offers a full suite of services to our customers, including the following:

- brokerage services for customs,
- value-added vehicle accessory options at our port and inland automotive facilities, from placing floor mats and owner's manuals to light maintenance work on vehicles, and

- customer service supporting our automotive customers by proactively managing all aspects of the supply chain—from ocean discharge to rail, truck, and transload—for a seamless service offering.

Over the years, CN has added capacity and supported customer growth. {{

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CN is frequently a go-to carrier for our automotive customers because we are solutions-based, especially when supply chains are disrupted, whether by dynamic external geopolitical factors, extreme weather, or capacity constraints. CN is recognized for our reliable service, understands the importance of time-sensitive, high-value freight, and offers dedicated proactive customer service via CN's Auto Desk. For finished vehicles, in addition to serving five Michigan vehicle assembly plants directly, based on our solid Michigan operations and proximity to Canada, CN is able to provide a reliable supply of empty multilevel railcars. Not only do we supply and serve our own plants, but at times we are also able to support other vehicle plants' production when other carriers are short of equipment through our universal automotive facility in Woodhaven, MI. This enables our customers to ship vehicles, so that they may achieve their goals and ultimately meet their dealers' and consumers' expectations.

As an example of CN's agility for production parts, during the Ambassador Bridge blockade, CN worked with an automobile manufacturer and supply chain partners to locate boxcar capacity, find transload locations on each side of the border, and line up train service and resources—all within 96 hours over Super Bowl weekend. This turnaround time demonstrates the trust automotive customers place in CN and CN's commitment and agility.

II. WITHOUT CN'S CONDITIONS, THE PROPOSED TRANSACTION WOULD REDUCE COMPETITIVE OPTIONS FOR AUTOMOTIVE CUSTOMERS IN THE KANSAS CITY–ST. LOUIS CORRIDOR

The Proposed Transaction would combine two Class I railroad networks that overlap between Kansas City and St. Louis. Kansas City is one of the few major hubs through which automotive rail traffic moves today, alongside St. Louis, Chicago, and Memphis. Memphis is limited by interchange restrictions resulting from track curvature. Without CN's proposed conditions, rail customers in these key watershed geographies would lose a competitive Class I option as a result of the Proposed Transaction.

A. Proposed Transaction's Impact on Automotive Customers

The Kansas City and St. Louis regions are important for the North American automotive industry. Kansas City is centrally located and serves as a major rail hub connecting the East, West, North, and South. It includes two assembly plants, Ford's Kansas City Claycomo assembly and GM's Fairfax assembly served directly by UP. Combined, UP and NS operate several yards and facilities equipped to handle automotive traffic in Kansas City. In addition to UP directly serving GM Fairfax Assembly, UP currently operates the Muncie automotive facility in Kansas City. However, UP's Amended Application indicates that it will "consolidate[] UP's Muncie automotive

facility into [NS's] Voltz Yard, which also has an automotive facility."[2] UP also once used its Neff Yard for intermodal traffic, but UP has since relocated those intermodal operations to its new Kansas City Intermodal Terminal and transferred switching operations out of Neff Yard.[3] NS operates an extensive automotive facility at Voltz, near Ford Kansas City Assembly.

Similarly, the St. Louis area has one vehicle assembly plant and only two automotive rail facilities—UP's Centreville facility and NS's Wentzville facility. GM Wentzville Assembly is directly served by NS, and no other railroad operates an automotive facility in the St. Louis area besides NS and UP. Yet UP's Amended Application plans to consolidate traffic by unloading auto traffic destined for NS's Wentzville automotive facility at UP's Centreville facility.[4]

In addition to preserving competitive options for auto customers, CN's access to Kansas City also creates new competition. It should be noted that only one option exists today for single-line service to and from Kansas City for two important trade routes for automotive traffic. Today, besides NS, there is no other rail carrier option that can compete with single-line service direct from Michigan to Kansas City and vice versa. In addition, there is only one rail carrier option, CPKC, with single-line service from Kansas City to Canada and vice versa. Also important to

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[2] UP-39/NS-37, FD 36873, Vol. 2 at 714 (filed Apr. 30, 2026) [hereinafter the "Amended Application" or "Am. Appl."]; *see also id*. at 1124 (in the Contingency Plan for Kansas City in the Service Assurance Plan, Applicants describe Muncie as "Idled" and "Muncie (Auto) consolidated into Voltz," and in identifying "Buffer Resources," the resource for Automotive is "Reopen Muncie").

[3] *See* Am. Appl. Vol. 2 at 683 ("UP recently relocated its intermodal operations from Neff Yard, a repurposed hump yard, to its new Kansas City Intermodal Terminal."); *see also* Bill Stephens, Union Pacific Celebrates Opening of New Kansas City Intermodal Terminal, Trains (Aug. 7, 2025), https://www.trains.com/pro/freight/intermodal/union-pacific-celebrates-opening-of-new-kansas-city-intermodal-terminal/ ("The facility, located in Armourdale Yard, has twice the capacity as the old terminal in Neff Yard.").

[4] *See* Am. Appl. Vol. 2 at 712; *see also id*. at 751 ("there will be additional activity at seven automotive terminals: Centerville (St. Louis), … and Voltz (Kan[s]as City).").

note, CPKC must ride on NS overhead trackage rights through Michigan to get to Kansas City, further reducing supply chain resiliency. Today, there are no direct competitive alternatives, which is why CN's conditions are so important for improving competition.

Without appropriate conditions, the Proposed Transaction would reduce competitive Class I railroad options for these and other automotive customers in both regions. Automotive customers depend on multiple competitive Class I carriers for resilient, efficient supply chains. In my experience, other modes are not effective, sustainable substitutes for rail for these movements, especially for high-volume, longer shipments. Barge plays no meaningful role in automotive transportation other than for international shipments. Trucking is generally used for shorter moves, and vehicle shuttles are typically driven only short distances so they can still be sold as "new." For longer-haul movements, such as those between Mississippi, Michigan or Ontario and Kansas City or St. Louis, rail is the practical and cost-effective option for auto customers. When competitive options are reduced by a merger, automotive shippers face the risk of higher transportation costs, diminished service quality and interruptions (meaning embargoes), and fewer alternatives during supply chain disruptions. In fact, NS has previously embargoed its destination automotive facilities for congestion.[5] Combining UP and NS in a corridor where both railroads have significant automotive traffic and facilities would produce exactly this harm.

[5] NS's embargoes in Missouri have included Voltz in Kansas City and Wentzville in St. Louis. *See* Embargo No. NS001024 (Voltz destination embargo on finished autos effective Apr. 10, 2024 and cancelled Apr. 19, 2024 because "congestion cleared and pipeline stabilized"); Embargo No. NS001822 (Voltz destination embargo on Ford origins in Dearborn effective June 28, 2022 and cancelled July 27, 2022); Embargo No. NS000818 (Wentzville embargo effective July 16, 2018 and cancelled Aug. 13, 2018 for "Accumulation / congestion at NS auto ramp"); Embargo No. NS000918 (Wentzville destination embargo applied to origins in Flat Rock, Sterling Heights, and Auburn, Michigan for "Accumulation / congestion at NS auto ramp" effective Sept. 3, 2018 and cancelled Mar. 14, 2019). NS has also issued embargoes for auto customers in Michigan. *See* Embargo No. NS003322 (Brownstown, MI effective Oct. 21, 2022 and cancelled Nov. 28, 2022 for auto parts); Embargo No. NS003622 (Melvindale embargo requested Dec. 28, 2022 and

III. CN'S CONDITIONS ARE NECESSARY TO PRESERVE COMPETITION FOR CN TO OFFER NEW COMPETITIVE AUTOMOTIVE OPTIONS

The Settlement MOU conditions, if implemented, will remediate potential competitive harms from the Proposed Transaction for automotive customers. CN's responsive applications ask the Board to condition any approval on these terms.

From the perspective of CN's automotive business and its customers, the most important elements are: (1) the conditions granting CN access to Kansas City, and (2) the conditions improving CN's access to East St. Louis and St. Louis. Under these conditions, CN will invest to open new automotive terminals in Kansas City and St. Louis. I address each in turn below.

A. Kansas City Access

The Settlement MOU provides CN access to Kansas City over UP's line between St. Louis, Missouri, and Kansas City, Missouri (the "Kansas City Line"), running from Neff Yard in Kansas City, Missouri, to Twelfth Street in St. Louis, Missouri, through two possible means: (1) divestiture of the Kansas City Line to CN; or (2) alternatively, if divestiture is not granted, trackage rights, including access to the former Sarpy Yard property (and overhead haulage rights), and local haulage rights. In addition, the Settlement MOU provides CN with access to UP's Neff Yard, including Neff intermodal terminal, in Kansas City, in whole or in part, through a lease with an option to purchase. CN intends to use Neff Yard for automotive and intermodal traffic.

CN also seeks terminal trackage rights pursuant to 49 U.S.C. § 11102 over approximately 7.5 miles of track owned by BNSF Railway Company ("BNSF") on its Marceline Subdivision between Eton, Missouri and Congo, Missouri in the Kansas City, Missouri terminal area (the "Eton

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cancelled Dec. 29, 2022 with the embargo cancel reason as "Metering agreement"); Embargo No. NS001223 (Melvindale destination embargo for autos shipped from GM in Michigan and Wentzville, Missouri effective Aug. 7, 2023 and cancelled Sept. 22, 2023 for "Congestion relieved; pipeline has stabilized").

to Congo Segment"). The Eton to Congo Segment connects the two portions of the Kansas City Line, and without it CN could not move trains between the Kansas City Line and Neff Yard.[6] The Settlement MOU also provides overhead trackage rights between Lydia Avenue and Broadway Boulevard in Kansas City, Missouri.[7] CN would use those trackage rights to facilitate interchange with other railroads in Kansas City, including UP, BNSF, and the Kansas City Terminal Railway Company ("KCT") (as CN will acquire Norfolk Southern's shares in the KCT) to reach CPKC. These ancillary conditions are necessary for CN to effectively operate in Kansas City and effectively access customers that would otherwise lose a competitive Class I alternative after the Proposed Transaction.

Access to Kansas City is essential for CN's automotive business. Kansas City is centrally located and serves as a major rail hub and interchange connecting the North, South, East, and West. CN will use UP's Neff Yard, including through the agreed-upon lease in whole or in part with an option to purchase, and will invest at Neff Yard to offer new automotive capabilities to our customers. Neff Yard would be the fifth automotive yard in Kansas City as UP, NS, BNSF, and CPKC currently have automotive yards. CN plans to use existing pavement and track where possible, which makes the site workable, but will otherwise invest as needed to convert the yard for automotive handling. This investment would build on CN's track record of investing in automotive terminal capacity, including its 2021 investment in a new automotive and intermodal terminal in New Richmond, Wisconsin, its {{

[6] CN's request for terminal trackage rights over the Eton to Congo Segment is the subject of a separate responsive application in Sub-No. 5.

[7] The overhead trackage rights between Lydia Avenue and Broadway Boulevard are addressed in Sub-No. 4.

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The principal opportunity for better customer access is for CN's Michigan-origin vehicles and parts to move directly into the Kansas City market and for CN to open up an additional interchange option accessing an existing automotive interchange gateway with other Class I railroads as an alternative to the existing Chicago gateway we operate through today for such traffic. This provides the supply chain, and our customers, with additional competitive options and provides greater resiliency in the supply chain. With CN access to Kansas City, automotive customers—including OEMs and Tier 1 suppliers in Ontario and Michigan—would have a new competitive single-line rail option to reach Kansas City, bypassing the Chicago interchange and reducing transit time. Today, UP and NS both offer service between Michigan and Kansas City. UP must interline with CN, as NS is the only carrier offering single-line service from Michigan to Kansas City. Today, CN cannot offer single-line service from Michigan to Kansas City or Canada to Kansas City. There are also finished-vehicle opportunities in the other direction: CN could originate finished vehicles from the GM and Ford assembly plants in Kansas City, with the traffic shuttled into CN at Neff Yard, and move in single-line service to Canada and Michigan without interchange. For example, Kansas City GM traffic that currently moves through Chicago could move directly from Kansas City to Canada and Michigan. This would provide new competitive options and support U.S. domestic and export production to dealers. Both Ford's Kansas City and GM's Fairfax vehicle assembly plants are approximately 9 miles from Neff Yard.

Moreover, automotive traffic that would otherwise be interchanged in Chicago could instead use Kansas City as a gateway, and opening traffic to longer hauls invites more competitive solutions and new destinations. Bypassing the Chicago interchange builds resilience in the

network, removes congestion and could save customers time and money. Reduced transit time for customers means reduced inventory carrying costs—financial and operational expenses for the OEM vehicle producers—and improves the shared multilevel fleet cycle times because interchange options become more fluid and railcars arrive faster at destinations, benefiting customers with more available empty railcar capacity.

The agreed-upon lease of Neff Yard, with an option to purchase,[8] will allow the following benefits:

(1) CN's access to customers in Kansas City that will lose a Class I alternative if the Proposed Transaction is approved,

(2) the development of new CN direct automotive service handling capabilities at the facility, and

(3) another interchange gateway solution linking North America where there is currently no other single-line direct competitive option, to and from Michigan and Canada.

B. Improved Access to East St. Louis and St. Louis

The Settlement MOU also provides for improved CN access to East St. Louis and St. Louis through: (1) divestiture of the Kansas City Line if ordered by the Board; (2) overhead trackage rights between Tuscola, Illinois, and East St. Louis, Illinois (the "Tuscola Line");[9] and (3) overhead trackage rights over UP's wholly owned subsidiary, The Alton & Southern Railway Company ("A&S"), between Lenox in Mitchell, Illinois, and Valley Junction in East St. Louis, Illinois, for connection to the Terminal Railroad Association of St. Louis ("TRRA").[10] CN's

[8] CN's lease or purchase of Neff Yard is in Sub-No. 6.

[9] *See* Sub-No. 7.

[10] *See* Sub-No. 8.

improved access will enable CN to offer new intermodal and automotive traffic options. CN plans to open its new automotive and intermodal terminal at the former Sarpy Yard property in St. Louis, which is located on the Kansas City Line.

Trackage rights over the Tuscola Line will connect CN's existing lines in central Illinois to the St. Louis gateway on both sides of the river. This is critical for CN's automotive business because it creates a more direct route for exports to Canada, for raw materials from Canada, and for traffic between the Midwest and East St. Louis and St. Louis. CN is approximately 70 miles east of the St. Louis market, so rail access closer to the market is needed for a more sustainable, competitive product by rail, reducing longer truck miles over the road. CN's current transit to serve St. Louis is {1.5 days} longer operating via CN's line through Du Quoin (where the traffic from Michigan must go south to then go north) versus a direct Tuscola routing. Today's operating route makes it difficult for CN to offer a competitive auto product and convert over-the-road truck traffic to rail.

Access to a facility for handling CN's automotive traffic to and from the St. Louis area is essential for CN to compete effectively for automotive business in this region. Today, CN does not own any track in St. Louis, Missouri. CN does not own a rail yard in East St. Louis, Illinois, and does not own land sufficient to open an intermodal and automotive terminal that is in close enough proximity to be competitive.

In seeking divestiture of the Kansas City Line, CN will invest in the former Sarpy Yard property in St. Louis to open automotive and intermodal terminals for our customers.[11] When

[11] In Sub-No. 3, CN seeks, in the alternative to divestiture, trackage rights and local haulage rights over the Kansas City Line. As part of that condition, CN is requesting a condition from the Board ordering the sale of the former Sarpy Yard property to CN. Without access to the former Sarpy Yard property, CN would not have a location to handle this traffic in St. Louis. CN's planned

combined with the Tuscola Line trackage rights and A&S trackage rights, this route would enable CN to offer new competitive single-line and interline automotive service options to and from the St. Louis gateway—connecting directly to the existing automotive network and assembly plants and suppliers in Michigan, Canada, and the Midwest. Single-line direct service from Michigan could also allow us to compete with truck, potentially take trucks off the road, and reduce wear and tear on roadway infrastructure given the approximately 550-mile distance between the St. Louis and Michigan markets.

C. Why These Conditions Are Necessary for Automotive Customers

The Settlement MOU conditions are necessary for CN to function as an effective and sustainable competitor for automotive traffic in the Kansas City-St. Louis corridor. Introducing that competition would unlock the following benefits for automotive customers:

First, new single-line direct service to and from Kansas City and St. Louis. Directionally today, **NS is the only carrier offering single-line** service between Michigan and Kansas City, and **CPKC**—which must use NS trackage rights through Michigan—**is the only single-line option** between Eastern Canada and Kansas City. With access via the Kansas City Line, Neff Yard, and the Tuscola Line, CN could offer OEMs, suppliers, and future raw materials shippers in Michigan and Canada a second competitive single-line option into these markets. In the reverse direction, traffic from Ford's Kansas City and GM's Fairfax assembly plants could be brought to CN at Neff Yard for direct onward movement. For St. Louis, NS is the only carrier offering direct single-line service between Michigan and St. Louis; CSX has the access to do so, but it does not currently offer a spot to land automotive traffic. Similarly, no carrier offers single-line finished vehicle

investments in the former Sarpy Yard property to handle intermodal and automotive equipment are detailed in Exhibit 13 (Operating Plan).

service between St. Louis and Ontario today because CPKC does not have an automotive facility in the St. Louis area; CN's conditions would allow CN to offer that new single-line service. Single-line service eliminates interchange cost and, by avoiding a Chicago interchange, improves reliability, quality, and transit time.

Second, gateway interchange access at Kansas City and St. Louis. Kansas City is a centrally located rail hub and gateway to the western Class I railroads, the greater Missouri market, and traffic moving toward the Southwest. Access at Kansas City and St. Louis/East St. Louis, including locations for handling CN's automotive traffic, would let CN tap into the existing automotive network and interchange with other Class I railroads where CN lacks practical access today.

Third, supply chain resiliency and bypassing Chicago. Today, CN must short-haul automotive freight to Chicago and interchange there to reach western carriers, compounding Chicago congestion and adding transit time. The conditions would provide new options for CN interchange with western carriers at existing Kansas City and St. Louis gateways that auto customers currently use and to which CN does not have access. The conditions would also give customers alternative gateways that bypass Chicago, relieve congestion there, and provide a backup during disruptions. Fewer interchanges also mean fewer handling points for high-value, damage-sensitive vehicles, faster multilevel fleet cycle times, more available railcar capacity, and lower inventory carrying costs for customers. If more freight, or freight of other commodities, moves over Chicago routings, it is essential that other traffic has an option to be routed elsewhere, tapping into existing networks and providing more opportunity for Class I railroads to directly connect.

Fourth, divestiture provides a real competitive remedy, and trackage rights are inadequate. Based on my experience, trackage and haulage rights alone, as CN is seeking in the alternative in Sub-No. 3, would not allow CN to compete effectively. UP sets the rate in the market today, and as a tenant CN would be dependent on UP's trackage rights fees and dispatching. And if UP opposes CN's requested condition to purchase the former Sarpy Yard property in St. Louis as the location for CN's automotive and intermodal terminals in St. Louis, CN would have no ability to offer new automotive and intermodal services to preserve competition in St. Louis. For these reasons, CN could not offer a competitive product to or from Kansas City or St. Louis. Divestiture of the Kansas City Line would allow CN to control the line, make its own dispatching, maintenance, and investment decisions, and set its own costs and service, offering automotive customers a genuine alternative.

Consistent with CN's commercial plans, the primary rail-to-rail finished vehicle diversion opportunities created by CN's conditions are on movements between Kansas City or St. Louis and Detroit or Eastern Canada, including finished vehicles originating at Ford Kansas City, GM Fairfax, and GM Wentzville. These diversion opportunities are reflected in the Verified Statement of Dr. Henry Kahwaty.[12]

IV. THE CN CONDITIONS ARE IN THE PUBLIC INTEREST

The Settlement MOU conditions will generate substantial benefits not only for automotive customers but also for the broader public interest, extending beyond the immediate preservation of competitive options in the Kansas City-St. Louis corridor.

[12] *See* Exhibit 12B, Verified Statement of Dr. Henry Kahwaty at ¶¶ 138-140 [hereinafter "Kahwaty V.S."].

A. Supply Chain Resiliency and Competitive Options

Automotive customers want more transportation options, capacity, and competition. Given future sustainable innovation objectives in a dynamic market, driver shortages, and ongoing global network disruptions, it is critical to build resiliency into the North American automotive supply chain to maintain—rather than reduce—options. CN's entry into Kansas City and improved access to St. Louis will give automotive customers an additional competitive Class I option with a track record of innovation to benefit customers, responsiveness, and future availability of raw materials to sustain and support our automotive foundation as a world leader in automotive mobility.

CN has committed to investing substantial resources to preserve competitive routing options in Kansas City and St. Louis, including construction of the connection at Tuscola in Sub-No. 7, the addition of CN's automotive and intermodal terminals at Neff Yard in Kansas City in Sub-No. 6, and the addition of CN's automotive and intermodal terminals at the former Sarpy Yard property in St. Louis in Sub-Nos. 2 and 3. These conditions will ensure that CN can function as an effective and sustainable competitor, preventing the erosion of competition that the Proposed Transaction would otherwise cause. CN serves five Michigan auto assembly plants directly, and this will allow us to unlock single-line service that does not exist today from these plants alone.

Moreover, the automotive industry is providing solutions for a multi-pathway strategy for carbon neutrality that is transforming the automotive industry. All stages of the supply chain must be developed cohesively—from raw material extraction (copper, nickel, zinc, cobalt, and lithium used to produce batteries) to aluminum and steel, semiconductor production, and the electric vehicle ("EV") charging infrastructure. In addition to the U.S., Canada is rich in these key raw materials supporting North America's vehicle production success supporting global leadership. CN's access to Kansas City and improved access to St. Louis to implement the Settlement MOU

conditions would enable CN to offer competitive single-line rail services that benefit all stages of the automotive supply chain cycle: from Canadian mines to the automotive manufacturing hubs in Michigan and Ontario, and onward to Kansas City and St. Louis supporting these local markets and for interchange beyond to additional markets.

In addition to carbon neutrality, the industry is also entering a broader transformative period of developing driverless vehicles. It is imperative that CN remain a competitive option for automotive customers as the market changes. Divestiture of the Kansas City Line to CN would support the growing EV supply chain and expand rail's optionality and market reach throughout North America.

B. Capacity and Truck-to-Rail Diversion

CN's entry into Kansas City and improved St. Louis access will also benefit the public by enabling additional truck-to-rail diversions. Based on the market analysis presented in the Verified Statement of Dr. Henry Kahwaty, CN's new or improved access involving Kansas City, St. Louis, and Des Moines is expected to divert approximately {{ }} annual rail cars or units from truck to the CN network, with approximately {{ }} units of diverted traffic in Kansas City and approximately {{ }} units in St. Louis.[13] Kansas City–Detroit is expected to be one of the largest diversion markets, and vehicle parts are expected to account for approximately {{ }} of the diverted traffic in that market. Diverting truck traffic to rail reduces highway congestion, lowers carbon emissions, and decreases public expenditures for highway maintenance, furthering national sustainability goals. Truck-to-rail diversion also improves public safety. Large trucks account for the substantial majority of freight transportation-related injuries, while rail freight accounts for a much smaller share, and rail freight injuries have declined by approximately

[13] *See* Kahwaty V.S. at ¶¶ 177-178.

16% in recent years.[14] Every long-haul automotive shipment that moves by rail rather than over the road removes trucks from highways shared with the traveling public.

CONCLUSION

For the reasons set forth above, I respectfully urge the Board to impose CN's conditions in Sub-Nos. 2 (or in the alternative Sub-No. 3), 4, 5, 6, 7, and 8 on any approval of the Proposed Transaction. The conditions—particularly CN's access to Kansas City through divestiture of, or alternatively trackage rights and local haulage rights over, the Kansas City Line (including the former Sarpy Yard property and 23rd Street Yard); the terminal trackage rights over the Eton to Congo Segment; the overhead trackage rights between Lydia Avenue and Broadway Boulevard to interchange with other carriers; the lease, with an option to purchase, of Neff Yard; and improved access to East St. Louis and St. Louis through the Tuscola Line trackage rights and A&S trackage rights—are essential to preserve competitive Class I railroad options for automotive customers in the Kansas City–St. Louis corridor and the St. Louis and Kansas City markets. Without these conditions, the Proposed Transaction would reduce competition and harm automotive shippers who depend on multiple competitive carriers for resilient, efficient supply chains.

CN is committed to being an effective and sustainable competitor in the Kansas City to St. Louis corridor and to markets beyond via interchange with western carriers and to investing the resources necessary to offer automotive customers the competitive single-line service options, supply chain resiliency, and innovative solutions they need.

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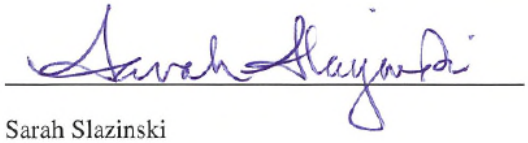
[14] *See Freight Transportation Safety*, U.S. Dep't of Transp., Bureau of Transp. Statistics, https://data.bts.gov/stories/s/Freight-Transportation-Safety/vu39-vtqh/ (last visited Nov. 17, 2026) (large trucks accounted for 95.6 percent of freight transportation injuries in 2023; rail freight injuries decreased 16.0 percent between 2019 and 2023).

VERIFICATION

I, Sarah Slazinski, declare under penalty of perjury under the laws of the United States that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on this 18th day of November, 2026.



Sarah Slazinski

Exhibit 4

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

-- CONTROL --

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

(SUB-NO. 2) ILLINOIS CENTRAL RAILROAD COMPANY – DIVESTITURE – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN ST. LOUIS, MO. AND KANSAS CITY, MO.

(SUB-NO. 3) ILLINOIS CENTRAL RAILROAD COMPANY – TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN ST. LOUIS, MO. AND KANSAS CITY, MO.

(SUB-NO. 4) ILLINOIS CENTRAL RAILROAD COMPANY – OVERHEAD TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN LYDIA AVENUE AND BROADWAY BOULEVARD IN KANSAS CITY, MO.

(SUB-NO. 5) ILLINOIS CENTRAL RAILROAD COMPANY – TERMINAL TRACKAGE RIGHTS – OVER LINE OF BNSF RAILWAY COMPANY BETWEEN ETON, MO. AND CONGO, MO.

(SUB-NO. 6) ILLINOIS CENTRAL RAILROAD COMPANY – LEASE AND PURCHASE – UNION PACIFIC RAILROAD COMPANY NEFF YARD IN KANSAS CITY, MO.

(SUB-NO. 7) ILLINOIS CENTRAL RAILROAD COMPANY – OVERHEAD TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN TUSCOLA, ILL. AND EAST ST. LOUIS, ILL.

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(SUB-NO. 8) ILLINOIS CENTRAL RAILROAD COMPANY – OVERHEAD TRACKAGE RIGHTS – OVER LINE OF THE ALTON & SOUTHERN RAILWAY COMPANY BETWEEN MITCHELL, ILL. AND EAST ST. LOUIS, ILL.

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(SUB-NO. 10) IOWA NORTHERN RAILWAY COMPANY AND CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY – TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN MANLY / IOWA FALLS, IOWA AND DES MOINES / AVON, IOWA

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VERIFIED STATEMENT OF DAVID PRZEDNOWEK

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My name is David Przednowek. I currently serve as Assistant Vice President - Grain for Canadian National Railway Company ("CN"), a role I assumed in October 2021. Immediately prior to my current position, I served for nearly three years as Director, Sales & Marketing, and I have been with CN since October 2014. I hold a Master of Science Degree and a Bachelor of Science (Agriculture) Degree from the University of Manitoba, specializing in agricultural sciences. In my current role at CN, I lead the marketing-related activities for the carload movement of grain and processed grain products across the CN network, including carload pricing and commercial car supply products. My sales-related responsibilities are focused on U.S.-based agricultural customers involved in grain origination and trading, grain processing, and renewable fuels production and marketing. I have participated in the Surface Transportation Board's annual National Grain Car Council meeting on CN's behalf. Prior to joining CN, I was directly involved in the grain industry for 17 years, including grain trading, derivatives trading, marine and rail

logistics, vessel chartering, financial analysis and accounting, market analysis, and trade execution and management.

Given my current role and experience, I am very familiar with grain traffic flows (both within North America and globally) and CN's grain customers. I submit this Verified Statement on behalf of CN in support of its Comment and responsive applications in STB Docket No. FD 36873. The purpose of my statement is to explain, from the perspective of CN's grain business and its customers, why the conditions set forth in the responsive applications and Memorandum of Understanding between CN and Union Pacific ("Settlement MOU")—particularly those relating to Des Moines, Kansas City, and St. Louis / East St. Louis—are necessary to preserve and enhance competition for grain shippers in the region affected by the Proposed Transaction. Without these conditions, the Proposed Transaction would reduce the number of competitive Class I railroad options available to grain shippers in the Kansas City-St. Louis and Des Moines corridors, to the detriment of those shippers and the public interest.

I. CN MAINTAINS AN EXTENSIVE GRAIN AND GRAIN PRODUCTS NETWORK

CN is one of the largest transportation providers for the shipment of grain and processed grain products in North America. The heaviest originations for CN's U.S. grain business are in Iowa, Illinois, Wisconsin, and Michigan, both directly and via short line connections, with additional origination via short line connections in the Mid-South including Kentucky and Tennessee. CN performs originations or terminations of grain and processed grain products for approximately {{ }} customers in the United States.

CN's agricultural-related traffic includes commodities such as corn, soybeans, soybean meal and oil, ethanol and distillers dried grains with solubles ("DDGS"), corn meal, sweeteners, starches, animal fats, and traffic related to corn milling, barley malting, and oat processing. The

logistics, vessel chartering, financial analysis and accounting, market analysis, and trade execution and management.

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grain elevators that CN directly serves in the United States are primarily situated in Illinois, Iowa, and Wisconsin. CN also serves a wide variety of agricultural-related processing facilities—including ethanol plants and other corn processors, soybean processors, wheat mills, malt plants, and oat processors—to which CN delivers raw products or from which CN ships finished products.

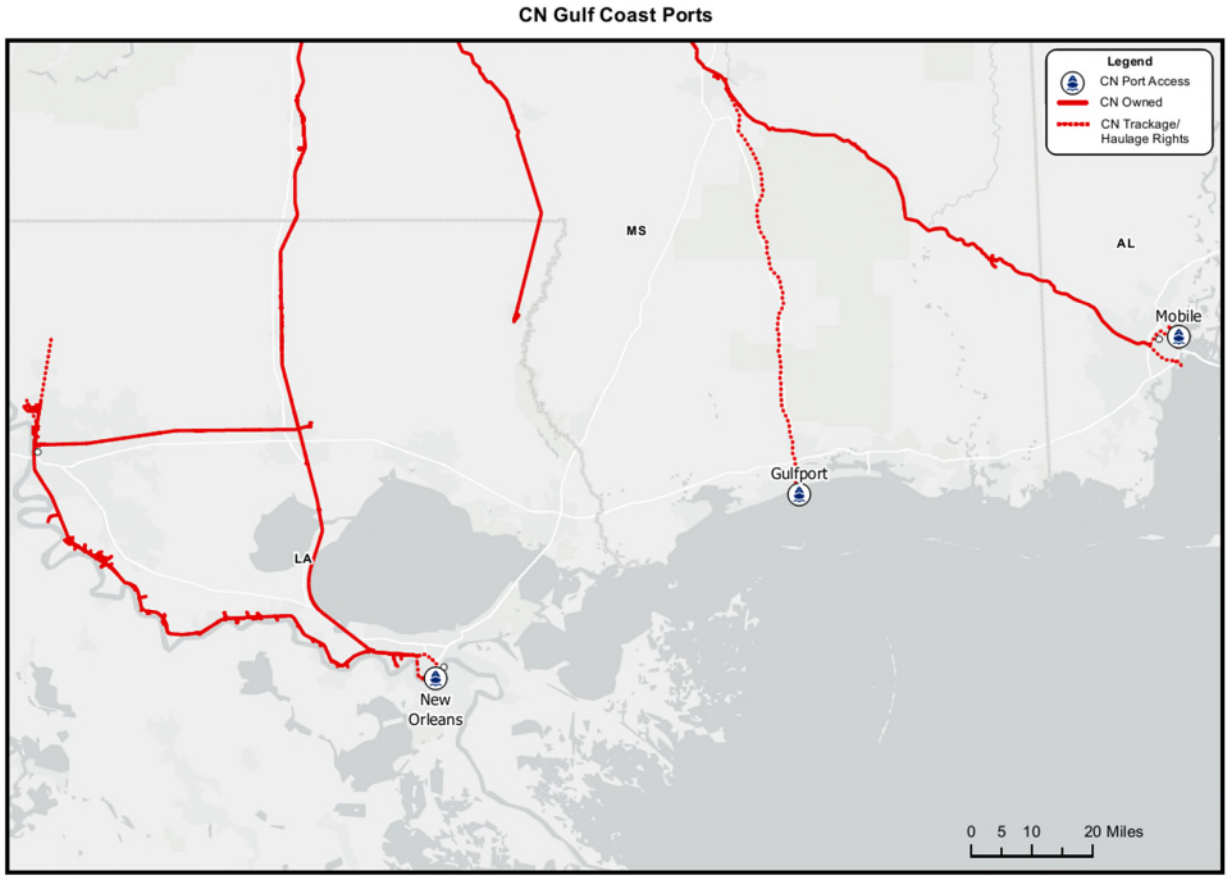
CN's grain-related traffic moves to domestic North American end-users and to overseas markets. Traffic destined to domestic North American end-users includes the movement of the following:

- Feed ingredients, such as corn, soybean meal, and DDGS to receivers in Mississippi and the Mid-South, the Midwest, and eastern Canada;
- Ethanol shipments to destinations in the United States and Canada;
- Animal fats and used cooking oil shipments to biofuels production facilities such as renewable diesel and biodiesel plants, bulk liquid terminals for trans-shipment to biofuels production facilities, and shipments (of animal fats) to oleochemical production facilities;
- Shipments of vegetable oils such as soybean oil and corn oil for human consumption in domestic North American markets, shipments to biofuels production facilities, and shipments to bulk liquid terminals for trans-shipment to biofuels production facilities or to overseas markets; and
- Bulk grain shipments to corn, soybean, wheat, oat, and barley processing facilities as well as the outbound shipment of finished processed products to various destinations in North America.

Traffic destined primarily for overseas markets moves directly by rail to export terminals across the CN network in the United States and Canada, with emphasis on export terminals in the

New Orleans and Mobile areas in the United States for CN's direct rail shipment program for its U.S. grain-centric business. From a bulk grain shipment perspective, and in addition to rail shipments moving directly to grain export terminals and liquids terminals in the Gulf Coast region, CN accesses multiple barge-loading locations along the inland waterways system, with locations stretching from southern Illinois to northeastern Iowa and northwestern Illinois. Bulk grain export terminals include Reserve, Destrehan, and Helvetia, Louisiana, and Mobile, Alabama (via the Alabama Export Railroad (ALE) and the Terminal Railway Alabama State Docks (TASD)).

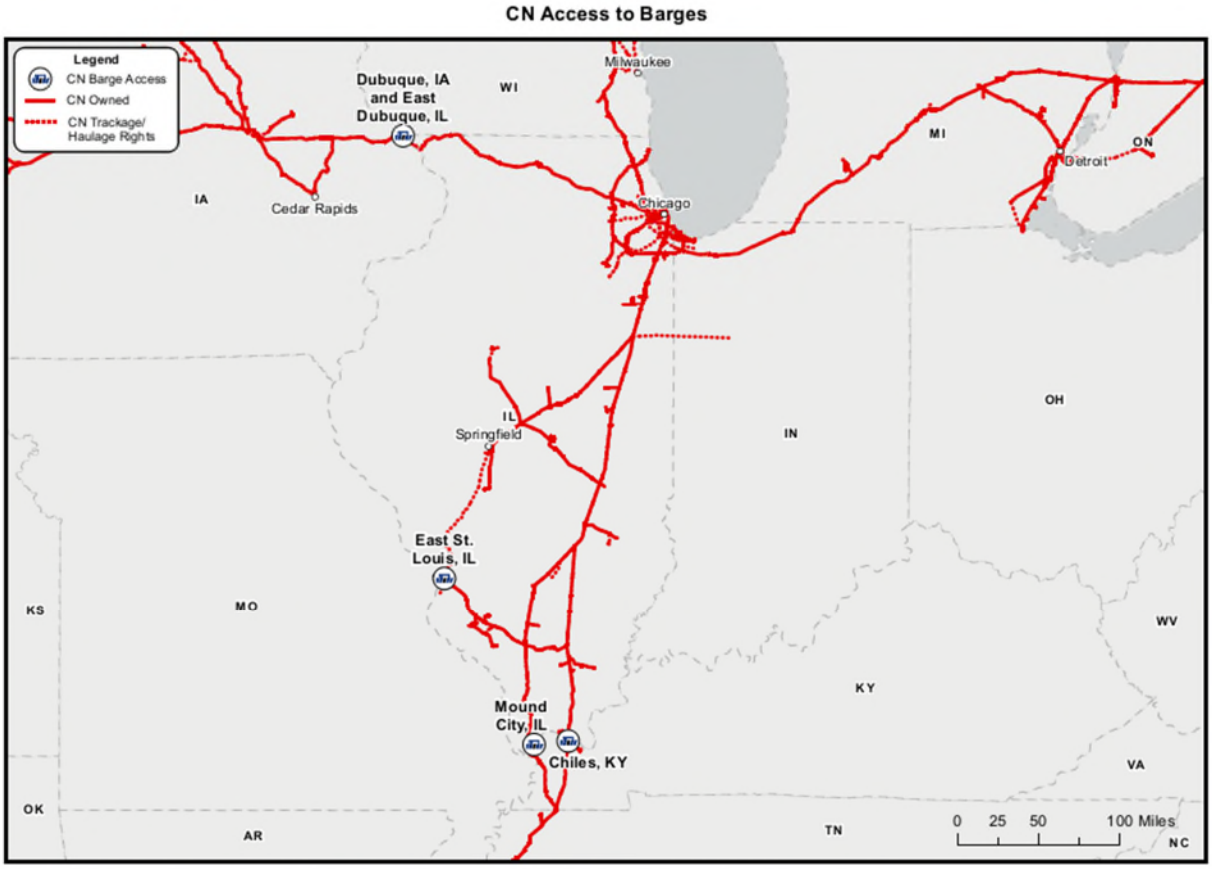
Figure 1: Map of CN Gulf Port Access



Source: CN GIS Data; U.S. Bureau of Transportation Statistics, National Transportation Atlas Database.

Barge-related movements play a dual role in CN's grain business. Because CN's rail network from the Midwest to the Gulf Coast region runs alongside the Mississippi River, there is a very dynamic and competitive relationship between rail and barge movements to the Gulf Coast. As such, barge competition features more prominently for CN than for other Class I railroads. At the same time, barge movement is also an important part of the distribution chain in which CN participates, where CN moves product by rail to river terminals for transfer to barge. CN also enhances overall supply chain resiliency by providing a direct rail solution when Mississippi River navigation is disrupted or barge movement is affected by low water levels.

Figure 2: Map of CN Access to River Terminals for Grain



Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

A. CN Invests in Moving Grain and Grain Products

CN invests in grain infrastructure in collaboration with its customers. Most recently, CN shipped the first grain unit train from the expanded Total Grain Marketing facility in southern Illinois, which features a new unit train loader developed in partnership with the customer.[1] Much of CN's recent grain-related growth has been organic, driven by close collaboration with customers and making use of available capacity on CN's network. In Iowa specifically, CN has invested approximately $295 million over the past decade, and CN's Iowa operations support approximately 730 jobs and $133 million in GDP. Those investments in Iowa have included upgrading bridges on CN's Cedar River Railroad Company from 268k to 286k, allowing shipments by rail to fully utilize the capacity of high-capacity cars.

CN is committed to investing in network infrastructure and equipment to help grow CN's customers' businesses and the capacity of CN's network. Those capital investments included replacement of rail, installation of new ties, rebuilding road crossing surfaces, and maintenance work on bridges, culverts, signal systems, and other track infrastructure. In November 2020, for example, CN completed the reconstruction of the Bonnet Carré-McComb Spillway Bridge near New Orleans. This 2.2-mile-long bridge provides a critical U.S. transportation corridor for both freight and passenger service across the Bonnet Carré Spillway, which alleviates excess water from the Mississippi River, protecting New Orleans and other communities from flooding. This $90 million project adds to the safety, reliability, and fluidity of CN's network and ensures that CN's direct rail traffic to the Gulf can move efficiently. In addition, CN is replacing the 1.3-mile Baton

[1] *CN Ships First Grain Unit Train from Expanded Total Grain Marketing Facility in Illinois*, CN, https://www.cn.ca/en/news/2026/09/cn-ships-first-grain-unit-train-from-expanded-total-grain-market/ (last visited Nov. 15, 2026) (describing the new 115-car loop track that replaced the existing 25-car footprint).

Rouge Bridge in St. Charles Parish, Louisiana over the same spillway, with expected completion in 2027. This project is expected to cost approximately {{ }}. In the United States, CN makes available approximately 1,500 hopper cars to customers across a variety of products, and that fleet has been stable over the last several years.

CN also offers specialized supply chain solutions to help grain customers get their goods to export markets. CN offers transload services at its rail-to-container Harvey Grain Facility in the Chicagoland area, meaning that various commodities are transferred from covered hopper equipment to shipping containers for export via rail. CN spots and pulls daily from the facility and offers competitive transit times to export. CN invested in this facility in 2023 to add more storage and handling capacity. And CN added a new track auger system in 2025 to double throughput for the facility. The new auger system allows customers to transload commodities such as corn gluten meal and soybean meal more efficiently, in turn increasing the overall capacity of the facility.

B. The Iowa Northern Railway Company Success Story

CN's U.S. rail operating subsidiaries now include the Iowa Northern Railway Company ("Iowa Northern"). CN's acquisition and integration of Iowa Northern provides a concrete, real-world demonstration of CN's ability to improve grain service and market reach in Iowa. The Iowa Northern experience shows that CN does not merely seek access to new markets; CN invests in infrastructure, equipment, and service quality to deliver tangible benefits to grain customers. CN has attracted new grain-related traffic in the legacy Iowa Northern network by working hard to understand local market dynamics and commodity flows, as well as investing significant time on the ground meeting customers face-to-face to better understand their business and transportation needs. The amount of grain-related traffic moving by rail from the legacy Iowa Northern rail network has been growing since CN's acquisition of the Iowa Northern. CN has been able to

establish new destination markets for legacy Iowa Northern customers through a combination of matchmaking and competitive single-line haul pricing while preserving customer access to alternate rail traffic gateways. {{

}}

Rail traffic within the legacy Iowa Northern network has been moving more efficiently as well, creating incremental capacity for rail traffic movements. Transit times have improved significantly under CN ownership, from approximately 36-48 hours down to 16 hours for a move between Manly and Cedar Rapids, Iowa. Improved transit times increase efficiency of both customer-supplied private equipment and the hopper car supply that CN makes available to legacy Iowa Northern customers for the shipment of corn and soybeans. CN has aggressively hired additional Train and Engine employees to address the legacy Iowa Northern's staffing deficit. The permanent Train and Engine employee count has grown since CN acquired the Iowa Northern, and CN can now offer a full extra board, which the Iowa Northern could not. Replacing lower-horsepower legacy Iowa Northern locomotives with CN high-horsepower locomotives for mainline traffic has also improved overall traffic movement, because high-horsepower road locomotives can pull more tonnage, especially at speeds of 0 to 15 miles per hour when a train is just starting to move.

II. TRACKAGE RIGHTS FROM MANLY AND/OR IOWA FALLS TO DES MOINES ARE NECESSARY TO PRESERVE COMPETITION FOR DES MOINES-AREA GRAIN AND GRAIN PRODUCTS CUSTOMERS

The Proposed Transaction between Union Pacific and Norfolk Southern, if unremedied, would reduce competitive rail options for many customer facilities in and around Des Moines, Iowa (including Avon, Iowa) from three Class I carriers to two, or from two Class I carriers to one. The Des Moines area is currently accessed by only three Class I railroads (Union Pacific, Norfolk Southern, and BNSF), with Norfolk Southern reaching Des Moines via haulage and trackage rights over BNSF's line. Many of the impacted customers are grain and grain products customers. The affected 2-to-1 and 3-to-2 facilities include grain elevators, soybean processors, and food and feed manufacturers, such as Archer Daniels Midland Co./ADM Soybean Processing, Heartland Co-Op (in both Des Moines and Avon), Feed Energy Co./Kru LTD, and General Mills (Avon). Applicants themselves have acknowledged the competitive harm to these customers and have proposed that the Board remedy almost all of the Des Moines 2-to-1 and 3-to-2 facilities by giving CN access.[2]

From the perspective of grain and processed grain products customers, this loss of competitive rail options is particularly harmful. Grain is a commodity whose transportation economics are driven by distance, routing efficiency, car supply, and access to multiple destination markets. Grain shippers—elevators, processors, ethanol producers, renewable-fuel plants, and feed mills—rely on competitive Class I access to negotiate favorable rates, obtain adequate car supply during peak periods (specific to the type of traffic to be transported), and access the broadest possible range of domestic and export markets. A reduction from three Class I carriers to two, or from two to one, directly diminishes those competitive dynamics.

[2] *See* UP-80/NS-78 at 58-62, FD 36873 (filed July 27, 2026) [hereinafter the "Second Supplemental Submission"].

In my experience, significant diversion of Des Moines area grain traffic from truck to rail is unlikely as a result of CN's trackage rights between Iowa Falls/Manly and Des Moines. Shipments of grain typically begin with short-haul truck movements from farms to elevators before ultimately moving by rail to their final destinations. Because CN's proposed trackage rights are intended to restore an independent Class I option for 3-to-2 and 2-to-1 rail customers, the competitive benefit for Des Moines area grain and grain products customers lies primarily in rail-to-rail competition rather than in attracting new traffic from trucks. That view is consistent with the diversion analysis supporting CN's responsive applications, which focuses on rail-to-rail diversions for grain and other agricultural products after their short-haul truck movements from farms.

A. Trackage Rights from Manly and/or Iowa Falls to Des Moines Provide the Most Effective Remedy to Preserve Competition for Grain and Processed Grain Products Customers

CN is seeking trackage rights over UP's line from Manly and/or Iowa Falls to Des Moines to preserve competition for the impacted Des Moines and Avon customers. I understand that Applicants proposed CN haulage over BNSF's line between St. Louis, Missouri, and Des Moines, Iowa, as an alternative means to implement CN as the remedy carrier. In my professional judgment, trackage rights over UP's line between Manly and/or Iowa Falls, Iowa, and Des Moines and Avon, Iowa, would provide a far more effective and competitive remedy for grain and grain products customers than Applicants' proposed BNSF St. Louis-Des Moines haulage arrangement, for several important reasons. For example, compare the routes for shipments of soybean meal originating in Des Moines to Chicago for interchange for furtherance to destination markets in the Eastern United States. Using CN's proposed trackage rights between Des Moines and Iowa Falls and CN's network to Chicago, the route is approximately 400 miles between Des Moines and

Chicago. By contrast, soybean meal originating in Des Moines would first move over the proposed BNSF haulage through East St. Louis, over CN's proposed trackage rights over the Tuscola Line, and then CN's network to Chicago for a total route of approximately 670 miles.

CN Success Using Trackage Rights to Access Grain and Processed Grain Products Customers. CN has demonstrated its ability to access grain customers in Iowa using trackage rights. In 2023, CN obtained local trackage rights to access an ethanol plant owned by Valero Marketing & Supply that is located on CPKC.[3] {{

}}. And in 2026, CN qualified crews over Union Pacific trackage rights (where Union Pacific is a sub-tenant of Norfolk Southern) to reach ADM's unit-train grain facility at Cockrell near Springfield, Illinois.[4] And CN moved {{

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Direct, Efficient Routing onto CN's Existing Iowa Network. Manly and Iowa Falls (upon construction of a new connection there) connect directly to CN's existing rail network in Iowa. This gives CN a short, direct route northward from Des Moines onto its own lines, rather than requiring a long, circuitous haulage move up from St. Louis on the railroad of a competitor that is not a party to the Proposed Transaction. For grain, where transportation cost is primarily a

[3] *See Cedar River Railroad Company and Chicago, Central & Pacific Railroad Company—Trackage Rights Exemption—Dakota, Minnesota & Eastern Railroad Corporation*, FD 36721 (STB served Sept. 15, 2023) (local trackage rights between Charles City, Iowa and the Valero ethanol facility in Floyd County, Iowa for up to seven trains per week).

[4] *See Illinois Central Railroad Company – Petition for Declaratory Order*, Docket No. FD 36892 (filed Dec. 1, 2025).

function of distance, the routing advantage is significant. A shorter, simpler route translates into better competitive options and, ultimately, better prices for farmers, end-user processors, and consumers.

Operational Control Over Train Service, Car Supply, and Scheduling. Trackage rights allow CN to operate its own trains with its own crews over the line segment between Manly and/or Iowa Falls and Des Moines. This operational control is critical for grain service. Customers need reliable car supply (specific to the type of traffic to be transported), locomotive power, predictable train schedules, and responsive service. Under a haulage arrangement, CN would depend on a competitor's crews, locomotives, operating priorities, and capacity. The competing carrier has no economic incentive to prioritize CN's grain and grain products traffic, particularly during the periods of heaviest demand when its own customers are also competing for capacity. Trackage rights eliminate this dependency and allow CN to manage crew staffing, car supply, train frequency, and service commitments directly.

CN anticipates initially operating over the trackage rights from Manly to Des Moines to serve 3-to-2 and 2-to-1 customers in Des Moines and Avon, either via UP reciprocal switch through Short Line Yard or, for unit trains, directly to (1) the Des Moines facility currently operated by ADM and (2) the Avon facility currently operated by Heartland Co-Op. CN also plans that its trains could enter and exit the trackage rights route at Iowa Falls rather than Manly, which would be a more direct connection to CN's network. However, a new connection would need to be constructed at that location to accommodate such operations, as the existing UP-CN connection at Iowa Falls is a short, 15-car spot interchange track through the middle of a grain elevator that is not suitably configured for the movement of CN trackage rights trains. Upon completion of a new

connection at Iowa Falls, CN contemplates that its trackage rights trains to and from Des Moines would operate via Iowa Falls.

An Effective Remedy Requires an Independent Competitor. An effective competitive remedy must establish CN as a truly independent competitor in the Des Moines area. Under a haulage arrangement, CN's service offerings, transit times, and costs would all be shaped by the terms of the haulage arrangement and by the host carrier's operating decisions. Trackage rights, by contrast, give CN the independence to compete on its own merits – setting its own rates, designing its own service products, and investing in service quality improvements that benefit Des Moines and Avon area grain and grain products customers.

Direct Access Connects Des Moines- and Avon-Area Grain and Grain Products Customers to CN's Full Range of Markets. Trackage rights from Manly and/or Iowa Falls to Des Moines would connect Des Moines and Avon area grain customers directly to CN's extensive network and the full range of CN destination markets. These markets include, among others:

- Gulf export terminals in the New Orleans, Louisiana and Mobile, Alabama areas;
- Multiple Mississippi River barge-loading facilities along the inland waterways, from southern Illinois to northeastern Iowa and northwestern Illinois;
- Feed mills and processing facilities across the CN network;
- Eastern Canada and Western Canada destination markets; and
- Midwest domestic end-users, including corn and soybean processors.

These additional destination options increase market arbitrage opportunities, improve market liquidity, and allow grain shippers to spread their commercial risk across a broader geography and a wider range of buyers. When grain shippers have access to more origination and destination

options, they can better manage price risk, diversify their customer base, and remain competitive even in adverse crop or market conditions.

Examples of specific agricultural-related facilities in the Des Moines/Avon area, and the CN opportunities and markets each facility could access, are as follows:

- **Archer Daniels Midland:**
    - Soybean meal to CN-served and CN-accessible Gulf export terminals and Mississippi River barge-loading facilities along the inland waterways, from southern Illinois to northeastern Iowa and northwestern Illinois;
    - Soybean meal and soy hulls to feed mills across the CN network, including soybean meal to CN's Harvey, Illinois rail-to-container transload facility described above;
    - Soybean oil to Gulf export terminals and Gulf renewable diesel production facilities, as well as CN-served and CN-accessible biodiesel production facilities in Iowa, Illinois, and elsewhere in the CN network;
    - Refined soybean oil to CN-served and CN-accessible end-users for domestic human consumption; and
    - Soybeans received from CN origins, enhancing the customer's soybean origination reach.
- **Heartland Co-Op:**
    - Soybean and corn shipments to CN-served and CN-accessible soybean processors, ethanol plants, and other corn processing facilities in the U.S. Midwest and Canada;
    - Soybean and corn shipments to CN-served and CN-accessible Gulf export terminals; and

  - Soybean and corn shipments to CN-served and CN-accessible barge-loading facilities.

- **Feed Energy Co./Kru LTD:**
  - Shipments of renewable fuels-related feedstocks to CN-served and CN-accessible renewable fuels plants that can use these commodities as feedstock.
- **General Mills:**
  - Outbound shipments of bulk flour to end-users across the CN network; and
  - Inbound shipments of wheat from within the CN network.

The Iowa Northern experience demonstrates, along with CN's successes using trackage rights to access grain and grain products customers, that CN has both the capability and the commitment to serve as an effective remedy carrier for Des Moines- and Avon-area grain and grain products customers. CN's track record of investing in infrastructure, deploying modern equipment, improving service, and expanding market access for Iowa grain shippers is directly relevant to the Board's evaluation of CN as the appropriate carrier to receive trackage rights between Manly and/or Iowa Falls and Des Moines and Avon, Iowa.

III. ACCESS OVER THE TUSCOLA LINE AND KANSAS CITY AND ST. LOUIS CONDITIONS WILL BENEFIT GRAIN AND GRAIN PRODUCTS CUSTOMERS

The Proposed Transaction between Union Pacific and Norfolk Southern, if unremedied, would reduce competitive rail options for grain customers in the Midwest. Union Pacific and Norfolk Southern both serve grain and processed grain products customers in Kansas City and St. Louis / East St. Louis, and their networks directly overlap between the cities. Grain is among the top commodities that Applicants originate and terminate in the Kansas City area. Without conditions, grain and grain products shippers that today can leverage their access to both Union Pacific and Norfolk Southern (and in combination with other interline partners) in these markets

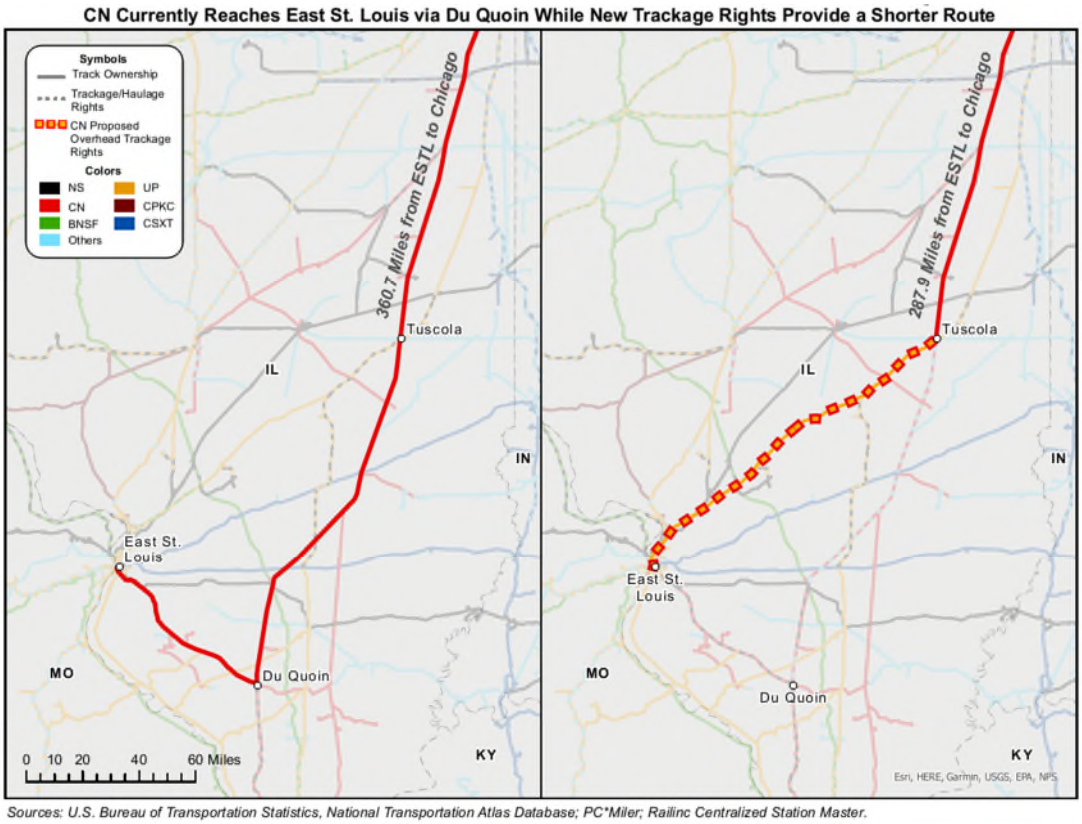
would lose that independent competitive option. The conditions described below would restore a competing Class I carrier for these grain customers by giving CN a more direct route into the St. Louis / East St. Louis gateway and new access to Kansas City and the Kansas City gateway.

A. East St. Louis Is Critical to CN Grain Customers

The conditions seeking trackage rights over UP's line between Tuscola and East St. Louis, Illinois (the "Tuscola Line") and the Alton & Southern ("A&S") line will deliver significant benefits to CN's grain and grain products customers. East St. Louis represents the single largest concentration of barge-loading facilities along the Mississippi River. It is a critically important destination market for Midwest shippers seeking to move corn, soybeans, wheat, soybean meal, DDGS, and other commodities to the export market via barge.

Today, for CN to reach East St. Louis from points in northern Illinois, Iowa, and Wisconsin, CN routes trains all the way to southern Illinois, past East St. Louis to Du Quoin, Illinois, and then routes them back up again to East St. Louis. Trackage rights over the Tuscola Line would alleviate the need for this circuitous route and connect CN's existing central Illinois lines directly to the East St. Louis / St. Louis gateway, allowing CN to more effectively compete for this grain and grain products traffic. CN currently has a more roundabout route into the East St. Louis / St. Louis area than virtually any other carrier, and the Tuscola Line would provide a routing improvement of approximately 70 miles. This reduction in distance and transit time will lower transportation costs for CN's grain and grain products customers and allow CN to compete on a more even footing with the merged UP and NS for grain and grain products traffic destined to the East St. Louis / St. Louis area, which has become an important bulk grain market because of local infrastructure investment.

Figure 3: Map of More Efficient Routing



*Sources: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; PC*Miler; Railinc Centralized Station Master.*

Customers on the A&S and the Terminal Railroad Association of St. Louis ("TRRA") are open to all Class I carriers, so the improved route will allow CN to compete more effectively for rail traffic destined to facilities, such as Bunge-SCF in East St. Louis; Consolidated Grain & Barge, CHS, and Louis Dreyfus in Cahokia; ADM in Sauget; and ADM's North St. Louis facility, which completed an expansion in 2025. Shippers moving soybean meal, for example, would benefit from a more competitive CN route into East St. Louis / St. Louis for transfer to barge and onward movement to the Gulf. CN could also move wheat inbound to St. Louis, such as to ADM's St. Louis facility or to barge-loading facilities. CN could also move flour products outbound more efficiently from St. Louis to CN destination markets in Canada and the United States.

B. Access to Kansas City Will Provide Grain and Grain Products Customers with a New Gateway and a Broader Range of Markets

CN's conditions seeking access to Kansas City include purchase of UP's rail line between Kansas City and St. Louis (the "Kansas City Line") and lease or purchase of Neff Yard in Kansas City (Sub-Nos. 2 and 6). These conditions will open Kansas City as a new gateway and destination market for CN's grain and processed grain products, again allowing CN to compete more effectively with UP and NS for grain and grain products customers. Kansas City is a significant grain market, serving as a hub for grain processing, milling, feed manufacturing, and interchange with western carriers. Opportunities include Cargill's soybean crush plant, which could ship finished products into destination markets CN serves, and Bartlett's Kansas City grain terminals. Most of these customers are in Union Pacific's reciprocal switching tariff and are open to Norfolk Southern. CN is seeking access to those customers in Kansas City in Union Pacific's and Norfolk Southern's reciprocal switching tariffs that are open so that those customers do not lose a Class I option if the Proposed Transaction is approved and so CN can build density to and from Kansas City.

In addition to the Kansas City terminal, CN's purchase of the Kansas City Line will give CN access to existing local customers located along the line between Kansas City and St. Louis, which CN plans to serve directly.[5] These customers include numerous grain shippers that CN is well situated to access, like customers in Kansas City open to reciprocal switching performed by

[5] As Janet Drysdale explains, if the Board orders divestiture to CN of the Kansas City Line (Sub-No. 2), CN would provide local service to all UP stations on the line between St. Louis and Kansas City. *See* Exhibit 12H (Verified Statement of Janet Drysdale) at 16. So that customers do not lose options, CN proposes that UP would retain local haulage access to the customers as well as overhead trackage rights between Kansas City and St. Louis for through trains. *Id.* at 31. However, if the Board orders trackage rights to CN between Kansas City and St. Louis, CN would not directly serve local customers on the line. Under the Settlement MOU, CN would access those customers via local haulage performed by UP.

UP such as Bartlett, Cargill, and General Mills, as well as customers in St. Louis / East St. Louis like ADM Milling via TRRA. CN has demonstrated the ability to compete even when a reciprocal switch is performed at destination. {{

}}. By connecting these Kansas City Line customers to CN's network and origination markets, CN will be well positioned to restore competition for this traffic as well as for local customers on the Kansas City Line that would otherwise be lost as a result of the Proposed Transaction.

Kansas City would also give CN access to a new wheat footprint, providing wheat customers a new competitive option. For example, CN could newly access facilities such as General Mills' wheat mill, which is open on Union Pacific's reciprocal switching tariff. Processing plants in the area draw from wide origination areas, including substantial Missouri origination. Access to Kansas City will allow CN to offer its Midwest grain customers and short lines that connect with CN—including those in Illinois, Iowa, and Wisconsin—a new competitive routing option to Kansas City markets, further increasing origination reach, market optionality, and competitive dynamics for grain shippers across CN's network.

CN's new access to the Kansas City gateway will potentially allow CN to move corn more competitively to western carriers via interchange, giving customers originating corn moves on CN or on a short line that connects to CN another gateway option. The feed market in the Southwestern U.S. creates an opportunity to move additional corn to western carriers via interchange through the Kansas City gateway. Under the Settlement MOU, CN has agreed to purchase Norfolk Southern's shares in the Kansas City Terminal Railway, which is operated by Watco's Kaw River Railroad (KAW), giving CN the ability to interchange with other carriers in Kansas City through

KAW. In addition, CN seeks the ability to directly interchange with BNSF via its trackage rights between Lydia Avenue and Broadway Boulevard in Sub-No. 4, and CN plans to interchange with UP at Neff Yard. CN can move corn to the Southwestern U.S. via interchange in Kansas City from CN-served Illinois origins, as well as various short line-served origins that connect to CN. In Illinois, CN receives corn from Bloomer Shippers Connecting Railroad Company (BLOL) owned by Alliance Grain Company, Watco's Decatur & Eastern Illinois Railroad (DREI), and Indiana Rail Road Company (INRD). Given that distance is a major factor affecting the cost of rail transportation, the Kansas City gateway also provides reduced rail mileage from various Illinois origins to points of demand relative to current gateways. The extent of the opportunity will vary annually based on product availability within the local region. To illustrate, rail distance from CN-served Rantoul, Illinois to Garden City, Kansas via Memphis, Tennessee is roughly 1,228 rail miles, whereas rail distance from Rantoul, Illinois to Garden City, Kansas via the Kansas City gateway is roughly 838 rail miles (a 390-mile reduction).

CONCLUSION

For the reasons set forth above, the conditions sought in CN's responsive applications, particularly:

- trackage rights over UP's line between Manly and/or Iowa Falls, Iowa, and Des Moines and Avon, Iowa (Sub-No. 10);
- divestiture of UP's Kansas City Line (Sub-No. 2);
- overhead trackage rights over the Tuscola Line (Sub-No. 7);
- trackage rights over the Alton & Southern between Lenox and East St. Louis (Sub-No. 8);

- in the alternative to Sub-No. 2, trackage rights over UP's Kansas City Line (Sub-No. 3);
- trackage rights in Kansas City between Lydia and Broadway to interchange with other railroads (Sub-No. 4);
- terminal trackage rights over BNSF between Eton and Congo (Sub-No. 5) to connect UP's River Subdivision to Neff Yard in Kansas City; and
- lease or purchase of Neff Yard in Kansas City (Sub-No. 6).

These conditions are necessary to preserve competition for Des Moines area grain customers and to prevent the competitive harm that would otherwise result from the Proposed Transaction. CN's grain and grain products business, its demonstrated commitment to investing in infrastructure and service, and its successful integration of Iowa Northern all confirm that CN is the appropriate remedy carrier. The Tuscola Line and Kansas City and East St. Louis / St. Louis conditions will benefit grain and grain products customers by reducing routing distances to East St. Louis barge markets and St. Louis and East St. Louis origin and destination markets, allowing CN access to Kansas City origin and destination markets and to grain customers located on the Kansas City Line, and opening Kansas City as a new gateway for CN to interchange with western carriers. I respectfully urge the Board to grant the conditions requested in CN's responsive applications.

VERIFICATION

I, David Przednowek, declare under penalty of perjury under the laws of the United States that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 18th day of November, 2026.

/s/ David Przednowek
David Przednowek

Exhibit 5

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

-- CONTROL --

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

(SUB-NO. 2) ILLINOIS CENTRAL RAILROAD COMPANY – DIVESTITURE – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN ST. LOUIS, MO. AND KANSAS CITY, MO.

(SUB-NO. 3) ILLINOIS CENTRAL RAILROAD COMPANY – TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN ST. LOUIS, MO. AND KANSAS CITY, MO.

(SUB-NO. 4) ILLINOIS CENTRAL RAILROAD COMPANY – OVERHEAD TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN LYDIA AVENUE AND BROADWAY BOULEVARD IN KANSAS CITY, MO.

(SUB-NO. 5) ILLINOIS CENTRAL RAILROAD COMPANY – TERMINAL TRACKAGE RIGHTS – OVER LINE OF BNSF RAILWAY COMPANY BETWEEN ETON, MO. AND CONGO, MO.

(SUB-NO. 6) ILLINOIS CENTRAL RAILROAD COMPANY – LEASE AND PURCHASE – UNION PACIFIC RAILROAD COMPANY NEFF YARD IN KANSAS CITY, MO.

(SUB-NO. 7) ILLINOIS CENTRAL RAILROAD COMPANY – OVERHEAD TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN TUSCOLA, ILL. AND EAST ST. LOUIS, ILL.

(SUB-NO. 8) ILLINOIS CENTRAL RAILROAD COMPANY – OVERHEAD TRACKAGE RIGHTS – OVER LINE OF THE ALTON & SOUTHERN RAILWAY COMPANY BETWEEN MITCHELL, ILL. AND EAST ST. LOUIS, ILL.

VERIFIED STATEMENT OF GIRISH NAIR

My name is Girish Nair. I currently serve as Vice President, Intermodal & Automotive, Sales and Marketing, for Canadian National Railway Company ("CNR"), a role I assumed in December 2025. Before my current role, I served as Vice President, Multimodal Operations, from December 2023 to December 2025. Throughout my nearly 15-year tenure at CNR, I have held a variety of intermodal and sales roles. I joined the company in 2012 as a Market Manager focused on refrigerated cargo, and from 2014 to 2016 I served as Commercial Manager, Cold Supply Chain, where I was responsible for developing its refrigerated cargo business across cross-border, domestic, and international corridors. Before that, I spent approximately 12 years with an international shipping company, where I held a series of sales roles with responsibility for developing new trade lanes and services, pricing, and oversight of international agents. In total, I have more than 30 years of experience in sales, marketing, and transportation, including more than 25 years in the ocean shipping and rail intermodal industries. I hold an MBA with a specialization in marketing from the University of Leicester and completed coursework in sales and marketing management at Humber College in Canada.

Given my current role and experience, I am very familiar with intermodal traffic flows (both within North America and globally) and our intermodal customers. I submit this Verified

Statement on behalf of CN, in support of CN's Comments on the Amended Application & Requests for Conditions ("Comment") and responsive applications before the Surface Transportation Board (the "Board") in Docket No. FD 36873. The purpose of my statement is to explain, from the perspective of CN's intermodal business and its customers, why the conditions set forth in the responsive applications and in the binding Memorandum of Understanding that CN entered into with Union Pacific Railroad Company ("UP") on July 22, 2026 (the "Settlement MOU") are necessary to preserve competition for intermodal shippers in the region affected by the proposed acquisition of control of Norfolk Southern Railway Company ("NS") by UP (UP and NS, collectively, "Applicants") (the "Proposed Transaction"). As described in detail below, CN's proposed conditions are critical to preserving competitive options for intermodal customers. Without these conditions, the Proposed Transaction would reduce the number of competitive Class I railroad options available to intermodal shippers in the Kansas City-St. Louis corridor, to the detriment of those shippers and the public interest.

I. CN IS THE RAIL INDUSTRY LEADER IN INTERMODAL GROWTH AND SERVICE OFFERINGS

Intermodal is CN's fastest-growing business segment. Today, intermodal volume represents roughly 40% of CN's total carload volume, and because of that volume, intermodal makes a substantial contribution to CN's business. CN operates a three-coast network serving the U.S. Gulf Coast and Canada's East Coast and West Coast, connecting customers to import and export gateways such as Mobile, Alabama; New Orleans, Louisiana; Gulfport, Mississippi (via haulage); Vancouver; Prince Rupert; Halifax; Saint John; and Montreal, and reaching key markets in CN's network and, by interchanging containers with other railroads, enabling customers to reach further in rail shipments. CN operates 23 intermodal terminals in North America, including 10 in the United States, with facilities in Chicago and Memphis. CN runs more than {{ }} weekly

scheduled intermodal trains and has daily access to approximately 1,050 trucks for first- and final-mile service. CN serves {{ }} U.S. intermodal customers and handles approximately {{ }} U.S. intermodal originations and terminations annually. CN has agreements with seven port authorities and 15 port terminals, including the Ports of New Orleans and Mobile. CN accesses the Port of Mobile through the Alabama Export Railroad and the Terminal Railway Alabama State Docks ("TASD"). CN provides a direct connection between Mobile and Chicago with second-day arrival. Through an interline service with CSX Transportation, Inc. ("CSXT"), CN also has access to the Ports of New York/New Jersey and Philadelphia, and through a haulage agreement with Canadian Pacific Kansas City Railway Company ("CPKC"), CN has access to the Port of Gulfport, Mississippi. And CN works with the Indiana Rail Road Company ("INRD") to provide interline intermodal service between Indianapolis, Indiana, and CN's ports on the Gulf, East, and West Coasts.

CN offers a wide range of intermodal products, including a door-to-door retail program, which Class I railroads in the U.S. generally do not offer. CN owns a dedicated fleet of 53-foot and 40-foot containers that support its domestic program. In 2019, CN acquired TransX, a refrigerated intermodal specialist with a leased network of 11 distribution centers and approximately 1,400 temperature-controlled containers. Today, CN's CargoCool program operates one of the largest refrigerated and insulated container fleets in North America. CN's experts provide a safe and efficient supply chain for temperature-controlled goods. With end-to-end visibility, CN offers the services needed to bring temperature-sensitive commodities safely to market, from food and beverages to pharmaceuticals and fashion apparel. CN is also a full member of the Equipment Management Pool, giving it access to a supply of approximately 40,000 containers, and it maintains its own chassis. CN operates the CNTL trucking division and a

Domestic Repositioning Program, which reloads 40-foot containers so that there is an additional loaded move within the transportation cycle, allowing CN to build efficient trains.

CN has continued to expand its intermodal offerings in recent years. CN has developed new interline products, including a product with CSXT into the Ohio Valley, which increases routing optionality for customers, and its Falcon Premium service, a partnership with UP and Grupo México Transportes/Ferromex that provides seamless access across the United States, Mexico, and Canada. In response to significant supply chain volatility over the last 18 to 24 months, and as customers diversify their supply chains to reduce exposure to supply chain disruptions, CN is adding capacity to provide resilience. CN is also developing an approximately 900-acre Chicago logistics hub to reach the southwest side of the Chicago market near consumer distribution centers, address growing demand in Chicagoland and the Midwest, and improve access to North American and international markets.

CN's intermodal operating model also differentiates it from other carriers. CN runs predominantly double-stacked trains, one of the most efficient and cost-effective ways to move intermodal freight. CN's terminals also use a grounded operation, which allows CN to be more nimble in managing capacity and less dependent on chassis availability—a significant advantage during volume spikes or land and sea disruptions, when chassis mismatches have caused congestion on other rail networks. CN also combines its international and domestic business operationally, allowing it to support domestic programs that might not otherwise have sufficient volume. When the Board examined rail service problems in 2022,[1] it identified four U.S. Class I railroads as having service issues; CN was not among them.

[1] *See Urgent Issues in Freight Rail Serv.*, EP 770, slip op. at 3 (STB served Apr. 7, 2022).

CN also offers a level of customer service and supply chain expertise that sets it apart. CN maintains its own customer service team that provides white-glove service, including booking and billing on behalf of customers—functions that in the United States are typically performed by an intermodal marketing company. CN fields specialized teams focused on perishables, specialty crops, automotive capacity, expedited services, fleet, and third- and fourth-party logistics providers, and works closely with port operators, customs brokers, and other stakeholders to drive connectivity. CN also provides a digital framework that allows customers to self-serve. CN runs its own customs brokerage division, supporting both rail and non-rail shipments, and on the West Coast, CN provides a transload product. CN is also pursuing a real estate strategy focused on developing integrated logistics hubs, such as those in Grundy County, Illinois; Calgary, Alberta; and Milton, Ontario, that generate cost savings and operational efficiencies for customers. Together, these capabilities position CN as a full supply chain provider, rather than just a transportation provider.

II. CN'S CONDITIONS WILL RETAIN INTERMODAL COMPETITION AND PROVIDE NEW CUSTOMER SERVICES

Rail competition matters for intermodal shippers. For many long-haul lanes, intermodal rail service is more cost-competitive than over-the-road trucking, and railroads frequently work together with trucking providers, which handle first- and final-mile drayage, to offer customers the most competitive end-to-end options. At the same time, railroads compete extensively with one another for intermodal traffic, on price, transit time, reliability, terminal access, and service offerings. Intermodal shippers routinely shift volumes among rail carriers in response to those factors. Intermodal traffic is therefore not immune from the effects of reduced rail competition: competitive rail options are important to efficient, resilient supply chains, and when the number of

independent Class I options in a corridor is reduced, intermodal shippers face the risk of higher rates, diminished service, and fewer alternatives during supply chain disruptions.

The networks of UP and NS directly overlap between Kansas City and St. Louis, where both move significant intermodal volumes. Kansas City and St. Louis are principal gateways at which UP and NS serve intermodal customers and interchange traffic, and Applicants' networks run four parallel lines across Missouri, including three between St. Louis and Kansas City. As a result, UP and NS currently have significant market concentration in Kansas City, and that concentration would increase if the Proposed Transaction is approved. Intermodal and automotive traffic, together with motor vehicle parts, are among the commodities most affected by the Proposed Transaction in Kansas City and St. Louis. Applicants themselves have acknowledged that this overlap requires a remedy in the Settlement MOU with CN. Absent the conditions set forth in CN's responsive applications, customers in the Kansas City-St. Louis corridor would lose a competitive Class I intermodal option. CN does not currently access Kansas City, so granting CN access would introduce a highly motivated new Class I entrant and give those customers a new, strong option for intermodal services. And granting CN trackage rights between Tuscola and East St. Louis will expand its ability to reach St. Louis/East St. Louis markets more efficiently than CN does today. CN plans to invest in new intermodal and automotive terminals in Kansas City and St. Louis, Missouri.

A. Kansas City Access and Neff Yard Will Help Customers Retain Competitive Options

The best way to prevent this competitive harm is through complete divestiture to CN of UP's line between Neff Yard in Kansas City, Missouri, and Twelfth Street in St. Louis, Missouri (the "Kansas City Line") (Sub-No. 2). Divestiture is clean, certain, and effective, and it avoids ongoing reliance between the merged UP/NS and CN as the remedy. Without divestiture of the

Kansas City Line, the Settlement MOU provides that CN would have trackage rights access. This means that CN's ability to compete for intermodal traffic would be contingent on negotiating haulage and trackage rates (Sub-No. 3) and service guarantees with the merged UP/NS, which is CN's direct rival. CN is the only railroad willing to acquire 100% of the Kansas City Line. CN proposes the following conditions:

- Divestiture of the Kansas City Line (Sub-No. 2) so CN can enter the Kansas City market and expand its access in St. Louis, Missouri / East St. Louis, Illinois;[2]
- the lease of UP's Neff Yard, including the Neff intermodal terminal, in whole or in part, with an option to purchase (Sub-No. 6);
- terminal trackage rights over approximately 7.5 miles of track owned by BNSF Railway Company ("BNSF") between Eton, Missouri, and Congo, Missouri (the "Eton to Congo Segment") (Sub-No. 5), which connects the two portions of the Kansas City Line to Neff Yard; and
- overhead trackage rights between North Lydia Avenue and Broadway Boulevard in Kansas City, Missouri (the "Lydia Avenue to Broadway Boulevard Segment") (Sub-No. 4), which connects Neff Yard and the Kansas City Terminal Railway Company ("KCT") and allows CN to interchange with BNSF and other carriers and to reach KCT customers open via reciprocal switching.[3]

These conditions would enable CN to serve as a competitive intermodal option for customers.

[2] In CN's proposed divestiture condition, CN proposes to grant UP overhead trackage and local haulage rights on the Kansas City Line so that no customer loses an existing competitive option. If the Board finds that divestiture is not warranted, CN alternatively seeks trackage rights over the Kansas City Line, together with local haulage rights to serve affected customers on the line (Sub-No. 3).

[3] Under the Settlement MOU, CN will acquire NS's shares of KCT.

To serve as an effective remedy carrier for intermodal customers, CN must also be able to build and retain sufficient traffic density on the Kansas City Line to support its planned investments in intermodal facilities in Kansas City and St. Louis. Under haulage or trackage rights alone (Sub-No. 3), the merged UP/NS could degrade CN's service or prioritize its own trains. Absent robust gateway protections, UP/NS could steer interchange to less efficient locations or short-haul CN's traffic, which could erode the density CN needs. That is why CN's requested conditions include divestiture, robust and enforceable open gateway protections, and reciprocal switching access to Kansas City customers currently open to switching under UP and NS, so that those customers do not lose a Class I option if the Proposed Transaction is approved.

CN expects to use Neff Yard (Sub-No. 6) to serve intermodal customers in Kansas City and surrounding geographies. Neff Yard is UP's former intermodal yard in Kansas City; UP has since relocated its intermodal operations to its Kansas City Intermodal Terminal, and Neff Yard is now idled as an intermodal terminal. Before UP relocated its intermodal operations, the largest share of traffic originating and terminating at Neff Yard, and its leading customers, were ocean carriers, intermodal marketing companies, perishable exporters, and trucking companies. CN understands the terminal to be largely "plug and play," meaning that UP previously operated an intermodal terminal from within Neff Yard. Because it is an existing UP rail yard, CN anticipates a smooth transition and expects to be able to use Neff Yard immediately following consummation of the Proposed Transaction and divestiture of the Kansas City Line. CN anticipates that it would need to add equipment, such as trucks and cranes, and expects to engage a third-party terminal operator, but does not expect significant investment to be required to begin operations. Over time, CN plans to make significant investments at Neff Yard to improve and expand its intermodal operations, which would put a largely idled intermodal terminal back into productive service.

In addition, the proposed overhead trackage rights over UP's line between Tuscola, Illinois, and East St. Louis, Illinois (the "Tuscola Line") (Sub-No. 7), together with overhead trackage rights over the lines of UP's wholly owned subsidiary, The Alton & Southern Railway Company ("A&S") (Sub-No. 8), between Lenox in Mitchell, Illinois, and Valley Junction in East St. Louis, Illinois, would connect CN's existing lines in central Illinois to the St. Louis gateway and, through it, to the Kansas City Line. CN's network today reaches only East St. Louis, and CN operates over a more circuitous and less efficient route: CN's current route from the north runs south past East St. Louis to Du Quoin, Illinois, and then doubles back to reach the St. Louis gateway, adding significant mileage and transit time. With trackage rights over the Tuscola Line, CN intermodal traffic from Chicago would instead move south on CN's existing line to a new connection at Tuscola, over the Tuscola Line and A&S to East St. Louis, across the Mississippi River into St. Louis, and then over the Kansas City Line to Neff Yard. This more direct route would eliminate approximately 70 miles from CN's route between Chicago and St. Louis or Chicago and Kansas City.[4] Without these rights over the Tuscola Line, CN's intermodal service to St. Louis and Kansas City would be materially longer and costlier than Applicants' single-line service.

As part of its divestiture, CN also plans to use UP's inactive former Sarpy Yard property in St. Louis, which is located on the Kansas City Line, to develop facilities to handle intermodal and automotive traffic. If the Board grants trackage rights instead of divestiture, CN is seeking trackage rights access to the former Sarpy Yard property and a condition ordering the sale of that property to CN for the same purpose. Without access to that property, CN would not have a location to handle this traffic in St. Louis. CN expects the former Sarpy Yard property to provide intermodal capacity once the planned infrastructure improvements are completed, and CN can

[4] *See* Exhibit 13 (Operating Plan) at 137.

begin marketing that capacity in advance of completion. Together, Neff Yard and the former Sarpy Yard property would add two new U.S. intermodal terminals to CN's network and create new competitive alternatives and additional intermodal capacity for customers in the St. Louis and Kansas City gateways.

The diversion analysis of Dr. Henry Kahwaty estimates that approximately {{ }} annual rail cars or units would divert from truck to the CN network because of CN's new or improved access involving Kansas City and St. Louis / East St. Louis, approximately {{ }} of which (approximately {{ }} units) would be intermodal traffic.[5] Of the diverted intermodal traffic, approximately {{ } units are expected to move through the Kansas City area and approximately {{ }} units through the St. Louis area; in total, Kansas City is expected to receive approximately {{ }} units of diverted traffic and St. Louis approximately {{ }} units.[6] The diversion analysis also reflects that CN would divert approximately {{ }} intermodal units from other railroads.[7]

B. CN's Access to Kansas City and Expanded Access to St. Louis / East St. Louis Will Open New Single-Line Options for Intermodal Customers

CN's proposed conditions will not only preserve competition that would otherwise be lost as a result of the Proposed Transaction but also open new doors for intermodal customers. With access to Kansas City, CN would offer new single-line intermodal service to and from its existing intermodal terminals in places like Detroit and Eastern Canada. Through future interline arrangements, building on effective existing interline service such as CN's interline product with

[5] *See* Exhibit 12B, Verified Statement of Dr. Henry Kahwaty at ¶ 177 & Table 11 [hereinafter "Kahwaty V.S."].

[6] *Id.* ¶ 178.

[7] *Id.* ¶ 16.

CSXT into the Ohio Valley, CN could also gain access to new markets and products, such as traffic moving with other carriers from the Southeast from Norfolk, Savannah, or Charleston to Kansas City and East St. Louis. The Kansas City–Chicago market alone is expected to account for approximately {{ }} of total diverted traffic, and CN is particularly well positioned to serve that market given its extensive Chicago-area intermodal capabilities and the significant intermodal volume it already moves south from Chicago to Memphis, Jackson, and New Orleans.[8] Kansas City–Detroit is expected to be the second-largest market, accounting for approximately {{ }} of total diverted traffic, more than {{ } of which is expected to be intermodal, including vehicle parts shipped from Michigan auto facilities to assembly plants in Kansas City.[9] CN's large, modern Detroit intermodal hub, which handles approximately {{ }} units annually, positions CN to accommodate that growth.[10]

In St. Louis, CPKC—the only other railroad with intermodal terminals in Canada—does not have an intermodal terminal in St. Louis or East St. Louis, so once CN begins intermodal operations at the former Sarpy Yard property, it would be the only railroad able to offer St. Louis area shippers single-line service to and from a Canadian intermodal terminal. Because there is currently very little interline intermodal service between Canada and St. Louis, these new offerings would primarily benefit U.S. shippers by providing a new rail alternative to truck transportation in these lanes.

Access to Kansas City would also allow CN to move intermodal traffic on its own network to Kansas City for interchange with western carriers, rather than interchanging that traffic in

[8] *Id.* ¶ 179 & Figure 30.

[9] *Id.* ¶ 180.

[10] *Id.*

Chicago. Interchange with BNSF, UP, CPKC, and other carriers would occur at or via Neff Yard. This would give CN a longer haul, allowing it to price its own leg more competitively, and would provide customers a more cost-competitive and, for some lanes, shorter routing that avoids Chicago intermodal congestion. Bypassing Chicago would also reduce terminal and interchange handlings and improve equipment cycle times. CN estimates that routing sufficient train volume away from its Kirk Yard in the Chicago area could reduce shipping times by as much as a day.[11]

Through Kansas City, CN also expects to compete for international intermodal traffic moving to and from the East Coast and Gulf Coast, and to divert existing international intermodal traffic that moves to and from Kansas City and St. Louis through from congested U.S. West Coast and East Coast ports to CN-served ports. These new routes will tie into CN's three-coast port access, including the Ports of New Orleans and Mobile. CN's best approximation is that it could divert up to approximately 15,000 annual round-trip carloads of Kansas City traffic, based on current intermodal volumes moving between Kansas City and the Ports of Los Angeles/Long Beach, New York/New Jersey, and Norfolk. In developing this approximation, CN considered (i) the volume of existing international intermodal traffic moving between Kansas City and those ports; (ii) the throughput of CN's smallest U.S. intermodal terminal and CN's share in other Midwest locations; (iii) inland rail mileage and transit time to Kansas City from CN-served ports compared with current routings; (iv) CN's cost economics; and (v) whether the overseas origins and destinations of the traffic can shift to ocean services calling at CN-served ports. Most of this volume would come from northern ports, and CN views the Port of Montreal as the strongest diversion opportunity: Montreal is closer to North European ports than the Ports of New York/New Jersey, and at approximately 1,380 rail miles to Kansas City, it is essentially equidistant with New

[11] *See* Exhibit 13 (Operating Plan) at 103.

York/New Jersey and Norfolk (approximately 1,300 miles). Customers importing Europe-origin traffic currently moving via those ports to Kansas City therefore could convert to Montreal, subject to pricing, vessel capacity, and available ocean services.[12] The Gulf ports also present a strong opportunity for international intermodal, followed by Halifax and British Columbia, which are farther by rail from Kansas City but which CN would also offer as options depending on customer and market demand, to support trade diversification and supply chain resiliency. CN has successfully launched access to similar inland markets in the past, including its Arcadia and Chippewa Falls, Wisconsin; Indianapolis, Indiana; and Ohio Valley markets, which diverted from West Coast ports, and CN will validate the addressable opportunity directly with shipping line customers as it rolls out the product.

CN's temperature-controlled intermodal service will also enable Kansas City and Omaha area protein producers to access refrigerated intermodal service for the first time on a single-line basis. Kansas City is a significant origin for protein exports, a segment CN does not access today, and major Midwest protein exporters such as {Tyson Foods, JBS, and Cargill} would gain CN as a new option. In the United States, CN offers a more advanced and evolved temperature-controlled service with its own state-of-the-art equipment that guarantees a protective service to its customers, whereas other Class I railroads expect the shipper (or exporter) to manage the responsibility of maintaining temperature integrity with its own equipment. Extending that service to Kansas City would create opportunities for Kansas City area producers to use single-line rail service to reach export markets on the East Coast and Gulf Coast. The Port of Mobile has 350 reefer plugs for

[12] *See* Exhibit 12H, Verified Statement of Janet Drysdale at 28 [hereinafter "Drysdale V.S."]; Exhibit 13 (Operating Plan) at 101; Kahwaty V.S. ¶¶ 189-190.

refrigerated containers to keep temperature-sensitive products safe.[13] No U.S. Class I railroad currently offers temperature-controlled intermodal service via ISO containers to these producers. Trucking refrigerated goods between the Midwest and Mexico or Canada costs approximately 10%–20% more and produces approximately 75% more greenhouse gas emissions than intermodal alternatives.[14] CN would save those customers time and money and take trucks off the road.

III. CONCLUSION

For the foregoing reasons, the conditions set forth in the responsive applications, including complete divestiture of the Kansas City Line to CN (Sub-No. 2), will enable CN to preserve competition that would be lost in the Kansas City and St. Louis markets if the Proposed Transaction is approved. Customers will benefit from CN's new intermodal and automotive terminal services in Kansas City and St. Louis. The related conditions, including trackage rights over the Eton to Congo Segment (Sub-No. 5), the Lydia Avenue to Broadway Boulevard Segment (Sub-No. 4), the Tuscola Line (Sub-No. 7), and A&S (Sub-No. 8), and the lease or purchase of Neff Yard (Sub-No. 6), are necessary and appropriate to address the competitive harms to intermodal customers that would otherwise result from the Proposed Transaction. The Proposed Transaction would combine UP's and NS's parallel routes between Kansas City and St. Louis, two principal rail gateways, and Applicants themselves have acknowledged that this overlap requires a remedy in the Settlement MOU. Intermodal traffic is among the commodities most affected, and it is not immune from the loss of rail competition.

Divestiture is the most effective remedy because it places CN as an independent Class I carrier in the corridor without ongoing reliance on the merged UP/NS, and CN is the only railroad

[13] *See The Port of Mobile: Reliable, Capable and Connected*, CN (Mar. 20, 2024), https://www.cn.ca/en/stories/20240320-the-port-of-mobile/ (last visited Nov. 17, 2026).

[14] *See* Drysdale V.S. at 28.

willing to acquire 100% of the Kansas City Line. CN is well positioned to compete for intermodal traffic in Kansas City and St. Louis. Neff Yard can support CN intermodal service immediately following consummation of the Proposed Transaction and divestiture of the Kansas City Line, and the former Sarpy Yard property would enable CN to open an intermodal terminal in St. Louis. Because CN would grant UP overhead trackage and local haulage rights on the Kansas City Line, no customer would lose an existing rail option over that line.

Moreover, CN's conditions will unlock new opportunities for intermodal customers that would not otherwise be available. These include new single-line service between Kansas City and St. Louis and CN's terminals in Detroit, Chicago, and Eastern Canada; the only single-line service between St. Louis and a Canadian intermodal terminal; new routings through Kansas City that bypass Chicago congestion; port alternatives through Montreal and CN's other gateways; and, for the first time, single-line refrigerated intermodal service for Kansas City area shippers to the Gulf Coast or East Coast. These offerings would divert substantial volumes from highways to rail, saving customers time and money and taking trucks off the road.

VERIFICATION

I, Girish Nair, declare under penalty of perjury under the laws of the United States that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on this 18th day of November, 2026.



Girish Nair

Exhibit 6

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 36873

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UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

-- CONTROL --

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

_____

(SUB-NO. 2) ILLINOIS CENTRAL RAILROAD COMPANY – DIVESTITURE – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN ST. LOUIS, MO. AND KANSAS CITY, MO.

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(SUB-NO. 3) ILLINOIS CENTRAL RAILROAD COMPANY – TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN ST. LOUIS, MO. AND KANSAS CITY, MO.

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(SUB-NO. 4) ILLINOIS CENTRAL RAILROAD COMPANY – OVERHEAD TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN LYDIA AVENUE AND BROADWAY BOULEVARD IN KANSAS CITY, MO.

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(SUB-NO. 5) ILLINOIS CENTRAL RAILROAD COMPANY – TERMINAL TRACKAGE RIGHTS – OVER LINE OF BNSF RAILWAY COMPANY BETWEEN ETON, MO. AND CONGO, MO.

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(SUB-NO. 6) ILLINOIS CENTRAL RAILROAD COMPANY – LEASE AND PURCHASE – UNION PACIFIC RAILROAD COMPANY NEFF YARD IN KANSAS CITY, MO.

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(SUB-NO. 7) ILLINOIS CENTRAL RAILROAD COMPANY – OVERHEAD TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN TUSCOLA, ILL. AND EAST ST. LOUIS, ILL.

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(SUB-NO. 8) ILLINOIS CENTRAL RAILROAD COMPANY – OVERHEAD TRACKAGE RIGHTS – OVER LINE OF THE ALTON & SOUTHERN RAILWAY COMPANY BETWEEN MITCHELL, ILL. AND EAST ST. LOUIS, ILL.

(SUB-NO. 9) ILLINOIS CENTRAL RAILROAD COMPANY – LOCAL TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY TO SERVE HILLSBORO, ILL.

(SUB-NO. 34) ILLINOIS CENTRAL RAILROAD COMPANY – LOCAL TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY TO SERVE CARLINVILLE, ILL.

VERIFIED STATEMENT OF SANDRA ELLIS

My name is Sandra Ellis. I was appointed Vice President, Bulk in 2022, and am currently the Vice President, Bulk & Business Development Sales & Marketing of Canadian National Railway Company ("CN"). I am responsible for driving CN's market expansion and sales activities for bulk commodities, including grain, fertilizer, vegetable oils, ethanol, sulfur, coal, and petroleum coke, as well as Business and Industrial Development activities and Shortline and Class I relationships. Bulk commodities are those moved primarily in unit trains rather than individual carloads. My team and I support our bulk customers' growth and success. I currently serve on the Rail Energy Transportation Advisory Committee of the Surface Transportation Board ("Board") and recently became Co-Chair of that committee. I bring to my role more than 20 years of experience in the rail industry and more than 25 years in multimodal transportation, including pipelines. Prior to joining CN, I was a railroad customer. I held commercial roles, including Director, Commercial Development, NGL Processing at Inter Pipeline Ltd., where I was accountable for the negotiation of multimillion-dollar railcar purchase and lease agreements and

integrated a rail/truck transportation team and associated transportation management processes and supporting technology. My rail career started at Canadian Pacific Railway, where I held progressive Sales and Marketing management roles for more than 15 years. I have a Bachelor of Commerce from the University of Saskatchewan.

Given my current role and experience, I am very familiar with coal, fertilizer, and sulfur traffic flows (both within North America and globally) and CN's coal, fertilizer, and sulfur customers. I submit this Verified Statement on behalf of CN in support of its Comments on the Amended Application & Requests for Conditions ("Comment") and responsive applications in Docket No. FD 36873. The purpose of my statement is to explain, from the perspective of CN's bulk business and its customers, why the conditions set forth in the responsive applications and in the Binding Memorandum of Understanding between CN and Union Pacific dated July 22, 2026 ("Settlement MOU") are necessary to preserve competition for bulk shippers in the region affected by the acquisition of control of Norfolk Southern Corporation and Norfolk Southern Railway Company ("NS") by Union Pacific Corporation and Union Pacific Railroad Company ("UP") ("Proposed Transaction"). In particular, I address coal shippers in Hillsboro and Carlinville, Illinois, and potash and other fertilizer shippers and receivers, as well as sulfur shippers and receivers, in the Kansas City and St. Louis areas. As described in detail below, CN's proposed conditions are critical to preserving competitive options for coal customers served by the facilities of Foresight Energy LLC ("Foresight Energy"), and CN is the most effective remedy carrier for those customers who rely on the mines for their coal demand. CN's requested access to Kansas City and expanded access to St. Louis / East St. Louis would also address competitive harms from the Proposed Transaction related to potash and sulfur, providing potash and sulfur shippers and receivers in those markets with an efficient, competitive rail option.

I. CN'S COAL BUSINESS PROVIDES EXPANSIVE CUSTOMER ACCESS TO KEY TERMINALS

CN is a significant mover of coal traffic in the United States and across North America. CN's North American rail system spans three coasts, connecting the U.S. Midwest with lines running parallel along the Mississippi River to the Gulf Coast with Canada's Eastern and Western coasts through an approximately 18,600-mile rail network that runs through the U.S. heartland. CN's network not only reaches major metropolitan centers in the United States but also directly and indirectly serves thermal and metallurgical coal production and associated demand centers in the U.S. Midwest, Northeast, and Southeast, as well as critical ports of the West Coast and Gulf Coast within the United States and Canada. Our network enables the export through direct rail service of both thermal and metallurgical coal via the river system, the Great Lakes and St. Lawrence Seaway, and deep-water ports on all coasts. In a typical year, CN moves an average of approximately {{ }} short tons of coal. In 2025, CN performed originations or terminations of coal, petroleum coke, and metallurgical coke for approximately {{ }} carloads across {{ }} U.S. customers. CN has direct access to an expanding set of facilities, currently numbering 11 active or idled mines, 7 petroleum coke-producing facilities, and 6 high-capacity export terminals, including such terminals in Mobile, Alabama, and New Orleans, Louisiana. CN serves coal mines, petroleum coke sources, barge transload terminals, and export terminals across Illinois, Kentucky, Tennessee, Michigan, Louisiana, and Alabama, including mines in the Springfield, Illinois area and transload terminals in East St. Louis and Chicago.

CN's coal franchise is distinctive. In Canada, CN primarily moves metallurgical coal to West Coast ports for export. In the United States, CN's coal business is predominantly thermal coal used to generate electricity, consisting of short-haul rail movements to domestic power plants—often Powder River Basin coal received in interchange from BNSF Railway Company

("BNSF") or UP—or short-haul rail movements where CN originates Illinois Basin coal and moves unit trains to interchange with other rail carriers or to move via the river system. CN also moves coal from U.S. mines for export, including long-haul movements of Illinois Basin coal to the Gulf Coast and short-haul moves to Ohio River barge locations. CN's U.S. operations are focused on reliably delivering domestic coal trains to power plants. Some of these moves are short-haul rail moves; for example, CN's haul to the Weston plant in Wisconsin is approximately 30 miles from the interchange with UP for delivery of Powder River Basin coal, and its haul for the Vistra plants in Illinois is approximately 80 miles to interchange.

CN's rail lines in the United States reach Alabama, Illinois, Kentucky, Louisiana, Mississippi, Tennessee, and Wisconsin. This network gives CN single-line access from Illinois Basin coal origins to river barge loading locations on the Ohio River and the Mississippi River, Gulf export terminals, and utilities and industrial customers throughout the Mid-South and Gulf Coast regions. And CN connects indirectly to move Powder River Basin coal through interline moves from UP or BNSF.

II. CN'S CONDITIONS PRESERVE COMPETITION FOR IMPORTANT COAL FACILITIES

I understand that, as a result of the Proposed Transaction, two Foresight Energy facilities—Hillsboro Energy LLC (Deer Run Mine), located at Hillsboro, Illinois, with the capacity to produce up to 9 million tons of coal per year,[1] and Macoupin Energy LLC (Macoupin Energy Shay #1 Mine, formerly Monterey Mine No. 1), located near Carlinville, Illinois—would have their Class I carrier access reduced from two carriers to one, as both UP and NS currently have access to serve

[1] *See Operation*s, Foresight Energy, https://www.foresight.com/operations/ (last visited Nov. 16, 2026).

the Foresight Energy facilities, and no other Class I carrier has access.[2] I understand that Union Pacific and Norfolk Southern (collectively, "Applicants") acknowledge that these facilities would go from two Class I carriers to one and have agreed to grant trackage rights to another Class I carrier.[3] I also understand from Applicants' public submissions that Foresight Energy has asked Applicants to grant BNSF trackage-rights access post-merger, and that Applicants would grant such a request, but that BNSF has in turn *not* submitted a description of a responsive application requesting trackage-rights access from the Board to either the Hillsboro Energy or the Macoupin Energy facility. CN, by contrast, is the only carrier that filed a description of a responsive application seeking trackage rights to serve these 2-to-1 facilities. CN views Foresight Energy as an important coal producer sourcing coal to both domestic and export markets to which CN has existing connectivity, and is willing and able to preserve competition by providing service to the Foresight Energy coal mine facilities instead. In that respect, CN would step in as a direct replacement for the competition that the Proposed Transaction would otherwise lose.

A. Coal Customers Need to Maintain Existing Competitive Rail Options

From my rail experience serving coal customers and operating bulk coal service, I understand the importance of two-carrier competition to coal shippers, especially the need to preserve such access for those mines that have it. When a facility has existing access to two Class I carriers, the shippers benefit in several ways. The presence of two carriers provides enhanced rate, market, and service optionality. Market optionality increases transportation rate competition, particularly when the facility can directly access either carrier, so service quality is maintained

[2] With respect to Macoupin Energy LLC, I understand that Foresight Energy's public website describes this facility as currently idled. *Id*.

[3] *See* UP-39/NS-37, FD 36873, Vol. 1 at 395 (filed Apr. 30, 2026) [hereinafter the "Amended Application" or "Am. Appl."]; UP-80/NS-78, FD 36873, at 58 (filed July 27, 2026) [hereinafter the "Second Supplemental Submission"].

under both options. The more optionality a facility has, the more negotiating leverage available to it across transportation, marketing, and end-market combinations. Two rail carriers give shippers, third-party marketers, and receivers a choice of options. That choice includes different routing options (whether direct or interline) that may reach different destination markets: domestic utilities or other domestic consumers in different regions, river transload terminals, and export facilities through the Gulf Coast or other ports. Competition between carriers encourages each to provide reliable rail service, including adequate locomotive supply, cycle times, and workable loading windows for unit-train operations from the mine to unloading at the destination. It also provides resilience—if one rail carrier experiences a service disruption or capacity constraint, the shipper and receiver are not wholly dependent on that carrier. In short, maintaining existing two-carrier access is a meaningful competitive benefit for both a coal mine and its customers (or destination markets). Its loss to a single rail carrier because of a merger would represent tangible harm to the coal mine and the shippers and receivers who rely on it.

Preserving competitive options for coal mines and their shippers is particularly important in the current environment. Demand for coal-fueled power generation has strengthened as electricity demand has grown, driven in large part by data centers. According to the National Coal Council's July 2026 report, *Maximizing the Value of the U.S. Coal Fleet*,[4] U.S. electricity demand has grown at over 1.6% per year since the end of the COVID-19 pandemic; the coal fleet's average capacity factor reached 50% in 2025, the highest in seven years; and coal retirements and conversions fell to 6.3 GW in 2025, the lowest level since 2013. U.S. Department of Energy orders and voluntary retirement delays have preserved more than 13 GW of coal capacity that otherwise

[4] *See* National Coal Council, *Maximizing the Value of the U.S. Coal Flee*t at 10–11, 24 (July 2026), https://nationalcoalcouncil.energy.gov/ncc/sites/default/files/studies/2026/NCC_Maximizing%20Value%20of%20US%20Coal%20Fleet.pdf (last visited Nov. 16, 2026).

would have closed. Accordingly, it is imperative that coal shippers and receivers maintain existing competitive rail options and supply-chain resilience so that market access can be preserved if a merger between rail carriers is approved, and risk can be spread across multiple options.

B. CN Is the Best Solution for Foresight Energy If the Merger Is Approved

CN already has an established relationship with Foresight Energy. CN has direct access to two other Foresight Energy mines, one served solely by CN and the other dual-served, and CN already handles a mine-to-mine movement of approximately 12 miles between Foresight Energy's Pond Creek and Sugar Camp operations. CN also currently moves coal from Foresight Energy's Pond Creek operations to the Gulf Coast. When Foresight Energy's Sugar Camp mine experienced a fire that reduced it to roughly half capacity, Foresight Energy had to source coal from its other mines to meet its customer demand, and CN performed a special move to keep coal flowing to customers in southern markets.

CN is well positioned geographically to serve the Foresight Energy coal mine facilities in Hillsboro and Carlinville. Illinois is CN's largest state in terms of operations and employees, with approximately 1,600 railroaders. CN's existing central Illinois lines provide a foundation for service. CN has the resources to support unit-train coal service at these facilities. CN has more than 2,300 locomotives across its U.S. and Canadian operations, and CN has made substantial investments to modernize its locomotive fleet. CN has the locomotives to help promote operating and cycle-time efficiencies for our bulk shippers.

A key advantage CN can offer coal customers at the Foresight Energy facilities is reliable service with competitive cycle times through single-line access and increased optionality with improved access to the export market. Via CN's Illinois Central main line, coal originating at Hillsboro or Carlinville could move in a single-line movement to Gulf export terminals, river

transload facilities, and utilities and other domestic consumers on the CN network. Export represents the most significant growth opportunity for Hillsboro coal. CN serves Convent Marine Terminal in Louisiana—a roughly 795-mile haul—and CN consistently executes the mine-to-port movement from other mines in approximately 96 hours. CN can also reach the McDuffie terminal in Mobile, Alabama. Convent Marine Terminal and the McDuffie terminal are the only two terminals in the Gulf Coast region that currently receive coal by rail, and CN is the only rail carrier with direct access to Convent Marine Terminal.

On the river, although CN could not serve the Cora terminal directly, CN can access other nearby river-based coal transload facilities, including the Calvert City, Grand Rivers, and Four Rivers Marine terminals in Kentucky. CN also can access Foresight Energy's {{

}} the Evansville Western Railroad. CN would thus both maintain Hillsboro's connectivity to its current customers and provide Gulf Coast optionality with competitive cycle times that Hillsboro does not have today.

Moreover, I understand that coal traffic from Hillsboro moves to several destinations, including {{

}} CN has direct rail access to {{ }} one of Hillsboro's principal current destinations, which I understand BNSF does not. NS currently serves the Hillsboro-to-{{ }} movement in single-line service, and under CN's proposed conditions CN could also serve {{ }} in single-line service. {{ }} integrated processing complex, currently reliant on thermal generation with coal as a primary feedstock, and a CN option would give {{ }} a competitive rail transportation alternative to the combined UP/NS from Hillsboro. {{ }}

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is reached through the Cedar Rapids & Iowa City Railway Company, a short line that connects with both UP and CN via reciprocal switching. Because that facility is supplied primarily with Powder River Basin coal, and CN does not have access to the Powder River Basin movements, I expect {{ }} to be a secondary opportunity for CN, dependent upon the customer's demand for Illinois Basin coal.

I also understand that ADM Decatur is an intended user of a low-carbon gas-fired power generation project, expected to come online by 2030.[5] Until then, Decatur will remain reliant on a consistent supply of coal for its power and steam generation requirements, and the Hillsboro mine is well positioned to continue to be a source of that supply. CN is a strong remedy carrier for such domestic coal consumption to power manufacturing. Although CN's coal business is not primarily oriented toward short-haul movements, CN has built a short-haul product and supports it well. CN knows this playbook and can execute it.

C. CN's Proposed Conditions Are the Most Efficient for Customers

CN has requested trackage rights, rather than haulage, as its preferred form of access for these unit trains of coal. Operating under trackage rights would give CN operational control over its coal service, including over unit-train scheduling, car positioning, and loading-window coordination with the mine. This operational control is important to provide reliable, competitive coal service. Under haulage, CN would be dependent on UP's operations for crews, train movements, and locomotives for these unit-train moves of coal, which would limit CN's ability to compete on service plan and quality, and as such would reduce the efficacy of a CN solution for Hillsboro, thus not maintaining a competitive alternative.

[5] *See* Broadwing Energy Center, https://www.broadwingenergy.com/ (last visited Nov. 17, 2026).

CN's conditions also are designed to preserve, not disrupt, existing coal service to other customers on the affected lines. In particular, I understand that the Labadie facility receives unit trains of Powder River Basin coal over UP's line between St. Louis, Missouri and Kansas City, Missouri ("Kansas City Line"), which CN would acquire in connection with its requested divestiture. Coal is by far the largest commodity terminating on the Kansas City Line, and Union Electric Company, which I understand operates the Labadie facility, is among the major customers on the line. If CN acquires the line, CN expects that UP and BNSF would continue to have the local trackage rights necessary to bring unit trains of coal to Labadie. Labadie therefore would not lose the single-line service options it has today. At the same time, CN's bulk team, which handles approximately 45 million short tons of coal in a typical year, is well equipped to support coal customers on the Kansas City Line should they seek additional or alternative service options.

III. CN'S CONDITIONS WOULD PROVIDE A COMPETITIVE OPTION FOR POTASH SHIPPERS AND RECEIVERS IN KANSAS CITY AND ST. LOUIS

The conditions requested in CN's responsive applications would also benefit potash shippers and receivers in the Kansas City and St. Louis areas. I understand that potassium and sodium compounds, which include potash, are among the commodities moving to Kansas City and St. Louis that raise significant competitive concerns because of the Proposed Transaction. Specifically, both UP and NS terminate potash in Kansas City and throughout the Midwest, and after the merger, potash customers will lose a key competitive alternative for sourcing potash. These competitive harms extend broadly to agricultural commodities. Farmers and agricultural shippers often cannot practically use alternative means of transporting bulk inputs and products moving hundreds of miles, which makes them especially vulnerable to any loss of competitive rail options.

A. Strength of CN's Existing Fertilizer Service Offering

CN is a leading transporter of potash in North America. CN serves major producers of potash in Canada, and CN's fertilizer services include shipping potash, as well as ammonium nitrate, urea, phosphate fertilizers, ammonium sulfate, and liquid fertilizers, across Canada and the United States. CN performs approximately {{ }} U.S. grain and fertilizer originations and terminations and serves more than {{ }} U.S. grain and fertilizer customers. The U.S. fertilizer segment of CN's business is driven primarily by fertilizer consumption in the Midwest. CN's unique access—which includes access to the Gulf Coast, the river system, Western Canadian production, and Eastern Canadian import facilities—means that fertilizer distributors on CN's network are backed by responsive, cost-competitive, and primarily single-line supply chains.

B. CN's Conditions Will Restore Competition for Potash and Fertilizer Customers

Potash from Canada destined for Kansas City or St. Louis represents one of the most significant opportunities for CN to provide a competitive alternative under its proposed conditions. Fertilizer demand is highly seasonal, with distribution concentrated in the spring and fall application periods, and a competitive rail option strengthens supply-chain resilience and protects supply during these critical demand periods. Potash is critical for corn yields, and Kansas City sits in the middle of corn-growing territory that requires substantial crop nutrients. The United States imports more than 90% of its potash needs, most of it from Canada.[6] Because the potash supplying North American agriculture is produced predominantly in Canada, carriers in the eastern United States are not geographically positioned to originate this traffic.

[6] *See* U.S. Geological Survey, *Mineral Commodity Summaries 2026: Potas*h at 1 (2026), https://pubs.usgs.gov/periodicals/mcs2026/mcs2026-potash.pdf (last visited Nov. 16, 2026).

CN's conditions would give potash and other fertilizer shippers and receivers in Kansas City and St. Louis an efficient, competitive rail option, supporting economical access to crop nutrients for American farmers. For customers in Kansas City and St. Louis, CN could deliver potash in single-line service. In addition, CN can remedy the loss of competition by interchanging potash with other railroads for delivery to destinations via the Kansas City gateway.

i. CN Would Provide a New Single-Line Class I Option into and Beyond Kansas City

CN's conditions will provide a new single-line alternative to Canadian Pacific Kansas City Railway Company ("CPKC"). Today, some potash moving on CN is interchanged with UP at Superior, Wisconsin. Under CN's proposed conditions, that traffic could instead move in CN single-line service all the way to Kansas City, eliminating the interchange and making service more efficient for customers, which is particularly important for customers using private cars to transport fertilizer. A more direct routing also means fewer crews and less fuel burned. CN shippers and receivers benefit from reduced transit times from northern origins in Canada to the U.S. Corn Belt because single-line service eliminates interchange dwell and handoffs between carriers.

CN would also gain access to existing local customers on the Kansas City Line, and CN is well situated to restore competition for these customers. Grain and fertilizer traffic is one of the largest categories of local traffic on the line. These customers include grain-products shippers such as A. Zerega's Sons, Inc., which ships flour products. CN's grain and fertilizer business, which serves more than {{ }} U.S. grain and fertilizer customers, is well positioned to provide these local shippers and receivers a competitive alternative and access to CN's single-line network reaching Canada, the Midwest, the river system, and the Gulf Coast.

Potash originating in Western Canada already moves on CN's rail network to the United States, and access to Kansas City would benefit agricultural customers by allowing CN to extend its length of haul and provide a direct-haul option into the Kansas City market at scale using unit trains—introducing a competitive alternative to CPKC. From Kansas City, potash could also move on to more distant destinations, such as Texas, via a connecting carrier and a competitive rate structure. CN also serves a number of nitrogen fertilizer plants in Iowa and could provide an additional competitive source of nitrogen supply to customers in the Kansas City catchment area.

ii. CN Would Offer St. Louis Customers a Shorter, More Competitive Route

CN's expanded access in St. Louis, including via the trackage rights over UP's line from Tuscola, Illinois to East St. Louis, Illinois ("Tuscola Line"), would similarly benefit fertilizer customers there. Key potash traffic for which CN's conditions would provide a new or improved competitive option originates in Saskatchewan and terminates in the St. Louis area, where much of it is loaded onto barges on the Mississippi River. Today, CN traffic destined for St. Louis over CN's network moves south via Du Quoin and then back north; the Tuscola Line trackage rights would save approximately 70 miles, making all fertilizer traffic moving from the north into St. Louis and East St. Louis more competitive, as CN has access to the principal potash receivers in the St. Louis area. CN transports potash from mines in Saskatchewan, including the following:

- Nutrien's mines: Rocanville (CN station Sylvite); Allan, Cory, Lanigan (CN station Alwinsal), Vanscoy, and Patience Lake (via CP interswitch); and
- Mosaic's mines: Esterhazy (CN station Yarbo), from which CN moves potash for Canpotex. CN also has access to reach Belle Plaine and Colonsay.

iii. The Competitive Opportunity Will Grow as the Potash Market Evolves

CN sees opportunities both to carry additional potash for producers it already serves, such as Nutrien, whose movements would benefit from the new route into Kansas City and the shorter route to St. Louis, and to compete for new traffic as producers' multi-year rail contracts come up for renewal. In addition, I understand that BHP is expected to enter the market in 2027 as a third major potash producer and will look to place potash across North America, giving CN further potential to provide new producers a competitive, direct route into the Kansas City and St. Louis markets.

IV. CN'S CONDITIONS WOULD PROVIDE A COMPETITIVE OPTION FOR SULFUR SHIPPERS AND RECEIVERS

The conditions requested in CN's responsive applications would also benefit shippers and receivers of sulfur and sulfur-based products. CN moves sulfur in tank cars, in both manifest and unit trains, for U.S. consumption.

CN is an established transporter of sulfur in North America. Sulfur is one of the bulk commodities for which my team is responsible, and CN has direct access to sulfur supply in Canada. The principal sulfur origins are in Alberta from oil upgrading and refining, as well as from natural gas production in Alberta and British Columbia. CN also has the closest access to the sulfur blocks in Fort McMurray, which were estimated in 2025 to hold approximately 11.4 million metric tons of sulfur.[7] CN also has access to sulfur production in Eastern Canada derived from oil refining. In 2025, CN moved over {460,000} metric tons of sulfur from Canada into the United States.

Demand for sulfur has grown, and shippers and consumers are increasingly focused on how sulfur can be moved efficiently. Sulfur is closely linked to the fertilizer supply chain I describe

[7] *See* Alberta Energy Regulator, https://www.aer.ca/data-and-performance-reports/statistical-reports/st39 (last visited Nov. 17, 2026).

above. Sulfur-based products, such as ammonium sulfate and sulfuric acid, are inputs to crop nutrient production. Sulfur is needed to produce phosphate fertilizers, which are needed for root and reproductive development in crops like corn and soybeans. Sulfur is turned into sulfuric acid, which is used to process phosphate rock into phosphate fertilizers. Sulfur is also referred to as the fourth nutrient, after nitrogen, phosphorus, and potassium. Sulfur is directly applied to high-yielding corn acreage to optimize nitrogen-use efficiency and to soybean plantings to support root nodulation and seed protein. Higher-sulfur-intensity crops like canola and alfalfa occupy less acreage but are still important rotational crops in the Midwest region.

CN's requested access to Kansas City and expanded access to St. Louis would benefit both producers and users of sulfur products in the supply chain. Sulfur producers on CN's network would gain an additional outlet, or offtake, for their product to reach markets to the south and west. And receivers in those markets would gain an additional competitive source of supply. Sulfur is required in the process of extracting critical minerals such as lithium. Through CN's access to the Kansas City interchange to western carriers, CN can deliver sulfur from Eastern Canada, bypassing the congested Chicago interchange to provide a more efficient and cost-effective routing to lithium producers in Nevada. Similarly, CN could handle molten sulfur moving from Saskatchewan to Phoenix, Arizona via an extended Kansas City gateway, giving those receivers an additional competitive routing to the Southwest.

As with fertilizer, a competitive rail option for sulfur strengthens supply-chain resilience and gives shippers and receivers greater optionality, allowing them to spread risk across multiple routings and sources of supply. In short, CN's conditions would give sulfur shippers and receivers an efficient, competitive rail option and new routing alternatives to Kansas City and St. Louis markets and beyond.

V. CONCLUSION

For the reasons set forth above, I respectfully submit that the conditions requested in CN's responsive applications in Sub-Nos. 2 through 9 and Sub-No. 34 are warranted and should be granted by the Board. The conditions requested in Sub-No. 9 relating to Hillsboro and Sub-No. 34 relating to Carlinville are necessary to preserve the two-carrier competition that the Proposed Transaction would otherwise eliminate for Foresight Energy—as Applicants themselves acknowledge—and CN, the only carrier seeking trackage rights to access these facilities, is the most effective remedy carrier capable of providing meaningful competitive service to these coal shippers. CN's requested access to Kansas City and expanded access to St. Louis in Sub-Nos. 2 through 8 would also provide potash and other fertilizer shippers and receivers, as well as sulfur shippers and receivers, with a meaningful competitive rail option, while preserving the options for UP and BNSF unit-train coal service to Labadie so that Labadie does not lose its current single-line options for Powder River Basin coal.

VERIFICATION

I, Sandra Ellis, declare under penalty of perjury under the laws of the United States that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on this 18th day of November, 2026.

/s/ Sandra Ellis
Sandra Ellis

Exhibit 7

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 36873

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UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

-- CONTROL --

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

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(SUB-NO. 2) ILLINOIS CENTRAL RAILROAD COMPANY – DIVESTITURE – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN ST. LOUIS, MO. AND KANSAS CITY, MO.

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(SUB-NO. 3) ILLINOIS CENTRAL RAILROAD COMPANY – TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN ST. LOUIS, MO. AND KANSAS CITY, MO.

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(SUB-NO. 4) ILLINOIS CENTRAL RAILROAD COMPANY – OVERHEAD TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN LYDIA AVENUE AND BROADWAY BOULEVARD IN KANSAS CITY, MO.

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(SUB-NO. 10) IOWA NORTHERN RAILWAY COMPANY AND CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY – TRACKAGE RIGHTS – LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN MANLY / IOWA FALLS, IOWA AND DES MOINES / AVON, IOWA

VERIFIED STATEMENT OF KELLY LEVIS

My name is Kelly Levis. I am the Vice President, Industrial Products of Canadian National Railway Company ("CNR"), a role I assumed in October 2018. In my current role, I lead CN's industrial products division in Sales & Marketing for the U.S. and Canada. Within CN, Industrial Products oversees the forest products and metals and minerals markets. I am responsible for CN's marketing and sales activities for industrial products, including steel and other primary metals, aluminum, iron ore, base metal ores and concentrates, scrap, frac sand, construction materials and other minerals, and forest products. Before assuming my current role, I served as Assistant Vice President, Industrial Products from July 2015. I began my career at CN in 1997 as a commodity manager in CN's Petroleum and Chemicals business unit and moved into Sales in January 2000. I subsequently served as Director of Sales and Pricing for CN WorldWide Inc., CN's international freight forwarding subsidiary, Director of Supply Chain, and Director Sales U.S. I hold an MBA from the University of Chicago and a Bachelor of Commerce with a Major in Statistics & Decision Sciences from Concordia University in Montreal.

Given my current role and experience, I am very familiar with metals and minerals traffic flows, including steel, both within North America and globally, and with CN's metals and minerals customers. I submit this Verified Statement on behalf of CN in support of its Comment and

responsive applications in STB Docket No. FD 36873. The purpose of my statement is to explain, from the perspective of CN's metals and minerals business and in particular its steel customers, why the conditions set forth in the responsive applications and in the Memorandum of Understanding between CN and Union Pacific ("Settlement MOU") are necessary to preserve competition for steel and other metals shippers in the regions affected by the Proposed Transaction.

I. CN IS A LEADING CARRIER OF METALS AND MINERALS IN NORTH AMERICA

CN moves a large and diverse metals and minerals portfolio. That portfolio includes steel and other ferrous products, non-ferrous metals such as aluminum, iron ore, base metal ores and concentrates such as copper and zinc concentrate, lithium, cement and construction aggregates, frac sand, and dimensional and oversized loads such as heavy machinery and transformers. Metals and minerals now make up a larger share of CN's industrial products business than forest products. CN performed customer originations or terminations of approximately {{ }} metals and minerals carloads across {{ }} customers in 2025.

Year	**Carloads**	**Revenue (incl FSC)**
2025	{{ }}	{{ }}
2026 (YEO)	{{ }}	{{ }}
2027 (Forecast)	{{ }}	{{ }}

CN is one of the top movers of aluminum, iron ore, and base metal ore in North America. CN serves 10 aluminum smelters, more than any other railroad in North America, and is the only Class I railroad that serves all of the aluminum smelters in Canada. CN is also one of the top transporters of iron ore, serving four docks in Duluth, Minnesota; Two Harbors, Minnesota; and Conneaut, Ohio and moving iron ore by both rail and vessel over the Great Lakes to Conneaut, Ohio, for delivery in Pittsburgh, Pennsylvania, and Gary, Indiana. CN serves metals distribution centers in Detroit, Michigan; Chicago, Illinois; Memphis, Tennessee; and Mobile, Alabama.

CN's steel business moves in both directions across the border. CN carries ferrous products from the United States into Canada, as well as steel and other metals from Canada into the United States. Non-ferrous metals from Canada typically move south through {Toledo and Chicago}. CN's primary steel origins in Canada are in Quebec and Ontario. U.S. primary origins are centered around Indiana, Mississippi, Illinois, and Arkansas. In recent years, Canadian-produced steel has been moving primarily within Canada based on current trade policy, with main destinations located within Quebec and Ontario, as well as western Canada. U.S.-produced steel remains within the U.S. with main destinations being Mississippi, Wisconsin, Illinois, and Texas. While these flows have shifted in recent years, some cross-border moves continue, and supply chains could adjust in the future as trade policy evolves. CN's main scrap recyclers are located in Quebec and Ontario within Canada and Michigan, Ohio, Wisconsin, and Illinois in the U.S.

CN has the equipment to serve steel customers. CN's fleet ranges from covered and open coil gondolas to bulkhead flatcars that can carry loads of up to 110 tons. And as some metals move in boxcars or centerbeams, CN also has a large boxcar fleet and the largest supply of centerbeam cars in North America. CN maintains strong relationships with car builders and lessors, and cars are readily available if customers need to ramp up. CN's fleet of railcars consists of {400} flatcars and {3,000} gondolas. {Half} of CN's flatcar fleet is leased or in a TTX pool, while {two-thirds} of CN's gondola fleet is leased. CN's leases remain staggered throughout the coming years, allowing CN to scale up or down. CN recently took on a new lease for gondolas in response to increased demand.

CN also operates a large network of transload facilities, which allows CN to reach steel and metals customers that are not directly rail-served. This includes a transload facility that opened in May 2024 in Flat Rock, Michigan, for numerous steel shippers, which moves steel coils via rail

instead of by truck to serve the southeast Michigan automotive market. As of August 2025, the facility had handled more than {{ }} steel shipments per year since opening. That facility has capacity for steel, iron ore, and other dry-bulk commodities.

II. CN'S CONDITIONS WILL PRESERVE COMPETITIVE OPTIONS FOR STEEL CUSTOMERS

UP and NS both access steel and metals customers in the St. Louis area, and their networks directly overlap between Kansas City and St. Louis. Accordingly, the Proposed Transaction would reduce Class I options at specific steel and metals facilities. These include U.S. Steel Granite City Works in Granite City, Illinois, as well as several metals recyclers in Illinois, including Milano Metals & Recycling and Shapiro Bros. of Illinois in Mt. Vernon, and Mighty River Recycling and Azcon in Federal/Alton. In Des Moines, Iowa, numerous customers, including metals customers, would see their Class I options reduced from three to two or from two to one, including Alter Trading Corp./Alter Metal Recycling. Per the terms of the Settlement MOU, CN is the preferred remedy carrier for all affected 2-to-1 and 3-to-2 locations, absent a customer preference to the contrary.[1]

CN already has a long-standing relationship with U.S. Steel, moving iron ore as well as outbound steel, and CN sees potential synergies at USS Granite City Works that will preserve competition that would otherwise be lost if the Proposed Transaction is approved. USS Granite City Works is a 3-to-2 customer in Granite City, Illinois. Applicants have acknowledged this customer's 3-to-2 status and proposed that the Board condition the Proposed Transaction on CN

[1]UP-80/NS-78, FD 36873, at 203-04 (filed July 27, 2026) [hereinafter the "Second Supplemental Submission"]. CN is seeking access to Des Moines via trackage rights between Manly/Iowa Falls and Des Moines, Iowa (Sub-No. 10). For other 2-to-1 and 3-to-2 customers in Illinois, CN is seeking access via haulage, except for Foresight's coal mines, for which CN is seeking trackage rights access (Sub-Nos. 9 and 34).

being granted access to USS Granite City Works.[2] CN and Union Pacific agree that the preferred remedy for this customer facility is that the facility should be opened to switching for CN in St. Louis. Indeed, CN's expanded St. Louis access via the Tuscola Line, The Alton & Southern Railway Company ("A&S"), and the Terminal Railroad Association of St. Louis ("TRRA") would enhance its ability to reach this facility. CN has the ability to access USS Granite City Works via a switch from the TRRA at East St. Louis, Illinois, which means CN would not be dependent on UP to effectuate the proposed remedy. This location is the largest U.S. Steel location for steel loads moving with CN ({{ }} loads per year), followed by steel shipments out of Leipsic, Ohio ({{ }} loads per year). The vast majority of U.S. Steel shipments CN handles on rail are iron ore and aggregate moves into its Minnesota and Pittsburgh, Pennsylvania facilities ({{ }} loads per year). CN's Bessemer & Lake Erie subsidiary predominantly moves iron ore shipments from vessels unloaded at Conneaut, Ohio, to Pittsburgh, Pennsylvania. For the smaller metals recyclers, CN can bring its fleet and its transload network to bear. CN's fleet is ready to win new loads immediately.

The requested trackage rights over the Tuscola Line (Sub-No. 7), together with rights over the A&S (Sub-No. 8) to connect to the TRRA, would give CN a direct route from its central Illinois lines into the St. Louis gateway. Today, CN trains from the north move south past East St. Louis to Du Quoin, Illinois, and then double back. CN's trackage rights over the Tuscola Line will make it a stronger competitor in the East St. Louis and St. Louis markets and will reduce transit time for CN's customers, including USS Granite City Works, by shortening the route by approximately 70 miles.

[2] Second Supplemental Submission at 61.

CN's proposed conditions, including divestiture of the Kansas City Line (Sub-No. 2), lease or purchase of Neff Yard (Sub-No. 6), trackage rights in Kansas City (Sub-No. 4), and terminal trackage rights (Sub-No. 5) near Kansas City, will enable CN to interchange with other carriers and access customers via reciprocal switching to allow CN to carry steel and other metals and minerals traffic farther on its own network to extend its length of haul to benefit CN's customers. Today, CN interchanges much of its traffic to NS or UP at Chicago or Superior. Chicago and Superior are key interchange locations between CN and UP for all metals and minerals traffic; the traffic in Chicago moves to and from California, New Mexico, Kansas, Georgia, and Texas, and the traffic through Superior goes to and from Texas and Wisconsin. With NS, the key interchange is in Chicago, where the traffic goes to and from Ohio, Pennsylvania, Georgia, Indiana, and Mississippi. As a new entrant to the Kansas City markets and gateway, CN is seeking access to those customers in Kansas City in UP's and NS's reciprocal switching tariffs that are open so that those customers do not lose a Class I option if the Proposed Transaction is approved and so CN can build density to and from Kansas City. Phoenix Metals is open to reciprocal switching in UP's tariff and processes steel coils, sheets, and plate for industrial consumers.[3] I understand that CN's economic expert estimates that CN's proposed conditions would result in the diversion of approximately {{ }} units of steel products to CN, primarily on lanes between Chicago and Kansas City or St. Louis, where CN can offer new or improved single-line service.[4]

Access to Kansas City would give CN another gateway for metals and minerals moving south and west, and an alternative to the congested Chicago interchange. This matters for emerging supply chains. Canada is rich in the critical minerals used in defense applications, the electrical

[3] *See Services*, Phoenix Metals, https://www.phoenixmetals.com/services/ (last visited Nov. 17, 2026).

[4] *See* Exhibit 12B, Verified Statement of Dr. Henry Kahwaty at ¶ 153.

grid, automobiles, computer chips and electronics, and in electric vehicle batteries, including lithium, copper, nickel, zinc, and cobalt, and new mineral-rich mines in Canada are expected to come online in the next few years. All stages of these supply chains, from raw material extraction to aluminum and steel, must develop together. Competitive single-line and gateway options will help U.S. manufacturers access those raw material inputs.

CN's divestiture of the Kansas City Line (Sub-No. 2) will also allow CN to serve and restore competition for numerous metals and minerals customers located on that line.[5] CN plans to serve these local customers, and its existing metals and minerals fleet, sales relationships, and transload network position it well to compete for this traffic. These customers include Nucor Steel Sedalia LLC in Sedalia, which ships rebar, and U.S. Silica Co. in Pacific, Missouri, which ships industrial sand. CN looks forward to offering these and other metals and minerals shippers on the Kansas City Line competitive single-line service and gateway options. And these customers will not lose options from CN's acquisition. As Janet Drysdale explains, UP will retain access to the local customers via local haulage performed by CN.[6]

Finally, under the Settlement MOU, CN has agreed to purchase NS's shares in the Kansas City Terminal Railway Company ("KCT"), which will give CN access to the KCT customers via reciprocal switching, with first-mile and last-mile service performed by Watco's Kaw River Railroad ("KAW"). According to Watco's website for KAW, its primary commodity groups

[5] In the alternative to CN's divestiture of the Kansas City Line (Sub-No. 2), CN proposes trackage rights (including access to the former Sarpy Yard property and overhead haulage) plus local haulage in Sub-No. 3. If the Board imposed such a condition, CN would have commercial access to local customers on the Kansas City Line through local haulage performed by UP under the Settlement MOU. Second Supplemental Submission at 204–05.

[6] *See* Exhibit 12H, Verified Statement of Janet Drysdale at 16 [hereinafter "Drysdale V.S."]. In addition to retaining access to local customers on the Kansas City Line via haulage CN performs, UP will retain overhead trackage rights for trains to move between Kansas City and St. Louis and local trackage rights to reach Union Electric at Labadie. *Id.*

include scrap metal and industrial products.[7] KCT's customers open to reciprocal switching include Advantage Metals Recycling and Midwest Scrap Management.[8]

III. CONCLUSION

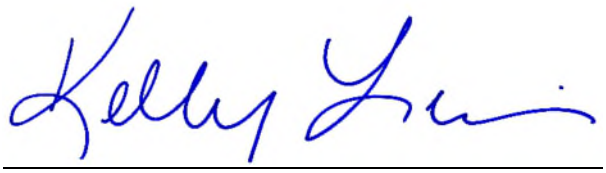
For the foregoing reasons, the conditions set forth in CN's responsive applications are necessary and appropriate to preserve competitive rail options for steel and other metals shippers that would otherwise be harmed by the Proposed Transaction. They will also allow CN to enter the Kansas City markets and gateways as an effective competitor for metals and minerals traffic, expand CN's existing access in East St. Louis / St. Louis, and serve the metals and minerals customers located on the Kansas City Line.

[7] *See Kaw River Railroad (KAW)*, Watco, https://www.watco.com/service/rail/kaw-river-railroad-kaw/ (last visited Nov. 17, 2026).

[8] *See* Kansas City Transportation Company, LLC, Local Switching and Terminal Tariff KCTL 8036-A (effective Feb. 1, 2026), *available at* https://kctrailway.com/wp-content/uploads/2025/12/KCTL-Tariff-8036-A-12.11.2025-clean.pdf (last visited Nov. 17, 2026).

VERIFICATION

I, Kelly Levis, declare under penalty of perjury under the laws of the United States that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on this 18th day of November, 2026.



Kelly Levis

Exhibit 8

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

-- CONTROL --

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

(SUB-NO. 2) ILLINOIS CENTRAL RAILROAD COMPANY—DIVESTITURE—LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN ST. LOUIS, MO. AND KANSAS CITY, MO.

(SUB-NO. 3) ILLINOIS CENTRAL RAILROAD COMPANY—TRACKAGE RIGHTS—LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN ST. LOUIS, MO. AND KANSAS CITY, MO.

(SUB-NO. 4) ILLINOIS CENTRAL RAILROAD COMPANY—OVERHEAD TRACKAGE RIGHTS—LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN LYDIA AVENUE AND BROADWAY BOULEVARD IN KANSAS CITY, MO.

(SUB-NO. 5) ILLINOIS CENTRAL RAILROAD COMPANY—TERMINAL TRACKAGE RIGHTS—OVER LINE OF BNSF RAILWAY COMPANY BETWEEN ETON, MO. AND CONGO, MO.

(SUB-NO. 6) ILLINOIS CENTRAL RAILROAD COMPANY—LEASE AND PURCHASE—UNION PACIFIC RAILROAD COMPANY NEFF YARD IN KANSAS CITY, MO.

(SUB-NO. 7) ILLINOIS CENTRAL RAILROAD COMPANY—OVERHEAD TRACKAGE RIGHTS—LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN TUSCOLA, ILL. AND EAST ST. LOUIS, ILL.

(SUB-NO. 8) ILLINOIS CENTRAL RAILROAD COMPANY—OVERHEAD TRACKAGE RIGHTS—OVER LINE OF THE ALTON & SOUTHERN RAILWAY COMPANY BETWEEN MITCHELL, ILL. AND EAST ST. LOUIS, ILL.

(SUB-NO. 9) ILLINOIS CENTRAL RAILROAD COMPANY—LOCAL TRACKAGE RIGHTS—LINE OF UNION PACIFIC RAILROAD COMPANY TO SERVE HILLSBORO, ILL.

(SUB-NO. 10) IOWA NORTHERN RAILWAY COMPANY AND CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY—TRACKAGE RIGHTS—LINE OF UNION PACIFIC RAILROAD COMPANY BETWEEN MANLY/IOWA FALLS, IOWA AND DES MOINES/AVON, IOWA

(SUB-NO. 34) ILLINOIS CENTRAL RAILROAD COMPANY—LOCAL TRACKAGE RIGHTS—LINE OF UNION PACIFIC RAILROAD COMPANY TO SERVE CARLINVILLE, ILL.

VERIFIED STATEMENT OF JANET DRYSDALE

My name is Janet Drysdale. I currently serve as Executive Vice President and Chief Commercial Officer for Canadian National Railway Company ("CNR"), a role I assumed on an interim basis in July 2025 and on a permanent basis in October 2025. I have been with CN for over 30 years. I spent the first decade of my career at CN in commercial roles before moving to other positions within the company, and I have now returned to lead the commercial function. I hold a Bachelor of Science from Queen's University (Ontario, Canada) and a Master of Business Administration from McGill University (Quebec, Canada).

In my role, I am accountable for CN's full commercial team, which is organized by commodity lines. Four Vice Presidents report to me, as does CN's Canadian trucking subsidiary.

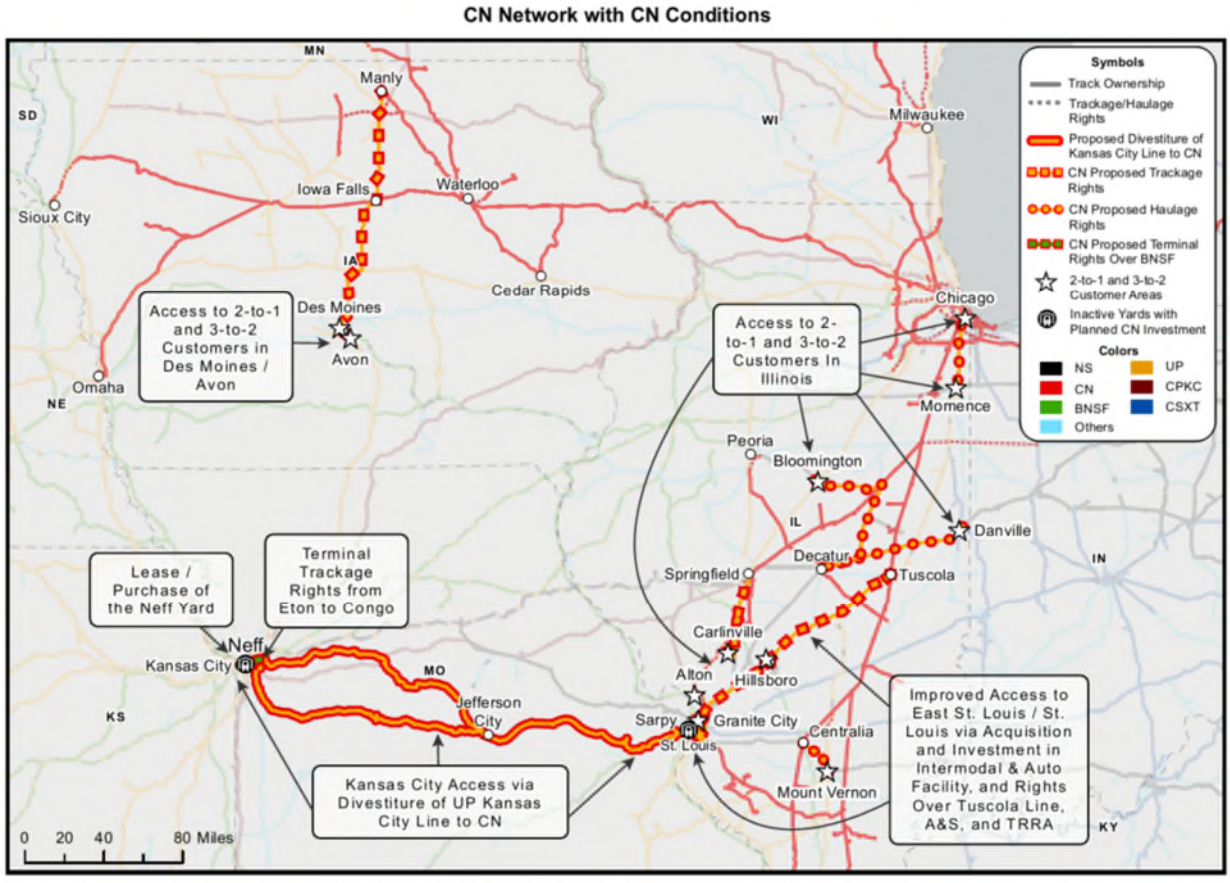
I meet formally with each of these business leaders approximately every two weeks. All large customer contracts, as well as all exceptions to standard contract terms (e.g., credit terms), come to me for approval. My role is to enable CN's commercial team to grow our volumes faster than the economy. We work together with our colleagues in Operations to provide the service that our customers need, recognizing that when our customers win in their marketplace, we win. My team is competing hard for every opportunity, no matter the size, to sell CN's available capacity. At CN, every carload counts—and when I say carload, I include intermodal units. I have challenged my team to have urgency, agility, and intensity in competing for business, including by improving the ease of doing business with CN. Over the last year, this approach has been yielding results: my team has pivoted quickly as supply chains have shifted in response to global macroeconomic and geopolitical trends, and our increased agility has enabled CN to help our customers establish new supply chains, and to capitalize on spot-market opportunities as they arise.

Given my current role and experience, I am knowledgeable about CN's network, its supply chain offerings across business segments, and its major customers. I submit this Verified Statement on behalf of CN in support of its Comment on the Amended Application & Requests for Conditions ("Comment") and its responsive applications in Surface Transportation Board ("Board") Docket No. FD 36873, in which Union Pacific Corporation and Union Pacific Railroad Company seek to acquire control of Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "Applicants") (the "Proposed Transaction").[1] The purpose of my statement is to explain, from the perspective of CN's overall supply chain business and its customers, why the

[1] For the purposes of this statement, certain other terms are defined as follows: Union Pacific Railroad Company ("UP"); Union Pacific Corporation and UP (together, "Union Pacific"); Norfolk Southern Railway Company ("NS"); and Norfolk Southern Corporation and NS (together, "Norfolk Southern").

conditions set forth in the responsive applications and in the binding Memorandum of Understanding that CN entered into with UP on July 22, 2026 (the "Settlement MOU") designating CN as UP's preferred remedy carrier are necessary to preserve competition and supply chain resiliency in the regions affected by the Proposed Transaction. As described in detail below, without these conditions the Proposed Transaction would reduce the competitive Class I railroad options available to shippers in the Kansas City–St. Louis corridor and at 2-to-1 and 3-to-2 customer facilities in Illinois and Iowa, including in and around Des Moines and Avon, Iowa, and Hillsboro and other parts of Illinois, to the detriment of those shippers and the public interest.

Figure 1: Map of CN's Conditions



Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database.

I. CN'S NETWORK AND SUPPLY CHAIN OFFERINGS PROVIDE CUSTOMERS WITH COMPETITIVE OPTIONS

CN operates an approximately 18,600-mile rail network, including approximately 5,400 route miles in the United States spanning 16 states, connecting the U.S. Midwest and U.S. Gulf Coast with Canada's Eastern and Western coasts. CN serves seven major ports on three coasts. In the United States, CN handles approximately 2.53 million total originations and terminations, including approximately {{ }} intermodal, {{ }} grain and fertilizer, and {{ }} automotive originations and terminations. Illinois is CN's largest state in terms of operations and employees, with approximately 1,600 railroaders. CN's U.S. headquarters, training center, and mechanical hub are in Homewood, Illinois, and CN owns and has invested in the former Elgin, Joliet & Eastern Railway bypass loop, the fastest rail route around Chicago. In Iowa, CN's operations support approximately 730 jobs and add $133 million to Iowa's GDP, and CN has invested approximately $295 million in the state over the past decade. CN has more than 2,300 locomotives across its U.S. and Canadian operations.

A. CN's Commodity Expertise Is Unrivaled

CN brings commodity expertise and services at scale across its supply chains. In intermodal, CN operates 23 intermodal terminals in North America, including 10 in the United States, runs more than {{ }} weekly scheduled intermodal trains, serves {{ }} U.S. intermodal customers, has daily access to approximately 1,050 trucks for first- and final-mile service, and has been a full member since 2022 of the Equipment Management Pool, a partnership that includes UP and NS, with a supply of approximately 40,000 containers.

In automotive, CN handles over 2 million finished vehicles annually; serves 11 vehicle assembly plants and 18 automotive facilities, including distribution centers in Detroit, Chicago, Markham, New Richmond, Memphis, and Jackson; has direct access to six ports handling

automotive parts or vehicles; and has over 5,000 multilevel railcars. CN's Auto Desk manages ocean, rail, truck, transload, and customs services for automotive customers, and CN's automotive port facilities provide value-added services such as installing floor mats and owner's manuals in vehicles.

In grain and fertilizer, CN serves more than {{ }} U.S. grain and fertilizer customers, performs originations or terminations of grain and processed grain products for approximately {{ }} U.S. customers, and makes available approximately 1,500 hopper cars to U.S. customers. In coal, CN moves an average of approximately {{ }} million short tons every year, performed originations or terminations of coal, petroleum coke, and metallurgical coke for approximately {{ }} carloads across {{ }} U.S. customers in 2025, and has direct access to 11 active or idled mines, 7 petroleum coke-producing facilities, and 6 high-capacity export terminals.

In metals and minerals, CN performed originations or terminations of approximately {{ }} carloads across {{ }} customers in 2025, serves 10 aluminum smelters, more than any other railroad in North America, and is one of the top transporters of iron ore, the foundational raw material for integrated steel mills.

CN also serves three major petrochemical centers in North America and operates 20 CargoFlo® distribution facilities for liquid transfer and bagging of bulk commodities (e.g., plastic pellets).

Beyond rail, CN offers end-to-end supply chain services, including its CargoCool® temperature-controlled program, which operates one of North America's largest refrigerated container fleets; a dedicated customer service team that performs booking and billing on behalf of customers; and a digital framework that allows customers to self-serve. CN also fields specialized teams for perishables, specialty crops, automotive capacity, and expedited service, and works with

port operators and customs brokers to drive connectivity. CN works to build a balanced book of loaded and empty flows so that empty equipment is available where customers need it, particularly in automotive, where CN participates in industry-shared equipment pools. CN's solution-oriented approach and deep expertise with temperature-controlled freight support customers such as Cedar Grove Warehouse in shipping Wisconsin cheese and butter to destinations across North America.[2]

These incremental services make CN a supply chain solution rather than just a transportation provider, helping to build deep and lasting customer relationships. CN's commercial team works hand in hand with its operating team, because CN cannot sell sustainable growth without providing sustainable service. CN also stays close to its customers, conducting a customer survey twice a year, because good service is what keeps business on the network.

B. CN Invests for Customers and Responds When Supply Chains Are Disrupted

CN has a track record of investing to expand and of successfully integrating new operations. CN invested over $20 million to open an automotive and intermodal terminal in New Richmond, Wisconsin, in 2021, opened an automotive facility in {{

}}. CN is also adding intermodal capacity for resilience and pursuing development of a 900-acre Chicagoland Logistics Hub in Grundy County, Illinois. Following its acquisition of the Iowa Northern Railway Company ("Iowa Northern"), CN has improved transit times between Manly and Cedar Rapids, Iowa from approximately 36–48 hours to 16 hours, replaced lower-horsepower locomotives with CN high-horsepower locomotives, hired additional train and engine employees

[2] *See From America's Dairyland to Markets Across North America: How CN's Freight Expertise Helps Cedar Grove Warehouse Ship Wisconsin Cheese and Butter with Care*, CN (June 18, 2026), https://www.cn.ca/en/stories/sm-20260618-from-america-dairyland-to-markets-north-america/ (last visited Nov. 17, 2026).

so that it can offer a full extra board, and increased grain-related traffic moving by rail from the legacy Iowa Northern network, including through investments in CN's legacy lines in Iowa. Customers had been well served by Iowa Northern as a short line for many years, so CN focused on preserving those relationships by communicating transparently and discussing and enabling commercial growth opportunities with customers. That experience demonstrates that CN can integrate new operations well and extend its reach in a new geography to give customers access to CN's broader network and meet their supply chain needs.

CN has also developed new interline products by working with other railroads. Those include a product with CSX Transportation, Inc. ("CSXT") into the Ohio Valley and its Falcon Premium service with UP and Grupo México Transportes/Ferromex, which provides seamless access across the United States, Mexico, and Canada. CN also reaches New York/New Jersey and Philadelphia through its interline service with CSXT and has agreements with seven port authorities and 15 ocean terminal operators, including at New Orleans, Louisiana and Mobile, Alabama.

CN also has strong experience in transloading across different commodity types. CN offers transload services for its customers shipping grain and grain products at its rail-to-container Harvey Grain Facility in the Chicagoland area.[3] CN worked with Target Steel to open a new transload for steel coils in Flat Rock, Michigan, with coils arriving by rail and transloaded to trucks for final delivery.[4] CN worked with Battle Lumber to establish two transloads in Wisconsin to

[3] *See CN Harvey Grain Facility: Expanding Capacity, Enhancing Safety, and Opening New Markets for US Grain*, CN (Oct. 10, 2025), https://www.cn.ca/en/stories/sm-20251010-cn-harvey-grain-facility/ (last visited Nov. 17, 2026).

[4] *See From Demand to Delivery: How Flat Rock Strengthens CN's Transload Network: Purpose-Built, Customer-Driven, Supply Chain Ready*, CN (Aug. 25, 2025), https://www.cn.ca/en/stories/20250825-flat-rock-strengthens-cn-transload-network/ (last visited Nov. 17, 2026).

meet demand for raw materials for investments in energy, manufacturing, and technology. CN and Battle Lumber developed a rail-to-truck transload using an existing rail site in Duplainville, Wisconsin and then established a second transload location in Fond du Lac on a former rail yard site, extending service approximately 100 miles farther in the state.[5] Battle Lumber moves lumber to CN via interchange from its sawmill in Wadley, Georgia and additional shipments from the Natchez Railroad. And CN's network also enables customers to reach transload locations on connecting short lines, such as the export facility Ray-Mont Logistics is constructing on Alabama Export Railroad property at the Port of Mobile.[6] Upon opening, the facility will increase export of plastic resins and other goods moving through the port.

In addition, CN is a go-to carrier when supply chains are disrupted. For example, in 2021, in response to congestion and vessel-unloading delays at U.S. West Coast ports, CN offered a new priority train service between the Port of Prince Rupert and Chicago, which expedited consumer products and helped relieve congestion at the ports of Los Angeles and Long Beach. During the Ambassador Bridge blockade in February 2022, when protests halted traffic on the busiest U.S.–Canada border crossing, CN set up cross-border transload service for an automaker within 96 hours. When the war in Ukraine began in 2022, CN served as a critical logistics conduit for increased exports through the U.S. Gulf for U.S. grain, while also handling increased shipments of iron ore originating in Minnesota, crude oil terminating in the Gulf, and coal originating from the Illinois Basin. In 2022, when the Board identified four U.S. Class I railroads with service

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[5] *See The Materials, Network and Partnerships Behind Energy Development*, CN (Sept. 28, 2026), https://www.cn.ca/en/stories/sm-20260928-cn-and-battle-lumber-transload-solution/ (last visited Nov. 17, 2026).

[6] *See Ray-Mont Logistics Building New Export Facility at Port of Mobile*, Alabama Port Authority (June 9, 2026), https://alports.com/news/ray-mont-logistics-building-new-export-facility-at-port-of-mobile/ (last visited Nov. 17, 2026).

issues, CN was not among them.[7] CN's extensive rail network also allows CN to help customers move goods to and from the Gulf Coast when low water levels disrupt barge traffic on the Mississippi River. CN's grounded intermodal terminals avoided the chassis shortages that congested other networks, and CN's grain team recently pivoted quickly to supply soybeans to Midwest processors. And CN worked with the Grenada Railroad in 2023 to establish a reroute agreement when Grenada's bridge went out of service to ensure there was no interruption in service for customers or interchange.

II. WITHOUT CN'S CONDITIONS, THE PROPOSED TRANSACTION WOULD REDUCE COMPETITIVE OPTIONS AND SUPPLY CHAIN RESILIENCY IN KANSAS CITY AND ST. LOUIS

The networks of UP and NS overlap between Kansas City and St. Louis, where Applicants' networks run four parallel lines across Missouri, including three between St. Louis and Kansas City, and Applicants themselves have acknowledged that this overlap requires a remedy. That overlap is not a "small piece" of an otherwise end-to-end transaction: The Proposed Transaction's competitive effects in Kansas City and St. Louis / East St. Louis would affect traffic moving to, from, and through these critical gateways, across the very commodities—intermodal, automotive, and bulk—that predominate in those gateways.

Intermodal and automotive traffic, together with motor vehicle parts, are among the most affected commodities, and grain, potash, and steel shippers in those markets would also lose an independent Class I option. Customers have experienced significant supply chain volatility and are diversifying their supply chains to reduce exposure, moving from "just-in-time" toward "just-in-case" supply chain management. Since the COVID-19 pandemic, disruptions affecting the Suez Canal and the Strait of Hormuz, fuel costs, labor shortages, and weather events have driven this

[7] *See Urgent Issues in Freight Rail Serv.*, EP 770, slip op. at 3 & n.3 (STB served Apr. 7, 2022).

shift. Supply chains are more resilient when customers have more operators and more geography to choose from, and CN is adding capacity in response to this demand. Kansas City and St. Louis also serve as "valves" for the North American network as alternatives to Chicago congestion, as shown in the summer of 2021, when two Class I railroads embargoed Chicago intermodal yards. NS has also previously embargoed its Voltz and Wentzville automotive facilities for congestion. Losing a Class I option at these gateways would remove that backup during disruptions.

A. The Proposed Transaction Would Eliminate an Independent Class I Option in the Corridor

If the Proposed Transaction were approved without CN's proposed conditions, the combined UP/NS would have no incentive to invest in or utilize UP's line between Neff Yard in Kansas City, Missouri and Twelfth Street in St. Louis, Missouri (the "Kansas City Line") in a manner that would compete with its other routes between Kansas City and St. Louis. Railroads do not invest capital without traffic density; the merged carrier would have no reason to commit capital to the Kansas City Line, and over time the line would deteriorate, ultimately harming the local and overhead customers who depend on it. Simply maintaining existing track assets matters to future resiliency, and having the Kansas City Line in the hands of a carrier committed to investing in it adds exactly the type of option customers need to withstand disruptions. The combined UP/NS could also use its market concentration across a vast geography to take business from lanes that remain competitive, for example by pricing low on certain lanes or by offering bundled discounts conditioned on a customer giving UP/NS business in other lanes. That harm would reach a broader set of customers than those at 2-to-1 and 3-to-2 facilities.

Today, CN reaches Kansas City only through interline partners, including UP, NS, and BNSF Railway Company ("BNSF"). A combined UP/NS would reduce the number of independent partners available to CN for Kansas City traffic, and without the Kansas City remedy, CN and its

customers would lose routing optionality into and out of that market. Unlike Canada, where regulated interswitching provides a remedy, the United States has no comparable regulatory solution. The solution, then, is robust competition among railroads.

B. Divestiture of the Kansas City Line Is the Most Effective Remedy

The best way to preserve competition is through the divestiture to CN of the Kansas City Line, including the former Sarpy Yard property. CN is the only railroad willing to acquire 100% of the Kansas City Line. Complete divestiture is clean, certain, and effective and avoids ongoing dependence on the merged UP/NS. Line ownership is the most important tool for control: ownership would give CN control over investment, maintenance, dispatching, and capital planning, so that CN can ensure the line is maintained and provide competitive service for its manifest, intermodal, and automotive customers in Kansas City and St. Louis. Divestiture is also a remedy the parties anticipated: the UP–NS Merger Agreement specifically accounts for the possibility that the Board may condition the Proposed Transaction on divestiture of a line between Kansas City and St. Louis, and the Settlement MOU provides that if the Board orders divestiture of the Kansas City Line, CN shall have the right of first refusal to acquire it. Proposals that would leave UP with an ownership interest in the line would continue the entanglement and require ongoing oversight. If the Board believes it is necessary to provide an additional Class I carrier beyond CN access to Kansas City to preserve competition, CN is willing to jointly acquire the Kansas City Line with another Class I carrier, so long as CN obtains at least 50% ownership, and no ownership stake remains with the merged UP/NS. Divestiture would extend CN's direct market reach into Kansas City, an important market for automotive, intermodal, grain, fertilizer, and other commodities, and Kansas City would in turn serve as a gateway to other origins, destinations, and markets and strengthen CN's east–west capabilities in the United States, similar to what CN has done in Iowa.

Without divestiture, CN's ability to compete would depend on UP/NS providing dispatching, maintenance, and investment, and on negotiating haulage and trackage rates and service guarantees with the merged UP/NS, which is CN's direct rival. Under haulage or trackage rights alone, the merged UP/NS could degrade CN's service or prioritize its own trains, self-preference at St. Louis or Kansas City, short-haul CN on traffic such as automotive traffic from Detroit to Kansas City and beyond, or set haulage or trackage rates at levels that make it cost-prohibitive for CN to compete, eroding the density CN needs to ensure ongoing investment in the line. CN has experience elsewhere with trackage rights; CN recently qualified crews over a UP trackage rights segment on which UP was a subtenant of NS for CN to be able to pull trains for ADM from Cockrell outside of Springfield, Illinois to the Gulf.[8]

C. Related Access Rights and Gateway Protections Are Needed to Make the Remedy Effective

Access to the Kansas City Line alone would not allow CN to compete effectively. CN therefore also seeks the lease of UP's Neff Yard, including Neff intermodal terminal, in whole or in part, with an option to purchase; terminal trackage rights over approximately 7.5 miles of BNSF track on its Marceline Subdivision between Eton, Missouri and Congo, Missouri (the "Eton to Congo Segment"), which connects the two portions of the Kansas City Line and allows CN to move trains between the line and Neff Yard on the directional running basis UP maintains today; and overhead trackage rights between Lydia Avenue and Broadway Boulevard in Kansas City, Missouri (the "Lydia Avenue to Broadway Boulevard Segment"), which connects Neff Yard and the Kansas City Terminal Railway Company ("KCT") and allows CN to interchange with BNSF and other carriers.[9] Under the Settlement MOU, CN will also acquire NS's 8.33% ownership

[8] *See Ill. Cent. R.R. Co.—Petition for Declaratory Order*, FD 36892 (filed Dec. 1, 2025).

[9] *See* Exhibit 13 (Operating Plan) at 56-65, 136-38.

interest in KCT for nominal consideration, giving CN the ability to interchange with other carriers, including Canadian Pacific Kansas City Railway Company ("CPKC"), through KCT, and giving CN access to KCT's customers open via reciprocal switching. Also under the Settlement MOU, if the Board removes any paper barrier on the Kansas City Line or grants any exception to any paper barrier on the Kansas City Line, UP would similarly remove or grant an exception to CN for the paper barrier governing Genesee & Wyoming's Missouri & Northern Arkansas Railroad ("MNA"), as MNA connects to the Kansas City Line at Pleasant Hill and operates via interchange trackage rights over UP from Pleasant Hill to Neff Yard, where it interchanges with UP.[10] CN also seeks reciprocal switching access to Kansas City customers currently open to switching under UP and NS tariffs for Kansas City, which are among the customers whose options would be reduced if the Proposed Transaction is approved and whose traffic CN needs to build sufficient route density.

Finally, CN asks the Board to adopt robust and enforceable open gateway protections. These protections matter well beyond Kansas City and St. Louis: CN interchanges with UP and NS at dozens of gateways across its U.S. network, from Chicago, Detroit, Memphis, and New Orleans to the Twin Cities, Council Bluffs, and Buffalo, and relies on them to reach customers at key origins and destinations such as Houston, the Twin Cities, and Atlanta. Any open gateway condition the Board adopts should expressly apply to each of those locations. Figures 2 and 3 below show the top U.S. destinations CN reaches (either as origin or destination carrier, respectively) through its interline relationships.

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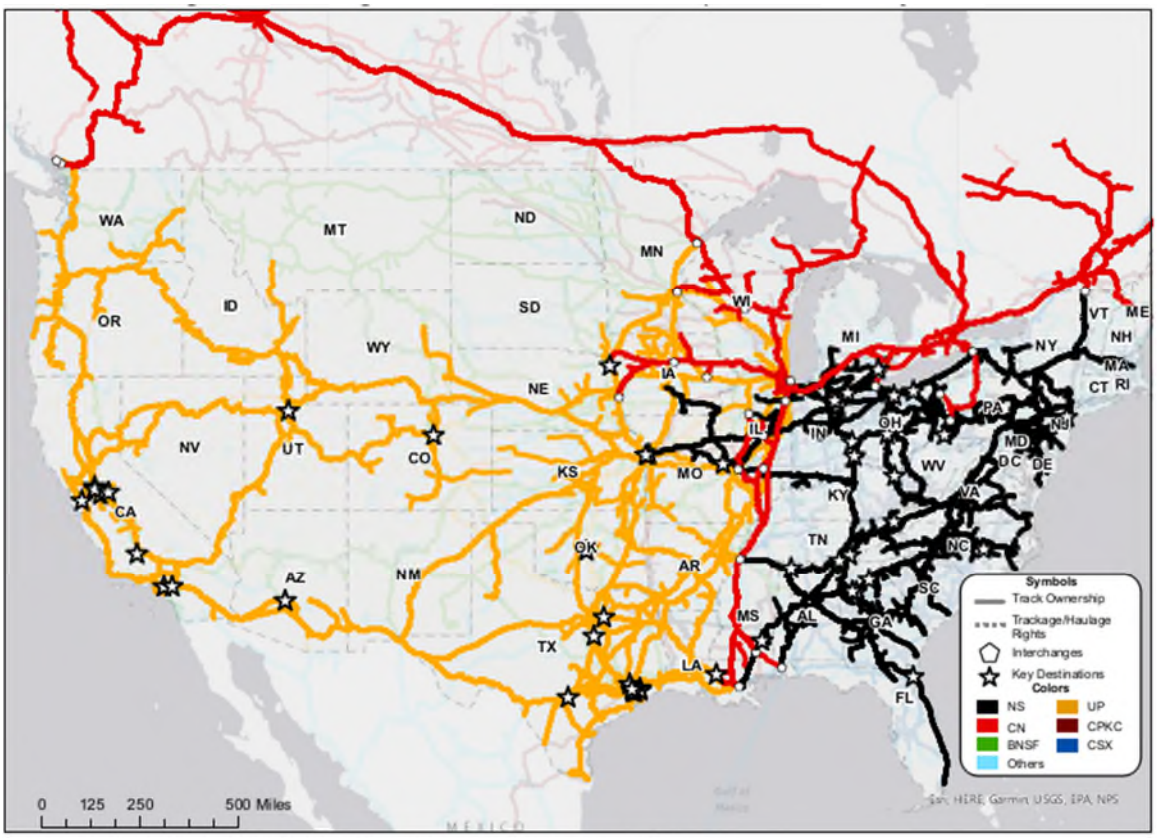
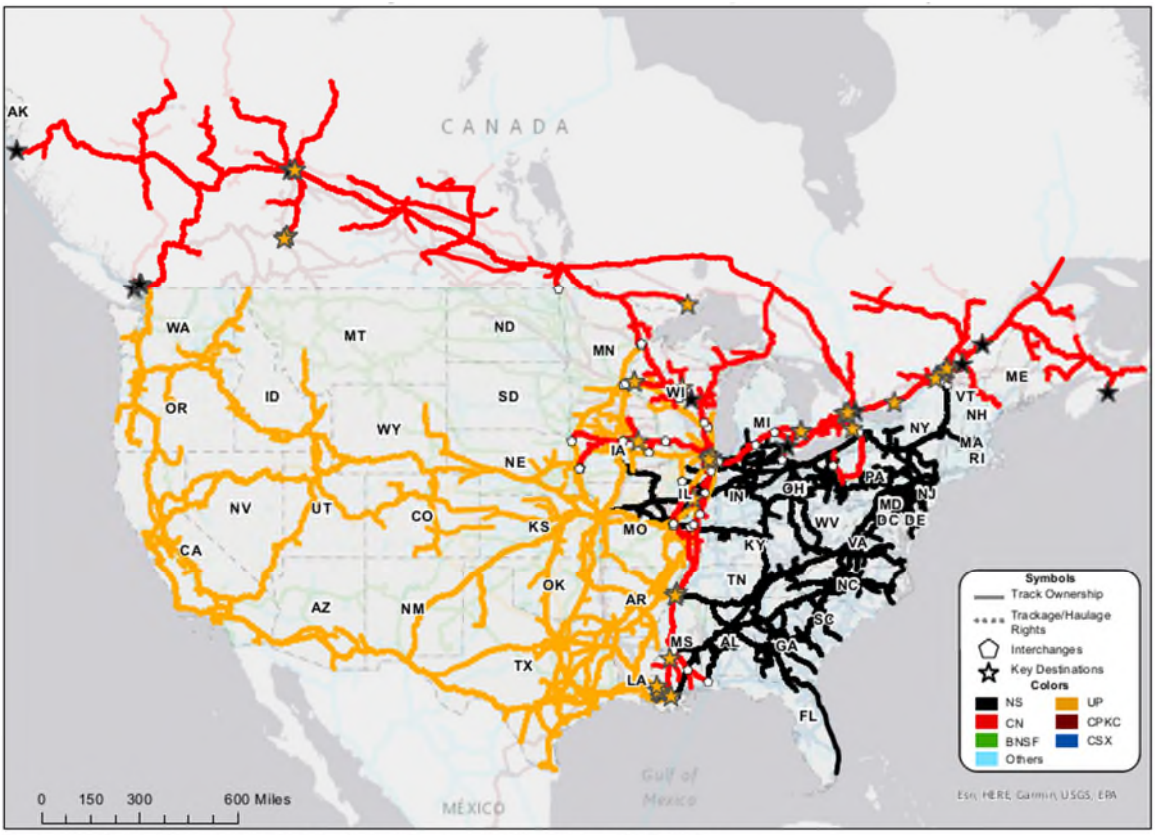
[10] *See* UP-80/NS-78 at 207-08, FD 36873 (filed July 27, 2026) [hereinafter the "Second Supplemental Submission"]. The Settlement MOU also provides that to the extent the Board requires remedies or conditions applicable in general that are more favorable than those agreed to in the Settlement MOU, CN would automatically receive the benefit of those more favorable terms. *See also* Exhibit 13 (Operating Plan) at 55.

Figure 2: CN as Origin Carrier for Interchange with UP/NS to Reach Destinations



Sources: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; CN Traffic Tapes.

Figure 3: CN as Destination Carrier for Interchange with UP/NS to Reach Destinations



Sources: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; CN Traffic Tapes.

D. CN Will Serve Kansas City Line Customers from Day One and Invest to Expand Service

CN expects to begin operating over the Kansas City Line immediately following consummation of the Proposed Transaction and divestiture of the line to CN. As owner of the line, CN will provide local service to all UP stations between Twelfth Street in St. Louis and Kansas City, including the line's industrial leads, while preserving those customers' access to UP: CN would grant UP local haulage rights so that every customer on the line remains open to UP, and overhead trackage rights so that all existing routing options are preserved.[11] CN has proposed that UP and BNSF would retain the local trackage rights necessary to deliver unit trains of Powder River Basin coal to Union Electric Company's Labadie facility, which is among the major

[11] *See* Exhibit 13 (Operating Plan) at 106-07, 110, 134-35.

customers on the line, so that Labadie would not lose the single-line service options it has today. CN also has proposed that MNA, whose line connects to the Kansas City Line at Pleasant Hill and which operates over UP from Pleasant Hill to Neff Yard, can continue to interchange traffic with UP at Neff Yard or at another mutually agreeable location, so that MNA's existing operations would not be disrupted.[12] Shippers on the Kansas City Line would gain single-line access to CN's network to Chicago, Detroit, Eastern Canada, the Mid-South, and CN's Gulf Coast ports—and many would be gaining a carrier they already know, because CN already serves other facilities of the same customers.

Only if the Board finds that divestiture is not warranted does CN request, in the alternative, trackage rights over the Kansas City Line (Sub-No. 3), together with local and overhead haulage rights to serve affected customers on the line. To the extent the Board grants CN trackage rights over the Kansas City Line, instead of divestiture, CN is also seeking trackage rights access to reach the former Sarpy Yard property for the same purpose in Sub-No. 3, and is requesting a condition from the Board ordering the sale of the former Sarpy Yard property to CN.

Consistent with how UP operates the corridor today, CN's westbound trains would generally use the Sedalia Subdivision into Kansas City and its eastbound trains the River Subdivision back toward St. Louis.[13] Under the diversion study, CN anticipates that, by the third year following the Board's approval decision, it would operate four trains per day (two train pairs) between Kansas City and St. Louis—a manifest train and a combined automotive and intermodal train in each direction.[14] In addition, CN would take over UP's existing local service on the line,

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[12] *See* Exhibit 13 (Operating Plan) at 55, 65, 107, 109.

[13] *Id*. at 111, 138.

[14] *I*d. at 103, 105, 111, 129.

and CN assumes that the existing volume would continue as it does today. CN's Rail Traffic Controller modeling indicates that this traffic can be accommodated on the Kansas City Line alongside UP and other users without interfering with Amtrak service over the Sedalia Subdivision.[15]

If the Board grants CN's conditions, CN is committed to investing in the Kansas City Line and related facilities within three years after the Board's approval, consummation of the Proposed Transaction, and divestiture to CN. These capital projects include the following:[16]

- upgrades at Neff Yard to start CN's intermodal and automotive terminals;
- the acquisition and improvement of the former Sarpy Yard property, described below;
- a new connection at Tuscola from CN's existing Champaign Subdivision to UP's Pana Subdivision; and
- a new connecting track at Sullivan station on the Pana Subdivision to facilitate more efficient movements of coal and other unit trains.

These investments would support new intermodal and automotive terminal service in Kansas City and St. Louis; expanded service for grain, fertilizer, steel, and other commodities; reduced transit times to St. Louis; and greater resilience to supply chain disruptions.

i. Neff Yard in Kansas City and the Former Sarpy Yard Property in St. Louis Will Add New Intermodal and Automotive Terminal Facilities

Neff Yard is UP's former intermodal yard in Kansas City; UP has since relocated its intermodal operations to its Kansas City Intermodal Terminal, and Neff Yard is now largely idled,

[15] *See* Exhibit 13 (Operating Plan) at 22, 112-13, 145-47 & App. A (CN Line Capacity Assessment of Kansas City, St. Louis and Iowa Lines, Iron Road Software & Simulation, Inc.) [hereinafter "Iron Road study"].

[16] *See* Exhibit 13 (Operating Plan) at 24, 150-56.

although intermodal has historically been the largest share of the traffic originating and terminating there. CN expects to use Neff Yard for intermodal, automotive, and manifest/bulk traffic when it begins operating the Kansas City Line. CN understands the former intermodal terminal at Neff to be largely "plug and play": CN anticipates adding equipment such as trucks and cranes. CN does not expect significant investment to be required to begin CN's intermodal and automotive operations at Neff. Over time, CN plans to make significant investments at Neff Yard—including equipment, fencing, repair tracks, lighting, and security cameras—to expand intermodal and automotive capacity and put a largely idled yard back into productive service.[17]

CN anticipates engaging a third-party operator for Neff Yard. As Patrick Whitehead explains in Exhibit 13 (Operating Plan), a third-party operator will also facilitate operations within Neff Yard if UP retains the ability to operate through the yard pursuant to trackage rights over the Kansas City Line.[18] Manifest traffic will use the existing yard tracks, and interchange traffic will move over the Lydia Avenue to Broadway Boulevard Segment to BNSF and other railroads via KCT. We will interchange with UP at Neff Yard.[19]

For automotive traffic, CN would use the existing pavement and track at Neff Yard where possible and convert the yard as needed, making Neff Yard Kansas City's fifth automotive terminal, alongside those of UP, NS, BNSF, and CPKC.[20] As Sarah Slazinski explains, Neff Yard is conveniently located for our automotive customers.[21]

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[17] *See* Exhibit 13 (Operating Plan) at 42-43, 61-62, 105-06, 150-51.

[18] *See id.* at 106.

[19] *Id*. at 103, 107.

[20] *Id*. at 107-08, 150.

[21] *See* Exhibit 12C, Verified Statement of Sarah Slazinski at 10–11 [hereinafter "Slazinski V.S."].

In St. Louis, CN plans to invest in the former Sarpy Yard property, located on the Kansas City Line, as a new automotive and intermodal terminal. CN does not own any track in St. Louis, Missouri. Nor does CN own a rail yard or sufficient land in East St. Louis, Illinois to open a competitive automotive and intermodal terminal. Without the ability to invest in the former Sarpy Yard property, CN would have no location to handle this traffic in St. Louis as a new entrant into the markets for automotive and intermodal customers.[22]

Together, Neff Yard in Kansas City and the former Sarpy Yard property in St. Louis would add two new U.S. intermodal and automotive terminals to CN's network and provide new capacity and competitive options for customers.

ii. CN's Expanded Access to East St. Louis via the Tuscola Line Will Open New Routes for Customers

The proposed overhead trackage rights over UP's line between Tuscola, Illinois and East St. Louis, Illinois (the "Tuscola Line") would connect CN's existing lines in central Illinois to the St. Louis gateway and, through it, to the Kansas City Line. Today, for CN to reach East St. Louis from points in northern Illinois, Iowa, and Wisconsin, CN must route south past East St. Louis to Du Quoin, Illinois, and then back up, which adds approximately 1.5 days to CN's transit to St. Louis. Under Exhibit 13 (Operating Plan), traffic from Chicago and points north and east would instead move south on CN's lines to the new Tuscola connection and over the Tuscola Line to East St. Louis; from there, overhead trackage rights over UP's wholly owned subsidiary, The Alton & Southern Railway Company ("A&S"), between Lenox in Mitchell, Illinois and Valley Junction in East St. Louis would connect CN to the Terminal Railroad Association of St. Louis ("TRRA"), whose bridges carry traffic across the Mississippi River into St. Louis and onto the Kansas City

[22] *See* Exhibit 13 (Operating Plan) at 47-48, 87, 102, 107-08, 154-55; Slazinski V.S. at 13 & n.11.

Line, using trackage rights CN is separately seeking from TRRA.[23] This route would eliminate approximately 70 miles from CN's route from Chicago to St. Louis and Kansas City, reducing CN's costs and transit times, and manifest traffic from CN's lines in southern Illinois and the Mid-South would connect to the new service through East St. Louis.[24] Customers on the A&S and TRRA are open to all Class I carriers, so the improved route will allow CN to compete more effectively for traffic to facilities such as Bunge-SCF in East St. Louis; Consolidated Grain & Barge, CHS, and Louis Dreyfus in Cahokia; and ADM in Sauget and North St. Louis.[25] East St. Louis also has the single largest concentration of barge-loading facilities along the Mississippi River, giving customers access to new gateways and destinations via CN's river-adjacent network.

iii. Shifting CN's Interchange Gateways to Kansas City and St. Louis Will Create a More Efficient Network and Improve Service Offerings

CN can build a more efficient network and improve customer service offerings by changing the interchange gateway for traffic where doing so makes commercial sense. Today, across a variety of examples of different commodities and lanes, {{

[23] *See* Exhibit 13 (Operating Plan) at 20, 71-73, 99-100, 103, 111, 137.

[24] *See id*. at 65-74, 112-15, 137.

[25] *See Freight Tariff TRRA 3023-V*, TRRA (effective Jan. 1, 2026), https://terminalrailroadstl.odoo.com/web/content/4736?unique=f82e2a9a93452e26a76da5ec0ed33429e635e06c&download=true (last visited Nov. 15, 2026); *Tariff ALS 8002-O*, A&S (effective Mar. 1, 2023), https://www.altonsouthern.com/wp-content/uploads/2023/11/als8002-o-tariff.pdf (last visited Nov. 15, 2026).

}}

With the Kansas City Line, Neff Yard, the Tuscola Line, and the related Kansas City access rights, CN, as the originating carrier, could move traffic over its own network to Kansas City and interchange there with western and southern carriers, including BNSF, UP, CPKC, and carriers reached through KCT. With a longer length of haul, CN could build density, design trains more efficiently, and offer a more cost-competitive routing option, while giving customers an alternative to the congested Chicago interchange. Kansas City access would also allow CN to shift selected train building from its Kirk Yard in the Chicago area to Champaign, Illinois, so that eligible traffic bypasses Chicago area processing, which CN anticipates could shorten transit times by approximately one day for affected shipments.[26]

I expect that CN could successfully shift the interchange gateway where it makes commercial and operational sense for CN's new network—for example, for southbound and westbound traffic currently interchanged in Chicago, Illinois; Superior, Wisconsin; and East St. Louis, Illinois and destined for California, Oklahoma, Arizona, and New Mexico. This strategic commercial and operational plan spans several CN business units. For finished vehicles and vehicle parts, CN could interchange Michigan- and Ontario-origin traffic at Kansas City rather than Chicago, including traffic moving toward the Southwest; for intermodal, CN could move traffic to Kansas City, bypassing Chicago, for furtherance with western and southern carriers; and for grain, CN could move shipments through Kansas City to compete more effectively with UP and NS. CN would pursue similar opportunities in other business units, including forest products, petroleum and chemicals, and metals and minerals. As explained in Exhibit 13 (Operating Plan),

[26] *See* Exhibit 13 (Operating Plan) at 103, 112.

these shifts could be handled by adding volume to the new Chicago–Kansas City service on existing trains and are included in our diversion estimate. In the future as traffic grows organically, CN could add a train pair, and CN views them as realistic and achievable in the years following implementation, based on its commercial and operational plans and existing customer relationships.[27]

III. CN WILL PRESERVE THREE-CARRIER CLASS I COMPETITION IN DES MOINES

CN seeks trackage rights for its affiliates Iowa Northern and Chicago, Central & Pacific Railroad Company over UP's line between Manly and/or Iowa Falls and Des Moines, Iowa, and between Des Moines and Avon, Iowa (the "Des Moines Line"). The Des Moines area is accessed today by only three Class I carriers—UP, NS (via haulage and trackage rights over BNSF), and BNSF. Absent conditions, the area generally would go from three Class I options to two, and at least fifteen customer facilities would see their Class I options reduced from two to one (2-to-1) or from three to two (3-to-2). Affected customers include grain elevators, soybean processors, and food and feed manufacturers such as ADM Soybean Processing, Heartland Co-Op (Des Moines and Avon), Feed Energy Co./Kru LTD, and General Mills (Avon); metals customers such as Alter Trading/Alter Metal Recycling; and others including Cargill, Titan Tire, Bridgestone Americas Tire Operations, and Magellan Midstream Partners. Applicants themselves have proposed that CN remedy almost all of these facilities; the dispute is over the means of access.

Trackage rights from CN's Iowa network are the most effective means of access. CN's nearest lines connect with UP at Iowa Falls (approximately 73 miles from Des Moines) and Manly (approximately 130 miles). Applicants' alternative of CN haulage over BNSF from St. Louis would require the Board to override a restriction in the BNSF–NS haulage agreement, would be a

[27] *See* Exhibit 13 (Operating Plan) at 103-05, 133.

significantly longer route, and would run through the more congested St. Louis gateway; for example, soybean meal moving from Des Moines to Chicago would travel approximately 400 miles via CN's proposed trackage rights but approximately 670 miles via the BNSF haulage route. For Avon, Applicants have not detailed where their proposed UP haulage would run from. Trackage rights would also give CN operational control over crews, car supply, train frequency, and service commitments, rather than dependence on a competitor's operating priorities. CN would initially enter the Des Moines Line at Manly, serving Des Moines and Avon customers either via UP reciprocal switch through Short Line Yard or, for unit trains, directly to the ADM facility in Des Moines and the Heartland Co-Op facility in Avon.[28] Because the existing Iowa Falls interchange is a short, 15-car spot track through the middle of a grain elevator, CN would shift to Iowa Falls once a new connection is built there.[29] These rights would link Des Moines directly to CN's Iowa network, including Iowa Northern, giving shippers access to Gulf export terminals at New Orleans and Mobile, Mississippi River barge facilities, feed mills and processors across the CN network, Eastern and Western Canada, and Midwest end users; CN's three major petrochemical centers and 10 aluminum smelters are also relevant to Des Moines chemicals and metals customers. No capital investments are proposed for the Des Moines Line, other than the connection at Iowa Falls. CN would hire additional train and engine, signals, and maintenance employees in Iowa, and anticipates new traffic beginning in the second or third year after the transaction as new agreements are reached with customers.[30]

[28] *See* Exhibit 13 (Operating Plan) at 17-18, 118-19.

[29] *Id.*

[30] *See* Exhibit 13 (Operating Plan) at 24, 43, 79-85, 117-21, 140-43, 153.

IV. CN WILL REMEDY LOST COMPETITION FOR ILLINOIS CUSTOMERS

CN seeks trackage rights over UP's line between East St. Louis and Hillsboro, Illinois (the "Hillsboro Line") to serve the 2-to-1 Hillsboro Energy LLC (Deer Run Mine) facility of Foresight Energy, which has the capacity to produce up to 9 million tons of coal per year, without the right to serve other customers on the line. CN also seeks trackage rights over UP's Springfield and Monterey Subdivisions and NS's Monterey Mine Lead between Springfield and Carlinville, Illinois (the "Macoupin Line") to access Foresight Energy's 2-to-1 Macoupin Energy LLC (Shay #1) facility; although that mine is currently idled, CN seeks these rights to avoid any doubt regarding its ability and intention to serve the mine should it resume production.[31] CN is the only carrier that has requested trackage rights to serve these facilities; although Foresight Energy has requested BNSF, BNSF did not seek such rights in September as required under the Board's schedule. Because this coal moves in unit trains, only trackage rights—not haulage—would provide the operational control over scheduling, car positioning, and loading windows needed for reliable, competitive service. CN already has an established relationship with Foresight Energy: it has direct access to two other Foresight mines, handles a mine-to-mine movement between Foresight's Pond Creek and Sugar Camp operations, moves Pond Creek coal to the Gulf Coast, and performed a special move to keep coal flowing to customers when a fire reduced Sugar Camp to roughly half capacity.

CN can preserve Hillsboro's existing connectivity and add new options. Hillsboro coal moves principally to {{ }}. CN has direct rail access to {{ }}, which I understand BNSF

[31] *See* Exhibit 13 (Operating Plan) at 74-79, 115-17.

does not have, and could serve {{ }} there in single-line service, aided by a new connecting track CN plans to build at Sullivan station on UP's Pana Subdivision—the only capital investment proposed in connection with the Hillsboro Line. CN can reach Foresight's {{ }} through an interchange with the Evansville Western Railroad, and although CN could not serve the {{ }} terminal directly, CN can access other nearby river transload facilities. Export represents the most significant growth opportunity: via CN's Illinois Central main line, Hillsboro coal could move single-line to Convent Marine Terminal in Louisiana (approximately 795 miles, which CN consistently executes mine-to-port in approximately 96 hours), to which CN is the only rail carrier with direct access, and to the McDuffie terminal in Mobile, Alabama—the only two Gulf Coast terminals that currently receive coal by rail. The diversion analysis of Dr. Henry Kahwaty estimates that approximately {{ }} units of Hillsboro coal would divert to new CN service, more than {{ }} of it on export movements that CN would shift from the {{ }} river terminals to direct CN rail service to the Gulf—service neither UP nor NS can provide today—with the remainder on shipments to {{ }}.[32] Operationally, CN would reach Hillsboro through the Tuscola Line corridor and route coal either through East St. Louis, where CN could interchange with TRRA, A&S, BNSF, UP/NS, CPKC, and CSXT, or via the Sullivan or Tuscola connections onto CN's network.[33] CN would reach the Macoupin Line from its existing connection with UP at Springfield, operating over UP's Springfield and Monterey Subdivisions and NS's Monterey Mine Lead to the mine at Carlinville, should the idled mine resume production.[34]

[32] *See* Exhibit 12B, Verified Statement of Dr. Henry Kahwaty at ¶ 159 [hereinafter "Kahwaty V.S."].

[33] *See* Exhibit 13 (Operating Plan) at 21, 115-16, 151-52.

[34] *See* Exhibit 13 (Operating Plan) at 21, 76–79, 116-17, 154.

Applicants have acknowledged that other Illinois customer facilities would also lose a Class I option, but their proposed access commitments do not consistently designate CN or, in several cases, prescribe routings that would effectively preserve competition. CN therefore also seeks switching access in Chicago and St. Louis—including at U.S. Steel's Granite City Works, where CN and UP agree the facility should be opened to reciprocal switching for CN—and haulage rights to reach the affected 2-to-1 and 3-to-2 facilities at Bloomington, Mt. Vernon, Danville, and Momence, Illinois, consistent with the routes detailed in CN's Comment.[35] Together, the Kansas City, St. Louis, Des Moines, and Illinois conditions extend CN's existing network to access industries and connect them to CN's network in single-line service as well as beyond through interchange with other railroads.

V. CN'S CONDITIONS WILL BENEFIT U.S. RAIL CUSTOMERS, COMMUNITIES, AND THE ENVIRONMENT

CN's conditions would preserve competition that would otherwise be lost as a result of the Proposed Transaction and open new single-line routing options between Kansas City, St. Louis, and points on CN's network, including Detroit, Chicago, and Eastern Canada, as well as for traffic moving to and from the East Coast and Gulf Coast. Today, NS is the only carrier offering single-line service between Michigan and Kansas City or St. Louis, and CPKC—which must use NS trackage rights through Michigan—is the only single-line option between Eastern Canada and Kansas City. No carrier offers single-line finished vehicle service between St. Louis and Ontario, and CN would be the only railroad able to offer St. Louis area shippers single-line intermodal service to and from a Canadian intermodal terminal. Routes from the Port of Montreal to Kansas City and St. Louis would be available for international traffic as an alternative to congested East

[35] *See* Second Supplemental Submission at 62.

Coast ports; Montreal is closer to North European ports than the ports of New York/New Jersey, and at approximately 1,380 rail miles to Kansas City, it is essentially equidistant with New York/New Jersey and Norfolk. These routes would tie into CN's three-coast port access, including the ports of New Orleans and Mobile. Reductions in the logistics costs U.S. shippers need to bear to get their products to export markets benefit U.S. manufacturers and U.S. workers.

Moreover, CN's plan to invest in these regions would benefit local communities and the environment by taking trucks off the road. Converting freight from truck to rail for the long haul can reduce greenhouse gas emissions by up to 75%.[36] Within the rail industry, CN is a leader in fuel efficiency. CN publicly reports that its locomotives consume approximately 15% less fuel per gross ton-mile than the average of the North American Class I railroads, an efficiency advantage that reduces greenhouse gas emissions.[37] CN is building on that performance through increased use of lower-carbon fuels: in 2025, renewable fuels, such as biodiesel and renewable diesel, accounted for close to 12% of all locomotive fuel used across CN's North American network.[38] And CN tested a medium-horsepower hybrid-electric yard locomotive in 2025, including at locations in Tennessee, Mississippi, and Louisiana, and conducted cold-weather testing in Western Canada. After achieving a 50% improvement in fuel efficiency, along with reductions in engine-related failures, increased horsepower, and reduced idling, CN is now testing three locomotives.[39]

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[36] Canadian National Railway Co., *2025 Annual Report*, at XIX, https://www.cn.ca/en/-/media/files/investors/investor-annual-report/2025-cn-annual-report.pdf (last visited Nov. 17, 2026) [hereinafter "CN 2025 Annual Report"].

[37] CN 2025 Annual Report at 9.

[38] CN 2025 Annual Report at XIX.

[39] *See Watch: CN Advances Hybrid Locomotive Program*, Railway Age (Aug. 17, 2026, updated Aug. 20, 2026), https://www.railwayage.com/mechanical/locomotives/watch-cn-advances-hybrid-locomotive-program/ (last visited Nov. 17, 2026); *see also* CN 2025 Annual Report at 21.

These initiatives, combined with its industry-leading fuel efficiency, allow CN to provide customers with efficient, lower-carbon freight transportation while maintaining reliable service.

Dr. Kahwaty's diversion analysis estimates that approximately {{ }} annual rail cars or units would divert from truck to the CN network because of CN's new or improved access involving Kansas City and St. Louis. By service type, approximately {{

}}

Of the diverted intermodal traffic, approximately {{ }} units are expected to move through the Kansas City area and approximately {{ }} units through the St. Louis area; in total, Kansas City is expected to receive approximately {{ }} units of truck-to-rail diverted traffic and St. Louis approximately {{ }} units.[40] The Kansas City–Chicago market alone is expected to account for approximately {{ }} of total truck-to-rail diverted traffic, and Kansas City–Detroit, the second-largest market, for approximately {{ }}, more than {{ }} of it intermodal.[41] By commodity, grain is expected to be the largest source of truck-to-rail diversion, at approximately {{ }} units, or roughly {{ }} of the approximately {{ }} units of total truck-to-rail diverted traffic, including approximately {{ }} of the diverted traffic between Kansas City and Chicago. Truck-to-rail diversion of vehicle parts is estimated at approximately {{ }} units.[42] These truck-to-rail diversions are in addition to the traffic that Dr. Kahwaty estimates would divert to CN from other railroads. His rail-to-rail analysis estimates that approximately {{ }} units of intermodal traffic would divert to CN, principally on the

[40] *See* Kahwaty V.S. at ¶ 177 & Table 11.

[41] *Id.* at ¶¶ 178-179.

[42] *Id.* at ¶¶ 170–171 & Figure 31.

Detroit–Kansas City lane; approximately {{ }} units of potash, principally moving from Canada to St. Louis; approximately {{ }} units of Hillsboro coal; approximately {{ }} units of grain, principally soybean meal moving over the Kansas City Line; and approximately {{ }} units of steel products, principally on lanes between Chicago and Kansas City or St. Louis where CN could offer new or improved single-line service.[43] Trucking refrigerated goods between the Midwest and Mexico or Canada costs approximately 10–20% more and produces approximately 75% more greenhouse gas emissions than intermodal alternatives, and diverting truck traffic to rail reduces highway congestion and maintenance costs and improves public safety.

CN's conditions would also create jobs: CN anticipates hiring additional personnel to operate the Kansas City, Tuscola, Hillsboro, and Des Moines Lines, including train and engine employees for all of the lines and additional employees for the Kansas City Line divestiture, including dispatching, signals, and maintenance-of-way employees. CN will offer qualified UP employees currently working on the Kansas City, Tuscola, and Des Moines Lines priority hiring consideration.[44]

VI. CONCLUSION

The Proposed Transaction would combine UP's and NS's parallel lines between Kansas City and St. Louis and reduce Class I options for customers in that corridor, as well as in the Des Moines area, and at Illinois facilities including Foresight Energy's Hillsboro and Macoupin mines—harms that Applicants themselves have acknowledged. Divestiture of the Kansas City Line to CN (Sub-No. 2), the only railroad willing to acquire 100% of the line, is the clean, certain,

[43] *Id.* at ¶¶ 129–130, 144–147, 153; *see also* Exhibit 13 (Operating Plan) at 100-01.

[44] *See* Exhibit 13 (Operating Plan) at 140-45 & App. B (Labor Impact Statements).

and effective way to place an independent Class I competitor in the corridor. The related conditions are needed to make that remedy work:

- the former Sarpy Yard property in St. Louis for CN's new intermodal and automotive terminals;
- trackage rights over the Tuscola Line (Sub-No. 7) and trackage rights over A&S in East St. Louis (Sub-No. 8);
- terminal trackage rights over BNSF's Eton to Congo Segment (Sub-No. 5) to connect the River Subdivision on the Kansas City Line to Neff Yard;
- the Neff Yard lease or purchase (Sub-No. 6) where CN will handle manifest traffic and bulk trains and invest in CN's new intermodal and automotive terminals;
- reciprocal switching access in Kansas City to UP's and NS's customers open to reciprocal switching, and trackage rights over the Lydia Avenue to Broadway Boulevard Segment in Kansas City (Sub-No. 4) to interchange with other railroads, including KCT, of which CN will become a shareholder under the Settlement MOU; and
- robust and enforceable open gateway protections to extend CN's reach through the Kansas City and St. Louis / East St. Louis gateways.

Because CN would grant UP local haulage to retain access to local customers on the Kansas City Line and overhead trackage rights over that same line between Kansas City and St. Louis, no customer would lose an existing rail option.

CN's requested trackage rights to Des Moines (Sub-No. 10), Hillsboro (Sub-No. 9), and the idled mine at Carlinville (Sub-No. 34), together with switching and/or haulage access to other affected Illinois facilities, would likewise ensure that no 2-to-1 or 3-to-2 customer is left with fewer Class I options than it has today.

With its adjacent Midwest network, commodity expertise, record of investment and integration, and commitment to invest in Neff Yard, the former Sarpy Yard property, and new connections at Tuscola and Sullivan, CN is well positioned to be the remedy carrier if the Board approves the Proposed Transaction. CN's conditions would not only preserve competition but also open new single-line routes connecting Kansas City and St. Louis with Detroit, Chicago, Eastern Canada, and CN's three-coast ports, including the Port of Montreal; give customers an alternative to the congested Chicago interchange; take approximately {{ }} annual truck shipments off the highways; and create new rail jobs. For these reasons, I respectfully urge the Board to impose the conditions set forth in CN's responsive applications as part of any approval of the Proposed Transaction.

VERIFICATION

I, Janet Drysdale, declare under penalty of perjury under the laws of the United States that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on this 18th day of November, 2026.

/s/ Janet Drysdale
Janet Drysdale

Exhibit 9

WITHHELD FROM PUBLIC VERSION

Exhibit 10

WITHHELD FROM PUBLIC VERSION

Exhibit 11

WITHHELD FROM PUBLIC VERSION

Exhibit 12

WITHHELD FROM PUBLIC VERSION

Exhibit 13

WITHHELD FROM PUBLIC VERSION

Exhibit 14

WITHHELD FROM PUBLIC VERSION

Exhibit 15

WITHHELD FROM PUBLIC VERSION

Exhibit 16

WITHHELD FROM PUBLIC VERSION

Exhibit 17

WITHHELD FROM PUBLIC VERSION

Exhibit 18

CORNERSTONE RESEARCH
ECONOMIC AND FINANCIAL CONSULTING AND EXPERT TESTIMONY

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 36500
CANADIAN PACIFIC RAILWAY LIMITED, ET AL. – CONTROL – KANSAS CITY SOUTHERN, ET AL.

EXPERT STATEMENT OF W. ROBERT MAJURE, PH.D.

October 29, 2021

REDACTED

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1. QUALIFICATIONS AND ASSIGNMENT

1.1. Qualifications

1. My name is W. Robert Majure. I am a Vice President at Cornerstone Research. Prior to joining Cornerstone Research, I worked for approximately 25 years in the Antitrust Division of the U.S. Department of Justice ("DOJ") as an economist, Assistant Section Chief, Section Chief, and ultimately as the Director of Economics.

2. I earned my Ph. D. in Economics from Massachusetts Institute of Technology in 1994 and a B.A. from the University of Virginia in 1990. My main area of expertise is the economics of industrial organization – particularly issues of competition.

3. While at the DOJ, I performed and supervised economic analyses of competition issues in various industries, including transportation, telecommunications, banking, computer software and hardware, heavy industry, mining and drilling, healthcare, entertainment, and railroads. I submitted testimony on competitive effects in the merger of the Union Pacific and Southern Pacific Railroads and on the suitability of remedy in *U.S. v. SBC Communications Inc. and AT&T Corp.* and *U.S. v. Verizon Communications Inc. and MCI, Inc.* I also served on the committee that drafted the 2010 Horizontal Merger Guidelines. I received awards for my work at the DOJ, including presidential recognition for my contributions as a senior executive of the civil service.

4. A copy of my *curriculum vitae* is attached as Appendix A.

1.2. Assignment

5. In the context of these proceedings, on April 30, 2021 and at the request of counsel for Canadian Pacific ("CP"), I submitted an expert statement ("Initial Statement") to describe my preliminary findings on the competition issues related to the proposed acquisition of Kansas City Southern ("KCS") by Canadian Pacific, and to compare them to competitive issues that would be raised in an acquisition of KCS by Canadian National ("CN").[1]

6. On June 28, 2021, at the request of counsel for CP, I submitted a second expert statement ("Voting Trust Statement"), in the context of the proceedings related to the proposed acquisition of KCS by CN.[2] In the Voting Trust Statement, I provided an economic analysis of the voting trust arrangement that had been proposed by CN for its potential acquisition of KCS, and showed that a voting trust arrangement would have given CN an immediate incentive to implement its part of the anticompetitive horizontal consequences of a CN-KCS combination. I also provided additional analysis that confirmed the proposed merger of CN and KCS should have been treated as a horizontal merger, and that CN's proposed divestiture was insufficient to resolve the horizontal competition issues that would have been created by the transaction.

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[1] Expert Statement of W. Robert Majure, Ph.D., *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500 and *Canadian National Railway Company, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36514, Apr. 30, 2021 ("Initial Statement").

[2] Expert Statement of W. Robert Majure, Ph.D., *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36514, June 28, 2021 ("Voting Trust Statement").

7. I have been asked to submit a third expert statement at the request of counsel for CP evaluating whether the proposed acquisition of KCS by CP is likely to generate any procompetitive benefits or cause any competitive harms.

8. Cornerstone Research is being compensated at my standard billing rate of $875 per hour. I have been assisted by staff of Cornerstone Research, who worked under my direction. Cornerstone Research's compensation in this matter is not in any way contingent or based on the content of my opinion or the outcome of this or any other matter, nor is my compensation.

9. Appendix B contains a list of materials I have relied upon in preparing this statement. My work is ongoing, and I expect to supplement this analysis as these proceedings continue.

2. OVERVIEW AND SUMMARY OF OPINIONS

10. My economic analysis supports the following main conclusion: a CP and KCS combination is a vertical transaction of two complementary networks that would create opportunities for procompetitive benefits throughout the CP/KCS network and would not substantially lessen competition.

11. That a combination of CP and KCS would be a vertical, end-to-end combination of complementary networks that connect in only one location, Kansas City, is apparent from a map of the two railroads' route structures. The map in **Exhibit 1**, which shows the CP and KCS networks, including both owned tracks and trackage rights, make this clear.

EXHIBIT 1
A Canadian Pacific and Kansas City Southern deal is a vertical combination of complementary networks



Source: Canadian Pacific
Note: This map plots the rail networks of CP and KCS including tracks that each railroad either owns or has trackage rights over.

12. I organize the economic analysis of the potential competitive effects of a CP and KCS combination that supports my main conclusion as follows:

- In section 3, I consider the implications of an end-to-end railroad combination for competition. By combining railroads that extend rather than duplicate one another's systems, end-to-end combinations present benefits for shippers. This consistent conclusion of the Surface Transportation Board ("Board") is well grounded in economics. In the language of competition economics, these

benefits are consistent with the general expectation that a vertical merger can enable more efficient arrangements between parties and, as a result, can enhance competition. Specifically, new single line service created by a CP/KCS combination would have such benefits for shippers. End-to-end railroad combinations have also consistently been found by the Board unlikely to harm competition. I discuss the economics of vertical transactions and explain that neither CP nor KCS would have the incentive and ability as a combined firm to foreclose rivals or otherwise lessen competition as a result of vertical integration. I analyze traffic KCS brings to the Laredo gateway to illustrate how the overall effects on rivals of a combination of CP and KCS are likely to stem, not from CP/KCS foreclosing those rivals, but from enhanced competition as shippers freely choose newly-created CP/KCS single line options.

- In sections 4-6, I confirm that a combination of CP and KCS will not have any adverse horizontal competitive effects, which is consistent with its end-to-end character. In section 4, I analyze corridors of rail movements observed in the 2019 Confidential Waybill Sample for potential horizontal effects. Where both CP and KCS participate in movements of commodities in the same corridor, I examine the number of independent routes available to shippers before and after a combination of CP and KCS. This analysis confirms that a combination of CP and KCS would not reduce the number of independent options available in any corridor – i.e., that shippers would have no reduction in the number of horizontal competitors serving the rail corridor that shipper has used.
- In section 5, I analyze another aspect of horizontal competition, competition between corridors – i.e., situations where a shipper may have options to choose a different source or destination and may benefit from competition between a corridor involving CP and one involving KCS. After applying well-established screens for potential competitive effects, I examine the screened situations in more detail to determine whether CP and KCS are likely to pose an important competitive constraint on each other. I conclude that a combination of CP and KCS would not be likely to diminish between-corridor competition.
- In section 6, I consider the question of possible coordinated effects of a combination of CP and KCS. I find such effects particularly unlikely from this combination because: (i) a combined CP/KCS will still be the smallest Class I railroad with the same incentives to grow share that CP and KCS both exhibit today, (ii) effective coordination would require the participation of the same number of railroads whether or not CP and KCS combine, as CP and KCS are currently not providing significant competition to one another for any particular customers, and (iii) the incentives of a combined CP/KCS will tend to be

antagonistic to any possible coordination scheme, as the combination seeks to realize the efficiencies of new single-line service. I conclude that coordinated effects on competition stemming from the combination of CP and KCS are unlikely.

3. A CP AND KCS COMBINATION BENEFITS SHIPPERS AS AN END-TO-END RAILROAD COMBINATION

13. End-to-end railroad mergers have often been deemed beneficial to shippers. As the Board noted in its decision to allow a KCS combination with The Texas Mexican Railway Company ("Tex Mex" or "TM"): "An end -to-end consolidation of carriers, by its very nature, is not likely to generate the kinds of competitive problems that often arise in connection with a 'parallel' consolidation . . . Indeed, the evidence demonstrates that the end-to-end configuration of the KCS/TM control transaction will benefit shippers by enabling KCS to offer expanded single-line service . ."[3] Similarly, in its decision to approve the combination between Burlington Northern and Santa Fe, the ICC (predecessor to the Board) noted that: "The primarily end-to-end (vertical) integration of the rail operations conducted by BN and Santa Fe will enable the consolidation carrier to reduce the costs it incurs and to improve the services it provides. Shippers should benefit from lower rates and improved service, including new single-line service."[4]

14. These conclusions are consistent with the nature of end-to-end railroad combinations. They are a form of vertical merger, and vertical mergers have been widely recognized as presenting opportunities for enhancing competition by improving the service that merging parties are able to offer together.[5] As I discuss in section 3.1,

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[3] *Kansas City Southern – Control – The Kansas City Southern Railway Company et al.*, Finance Docket No. 34342 (Decision No. 12 served Nov. 29, 2004) ("KCS-TM-TFM Decision"), at p. 17.

[4] *Burlington Northern Inc. et al. – Control and Merger – Santa Fe Pacific Corporation et al.*, Finance Docket No. 32549 (Decision No. 38 decided Aug. 16, 1995), 10 I.C.C.2d ("BN-SF Decision"), at p. 740.

[5] U.S. Department of Justice and the Federal Trade Commission, Vertical Merger Guidelines ("Vertical Merger Guidelines"), June 30, 2020, at pp. 11–12.

the new single-line service CP and KCS will be able to offer is an example of this pro-competitive effect associated with vertical mergers. In some circumstances, vertical mergers are also capable of impairing competition. However, as I explain in section 3.2, that is not likely in a combination of CP and KCS. I use traffic KCS currently brings to the Laredo gateway to illustrate the balance of vertical effects that is likely to prevail at all the gateways of a combined CP/KCS and show that the effect is beneficial to shippers. That is, a combined CP/KCS will have the incentive to compete more effectively to provide opportunities for shippers to benefit from new single-line service offered by CP/KCS while also working with other railroads at these gateways to provide interconnection service if shippers so choose.

3.1. A CP and KCS combination enhances competition through the vertical effect of allowing new single-line service

15. I begin with the opportunity to enhance competition. Vertical mergers can enable a product improvement that is difficult to achieve through contracts or other agreements among vertically-related independent entities such as CP and KCS.[6]

16. Vertical mergers involve firms that are, absent a merger, not rivals for a customer's business but instead are working together in some fashion to produce a joint product for that customer. For end-to-end railroad mergers, the joint product is an interline movement. Both railroads would like to offer shippers interline service that is just as good as single-line service. However, producing a product together can be difficult

[6] *See, e.g.*, Nicholas Economides, "Quality choice and vertical integration," *International Journal of Industrial Organization*, 17(6), 1999, at pp. 903–914.

and, as the Verified Statement of John Brooks illustrates, railroads are no exception to the difficulties of coordinating operations, investments, and pricing of such products.

17. I understand from John Brooks's Statement that CP and KCS have in the past undertaken concerted efforts to achieve improvements in interline service through interline coordination as separate carriers. The difficulties he describes with contractual arrangements include disagreements about the split of revenues, about the costs of externalities imposed on each railroad's operations as equipment is outside of their tracking and control, and about the need for investment in improving operations across the interconnection.[7] All of these difficulties suggest that the reason interline service is inferior to single-line service is that separate railroads are limited in what they can do to align their incentives with respect to joint operations – limitations that fit into the model of vertical mergers enhancing efficiency by enabling more efficient coordination.

18. By resolving these shortcomings, an end-to-end railroad merger can enhance competition. In a combination of CP with KCS, the interconnection in Kansas City would become part of a commonly managed system. The features that make single-line service preferable – features that are difficult to implement by agreement between interlining railroads – would be directly enabled by the combination of CP and KCS. As a result, the combined CP/KCS product would be expected to divert some traffic

[7] For a detailed discussion of CP's attempts to coordinate and to contract for improvements to interline service, see Verified Statement of John Brooks ("Brooks V.S."), ¶¶ 30-34.

from other railroads.[8] Those other railroads will need to improve the quality of their own service or find ways to lower their prices to retain shippers.

19. In short, a combination of CP and KCS is likely to enhance competition through an effect common to many vertical mergers: resolving inefficient production of a joint product. Specifically, the combination is likely to eliminate coordination inefficiencies so that the present ability to interconnect in Kansas City will achieve the features of single-line service, which shippers prefer. As a result, shippers will benefit and competition will be enhanced.

3.2. The "vertical effects" of a CP and KCS combination would enhance rather than diminish competition

20. In this section, I examine the competitive implications of the end-to-end features of the combination of CP and KCS. I consider whether there are any features of this Transaction that would call into question the Board's consistent conclusions in other cases that end-to-end combinations are procompetitive and are not likely to lead to competitive harm. Specifically, I consider whether the combination might lead to competitive harm arising from closing off access to gateways for rival railroads that customers would prefer to the single-line offerings of the combined CP/KCS.

[8] For detailed predictions of traffic likely to be diverted to new single-line service for a combined CP/KCS, see Verified Statement of Bengt Mutėn ("Mutėn V.S."); Verified Statement of Jonathan Wahba and Mike Naatz ("Wahba V.S."); and Verified Statement of Richard Brown and Nathaniel S. Zebrowski ("Brown V.S.").

21. In the circumstances of this case, I find that harm from so-called "vertical" effects is not likely. To the contrary, the vertical features of the Transaction will add new competitive alternatives to the marketplace, enhancing competition.

22. The Board's approach to the analysis of end-to-end railroad combinations is well grounded in competition economics reflected in the relevant enforcement guidance of the antitrust agencies. The Vertical Merger Guidelines issued in 2020 by the Antitrust Division and the Federal Trade Commission identify two elements that are necessary for these agencies to investigate to assess whether a proposed merger creates potential adverse vertical effects, neither of which are present here. First, one of the merging parties must have the *ability* to preclude or control a rival's ability to compete. Second, there must be an *incentive* for the merged entity to exercise this ability over rivals.[9] Neither of these elements is applicable to the combination of CP and KCS, consistent with the general conclusion the Board has reached in prior cases.[10]

23. To illustrate how the incentive and ability elements apply to railroads, I consider two examples that have often featured in the Board's evaluation of end-to-end

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[9] *See* Vertical Merger Guidelines, at pp. 4–5. On September 15, 2021, the FTC voted to withdraw from these guidelines. The majority statement in that decision took issue with a separate section of the 2020 VMG related to efficiencies while endorsing the sections that discussed the incentive and ability elements: "The 2020 VMGs represent a substantial improvement over the 1984 guidelines that they replaced and address important principles such as raising rivals' costs, foreclosure, and misuse of competitively sensitive information." *See* Statement of Chair Lina M. Khan, Commissioner Rohit Chopra, and Commissioner Rebecca Kelly Slaughter on the Withdrawal of the Vertical Merger Guidelines, Federal Trade Commission, Commission File No. P810034, Sept. 15, 2021, at p. 2, available at https://www.ftc.gov/system/files/documents/public_statements/1596396/statement_of_chair_lina_m_khan_commissioner_rohit_chopra_and_commissioner_rebecca_kelly_slaughter_on.pdf.

[10] *See, e.g.*, the decision in NS and CSX combinations with Conrail: "It has been our experience that end-to-end restructurings of this kind rarely result in a diminution of competition. We have adopted a presumption, known as the one-lump theory, that vertical combinations will not result in competitive harm." *CSX Corp. et al. -Control and Operating Leases/Agreements - Conrail Inc. et al.*, Finance Docket No. 33388 (Decision No. 89 served Jul. 28, 1998), at p. 248.

transactions: (i) a completely captive shipper and (ii) a shipper who can readily turn to other transportation options in the face of any price increase. Assume these two hypothetical shippers are both located on parts of the KCS system.

24. First, consider the solely-served shipper who has no ready alternative to KCS for originating its movements. A combined CP/KCS would not be expected to have any *incentive* to affect the competitive terms available to this shipper, because KCS would already be collecting the full measure of returns associated with its existing market power. This lack of an incentive to change prices for such shippers (or reduce service or otherwise degrade the terms that shipper receives) is what the Board and its predecessor agency have found when evaluating other end-to-end transactions, and is sometimes labeled as "the one-lump theory."[11] The combination of CP and KCS would not change the state of affairs for a completely captive shipper, except possibly to give that shipper an option to use the KCS/CP single-line if that service is better than a KCS-Other Carrier route. To that extent, diversion to the KCS/CP route would indicate a presumptively better outcome for that shipper. Likewise, if the other carrier responds to this pressure with an offer to tighten margins and retains the shipper, the outcome reflects enhanced competition.

25. Next, consider the other hypothetical shipper, who can readily switch to another railroad or mode of transportation. Perhaps this second shipper can rely on FXE's

[11] *See* BN-SF Decision at pp. 747–748, 751: "Our experience has been that where a single rail carrier controls a destination segment, and no transportation alternatives are available, the shipper will be captive and the single rail carrier will be able to capture the preponderance of the economic profits" and "the through rate will be at the level maximizing net revenue for the traffic, subject to regulatory limits, and the destination carrier will establish favorable through service with the origin carrier willing to take the lowest division of the through rate for its segment of the movement." *See*, also, fn. 10.

network in Mexico as a suitable alternative to KCSM for originating its movements. For the shipper with ready alternatives, there would be no *ability* for a combined CP/KCS to force inferior terms on the shipper. Doing so would only lead to loss of the traffic – or failure to attract new traffic – contrary to the company's economic incentives. Again, this shipper may still see the benefit of new single-line service and choose to divert from a KCS-Other Carrier route to a KCS/CP route or the other carrier may tighten its margins to retain the shipper – in either case, enhancing, rather than diminishing, competition. The Board has summarized this lack of ability by noting that any forces constraining a rail carrier from taking "full advantage of a bottleneck" are a limit on that ability both before and after a merger.[12] Whether those limiting forces are a regulatory constraint, competitive pressure from other rail or non-rail options, or anything else, the combination of CP and KCS is not likely to create any ability for the combined firm to profit from inferior terms to any shipper.

26. These two examples illustrate the extremes of a continuum. For any actual shipper, the degree to which they can turn to competitive options is likely somewhere between being completely captive and having a perfect limiting force. That is, the shipper has a "lump" that a serving railroad can earn but less of a lump than a completely captive shipper might convey. However large the lump is, the lack of either incentive or ability ensures that the shipper is not likely to suffer any incremental adverse effects from an end-to-end rail merger.

[12] *See* BN-SF Decision at p. 751: "Conversely, when certain factors are present that limit a carrier's ability to take full advantage of a bottleneck, those factors will remain in place as effective safeguards after the merger. We have consistently adhered to these principles in assessing harm in merger cases and in making market dominance determinations in rate cases."

27. Examination of the impact of past transactions in which vertical competitive concerns were raised tends to confirm the Board's conclusion in those prior cases. Of particular interest for this Transaction are the concerns raised by Union Pacific ("UP") in 2004-2005 about the impact of KCS's acquisition of Tex Mex and TFM (the holder of the Northeast Concession and predecessor of KCSM) on competition for traffic moving via the Laredo gateway. UP's concerns 15 years ago echo the concerns UP raised when it opposed the waiver of the 2001 merger rules to this Transaction.[13]

28. In the KC-TM-TFM proceeding, UP argued that KCS would inefficiently divert TFM-UP traffic to TFM-KCS routes in order to extend KCS's haul and earn greater revenues.[14] KCS responded by arguing that it would not have any incentive or ability to foreclose efficient TFM-UP routes and the Board agreed.[15] However, the Board nonetheless held KCS to its representations that it would keep the Laredo gateway open on commercially reasonable terms.[16]

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[13] *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.,* Union Pacific Railroad Company's Opposition to Waiver of the Regulations Contained in Current Subpart A of 49 CFR Part 1180, Finance Docket No. 36500, Apr. 1, 2021, at pp. 8–9.

[14] *See Kansas City Southern – Control – The Kansas City Southern Railway Company et al.*, Finance Docket No. 34342, Union Pacific Railroad Company's Comments, Volume 1 of 2: Narrative, Aug. 4, 2003 ("UP Comments on KCS-TM-TFM"), at pp. 45–58.

[15] "KCS's experts credibly explained that market conditions would prevent KCS from raising rates to shippers or foreclosing UP and BNSF from the Mexican market, because the latter two carriers account for more than 90% of the rail traffic interchanged with TFM at Laredo, and it would be unprofitable for KCS to use its control of TFM to take actions that would foreclose this traffic." KCS-TM-TFM Decision, at pp. 17–18.

[16] "In addition, we are requiring KCS to comply with its commitment to keep the Laredo gateway open on commercially reasonable terms. . . We will approve the KCS/TM application because the evidence demonstrates that, subject to the conditions imposed in this decision, there will not be, as a result of common control of KCS, KCSR, GWER, Mexrail, and TM, either a substantial lessening of competition, the creation of a monopoly, or a restraint of trade in freight surface transportation in any region of the United States." KCS-TM-TFM Decision, at pp. 6, 16.

29. I examine KCS's handling of traffic that moved from Mexico via KCS's Mexican affiliate in 2019 – 15 years after KCS acquired control of TFM (and renamed it KCSM) – to explore how the alleged incentive to foreclose UP at Laredo has played out. The traffic that could potentially generate the relevant foreclosure incentive is the traffic that KCSM originates in Mexico and for which KCS is UP's competitor for the delivery in the United States. Looking back at the KCS-TFM merger, UP's stated concern would suggest that post-control KCS would have found ways to close the gateway by disadvantaging UP traffic moving over the gateway because doing so would improve KCS's ability to win the delivery of this traffic.[17]

30. In **Exhibit 2**, I use KCS's traffic tape to look at the handling at Laredo of all the traffic KCS brings to Laredo from Mexico. The first row captures traffic in the category where KCS allegedly has an incentive to refuse to work with UP – i.e., traffic that KCS itself could deliver to the ultimate termination. Even within this category of traffic, KCS interchanges {{ }} percent with UP at Laredo. That sizable percentage is consistent with KCS having an incentive to provide shippers with their preferred route and carrier – interchanging as necessary to meet the shipper's preference rather than forcing shippers to use KCS alone.

[17] While UP's concern could have applied to southbound traffic as well, I test the effect on the northbound traffic as I can readily categorize movements of this traffic in terms of whether an interchange with another railroad happened as early in the movement as feasible.

EXHIBIT 2
Traffic KCSM brings to the Laredo gateway from Mexico is interchanged with UP, BNSF, and KCS

{{

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Source: CP-KCS Traffic Tapes, 2019; Confidential Waybill Sample, 2019; CP Intermodal Containers to Railcar Conversion Factor.xls; KCS R-1 Annual Report, 2019

Note: This analysis focuses on northbound shipments that KCS routes from Mexico through Laredo. Total carloads and shares are broken down based on whether KCS, CP, UP, or BNSF can serve the ultimate destination area. Areas served are based on BEA areas. An area is considered "served" by a carrier in this analysis if the carrier is observed terminating the final segment of a movement in the area in the 2019 CP-KCS traffic tapes or is observed terminating a shipment in the 2019 Confidential Waybill Sample. There are {{ }} carloads that KCS routes from Mexico through Laredo for which the ultimate destination is not reported in the data. These carloads are excluded from the analysis. Intermodal units are converted to carloads using 4.7 units per flat car, which corresponds to a system average for CP. Using the KCS system average, 3.9 units per flat car, does not qualitatively change the results.

31. Of course, the exchange of traffic with UP is also consistent with KCS having no ability to force shippers into using KCS. Possibly, that lack of ability follows from the commitments KCS undertook as a condition for its merger with KCSM. However, even if the incentive to refuse to work with UP might exist and might be acted upon if KCS were not subject to those commitments, a combined CP/KCS would assume the same commitments KCS has been operating under since its merger with KCSM. Moreover, I understand that CP has already extended similar commitments to other existing gateways.[18] The fact that KCS has continued to interchange {{

}} traffic with UP at the Laredo gateway, even where KCS could be the single-line carrier of that traffic, demonstrates that the elements required to constitute a vertical concern are not present in a combination of CP and KCS. That is, interchange

[18] Brooks V.S., at ¶¶ 42–47.

activity at the Laredo gateway demonstrates a combined CP/KCS would not have the ability and incentive to preclude its rivals' access to gateways.

32. In addition, comparisons of the KCS shares in Exhibit 2 are consistent with my assessment that competition will benefit from the creation of new and improved single-line offerings. Of KCS's {{ }} percent share of the Laredo crossings destined for areas where KCS could potentially deliver to the ultimate destination, KCS handles {{ }} percent of this traffic via longer-hauls on its network (row 1). That is, counting the traffic KCS takes to Robstown, TX to exchange with BNSF as effectively the same as an interchange at Laredo, KCS is chosen by shippers for service beyond Laredo on about {{ }} percent of the carloads. This rate stands in contrast to the percentages seen in the second row – representing traffic that is destined for areas where KCS could not deliver to the ultimate destination. For that traffic, shippers choose KCS for service beyond Laredo on {{ }} percent of carloads. That difference, {{ }} percent where KCS could offer a single-line service compared to {{ }} percent where they could not, suggests that shippers have a preference for single-line service.

33. A portion of the areas where KCS cannot deliver to the ultimate destination today have the potential to gain single-line service from a combination of CP and KCS. Limiting my analysis only to those areas where CP could deliver to the ultimate destination (row 3), I see that KCS is handling the traffic beyond Laredo on an even smaller share of these carloads, about {{ }} percent. Within the same group of destinations, KCS is chosen for service beyond Laredo {{ }} for locations where each of UP or BNSF would have to interconnect with other railroads north of Laredo or Robstown to complete the movement (row 4), and

KCS is chosen for service beyond Laredo {{ }} where UP or BNSF instead would be able to reach the destination via their own networks and thus would not need to interconnect north of Laredo or Robstown (row 5).[19] These comparisons suggest that the ability to offer fewer interchanges can significantly improve a railroad's ability to win the business of shippers to these areas and can make a railroad's service a more significant competitive force.

34. These figures imply significant scope for shippers to benefit from enhanced competition resulting from the CP/KCS combination. This is particularly true for the shipments covered in row 3, where KCS only wins carriage of the traffic beyond Laredo for {{ }} of carloads. These are shipments destined for locations beyond Kansas City where the combined CP/KCS will create the potential to change the present interline service option of CP and KCS into single-line service. As I just showed, comparisons to regions where KCS can currently offer single-line service suggest the combined CP/KCS will win a larger percentage of shipper business as their competitiveness is enhanced as a result of the combination extending their single-line capability to these areas. In these areas, for which KCS currently exchanges about {{ }} percent of carloads with UP at Laredo and about {{ }} percent of them with BNSF at Robstown, CP/KCS will be in a stronger position after a CP and KCS combination to compete for the movement. UP and BNSF might lose some of their share on this traffic to the improved CP/KCS product, but they would not likely be foreclosed, just as UP has not been foreclosed by KCS for movements to areas KCS

[19] For these movements, UP and BNSF tend to serve the same set of delivery locations. Of the {{ }} carloads moving to delivery locations served by UP or BNSF (row 5), {{ }} carloads are destined for locations served by both UP and BNSF, {{ }} carloads for locations served by UP and not BNSF, and {{ }} for locations served by BNSF and not UP. See my workpaper 1.

can currently serve with a single line (row 1). Rather, UP and BNSF would have to compete harder to maintain share similar to what UP wins today in competition against KCS single-line routes to the areas in row 1.

35. To the extent that these shares suggest that KCS is less likely to exchange traffic with UP and BNSF when it has a competitive incentive to deliver the traffic itself, it is important to distinguish between an incentive to compete, which is good for shippers, and an incentive to impair competitors, which is bad for shippers. I expect a combined CP/KCS will have incentives and ability to compete more effectively, rather than an incentive to impair competitors, and that this would give more opportunities for shippers to benefit from new single-line service offered by a combined CP/KCS. This conclusion is consistent with the observed shares in Exhibit 2.

36. The Board has consistently recognized that the goal of preserving competition is not the same as protecting competitors. The economic consequence of a vertical merger creating an opportunity for the combined firm to bring a higher quality product to the market is an incentive for the combined firm to compete harder. This, in turn, forces rivals to compete harder – either through offering higher quality service themselves or through reducing their rates – to maintain share. If the net effect of this economic implication is the combined firm gains some share at the expense of its rivals, this is a procompetitive outcome, not the result of any incentive to foreclose a rival. Without the risk of this outcome, the rivals would not have to improve their own offers and competition would suffer. This tension between protecting competition or protecting competitors has been recognized in the Board's past reviews. For instance, in its decision on the KCS-TF-TFM transaction, the Board noted that to the extent the

transaction "would lead KCS to favor its own routings for those few points that are served by both KCS and UP (or KCS and BNSF), KCS might earn more revenue than in the past, and UP (or BNSF) might earn less, but that is not going to result in higher costs to shippers. This could well mean some harm to a competitor (UP, BNSF), but not harm to competition."[20]

37. Similarly, a vertical transaction may have the effect of reducing the leverage of a rival carrier in negotiations with the combined carrier over the division of joint rates. However, again, this effect is a result of increased competitiveness. The combined firm's ability to offer an attractive single-line option to shippers changes the relative value of interlining services. This change in competitive position among carriers serves to promote competition, rather than creating harm to shippers. Indeed, the Board also acknowledged this aspect of the distinction between competition and competitors when dismissing vertical concerns in its decision to allow the KCS–TM–TFM transaction.[21]

38. Other gateways throughout the combined CP/KCS system would present similar circumstances. The combined CP/KCS will have an incentive to win business with enhanced single-line service where the combination extends the reach of CP or KCS. The combined CP/KCS will also have an incentive to interchange traffic destined for locations it still cannot reach. And, like at Laredo, a combined CP/KCS should be expected to interchange traffic even where it can offer an enhanced service if the

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[20] KCS-TM-TFM Decision, at p.18.

[21] "If KCS tried to raise rates on TFM movements that are not rail dependent, the traffic would shift to motor or water carriage. And on TFM movements that are rail dependent, if for some reason TFM is not presently extracting monopoly rents, then the connecting carrier within the United States could be doing so. Therefore, UP's argument seeks to protect the U.S. carrier's leverage regarding divisions of joint rates (that is, concerns over how the interline rail partners will divide the profit), not to protect shippers." KCS-TM-TFM Decision, at p. 17.

shipper, nevertheless, prefers a different routing or wants to use a different carrier. CP's willingness to make the same sort of commitments adopted by KCS at Laredo (and which appear to have been effective) demonstrates this. Consequently, I conclude that a combined CP/KCS is likely to benefit shippers through enhanced competition and not likely to impair competition through vertical effects.

4. ANALYSIS OF INDEPENDENT ROUTE COUNTS BEFORE AND AFTER A CP AND KCS COMBINATION SHOWS THERE WOULD BE NO REDUCTION IN COMPETITION WITHIN ANY CORRIDOR

39. In sections 4 and 5, I demonstrate that a CP and KCS combination is not likely to harm horizontal competition. That result should not be surprising as this is not a horizontal combination but rather is an end-to-end combination.

40. In analyzing the prospect for a CP and KCS combination to affect horizontal competition, I start with the simplest and most direct form such competition can take – competition within a corridor. This is the competition among railroads to ship goods from a specific origin to a specific destination, i.e., in a corridor.

41. A shipper can presumably negotiate among the various railroads that offer service in a given corridor, so this analysis is predicated on identifying any corridors where a combination of CP and KCS could reduce the competitive options. With that goal in mind, in section 4.1 I consider the scope of specific locations (origin or destination) that could practically define a corridor and show that a Bureau of Economic Analysis Economic Area ("BEA area") is a reasonable way to ensure that the various recognized forms of competition have been included in the analysis.

42. To identify the options a shipper has for a given corridor, I look to the Confidential Waybill Sample ("Waybill Sample") and identify options based on actual movements of goods in that corridor in 2019. The shipments observed in the Waybill Sample, however, often involve interconnections where different railroads work together to deliver the goods from origin to destination. If the same railroad is involved in two different options seen in the data, the shipper is unlikely to generate competition among those two options by trying to get that railroad to negotiate against itself.

Consequently, the focus of this analysis will be on the number of *independent* rail options a shipper has and whether that number changes when CP and KCS are combined.

43. If the number of independent options is unchanged, a shipper is not likely to see any loss in the ability to generate competition among competing railroads. I present my analysis of corridor competition in section 4.2, and show that a combination of CP and KCS would not reduce independent rail choices for shippers, and thus would not harm competition within corridors.

4.1. The BEA area is an appropriate scope to define the origin or destination of a corridor in screening for competitive effects of a combination of CP and KCS

44. Rail corridors are defined by their endpoints. The scope of those endpoints, however, needs to reflect a reasonable area to reflect the competitive options a shipper might have. For example, one candidate for defining a corridor's endpoints might be the exact location at which a movement starts and the exact location at which it ends. Such a narrow definition would count only competition among railroads that serve these exact locations and would not allow consideration of other potential forms of competition.

45. The Board has identified a number of ways that nearby railroads can compete without having existing service at the same exact location. Specifically, the Board has asked about the possibility of "elimination of shippers' buildout, transloading, plant siting, and production shifting choices when two railroads serving overlapping areas

merge."[22] To address these possibilities, a screen of corridor competition should include railroads that operate close enough to the exact endpoints of a shipper's observed movement to capture realistic opportunities the shipper may have had to induce competition through one of these means for a specific movement.[23]

46. The Waybill Sample offers a range of practical alternatives for defining the scope of competition at an endpoint of a corridor: town (6-digit SPLC), county (4-digit SPLC), BEA area, or state.[24] Of these, only the BEA area is designed to identify a reliable commercial center for statistical purposes. The label refers to the Economic Areas defined by the Bureau of Economic Analysis based on observed commercial activity and transportation patterns rather than historic political boundaries.[25] The BEA areas, therefore, are a reasonable representation of areas in which a shipper is likely to look for "nearby" railroad competition. A shipper considering relocating a plant within an economic community or transloading their product within that community, for

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[22] *See Canadian National Railway Company, et al. – Control – Kansas City Southern, et al.,* Finance Docket No. 36514 (Decision No. 3 served May 17, 2021), at p. 4.

[23] For the shippers associated with movements observed in the data, "plant siting" and "production shifting" could introduce the possibility of relocating one endpoint of an observed movement, which I discuss below as the potential for competition between corridors. To the extent a shipper might be able to rearrange its business and rely on a different movement altogether – swapping out both endpoints of an observed movement – I consider that corridor and the competition for it as a separate issue to the extent that corridor is observed in the data.

[24] Railinc Business Services, "2019 Surface Transportation Board Carload Waybill Sample Reference Guide," Dec. 23, 2020, at pp. 39–41, 70 ("SPL Codes are based on a six-digit system of nesting recognized entities and numbering them in a standard geographic pattern. The nesting system is STATE - COUNTY - CITY (POINT), using two digits to identify each.")

[25] Johnson, Kenneth P., and John R. Kort, "2004 Redefinition of the BEA Economic Areas," *Survey of Current Business*, Nov. 2004, at p. 68 ("BEA's economic areas define the relevant regional markets surrounding metropolitan and micropolitan statistical areas. They consist of one or more economic nodes – metropolitan or micropolitan statistical areas that serve regional centers of economic activity – and the surrounding counties that are economically related to the nodes. These economic areas represent the relevant regional markets for labor, products, and information. They are mainly determined by labor commuting patterns that delineate local labor markets and that also serve as proxies for local markets where businesses in the areas sell their products.").

example, is making a decision that largely reflects the sort of general activity defining the BEA area.

47. Theoretically, for screening purposes, one could use a larger area such as a state or even a group of states and capture more possible overlaps that are farther removed from one another. Unlike choosing too small an area, choosing a larger area does not exclude any potential for competition. However, including possible overlaps that are unlikely to reflect any realistic prospect of a competitive alternative defeats the purpose of screening for overlaps as a first step. The factors used to construct a BEA area correspond well to the kinds of economic decisions underlying local competition possibilities that have been considered by the Board, so there is no apparent gain from using any larger area for screening.

48. The Bureau of Economic Analysis does not define areas outside the United States. For Canadian origins and destinations, a similar concept is embodied in the Economic Region defined by Statistics Canada, the Canadian national statistics office, and created as a "standard geographic unit for analysis of regional activity."[26] For Mexico, I have relied on the State as the geographic area most similar to the BEA areas. U.S. BEA areas, Canadian Economic Regions, and Mexican states are roughly similar in geographic size, although Mexican states tend to be somewhat larger.[27] For ease of

[26] Statistics Canada, "Economic region (ER), Detailed definition," available at https://www150.statcan.gc.ca/n1/pub/92-195-x/2011001/geo/er-re/er-re-eng.htm.

[27] The median Mexican state is 58,400 square kilometers. The median U.S. BEA area is 29,843 square kilometers and the median Canadian Economic Region is 21,734 square kilometers. Ten percent of Mexican states are smaller than 5,617 square kilometers, ten percent of U.S. BEA areas are smaller than 10,393 square kilometers, and ten percent of Canadian Economic Regions are smaller than 7,192 square kilometers. Ten percent of Mexican states are larger than 120,361 square kilometers, ten percent of U.S. BEA areas are larger than 99,028 square kilometers, and ten percent of Canadian Economic Regions are larger than 273,312 square kilometers. See my workpaper 2.

reference in describing my analysis, I use the term "BEA area" to stand for whichever of these areas is applicable for locations in a given country.

4.2. Analysis of competition within corridors shows that a CP and KCS combination would not reduce rail options for shippers

49. Analyzing competition for shipments between specific origin and destination pairs, a corridor, is a standard part of analyzing a proposed railroad combination.[28] The analysis is comprised of two main steps.

50. In step one, I implement a screen based on movements observed in the Waybill Sample, with a focus on data from 2019. For origin and destination areas, I use the BEA area (i.e., the Bureau of Economic Analysis Economic Areas within the United States, Economic Regions within Canada, and states for Mexico).[29] For each corridor where CP and KCS participated in at least one observed movement in the Waybill Sample, I identify and count the number of independent routings observed in the data. I consider two routings independent of one another if they do not have any carriers in

[28] *See, e.g.*, Verified Statement of Curtis Grimm, *Norfolk Southern Railway Company - Acquisition and Operation – Certain Rail Lines of the Delaware and Hudson Railway*, Finance Docket No. 35873, Nov. 5, 2014 ("Grimm V.S., 2014"). This screening analysis has been relied on by the Board in its past reviews of railroad acquisitions. *See, e.g.*, *Norfolk Southern Railway Company – Acquisition and Operation – Certain Rail Lines of the Delaware and Hudson Railway Company, Inc.*, Finance Docket No. 35873 (Decision No. 6 served May 15, 2015), pp. 18, 20; *Kansas City Southern et al. – Control – Gateway Western Railway Company and Gateway Eastern Railway Company*, Finance Docket No. 33311 (Decision served May 1, 1997), at pp. 4–5.

[29] BEA Economic Areas and states for each movement are native to the Confidential Waybill Sample. Economic Regions are administrative boundaries provided by Statistics Canada and "created as a standard geographic unit for analysis of regional economic activity." *See* Statistics Canada, "Economic region (ER), Detailed definition," available at https://www150.statcan.gc.ca/n1/pub/92-195-x/2011001/geo/er-re/er-re-eng.htm.

common.[30] For example, two routes in a corridor that both involve CP for at least one segment are not treated as independent in my analysis, but a route that involves BNSF and does not involve CP would be treated as independent of all routes involving CP.[31]

51. This screen identifies corridors where the number of independent routes observed in the Waybill Sample suggests that shippers doing business in the corridor might see reduced competition. This exercise has the benefit of using data on actual movements to identify routes – including interchanges between separate railroads – that are practical for shippers.

52. By screening for reductions in the number of independent routes, the screen identifies possible reductions in choices that are most likely to affect shippers' ability to generate competitive bids. Economists model this sort of competition as a negotiation that depends on each party's next-best alternatives. From that perspective, a merger is

[30] To count the number of independent routings observed in a corridor, I begin with the observed routings for which the carriers involved have the fewest number of overlaps with other routings. I then compare these to routings with more carrier overlaps, identifying as independent any routings that do not have carriers in common with the previously identified independent routes. This progression ensures an accurate and intuitive count of independent routings. To see this, consider the following simple example: a corridor with CN-KCS, CN-BNSF, and KCS-UP routings. This corridor has two independent options – CN-BNSF and KCS-UP. A shipper could play CN and BNSF against KCS and UP to negotiate a better rate. The CN-KCS routing can be dismissed as not independent of the CN-BNSF or KCS-UP since it has a carrier in common with each. However, because it has more overlaps, if one starts with the CN-KCS routing, both the CN-BNSF and KCS-UP routings would be dismissed as not independent of the CN-KCS routing and one would wrongly conclude that this corridor is served by a single independent routing. A similar approach has been used in analysis of prior railroad mergers. For example, see Grimm V.S., 2014, at pp. 89–90.

[31] Consistent with the use of a BEA area as the appropriate scope of an origin and destination, I treat a terminating or originating railroad carrying less than 15 miles as not determinative of whether a route is independent. In other words, if the set of railroads involved in a movement would constitute an independent route, but for the presence in the movement of originating or terminating railroads that carried for less than 15 miles (as measured by straight line distances), I consider the set an independent route. For example, if CP only handles the first 10-mile straight-line segment from the origin to the first interchange of a route that involves BNSF and KCS, then CP is not a factor when determining whether the route is independent of all other carrier-based routes that are feasible in the corridor.

likely to affect competition if it is likely to reduce shippers' ability to use a specific route as a threat (i.e., what the shipper would do if a deal could not be reached).[32] However, a credible threat needs to be independent of the railroad with which a shipper is bargaining. Attempting to bargain for better rates with a threat to switch to another route is unlikely to be successful if that alternative route also depends on getting a rate from the same railroad.

53. Consistent with that focus on identifying the lost choices that are most important to shippers, a common practice in railroad merger reviews is to focus on situations where a proposed acquisition reduces the number of independent routes from 3-to-2 or from 2-to-1.[33] In the former (a 3-to-2 reduction), a shipper still has some potential for competition but significantly less than before. In the latter (a 2-to-1 reduction), the loss of competition is even worse. A shipper that previously had some potential for competition no longer has any competition – i.e., the shipper would essentially face a monopoly on rail transport post-merger.

54. This screen represents a necessary but not sufficient test – i.e., the screen is an initial step of the analysis and identifies corridors where more detailed review is warranted. Here, the screen identifies only seven corridors for further examination.

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[32] This concept is addressed in FTC and DOJ's Horizontal Merger Guidelines, which state, "a merger between two competing sellers prevents buyers from playing those sellers off against each other in negotiations. This alone can significantly enhance the ability and incentive of the merged entity to obtain a result more favorable to it, and less favorable to the buyer, than the merging firms would have offered separately absent the merger." U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines ("Horizontal Merger Guidelines"), Aug. 19, 2010, at p. 22.

[33] *See, e.g.*, Grimm V.S., 2014, at pp. 86–92.

55. In step two, for each corridor identified for further review in the screening step, I examine additional facts to determine whether a substantial lessening of competition for shippers in that corridor is actually likely. Because the screen is based on routes chosen by shippers in 2019 (as evidenced by movements observed in the 2019 Waybill Sample), it often identifies corridors in which shippers may have viable rail options that happen not to be sampled in a given year's Waybill Sample. A route that shippers chose to use on a given corridor in prior years is likely still a viable route even if no shipper happened to have used it in 2019 – or none that ended up in the sample. The potential to use such a route is relevant to whether the corridor is likely to see a reduction in competition after a combination of CP and KCS.[34]

56. In all seven corridors flagged in the initial screen, further examination shows that shippers in these corridors would not face a meaningful reduction in the competition available within the corridor. For six of those seven corridors, I find that additional viable independent routes exist that were not captured in the 2019 Waybill Sample; the seventh has at least four independent options for shippers and KCS being independent of CP does not appear to add significantly to competition in this route.

[34] Grimm also uses arguments about other railroads that could serve the OD pairs that were identified by the screen, even if the proposed service was not observed in the data. *See* Grimm, at pp. 91–92 ("In fact, I determined that these corridors were not true 2-to-1 independent competitive alternatives in which there would be lessening of competition. This is because there exist independent alternatives to NS/DHS involving CSX although the sample used for the analysis did not include any such CSX traffic for that particular year notwithstanding the existence of CSX routings.").

4.2.1. Results of an initial screen to identify any corridors where shippers may experience a loss in rail choice from a combination of CP and KCS

57. I find that the initial screen triggers further examination for only seven corridors. I summarize these seven corridors in **Exhibit 3**. There are four screened for examination as potential 2-to-1 corridors, including {{{

}}} There are two screened for examination as potential 3-to-2 corridors: {{{

}}} One corridor, {{{

}}} is screened for further examination as a potential 5-to-4 corridor.

58. As I show in the next subsection, after further examination, none of these corridors hold up as likely to see a reduction in competition as a result of a combination of CP and KCS.

EXHIBIT 3
Corridors identified by the initial screen for further analysis of within-corridor competition for a CP and KCS combination

{{{

}}}

Source: Confidential Waybill Sample, 2019
Note: A corridor is screened as having a potential reduction in competition if the number of independent routes decrease due to a CP and KCS combination. Independent routes are those in which there is no overlap between participating railroads. For example, if there are two available routes, (a) KCS-CN and (b) KCS direct, they would not be independent because KCS is involved in both; however, if the second route instead used UP single-line service, then the two routes (KCS-CN and UP direct) would be independent. If the set of railroads involved in a movement would constitute an independent route but for the presence in the movement of originating or terminating railroads that carried for less than 15 miles long in straight-line distance, it is considered an independent route. Origin and destination areas are defined at the BEA areas level for the U.S., at the Economic Region level for Canada, and at the state level for Mexico. The table also reports the total expanded revenues observed in the 2019 Confidential Waybill Sample for each corridor. A "No Issue" note in the last column indicates that a corridor originally screened for more detailed review did not present any competitive concern after further analysis.

4.2.2. Further examination of the screened corridors shows that none would experience a meaningful reduction in competition, if any at all, following a combination of CP and KCS

59. In this section, I show that none of the seven corridors that triggered the screen would see a meaningful reduction in competition, if any at all, because of a CP and KCS combination.

60. I begin with the corridors that screen for examination as potential 2-to-1 corridors.

61. I first consider {{{

}}}. Most of the movements in 2019 in this corridor were for dried lumber.[35] However, shippers of dried lumber in this corridor have options independent from CP and KCS that were not observed in the sample for 2019. Specifically, {{{

}}} and {{{

. }}} Indeed, the 2017 Waybill Sample includes shipments of dried lumber using the {{{ }}} and the {{{ }}} routes.[36] The track map in **Exhibit 4**, illustrates these routing options that will be available for shippers in this corridor after a CP and KCS combination, including {{{

}}}.

[35] See my workpaper 3.

[36] See my workpaper 3.

EXHIBIT 4
{{{ }}} would have at least three viable, independent routes after a CP and KCS combination

{{{

}}}

Source: Confidential Waybill Sample, 2015–2019
Note: The table describes the potential independent routes before and after a CP and KCS combination. The italicized routes are those that are feasible based on Confidential Waybill Sample shipments observed in 2016, 2017, or 2018, or are routes that are feasible based on the railroads' networks.

62. I do a similar analysis for {{{ }}}. If the {{{ }}} route interconnecting in {{{ }}} is included, this corridor would not see a reduction in the number of independent routes. It would have two before and still have two after a CP and KCS combination. This {{{ }}} route does not appear in the 2019 Waybill Sample, but it would be a viable option following a CP and KCS combination. It does appear in the 2018 Waybill Sample with shippers using it to move wood products, which are shipped in this corridor in the 2019 data.[37] The track map in **Exhibit 5** shows that shippers will have at least two independent routes available after a CP and KCS combination, {{{ }}}.

[37] The specific types of wood products differ at the level of 7-digit STCC. See my workpaper 4.

EXHIBIT 5
{{{ }}} would have at least two viable, independent routes after a CP and KCS combination

{{{

}}}

Source: Confidential Waybill Sample, 2015–2019
Note: The table describes the potential independent routes before and after a CP and KCS combination. The italicized routes are those that are feasible based on Confidential Waybill Sample shipments observed in 2016, 2017, or 2018, or are routes that are feasible based on the railroads' networks. The dotted line is a route observed from the 2019 Waybill Sample that involves {{{ }}} After a CP and KCS combination, the CN-KCS route would no longer be independent of the CP single-line service.

63. I next evaluate {{{

}}}. Two viable routes, {{{ }}}, are not observed in the 2019 data. However, these routes were used by shippers in previous years. The 2017 Waybill Sample shows the {{{ }}} route used to ship plastic materials, and the {{{ }}} option used by shippers of vegetable oils, which represented 75 percent of the movements observed in this corridor in the 2019 data.[38] Shippers seeking competitive options in this corridor would still have three independent routes after a combination of CP and KCS, as can be seen on the track map in **Exhibit 6**.

[38] The specific types of vegetable oils differ at the level of 7-digit STCC. See my workpaper 5.

EXHIBIT 6
{{{ }}} would have at least three viable, independent routes after a CP and KCS combination

{{{

}}}

Source: Confidential Waybill Sample, 2015–2019
Note: The table describes the potential independent routes before and after a CP and KCS combination. The italicized routes are those that are feasible based on Confidential Waybill Sample shipments observed in 2016, 2017, or 2018, or are routes that are feasible based on the railroads' networks.

64. I now evaluate {{{ }}}. Further examination of the screening results reveals that this is a case where the screen is not actually identifying a possibility of consolidation by the merging parties. Instead, the screen is identifying a situation where the set of options would appear to be reduced only because the data do not include any observations of shippers currently using CP-KCS.[39] Including the new single-line route of a combined CP/KCS, shippers in this corridor will have two independent options rather than one. To help illustrate this artifact of the Waybill Sample, I summarize in **Exhibit 7** the route options observed in the 2019 Waybill Sample for this corridor.

EXHIBIT 7
{{{ }}}

{{{

}}}

Source: Confidential Waybill Sample, 2019

65. There are three routes observed in the 2019 Waybill Sample: {{{ }}}. Among these, a shipper cannot threaten both {{{ }}} and {{{ }}} with either the {{{ }}} option or with the {{{ }}} option. However, in negotiating with {{{ }}} and {{{ }}}, a shipper could use the threat of {{{ }}} and vice versa. The screen, being limited to routes observed in

[39] See my workpaper 6.

the data, sees a potential reduction in independent options even though a combined CP/KCS would offer a new single-line service, which would be independent of the {{{ }}} option. Consequently, shippers would still have at least two independent options to generate competition in negotiations: {{{ }}} and {{{ }}}. These options are shown in the track map in **Exhibit 8**.

66. Moreover, the results for this corridor actually identify a benefit of a CP and KCS combination. Although the 2019 Waybill Sample does not include {{{ }}}, I understand that such a route would be viable given {{{ }}}.[40] The efficiency of this new single line service could enhance competition with the existing {{{ }}} route, providing procompetitive benefits to shippers in this corridor.

[40] See my workpaper 7.

EXHIBIT 8
{{{ }}} would have at least two viable, independent routes after a CP and KCS combination

{{{

}}}

Source: Confidential Waybill Sample, 2015–2019
Note: The table describes the potential independent routes before and after a CP and KCS combination. The italicized routes are those that are feasible based on Confidential Waybill Sample shipments observed in 2016, 2017, or 2018, or are routes that are feasible based on the railroads' networks.

67. Next, I examine the corridors screened for examination as potential 3-to-2 corridors.

68. I begin with {{{ }}}. The 2019 Waybill Sample suggests {{{ }}} would have only two independent routes, down from three, following a combination of CP and KCS. However, a review of the track maps in **Exhibit 9** suggests otherwise. There are at least three viable independent routes in this corridor, with or without a combination of CP and KCS, including {{{ }}}. All three of these route options are observed in the Waybill Sample for 2018 and for 2017, moving types of industrial sand that are shipped in this corridor in 2019.[41] After the combination, the CP-KCS route will constitute a new single-line service.

[41] See my workpaper 8.

EXHIBIT 9
{{{ }}} would have at least three viable, independent routes after a CP and KCS combination

{{{

}}}

Source: Confidential Waybill Sample, 2015–2019
Note: The table describes the potential independent routes before and after a CP and KCS combination. The italicized routes are those that are feasible based on Confidential Waybill Sample shipments observed in 2016, 2017, or 2018, or are routes that are feasible based on the railroads' networks.

69. I next evaluate {{{ }}}. This low-volume corridor is not likely to see material competitive effects. In 2019, revenues in this corridor were only {{{ }}} dollars and only {{{ }}} tons of goods were moved.[42] Moreover, 60 percent of the tonnage moved in this corridor in the 2019 data were {{{ }}}.[43] Although not observed in the Waybill Sample, the two carriers' network maps suggests this corridor can be served by {{{ }}}.[44] The track map in **Exhibit 10**, illustrates these routing options that will be available for shippers in this corridor after a combination of CP and KCS, including {{{ }}}.

[42] *See* Exhibit 3. See my workpaper 9.

[43] See my workpaper 9.

[44] Another, circuitous route involving {{{ }}}, which does not appear on the map, can be found on several shipments in the 2016 Waybill Sample. These two routes, even if circuitous, are likely to be reasonable options given that most movements in this corridor are {{{ }}}. See my workpaper 9.

EXHIBIT 10
{{{ }}} would have at least three viable, independent routes after a CP and KCS combination

{{{

}}}

Source: Confidential Waybill Sample, 2015–2019
Note: The table describes the potential independent routes before and after a CP and KCS combination. The italicized routes are those that are feasible based on Confidential Waybill Sample shipments observed in 2016, 2017, or 2018, or are routes that are feasible based on the railroads' networks. The dotted line is a route observed from the 2019 Waybill Sample that involves {{{ }}} After a CP and KCS combination, the CN-KCS route would no longer be independent of the CP single-line service.

70. Finally, I evaluate the corridor that screened for examination as a potential 5-to-4 reduction, {{{ }}}. First, as I noted above, the Board has

historically focused on 3-to-2 and 2-to-1 reductions as most relevant. That focus is consistent with the fact that economic models of competition tend to suggest the effect of losing a competitive option is most significant when the number of options is already small.[45] Even taking the screen results at face value, without any additional evaluation, there would be at least four independent options available to shippers in this corridor after a combination of CP and KCS. Second, KCS currently does not have a large presence on this corridor. Out of more than {{{ }}} movements in this corridor in 2019, only {{{ }}} have participation by KCS, which is consistent with shippers having so many choices and also with KCS not being one of the better options among those.[46] Shippers are unlikely to experience a significant competitive effect from not having an independent KCS on this corridor.

71. In summary, the analysis of all seven corridors identified in the screening step demonstrates that there would not likely be a reduction in competition within any corridor because of a combination of CP and KCS.

[45] This general principle is embodied in the Herfindahl-Hirschman Index ("HHI") thresholds used in the Horizontal Merger Guidelines, which spell out increasing significance of concern for mergers in markets that are more concentrated and where the acquired firm is a larger portion of the competition that would otherwise exist. *See* Horizontal Merger Guidelines, Section 5.3.

[46] {{{

}}}. See my workpaper 10.

5. ANALYSIS OF CROSS-CORRIDOR COMPETITION SCENARIOS SHOWS NO LIKELY REDUCTION IN COMPETITION BETWEEN CORRIDORS IN A CP AND KCS COMBINATION

72. In the previous section, I examined competition within corridors. In this section, I examine geographic competition, i.e., competition between corridors. Specifically, I consider whether a combined CP and KCS would be likely to limit (a) receivers' ability to source a given commodity from shippers at different origins ("source competition"), or (b) shippers' ability to send a given commodity to a receiver at other destinations ("destination competition"). A railroad combination that reduces source competition or destination competition can potentially harm shippers and lead to higher prices or lower quality service.

73. As I showed in section 4, competition within corridors is undiminished by the combination of CP and KCS. Any benefit shippers may see from additional competition between corridors is incremental to this within-corridor competition. Consequently, the analysis of between-corridor competition is focused on identifying situations where CP and KCS are important and therefore could constitute an outsized portion of any incremental competitive significance and potentially raise a between-corridor competitive effect. That factual premise is likely to be unique to specific commodities and to depend on where that commodity originates and where it terminates. Therefore, this analysis will examine patterns of movements for specific commodities.[47]

[47] That is, I analyze geographic competition *commodity by commodity* allowing each commodity to have specific origins and destinations that are relevant for competition for the shippers of that commodity. For example, certain raw materials may only be sourced from a handful of areas and may only be processed in other specific areas.

74. Similar to my analysis of within-corridor competition, my analysis of cross-corridor competition for a given commodity is comprised of two steps. First, I apply a screen based on the 2019 Waybill Sample to identify origin-commodity pairs or destination-commodity pairs for which additional examination is useful. Second, I further analyze each of the areas identified by the screen to determine whether a substantial lessening of competition is, in fact, likely. Applying this established analytic framework demonstrates that no form of competition between corridors is likely to be harmed by a combination of CP and KCS.

5.1. The "50/10" analysis encapsulates the various possible forms of geographic competition

75. In this subsection, I explain the framework, methodology, and economic intuition of the two steps in my analysis of geographic competition. These steps are consistent with past practice in examining geographic competition in railroad mergers.[48] I then present the results of my analysis in section 5.2. I find that a combination of CP and KCS would not substantially lessen competition between corridors.

76. Before describing the methodology, it may be useful to establish some terminology to be clear about the various forms of geographic competition the analysis is designed to explore. The focus of the analysis will be:

- *Origin-commodity* pairs for which there might be reduced *destination* competition, and

[48] Verified Statement of Christopher Vellturo, *Canadian National Railway Company et al – control – EJ&E West Company*, Finance Docket No. 35087, Oct. 29, 2007 ("Vellturo V.S., 2007"), at pp. 85–88.

- *Destination-commodity* pairs for which there might be reduced *source* competition.

77. Consider a shipper located in Kansas City who produces brackets, which they currently ship to Mexico using KCS. In addition to the competition within this corridor to Mexico, the analysis of destination competition for this shipper asks whether there is an incremental competitive benefit because shippers of brackets from Kansas City can also find another destination for their brackets served by CP, perhaps Toronto. At the same time, this shipper may rely on steel as an input for making brackets and may currently source that steel from a mill in Mexico, again using KCS. The analysis of source competition for this shipper of steel to Kansas City involves other potential sources of steel, perhaps a Midwestern mill served by CP.

78. As these examples illustrate, geographic competition opens the possibility of dispersed options and of routes that a particular shipper is not currently using. To make useful comparisons across different corridors and reflect the likelihood a shipper might switch to any particular alternative, I rely on the economic intuition that similarly situated shippers are informative about each other's likelihood of choosing among the available options. That is, I use the share of all movements by shippers of the same commodity from the same origin (or to the same destination) as an indication of preferences among all shippers for that origin-commodity pair (or, respectively, the destination-commodity pair).[49] These shares, however, are not necessarily the share of

[49] This is consistent with the standard approach of other regulatory agencies in evaluating potential competitive effects of proposed mergers. For example, FTC and DOJ's Horizontal Merger Guidelines state that, "[t]he Agencies give weight to the merging parties' market shares in a relevant market, the level of concentration, and the change in concentration caused by the merger. . . Mergers that cause a significant increase in concentration and result in highly concentrated markets are presumed to be likely to enhance market power, but this presumption can be rebutted by persuasive

all movements that constitute a relevant market. Shipments of the commodity from other origins or to other destinations may also be relevant to the ultimate question of whether a combination of CP and KCS poses a risk of competitive effects in a well-defined market involving source or destination competition. Thus, the two steps of the analysis may be thought of as first narrowing consideration to origin-commodity or destination-commodity pairs that could be a relevant group of shippers, and then asking if such effects are likely for that group.

5.1.1. The initial screen methodology identifies areas for further review based on all varieties of possible geographic competition effects

79. The initial screen identifies for further review origin-commodity pairs and destination-commodity pairs for which a CP and KCS combination could potentially reduce "destination competition" or "source competition." The initial screen examines these two types of geographic competition separately.

80. Counting the number of options relevant to between-corridor competition is more complicated than counting options within a single corridor. Some corridors may be more desirable for shippers. Economists frequently rely on measures such as share of tons or revenues to standardize across such differences, as I do here. Using shares instead of counts, however, introduces a question of whether the denominator reflects the relevant set of options for shippers. Including too many or too few options could make shares a poor representation of actual competitive conditions. The share analysis

evidence showing that the merger is unlikely to enhance market power." *See* Horizontal Merger Guidelines, at p. 3.

used in past railroad mergers allows for various possibilities of how shippers may benefit from additional railroads operating at the origin or the destination or some combination by considering three variations – shares among all participating railroads, shares among railroads that were the originating carrier, and shares among railroads that were the terminating carrier.[50] I take the same approach here.

81. For each of these definitions of shares, the screen measures that share of traffic handled by the merging railroads for each origin-commodity and destination-commodity pair. If one of the merging railroads has a low share, then the combination is unlikely to substantially reduce competition and no further review is warranted. If, however, both merging railroads have sizable shares and the merger will result in a high share controlled by the combined firm, then there is a possibility that the merged firm could gain the ability to raise prices or reduce service quality for shippers of the commodity.[51] The screen flags these pairs for further review.

82. Specifically, the screen flags for further review origin-commodity or destination-commodity pairs if CP and KCS's combined shares of traffic (measured in tons) for the

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[50] *See, e.g.*, Vellturo V.S., 2007, at pp. 85–88; Amended and Supplemented Verified Statement of Dr. David Reishus, *CSX Corporation et al. – control – Pan Am Systems, Inc. et al.*, Finance Docket No. 36472, July 1, 2021 ("Reishus V.S., 2021"), at pp. 65–66.

[51] A shipper faced with a multi-carrier movement may negotiate separately for portions of the movement under Rule 11, generating multiple waybills for parts of a single movement. The sampling methodology used to construct the Waybill Sample does not guarantee that the corresponding waybill for the rest of that movement is in the data. Thus, the waybill data for these "Rule 11" movements may list origins or terminations that are a point of interchange and not the actual origin or termination of the full movement. Even so, the origins and terminations listed in Rule 11 observations identify movements over which a carrier may be able to exercise market power in freight revenue negotiations. I am aware that KCS/KCSM recategorizes movements as rebills in a way that may not reflect shipper choices. There is no clean way to reverse this practice in the data. I include Rule 11 movements in the 50\10 analysis, consistent with the approach taken in analysis of prior railroad mergers. *See, e.g.*, Vellturo V.S., 2007, Appendix A, at p. 141, fn. 4.

pair exceed 50 percent, *and* both CP and KCS individually each have shares of at least 10 percent.[52]

83. The three definitions of shares used as screens for each type of geographic competition overlap. That is, they measure the same movements observed in the Waybill Sample, but using different assumptions about how important a railroad may be to competition. A screen can be triggered for any of the three calculations of shares to reflect different possibilities of either source or destination competition. In Appendix 7.1.1, I use an illustrative example to describe in more detail how the three types of shares are calculated.

84. The *participating* screens – *origin BEA area ("OBEA") participating* screen and *destination BEA area ("DBEA") participating* screen – assume that a railroad is not likely to compete with itself and measures shares for each of CP and KCS based on routings that either do or do not involve that railroad at any stage of the movement.[53]

85. The two screens that focus on the competition at the specific BEA area where source or destination competition is being assessed (*OBEA-originating* screen and *DBEA-terminating* screen) may express a more natural assumption: competition between corridors could depend on the independent railroads available to a shipper.

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[52] The choice of these thresholds is consistent with the goal of identifying special circumstances where CP and KCS may have an outsize importance consistent with the possibility of an incremental effect from lost between-corridor competition and with the thresholds used to implement similar screens in prior railroad merger reviews. *See, e.g.*, Vellturo V.S., 2007, Attachment 2, at pp. 115–116.

[53] This measure can involve some intentional "double-counting" of routes that involve both CP and KCS, ensuring this screen is over inclusive. Some extremes of over-inclusiveness are ruled out with an adjustment to the threshold used in these double-counting instances. To trigger the screen, the participating share of the combined railroad, after removing double counting, must be at least 10 percentage points higher than the higher of the merging railroads' individual shares.

For example, a shipper looking to employ different destinations might look at the railroads immediately available in a BEA area such as Kansas City, MO and try to negotiate between KCS, who can start a movement headed southward, and CP, who could start a movement headed northward.

86. The last two screens (*OBEA-terminating* screen and *DBEA-originating* screen) may seem unusual in that they focus on the "other end" of each movement. That is, for movements of a commodity from a given origin, the *OBEA-terminating* screen looks at the *terminating* end of these movements, potentially across many different possible destinations. This measure accounts for the possibility that a shipper can only choose an alternative destination if it can find a customer served by a different railroad.

87. Taken together, these various ways of measuring shares across both forms of geographic competition address every recognized way in which there might be some competition between corridors that warrants further investigation.

88. The second-stage methodology addresses each possibility from the step-one screen to assess whether competitive effects are likely.

89. There are two primary reasons why the 50/10 screens could flag a commodity-BEA area pair for further review when in fact there is no likelihood of competitive effects. First, the 2019 Waybill Sample used to calculate shares may not accurately indicate actual shares. Second, for some commodity-BEA area pairs, in response to any attempted exercise of market power, shippers could turn to other railroads serving other sources or destinations of the commodity in enough numbers to make the attempted price increase unprofitable.

90. The first issue, measurement of shares as a reliable description of choices, has been recognized in the Board's recent decision to adjust the Waybill sampling methodology to better capture smaller shipments.[54] With the thin observation of these shipments that was still used in the 2019 Waybill Sample, the initial screen can be triggered by shares based on as few as 2 observed shipments which mathematically has to give one carrier at least 50 percent even if that is not an accurate representation of competition. This issue was indirectly addressed in past implementations of this test by imposing a minimum of one carload per day on candidate BEA area-commodity pairs.[55] I will use an equivalent threshold for reliability of the screen.[56] That *de minimis* approach to the screens may be appropriate in some cases where there are not enough movements observed to know what choices shippers have. In some cases, however, we may be able to glean, even from minimal numbers of movements, the pertinent fact that shippers have exercised different choices over time and conclude the screening shares overstate any potential for competitive effects.

91. Generalizing this issue, I conclude that the shares underlying the screen itself are reliable descriptions only when they are based on a sufficient number of movements in

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[54] *Waybill Sample Reporting*, EP 385_8 (Decision served Nov. 29, 2019) at pp. 3–4.

[55] For example, Vellturo says, "As can be seen in Attachment 3, most of the 50/10 product/DBEA pairs involve combined CN/EJ&E traffic that represents relatively limited volumes with respect to the total traffic shipped by the parties. Only ten product/DBEA pairs involve traffic where the combined volumes of the two railroads amount to more than a carload a day (and only four have more than three carloads per day). I understand that the Board has stated that it must approve a transaction of this type 'unless there will be adverse competitive impacts that are both 'likely' and 'substantial.'" *See* Vellturo V.S., 2007, at p. 88.

[56] With the 1:40 scaling of the sample for single carload waybills, this threshold indirectly implements a minimum of 10 observed shipments so that the 10 percent portion of the test is possible to obtain with one observed shipment. *See* Railinc Business Services, 2019 Surface Transportation Board Carload Waybill Sample Reference Guide, Dec. 23, 2020, at pp. 49, 57. Requiring 10 shipments or 365 carloads is functionally equivalent as a "reliability threshold" in the BEA-commodity pairs I examine.

the given year and are sustained over time. Where the shares are based on a small number of observed movements, the shares cannot be deemed to reflect accurately a shipper's choices. In addition, however many observations they are based on, shares that lack persistence over time suggest a concern is not likely. For CP and KCS to offer important incremental competition between corridors, their shares should consistently be high enough that the same screen would trigger for any recent year's data. If, instead, the BEA area-commodity pair only triggers in the 2019 data because of share fluctuations from year to year, then shippers' choices in the prior years suggest that they can and do rely on different railroads to such an extent that they would certainly be able to turn to these other options to defeat any attempted price increase.[57]

92. For the second issue, assessing whether shippers are likely to defeat any hypothetical price increase, I implement a version of the "critical loss" analysis used in past railroad mergers to examine the feasibility of anyone imposing a price increase on the shipments of a given commodity from a given source (or to a given destination).[58] This is a version of the test that is commonly used in competition analysis to ensure "market shares" are measuring concentration in a well-defined market – i.e., whether shippers have choices outside of those measured in the shares used by the screen and which the shippers would turn to in large enough numbers to make a small but significant and non-transitory increase in price (a "SSNIP") unprofitable.[59]

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[57] Where a commodity-BEA pair does not appear in these prior years of the Waybill Sample, I cannot distinguish a commodity that did not move by rail from one that may not have moved by any means or from one that moved in such small volume as to be missed by the sampling methodology. Therefore, I make no inference about the availability of other options based on commodity-BEA pairs that do not appear in prior years.

[58] Vellturo V.S., 2007, at pp. 88–90.

[59] Horizontal Merger Guidelines, at pp. 11–12

93. In constructing the critical-loss analysis, I recognize that the demand for rail services is a product of shippers' options at both the originating and the receiving ends of a shipment. If the price of a shipment increased, shippers at the originating end may have other outlets to which they could divert some of their product or shippers at the receiving end may have other sources they could turn to for the commodity. In order for a price increase to be profitable, the profit lost on shipments that no longer happen (either because affected originating *or* receiving shippers have alternatives) needs to be less than the increased profit on shipments that do still happen. The critical loss test examines whether the alternatives at either end are so plentiful that a prediction that a price increase would be profitable is not credible.[60] In Appendix 7.1.2, I illustrate the volume available for a shipper to make such diversions at either the originating or receiving end of the shipment.

94. In practice, the fact that shippers on either end could defeat a price increase means the larger of the volumes available as (a) alternative sources for the affected destinations or (b) alternative destinations for affected sources will serve as the relevant comparison point to the affected volume in a hypothesis of CP and KCS raising price on their shipments of a screened BEA-commodity pair. Following analysis used in

[60] Note that "critical loss" is a concept that antitrust analysis usually associates with the elasticity of demand – i.e., with shipper responses to prices. The terminology Vellturo uses to describe his implementation of the test can suggest the response depends on the divertible capacity of competing railroads. Both of my implementations actually reflect that the ability of shippers to get the commodity to the affected areas on an independent routing is important and that shippers would make a choice to do so based on relative prices. *See* Vellturo V.S., 2007, Attachment 2, at p. 119 ("Accordingly, for the product/DBEA pairs identified by the screen, I evaluated the *ability (both actual and potential) of other providers of transportation services* to prevent the combined firm from raising prices (or reducing service) after the proposed combination. Other providers of transportation services provide such competitive discipline if they collectively have the ability and incentives to take sufficient volumes from the combined firm in the event of price increase so as to render such an increase unprofitable." [emphasis added]).

previous railroad mergers, I use a conservative threshold of the relative volumes to identify whether enough volume would plausibly divert to other railroads if CP and KCS were to impose a SSNIP on shipments from the OBEA. The threshold implies that a ratio of the affected volume to the available volume that is smaller than one supports a conclusion that the hypothesized price increase would not be profitable.[61]

95. In the next section, I present the results of the initial screens and then, for each BEA-commodity pair identified in those screens, I show that the fuller analysis demonstrates that shippers could readily defeat any attempted price increase on that BEA-commodity pair.

5.2. Analysis of competition between corridors shows that a CP and KCS combination would not materially reduce geographic competition for shippers

5.2.1. Results for source competition

96. In this section, I discuss the results of the 50/10 screen for source competition and the subsequent analysis that confirms that none of the destinations identified by the screen are concerning.

[61] This threshold for the ratio of available to affected volume is consistent with the threshold used by Vellturo in his critical loss analysis. He required that direct divertible capacity (available volume) be ten times greater than the critical loss volume. Under his assumption of a 50 percent profit margin, the comparison using his "conservative" ratio of 10 amounts to comparing available volume to the capacity handled by the merging parties prior to the merger (affected volume). *See* Vellturo V.S., 2007, Attachment 2, at pp. 124–126. The price increase would likely be unprofitable if affected volume is less than available volume – that is, if the ratio of affected to available volume is less than one.

97. In **Exhibit 11**, I summarize the results of the initial screen for source competition. Overall, based on movements in the 2019 Waybill Sample, twelve DBEA-commodity pairs screen for the second-stage considerations of source competition. None of these are in the category that may be most intuitive for competition – i.e., the DBEA-terminating category where CP and KCS might be seen as competing to deliver products into Kansas City does not screen as potentially problematic for any commodity. The screen does trigger further examination for seven pairs in terms of the DBEA-participating screen and five in terms of the DBEA-originating screen.

EXHIBIT 11
Results of the initial screen for source competition

	Termination BEA Area (DBEA)	Commodity Description	2019 Share of Tonnage KCS	CP	KCS or CP	Total Expanded Tonnage
DBEA – Participating Screen						
1.	Amarillo, TX-NM, US	Plate, Iron Or Steel, n.e.c., Plain, Galvanized, etc	{{{		}}}	21,520
2.	Chicago-Gary-Kenosha, IL-IN-WI, US	Kits, Furniture, Unassembled	{{{		}}}	1,360
3.	Dallas-Fort Worth, TX-AR-OK, US	Plastic Dishes, Cellular	{{{		}}}	1,640
4.	Des Moines, IA-IL-MO, US	Clay, Crushed, Ground Or Pulverized	{{{		}}}	18,960
5.	Jackson, MS-AL-LA, US	Lumber Or Timber, Dried	{{{		}}}	30,120
6.	{{{ [redacted] }}}	Plate, Iron Or Steel, n.e.c., Plain, Galvanized, etc	{{{		}}}	{{{ [redacted] }}}
7.	Spokane, WA-ID, US	Lead Bars, Blocks Or Ingots	{{{		}}}	14,040
DBEA – Terminating Screen						
8.	–	–				–
DBEA – Originating Screen						
9.	Davenport-Moline-Rock Island, IA-IL, US	Polypropylene, Other Than Liquid	{{{		}}}	61,800
10.	Michoacán de Ocampo, MX	Woodpulp, Not Powdered, n.e.c.	{{{		}}}	34,560
11.	Nuevo León, MX	Wheat (Fertilized)	{{{		}}}	214,344
12.	Nuevo León, MX	Pulpboard Or Fibreboard	{{{		}}}	124,560
13.	Rochester, MN-IA-WI, US	Plate, Iron Or Steel, n.e.c., Plain, Galvanized, etc	{{{		}}}	30,760

Source: Confidential Waybill Sample, 2019
Note: The exhibit reports the results from the initial stage of the of 50/10 screen for source competition. The three panels describe the DBEA-commodity pairs triggered by each of the participating, terminating, and originating screens. A DBEA-commodity pair is triggered when both KCS and CP have tonnage shares greater than 10 percent and a combined share greater than 50 percent, and, for the participating screen, the combined share must also be at least 10 percent greater than the maximum of either the CP or KCS shares. The CP, KCS, and combined shares are reported for each pair in the "Share of Tonnage" columns. The exhibit also reports the total expanded tonnage.

98. For each of these DBEA-commodity pairs, I look at additional information to determine whether the results of the screen reflect the kind of competitive significance of CP and KCS in movements of the commodity into the BEA area that would be

needed to create a between-corridor competitive effect. As explained above, there are two prominent considerations in my assessment: first, the reliability of the share measure as a description of shipper choices; second, whether the measured shares reflect sustainable market power or whether shippers have ready alternatives involving other railroads that they could turn to in the face of higher prices.

99. In **Exhibit 12**, I summarize the results of this assessment for each of the DBEA-commodity pairs that screen for examination of source competition. For each DBEA and commodity, the third column identifies whether the pattern of shares over time indicates that shippers' choices in prior years demonstrate an ability to circumvent any attempted price increase. The fourth column identifies whether the number of movements underlying the shares used in the screen satisfies the *de minimis* threshold and, consequently, involves enough movements for the shares to be accurate enough for the screen to apply. Check marks in the fifth column indicate that a DBEA-commodity pair can be dismissed based on the unreliability of the screen's underlying share information.

100. The two columns on the right report the results of the critical loss analysis. I report the ratio of the affected volume to the available volume for diversion. If this ratio is below one, any attempt to impose a SSNIP is likely to be unprofitable, which I indicate with a check mark in the final column. I find that every DBEA-commodity pair can be eliminated as a concern for at least one of these reasons, and many for both, demonstrating that none are likely to experience a between-corridor competitive effect from a combination of CP and KCS.

EXHIBIT 12
Summary of second stage analysis for DBEA-commodity pairs screened for examination of source competition

	Termination BEA Area (DBEA)	Commodity Description	Assesment of Reliability of Screened Shares: Prior Year Significant Movement on Other Railroads	Assesment of Reliability of Screened Shares: Insufficient Movements or Carloads in 2019 Data	Assesment of Reliability of Screened Shares: Pattern Rebutts Screen	Critical Loss Analysis: Ratio of Affected to Available Volume	Critical Loss Analysis: Volume to Defeat Price Increase
DBEA – Participating Screen							
1.	Amarillo, TX-NM, US	Plate, Iron Or Steel, n.e.c., Plain, Galvanized, etc	Yes	Yes	✓	<0.01	✓
2.	Chicago-Gary-Kenosha, IL-IN-WI, US	Kits, Furniture, Unassembled	No	Yes	✓	–	
3.	Dallas-Fort Worth, TX-AR-OK, US	Plastic Dishes, Cellular	Pre-2018	Yes	✓	0.06	✓
4.	Des Moines, IA-IL-MO, US	Clay, Crushed, Ground Or Pulverized	Yes	Yes	✓	<0.01	✓
5.	Jackson, MS-AL-LA, US	Lumber Or Timber, Dried	Yes	Yes	✓	<0.01	✓
6.	{{{ [redacted] }}}	Plate, Iron Or Steel, n.e.c., Plain, Galvanized, etc	Pre-2018	Yes	✓	{{{ [redacted] }}}	✓
7.	Spokane, WA-ID, US	Lead Bars, Blocks Or Ingots	Yes	Yes	✓	0.19	✓
DBEA – Terminating Screen							
8.	–	–	–	–		–	
DBEA – Originating Screen							
9.	Davenport-Moline-Rock Island, IA-IL, US	Polypropylene, Other Than Liquid	Yes	No	✓	<0.01	✓
10.	Michoacán de Ocampo, MX	Woodpulp, Not Powdered, n.e.c.	Yes	Yes	✓	<0.01	✓
11.	Nuevo León, MX	Wheat (Fertilized)	Yes	No	✓	<0.01	✓
12.	Nuevo León, MX	Pulpboard Or Fibreboard	Yes	No	✓	<0.01	✓
13.	Rochester, MN-IA-WI, US	Plate, Iron Or Steel, n.e.c., Plain, Galvanized, etc	Yes	Yes	✓	0.01	✓

Source: Confidential Waybill Sample, 2015–2019
Note: See Appendix, Exhibit 20 and Exhibit 21 for details. The first three columns characterize the reliablility of screened shares and report the extent to which shippers likely have access to additional alternative railroad options for shipments of each commodity to each DBEA. The last two columns characterize the critical loss analysis and report the ratio of the total expanded tonnage affected by the combination CP and KCS over the maximum of the available tonnage. A ratio below one indicates that sufficient diversion on either the receivers' or shippers' end is likely to render a price increase unprofitable. The two check-mark columns are checked when a commodity-DBEA pair is considered to have unreliable shares or is able to defeat a hypothetical price increase by a combined CP/KCS.

101. To make more concrete the logic behind my assessments of these DBEA-commodity pairs, consider **steel or iron plate shipped to the Amarillo, TX-NM BEA**. I first address the reliability of the screening shares. As I explained above, shares are not a reliable description of shippers' choices unless they are based on enough movements in the given year and are not merely a fluke of year-to-year fluctuations. That is not what I observe in the pattern of movements for this BEA-commodity. KCS and CP each participated in more than 10 percent of these movements in the 2019 data ({{{ }}} and {{{ }}} percent, respectively) and combined, CP and KCS participated in {{{ }}} percent. However, when I look at movements in previous years, I see that shippers are demonstrating that they can rely on alternatives to CP and

KCS.[62] Indeed, in other years, shippers {{{ }}} used alternatives to CP and KCS. I observe movements of steel plate to Amarillo in the data for each year from 2015 through 2019, yet only in 2019 are CP and KCS used often enough by shippers to trigger the screen.[63] This pattern tells me that although I observe shippers currently (in 2019) using CP and KCS, they routinely used other options and could respond with these options to any attempted price increase by a combined CP/KCS on steel plate movements to Amarillo.

102. In addition, steel plate is rarely shipped to Amarillo, as there are only {{{ }}} observed movements in the 2019 Waybill Sample.[64] Thus, any railroad involved in even one of the {{{ }}} movements would have a share above the 10 percent threshold, which makes that portion of the screen unreliable. These {{{ }}} movements represent {{{ }}} carloads in 2019, well below the one-carload-per-day threshold that the Board has relied upon in previous competitive analyses.[65] This *de minimis* level of activity, by itself, would be enough reason to conclude that the shares that trigger the screen are not a reliable measure of the competitive significance of CP and KCS for the BEA-commodity pair.

103. Continuing with steel plate shipped to Amarillo as an exemplar, I next discuss how the volume ratio informs the critical loss analysis. This analysis explores whether a hypothetical price increase on steel plate shipped to Amarillo is likely to be defeated by shippers diverting their steel plate shipments to other railroads, and the volume ratio

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62 *See* Appendix 7.2, Exhibit 20.
63 See my workpaper 11.
64 *See* Appendix 7.2, Exhibit 20.
65 *See* fn. 56.

reveals that the answer is yes. In this case, the shippers of plate to Amarillo have more options than receivers of plate in Amarillo. Either group has enough alternatives evident for their volume to suggest they could divert enough of their demand for rail service to defeat a price increase, but I proceed with the shipper side. The volume affected by the hypothetical price increase is two percent of the volume of steel plate demand available to shippers looking to divert their shipments from Amarillo – that is, there is ample potential for shippers to defeat the price increase.[66] Thus, from the critical loss analysis, I can also conclude that a combined CP/KCS would not likely find it profitable to increase prices on steel plate shipped to Amarillo.

104. After analyzing all 12 DBEA-commodity pairs that trigger the screen for further examination of source competition from Exhibit 11, I find that none is likely to experience a between-corridor competitive effect as the result of a CP and KCS combination. As detailed in Appendix 7.2, these DBEA-commodity pairs have a reliability basis or a critical-loss basis, or both, to conclude that there is unlikely to be any harm to source competition from a CP and KCS combination.

[66] To identify volume of steel plate demand available to shippers looking to divert their shipments from Amarillo, I look at all the origin BEAs that shipped steel plate to Amarillo in 2019, and only keep those for which steel plate could be shipped independently of CP and KCS to destinations other than Amarillo. That is, I check whether I observe in the 2019 Waybill Sample a movement of steel plate to a destination other than Amarillo independently of CP and KCS. Shippers at these origins could divert volume being shipped to Amarillo to these other destinations in order to defeat a hypothetical price increase. I then compare the total volume of steel plate shipping to Amarillo to the volume of steel plate being shipped to these other destinations. If this ratio is below the critical loss threshold, then there is enough available volume to likely defeat a hypothetical price increase. *See* Appendix 7.2, Exhibit 21.

5.2.2. Results for destination competition

105. In this section, I summarize the results of the 50/10 screen for destination competition and the subsequent analysis that confirms that none of the origins identified by the screen are concerning.

106. In **Exhibit 13,** I summarize the results of the initial screen for destination competition. Overall, based on movements in the 2019 Waybill Sample, 20 OBEA-commodity pairs trigger the screen for destination competition, including 9 that trigger the OBEA-participating screen and 11 that trigger the OBEA-terminating screen. No OBEA-commodity pairs trigger the OBEA-originating screen.

EXHIBIT 13
Results of the initial screen for destination competition

	Origin BEA Area (OBEA)	Commodity Description	2019 Share of Tonnage KCS	CP	KCS or CP	Total Expanded Tonnage
OBEA – Participating Screen						
1.	Atlanta, GA-AL-NC, US	Kaolin (China Clay), Crude	{{{		}}}	2,920
2.	Atlanta, GA-AL-NC, US	Paper, n.e.c., Not Printed	{{{		}}}	7,120
3.	Atlanta, GA-AL-NC, US	Pellets, Gas Well Fracture Supporting	{{{		}}}	29,864
4.	Capitale-Nationale, PQ, CA	Lumber Or Timber, Dried	{{{		}}}	33,560
5.	{{{ [redacted] }}}	Sugar Of Milk (Lactose), Refined	{{{		}}}	{{{ [redacted] }}}
6.	Davenport-Moline-Rock Island, IA-IL, US	Animal Tallow Or Fat, Inedible, Liquid	{{{		}}}	25,320
7.	Fargo-Moorhead, ND-MN, US	Peas, Canadian Field, Dried	{{{		}}}	11,960
8.	Hamilton--Niagara Peninsula, ON, CA	Animal Tallow Or Fat, Inedible, Liquid	{{{		}}}	18,800
9.	San Antonio, TX, US	Calender Roll Paper	{{{		}}}	3,440
OBEA – Originating Screen						
10.	–	–				–
OBEA – Terminating Screen						
11.	Davenport-Moline-Rock Island, IA-IL, US	Corn Syrup (Glucose), Dehydrated	{{{		}}}	60,560
12.	{{{ [redacted] }}}	Soybean Oil	{{{		}}}	{{{ [redacted] }}}
13.	Madison, WI-IL-IA, US	Sand Fracing 30/50 Mesh	{{{		}}}	112,116
14.	Madison, WI-IL-IA, US	Sand Fracing 40/70 Mesh	{{{		}}}	741,919
15.	Madison, WI-IL-IA, US	Sand Fracing 100 Mesh	{{{		}}}	675,384
16.	Madison, WI-IL-IA, US	Animal Tallow Or Fat, Inedible, Liquid	{{{		}}}	18,000
17.	Minneapolis-St. Paul, MN-WI-IA, US	Linseed (Flaxseed) Oil	{{{		}}}	26,520
18.	Northwest / Nord-ouest, ON, CA	Newsprint Paper	{{{		}}}	30,960
19.	Red Deer, AB, CA	Propane Gas, Liquefied	{{{		}}}	172,000
20.	Saskatoon--Biggar, SK, CA	Rapeseed Oil (Colza Oil)	{{{		}}}	417,508
21.	Thompson--Okanagan, BC, CA	Structural Beams	{{{		}}}	21,080

Source: Confidential Waybill Sample, 2019
Note: The exhibit reports the results from the initial stage of the of 50/10 screen for destination competition. The three panels describe the OBEA-commodity pairs triggered by each of the participating, terminating, and originating screens. An OBEA-commodity pair is triggered when both KCS and CP have tonnage shares greater than 10 percent and a combined share greater than 50 percent, and, for the participating screen, the combined share must also be at least 10 percent greater than the maximum of either the CP or KCS shares. The CP, KCS, and combined shares are reported for each pair in the "share of tonnage" columns. The exhibit also reports the total expanded tonnage.

107. For each of these OBEA-commodity pairs, I look at additional information to determine whether the results of the screen reflect the kind of competitive significance of CP and KCS in movements of the commodity out of the BEA area that would be needed to create a between-corridor competitive effect. In **Exhibit 14**, I summarize the results of this assessment for each of the OBEA-commodity pairs that screen for destination competition, reporting and organizing results as I did in the previous section for source competition.

108. I evaluate the reliability of the measured shares themselves, and whether the measured shares reflect sustainable market power or whether shippers have ready alternatives involving other railroads that they could turn to in the face of higher prices. Based on these two assessments, as detailed in Appendix 7.3, I can eliminate all but one OBEA-commodity pair. Those two assessments do not allow me to eliminate corn syrup shipped from Davenport-Moline-Rock Island, IA-IL (row 11) as a potential concern for between corridor competitive effects. I discuss corn syrup from Davenport in more detail below and explain why it is also unlikely to experience a reduction in between-corridor competition.

EXHIBIT 14
Summary of second stage analysis for OBEA-commodity pairs screened for further examination of destination competition

	Origin BEA Area (OBEA)	Commodity Description	Assesment of Reliability of Screened Shares: Prior Year Significant Movement on Other Railroads	Assesment of Reliability of Screened Shares: Insufficient Movements or Carloads in 2019 Data	Assesment of Reliability of Screened Shares: Pattern Rebutts Screen	Critical Loss Analysis: Ratio of Affected to Available Volume	Critical Loss Analysis: Volume to Defeat Price Increase
OBEA – Participating Screen							
1.	Atlanta, GA-AL-NC, US	Kaolin (China Clay), Crude	Pre-2018	Yes	✓	–	
2.	Atlanta, GA-AL-NC, US	Paper, n.e.c., Not Printed	Yes	No	✓	0.04	✓
3.	Atlanta, GA-AL-NC, US	Pellets, Gas Well Fracture Supporting	No	Yes	✓	0.37	✓
4.	Capitale-Nationale, PQ, CA	Lumber Or Timber, Dried	Yes	No	✓	<0.01	✓
5.	{{{ [redacted] }}}	Sugar Of Milk (Lactose), Refined	Yes	Yes	✓	–	
6.	Davenport-Moline-Rock Island, IA-IL, US	Animal Tallow Or Fat, Inedible, Liquid	No	Yes	✓	0.04	✓
7.	Fargo-Moorhead, ND-MN, US	Peas, Canadian Field, Dried	Yes	Yes	✓	1.01	
8.	Hamilton--Niagara Peninsula, ON, CA	Animal Tallow Or Fat, Inedible, Liquid	No	Yes	✓	0.02	✓
9.	San Antonio, TX, US	Calender Roll Paper	Pre-2017	Yes	✓	<0.01	✓
OBEA – Originating Screen							
10.	–	–	–	–		–	
OBEA – Terminating Screen							
11.	Davenport-Moline-Rock Island, IA-IL, US	Corn Syrup (Glucose), Dehydrated	No	No		–	
12.	{{{ [redacted] }}}	Soybean Oil	No	Yes	✓	{{{ [redacted] }}}	✓
13.	Madison, WI-IL-IA, US	Sand Fracing 30/50 Mesh	No	No		0.01	✓
14.	Madison, WI-IL-IA, US	Sand Fracing 40/70 Mesh	No	No		0.04	✓
15.	Madison, WI-IL-IA, US	Sand Fracing 100 Mesh	Yes	No	✓	0.05	✓
16.	Madison, WI-IL-IA, US	Animal Tallow Or Fat, Inedible, Liquid	No	Yes	✓	0.02	✓
17.	Minneapolis-St. Paul, MN-WI-IA, US	Linseed (Flaxseed) Oil	Pre-2018	Yes	✓	6.91	
18.	Northwest / Nord-ouest, ON, CA	Newsprint Paper	Yes	Yes	✓	0.12	✓
19.	Red Deer, AB, CA	Propane Gas, Liquefied	Pre-2017	No		0.02	✓
20.	Saskatoon--Biggar, SK, CA	Rapeseed Oil (Colza Oil)	Yes	No	✓	0.18	✓
21.	Thompson--Okanagan, BC, CA	Structural Beams	Yes	Yes	✓	0.03	✓

Source: Confidential Waybill Sample, 2015–2019
Note: See Appendix, Exhibit 22 and Exhibit 23 for details. The three columns under "Assessment of Reliability of Screened Shares" characterize the reliablility of screened shares and report the extent to which shippers likely have access to additional alternative railroad options for shipments of each commodity from each OBEA. The last two columns characterize the critical loss analysis and report the ratio of the total expanded tonnage affected by the CP and KCS combination over the maximum of the available tonnage. A ratio below one indicates that sufficient diversion on either the receivers' or shippers' end is likely to render a price increase unprofitable. The two check-mark columns are checked when a commodity-OBEA pair is considered to have unreliable shares or is able to defeat a hypothetical price increase by a combined CP/KCS.

109. To the extent that a combination of CP and KCS affects **corn syrup shipped from Davenport-Moline-Rock Island, IA-IL**, competition and shippers will benefit from potential new CP/KCS single line service. The 2019 data show CP or KCS handling the terminating leg of {{{ }}} percent of movements of corn syrup that originate out of the Davenport BEA. However, {{{ }}} of the shipments terminated by CP terminate in Kansas City, and {{{ }}} of these movements are Rule 11 shipments that

CP handed off to another railroad in Kansas City.[67] {{{ }}} of these Rule 11 interchanges in Kansas City are with KCS and destined for Mexico.[68] After a combination of CP and KCS, these CP movements could instead go on a CP/KCS single line through Kansas City.

110. Thus, after my analysis, I find that none of the 20 OBEA-commodity pairs that trigger the screen for further examination of destination competition summarized in Exhibit 13 is likely to experience a between-corridor competitive effect as a result of a combination of CP and KCS.[69] There is unlikely to be any harm to destination competition.

[67] See my workpaper 12.

[68] The CP and KCS 100% traffic tapes confirm that out of the {{ }} movements of corn syrup in which CP handled the shipment from Davenport to Kansas City, {{ }} were interchanged with KCS in Kansas City with an ultimate destination in Mexico. See my workpaper 12.

[69] In Appendix 7.3, I describe similar analysis of additional information for each of the remaining OBEA-commodity pairs in Exhibit 14. I find that each of the OBEA-commodity pairs described in the appendix have a reliability basis, critical-loss basis, or both on which to conclude that the combination of CP and KCS is unlikely to affect destination competition.

6. A CP AND KCS COMBINATION DOES NOT CREATE ANY ISSUE OF COORDINATED COMPETITIVE EFFECTS

111. In the previous sections, I considered the various forms of competitive effects theories that could involve unilateral action by a combined CP/KCS. In this section, I consider a competitive effect theory raised in the U.S. Department of Justice's comment – that a combination of CP and KCS might affect competition by facilitating a more coordinated outcome among the railroads that would otherwise be competing with one another.[70]

112. A number of factors are generally recognized as making coordination more difficult to achieve without industry participants outright engaging in illegal activities. Collectively, these factors go to the difficulty of industry participants reaching some agreement on industry outcomes with each other, monitoring each other's compliance with that agreement, and punishing non-compliance to incentivize continued coordination.[71]

113. In the case of a combination between CP and KCS, three additional factors make any effect on competition through coordinated effects unlikely regardless of how likely (or not) the railroad industry is to support coordinated outcomes of any sort based on the general factors of coordination.

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[70] Comment of the United States Department of Justice, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500, Apr. 12, 2021.

[71] Horizontal Merger Guidelines, section 7.2.

114. First, a combined CP/KCS would still be the smallest Class I railroad. CP and KCS are currently the two smallest Class I railroads.[72] The smallest participants in an industry generally have incentives to grow and build their share at the expense of larger participants.[73] That dynamic can make an agreement between large and small participants particularly difficult to achieve as the two groups would likely disagree about whether to split the gains from coordination based on historic performance or future potential. Likewise, small and large industry participants are likely to have disagreements over what constitutes non-compliance and have different capabilities to punish and be punished for non-compliance.[74]

115. Second, as shown in the previous sections, a combination of CP and KCS does not eliminate any significant competitive overlap between them. In general, coordinated

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[72] *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500 (Decision No. 4 decided Apr. 23, 2021), at p. 2 ("[T]he combination of CP and KCS, the sixth largest and seventh largest Class I railroads, respectively, would still result in the smallest Class I railroad, based on U.S. operating revenues").

[73] The Horizontal Merger Guidelines explain that a small firm with an ability to expand quickly is less likely to conform to a coordinated agreement. *See* Horizontal Merger Guidelines, at p. 26 ("A firm is less likely to be deterred by whatever responses occur [(i.e., less likely to coordinate with rivals)] if the firm has little stake in the status quo. For example, a firm with a small market share that can quickly and dramatically expand, constrained neither by limits on production nor by customer reluctance to switch providers or to entrust business to a historically small provider, is unlikely to be deterred."). *See also* Bos, Iwan, and Joseph E. Harrington, Jr. "Endogenous cartel formation with heterogeneous firms," *The RAND Journal of Economics* 41, no. 1 (2010): 92-117 at p. 93. The authors consider small firms with production constraints and also find reason to conclude "we should not expect a cartel to include very small firms."

[74] The academic literature confirms that these types of asymmetries, which may be generalized as differences in various aspects of cost structure, increase the difficulty of coordination. *See* Ivaldi, Marc, Bruno Jullien, Patrick Rey, Paul Seabright, and Jean Tirole, "The Economics of Tacit Collusion: Implications for Merger Control," in *The Political Economy of Antitrust* (Emerald Group Publishing Limited 2007) ("Ivaldi 2007") at pp. 223-224 ("[In regards to cost asymmetry] First, firms may find it difficult to agree to a common pricing policy. Indeed, firms with a lower marginal cost will insist on lower prices than what high-cost firms would wish to sustain. More generally, the heterogeneity in cost structures may rule out any 'focal point' in pricing policies and so exacerbate coordination problems. . . Second, even if firms agree on a given collusive price, low-cost firms are more difficult to discipline.").

effects theories often reflect a simple intuition that coordination is easier among fewer parties – that two people can coordinate their actions more easily than three – and there is some economic foundation for considering reductions in the number of competitors as a possible impetus to coordination.[75] However, a combination of CP and KCS does not involve such a reduction as they are not horizontal competitors to each other. So, the combination does not change the likelihood of any agreement being reached or enforced.

116. Third, the pro-competitive effect of a combination of CP and KCS would tend to disrupt any tendency toward agreement. The incentive to realize the potential of new single-line service, for example, would create an incentive for the combined CP/KCS to compete more aggressively. And, as discussed above, the enhanced quality of the combined CP/KCS single-line service would incentivize rivals to change their own service and pricing. Change and disruption of this sort generally make reaching an agreement more difficult (at least without engaging in outright illegal activity) as there is not an obvious focal point for outcomes from which an agreement could build.

117. Based on these factors, I conclude that a combination of CP and KCS is unlikely to affect competition through coordinated effects.

[75] For example, see Ivaldi 2007 at p. 220 ("Collusion is more difficult when there are more competitors. First, coordination is more difficult, the larger the number of parties involved. Second, and beyond the issue raised by the difficulty of reaching a consensus, deviations from it are more tempting in the presence of many competitors: Since firms must share the collusive profit, as the number of firms increases each firm gets a lower share of the pie. This implies that the short-run gain from deviation increases, while at the same time the long-run benefit of maintaining collusion is reduced. It is thus more difficult to prevent firms from deviating.").

7. APPENDIX

7.1. Appendix: Details of 50/10 screen implementation

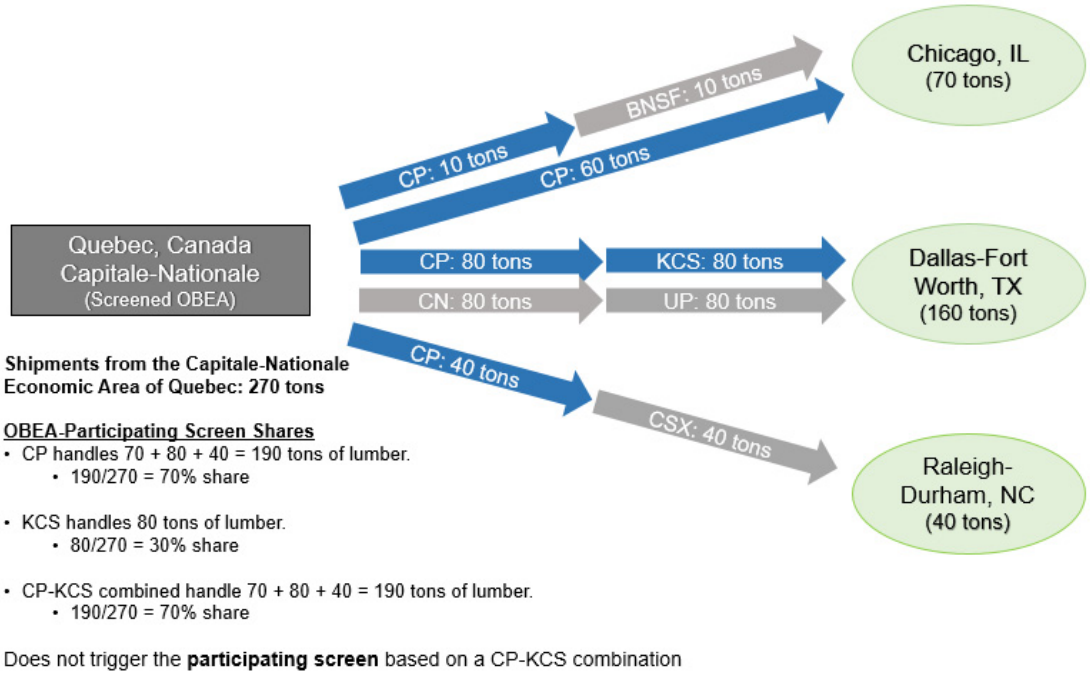
7.1.1. Illustration of three definitions of share calculations

118. To make the three share calculations of the 50/10 screens more concrete, I will explain each screen as they apply to destination competition (that is, the potential that shippers benefit from alternative shipment routes from a given origin to alternative destinations). I use the same pairings of a commodity (defined by a non-hazardous 7-digit STCC code) and an originating BEA area (*OBEA*) in the Confidential Waybill Sample in each of the three screens. Each screen, however, uses a different method for calculating the CP and KCS movement shares for each pair.

119. The first version is the most general and calculates CP and KCS shares based on all movements of the commodity from the OBEA that CP and KCS *participate* in at all, whether as the originating, terminating, or intermediate railroad. I call this the "*OBEA-participating*" screen. I describe a stylized example of how to calculate the three OBEA-participating screen shares in **Exhibit 15** based on actual movements in the data, but the details in the diagram are all fabricated for the purpose of exposition. In the exhibit, the blue arrows describe tonnage of lumber shipped by either CP or KCS from the Capitale-Nationale, QB OBEA. To calculate the shares, I separately sum the tonnage handled by CP, by KCS, and by either CP or KCS, and then divide by the total tonnage originating from the OBEA.

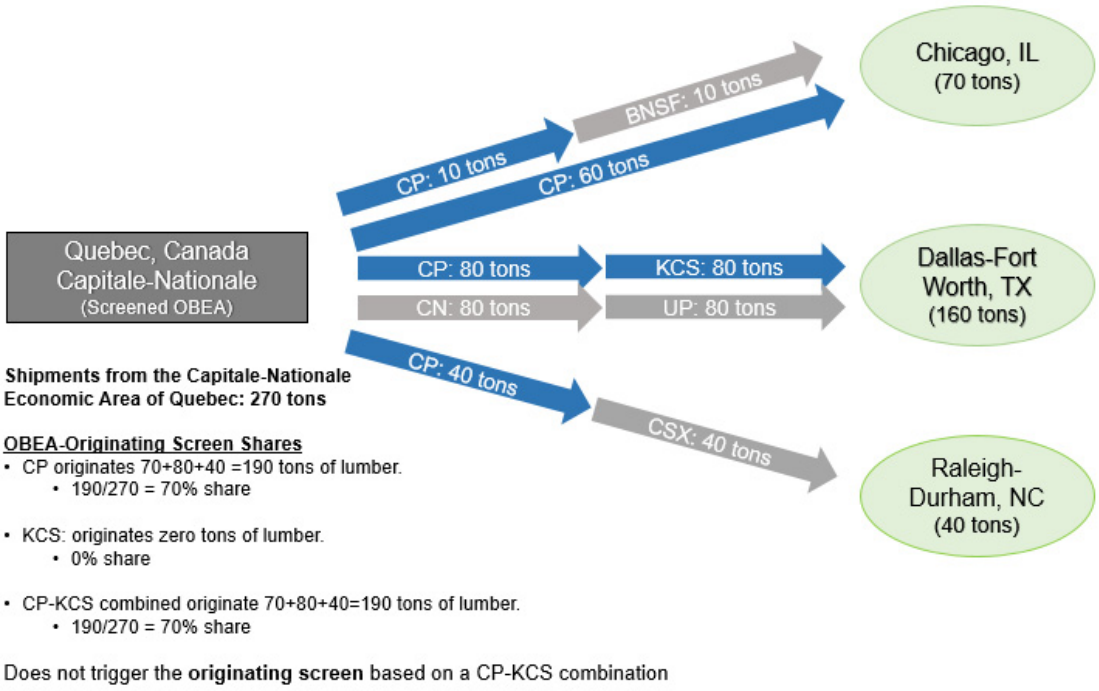
120. The participating screen allows for some intentional double-counting. In this example, the route where 80 tons are interchanged between CP and KCS has the same 80 tons counted in the shares for each railroad, although counted only once in the combined share. The threshold accounts for this sort of double-counting. Specifically, the OBEA-participating screen is not triggered for this example because, while both CP and KCS each have shares greater than 10 percent and a combined share greater than 50 percent, the combined share is not at least 10 percent greater than the maximum of the separate shares for CP and KCS. This is consistent with the intuition that KCS's participation on the route to Dallas may be relevant to shippers, but as a partner on this route with CP, the shippers' options are not likely to be made worse by a combination of CP and KCS.

EXHIBIT 15
Stylized example of an OBEA-participating screen calculation to assess the extent of destination competition



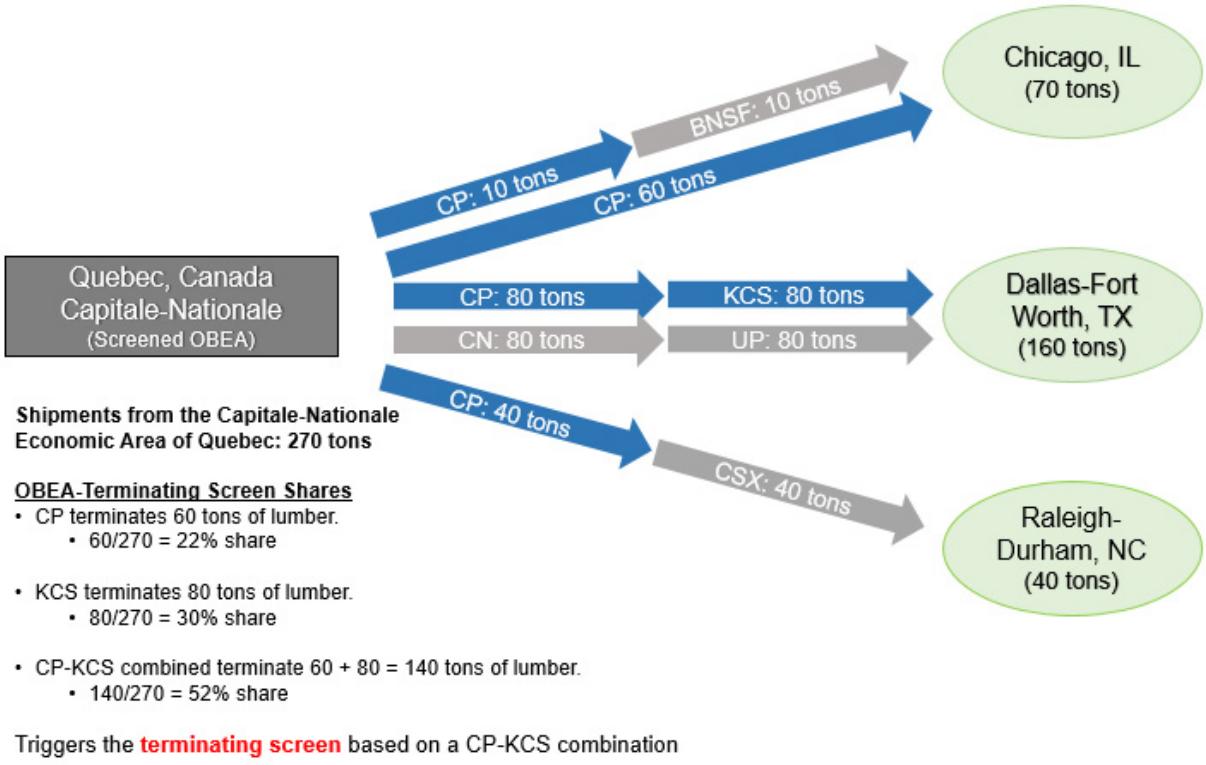
121. The second version of shares allows for the possibility that a shipper's ability to choose alternative destinations is most dependent on the railroads available to originate traffic in the OBEA. This version calculates shares based on the identity of the *originating* carrier for movements of the commodity from the OBEA. I call this the "*OBEA-originating*" screen. The OBEA-originating screen shares are calculated similar to the OBEA-participating screen, except that the parties must be the originating railroad for the tonnage to factor into the share calculations. The stylized example in **Exhibit 16** presents the same movements as the previous example, but counted according to the originating screen. As originations are only observed as competition between CP and CN in this example, the combination of CP and KCS does not reduce the choices of shippers. This screen would trigger, however, for a hypothetical combination of CP with CN reflecting the fact that such a combination would not only affect competition on the route to Dallas, it might affect shippers to Chicago and Raleigh as well.

EXHIBIT 16
Stylized example of an OBEA-originating screen calculation to assess the extent of destination competition



122. The third version allows for the possibility that a shipper's ability to choose alternative destinations is most influenced by the carriers operating at those destinations. It calculates shares for movements of the commodity from an OBEA based on the identity of the *terminating* railroad. I call this the "*OBEA-terminating*" screen. The OBEA-terminating screens are calculated similar to the other screens, except that the parties must be the terminating railroad for the tonnage to factor into the share calculations. The stylized example in **Exhibit 17** illustrates the same movements as the prior examples, but counted according to terminations. In the example, this screen does trigger for a CP and KCS combination suggesting further examination to cover the possibility that KCS at Dallas is a relevant option affecting competition for shippers of lumber out of Quebec as they negotiate with CP for termination at Chicago.

EXHIBIT 17
Stylized example of an OBEA-terminating screen calculation to assess the extent of destination competition



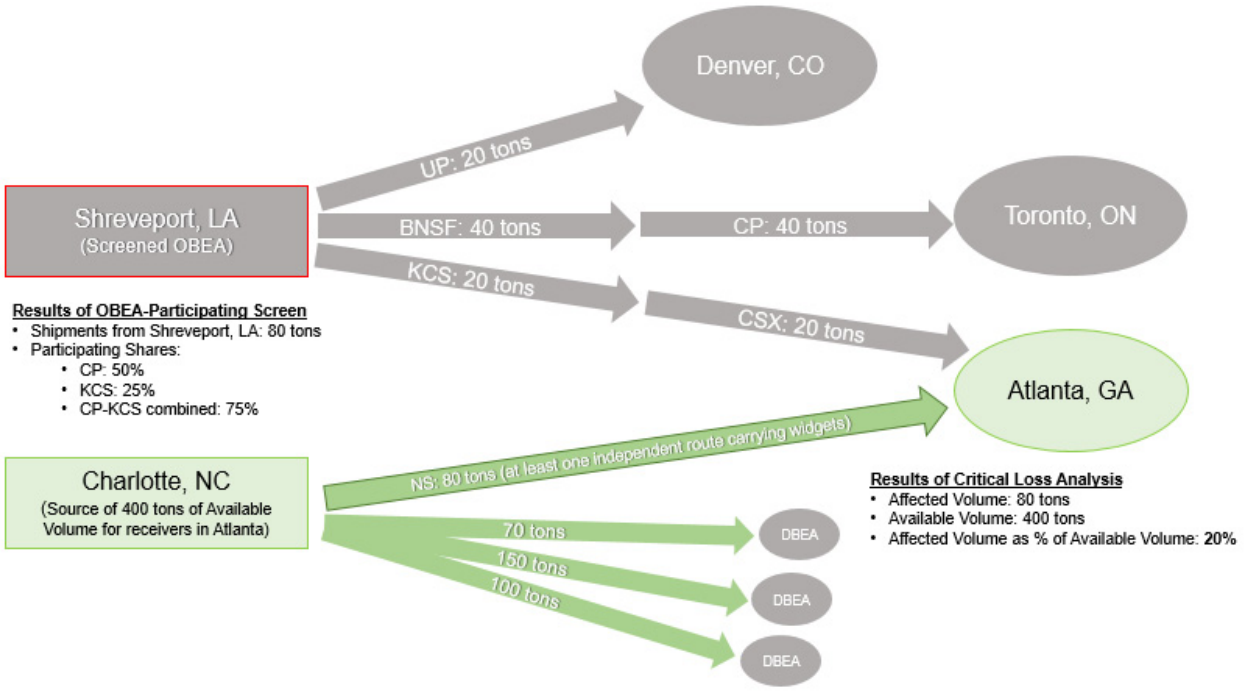
123. The analogous definitions and share calculations for source competition revolve around shipments of each commodity to a destination BEA area (the "*DBEA*"). They are "*DBEA-participating*" which uses shares based on all movements CP or KCS participate in, "*DBEA-terminating*" which gives CP and KCS shares based on their identities as the terminating carriers, and "*DBEA-originating*" which gives them shares based on their identities as the originating carrier.

7.1.2. Illustration of available capacity calculations for critical-loss analysis

124. To make the available capacity used in the critical-loss analysis more concrete, **Exhibit 18** illustrates a BEA-commodity pair that would trigger the *OBEA-*

participating screen. In this example, shipments of widgets are observed from Shreveport to Denver, Toronto, and Atlanta with CP participating in 50 percent of the shipped tons and KCS participating in 25 percent. The screen identifies widgets shipped from Shreveport as having the potential to be affected by a CP and KCS combination based on these shares and the critical loss test can then address whether the implied concentration is likely to matter. In this example, widgets are also shipped to Atlanta from Charlotte via NS without any involvement by CP or KCS. Shippers on the receiving end, faced with a hypothetical price increase on their shipments from Shreveport, would be able to divert some of their demand for widgets to Charlotte and, consequently, divert their demand for rail service to NS. There may be lots of widgets shipped out of sources like Charlotte that serve the same destinations as Shreveport over independent routes. As I explained in section 88, the volume of such shipments relative to the volume of shipments included in the screening shares is a useful approximation of whether enough diversion on the receiving end is likely that a price increase would be unprofitable.

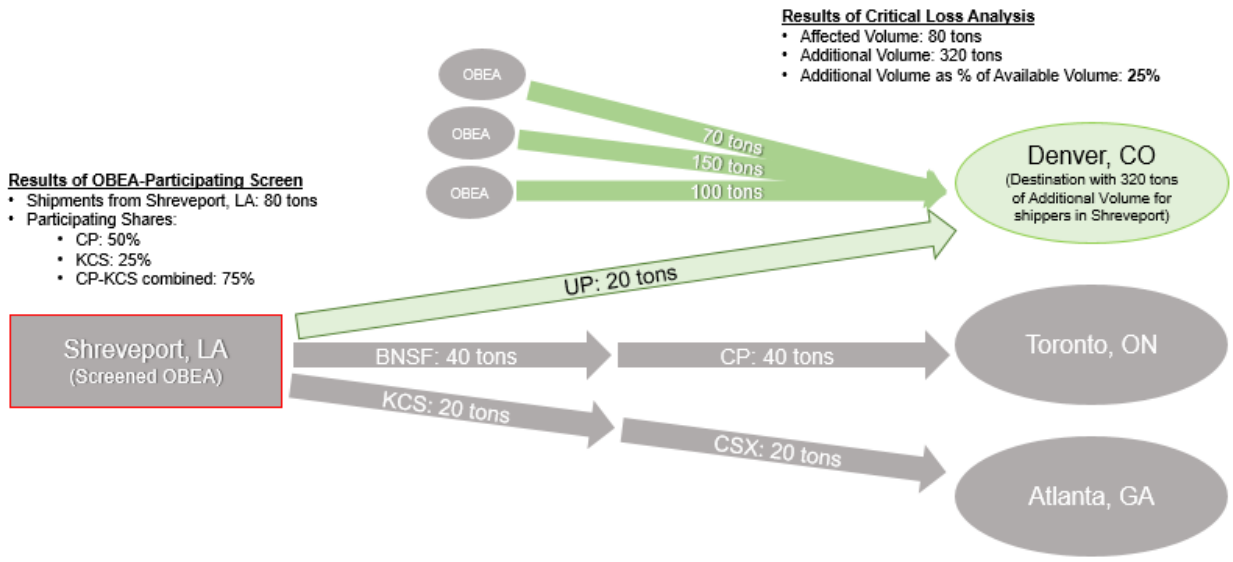
EXHIBIT 18
Illustration of volume available to shippers on the receiving end of movements for a BEA-commodity that would trigger the OBEA-participating screen



125. To illustrate the way that shippers on the origin end might also divert their sales to defeat a price increase, **Exhibit 19** presents the same scenario of widgets shipped from Shreveport but now considering the availability of Denver as an alternative outlet for the shippers looking to move their widgets out of Shreveport. In this version of the example, Denver is identified as an alternative outlet because UP's route for widgets to Denver is independent of CP and KCS. The potential to divert widgets to Denver as an outlet is demonstrated by the volume of widgets currently shipped to Denver from other sources. Faced with a hypothetical price increase by a combined CP/KCS on shipping their widgets to their current outlets, shippers in Shreveport would likely divert some of their product to Denver and their demand for rail services to UP. The demand for widgets in Denver is large based on the volume received in Denver and diversion is

likely to make the assumed price increase unprofitable based on the comparison of that volume to the volume included in the screening shares.

EXHIBIT 19
Illustration of volume available to shippers on the origin end of movements for a BEA-commodity that would trigger the OBEA-participating screen



7.2. Appendix: Detailed results for source competition

126. Below, I describe the additional information used to determine whether the results of the DBEA-participating screen reflect the kind of competitive significance of CP and KCS for the remaining commodities listed in Exhibit 11 and not already described in section 5.2.1. I find that the remaining BEA-commodity pairs do not meet the reliability threshold, that shippers are able to defeat a price increase, or both.

127. **Exhibit 20** describes the detailed results of the reliability threshold for the DBEA-commodity pairs screened for source competition presented in section 5.2. The additional columns document with green check marks the years in which shippers have

enough options available to them from other railroads. The exhibit also summarizes the total number of BEA-commodity pair movements and expanded carloads, and numbers colored in green indicate that the number of movements in the 2019 data do not meet the reliability threshold.

EXHIBIT 20
Reliability results for the second stage analysis of DBEA-commodity pairs screened for source competition

	Termination BEA Area (DBEA)	Commodity Code	Commodity Description	Assesment of Reliability of Screened Shares: Pattern of Shares '15	'16	'17	'18	'19	Movements in 2019 Data	Total Carloads
DBEA – Participating Screen										
1.	Amarillo, TX-NM, US	3312253	Plate, Iron Or Steel, n.e.c., Plain, Galvanized, etc	✓	✓	✓	✓	X	{{{ [redacted] }}}	
2.	Chicago-Gary-Kenosha, IL-IN-WI, US	2599969	Kits, Furniture, Unassembled	–	–	–	–	X	{{{ [redacted] }}}	
3.	Dallas-Fort Worth, TX-AR-OK, US	3071149	Plastic Dishes, Cellular	✓	✓	✓	X	X	{{{ [redacted] }}}	
4.	Des Moines, IA-IL-MO, US	3295232	Clay, Crushed, Ground Or Pulverized	✓	✓	✓	✓	X	{{{ [redacted] }}}	
5.	Jackson, MS-AL-LA, US	2421184	Lumber Or Timber, Dried	✓	✓	✓	✓	X	{{{ [redacted] }}}	
6.	{{{ [redacted] }}}	3312253	Plate, Iron Or Steel, n.e.c., Plain, Galvanized, etc	✓	✓	✓	X	X	{{{ [redacted] }}}	
7.	Spokane, WA-ID, US	3332115	Lead Bars, Blocks Or Ingots	–	–	–	✓	X	{{{ [redacted] }}}	
DBEA – Terminating Screen										
8.	–	–	–	–	–	–	–	–	–	–
DBEA – Originating Screen										
9.	Davenport-Moline-Rock Island, IA-IL, US	2821139	Polypropylene, Other Than Liquid	✓	✓	✓	✓	X	{{{ [redacted] }}}	
10.	Michoacán de Ocampo, MX	2611135	Woodpulp, Not Powdered, n.e.c.	✓	✓	✓	✓	X	{{{ [redacted] }}}	
11.	Nuevo León, MX	0113710	Wheat (Fertilized)	✓	✓	✓	✓	X	{{{ [redacted] }}}	
12.	Nuevo León, MX	2631117	Pulpboard Or Fibreboard	✓	✓	✓	✓	X	{{{ [redacted] }}}	
13.	Rochester, MN-IA-WI, US	3312253	Plate, Iron Or Steel, n.e.c., Plain, Galvanized, etc	✓	X	✓	✓	X	{{{ [redacted] }}}	

Source: Confidential Waybill Sample, 2015–2019
Note: The "Pattern of Shares" columns indicate years for which movements of the commodity shipping to the BEA area do not trigger the screen with a green check mark and years for which the screen is triggered with a red X. Dashes indicate years for which there are no observed movements of the commodity to the BEA. The last two columns summarize the number of BEA-commodity pair movements in the 2019 data, or the number of observations in the Waybill sample, and the total expanded carloads shipped via those movements. The green-colored movements and carloads indicate that the BEA-commodity pair does not meet the one-carload-per-day threshold, suggesting that the shares that triggered the screen are not reliable. The red-colored movements and carloads indicate that the pair meets the one-carload-per-day threshold. Total carloads are not adjusted for railcars carrying more then one intermodal unit. Doing so, adjusting carloads by the average units per flat car, would further reduce the number of carloads represented by these movements.

128. **Exhibit 21** describes the underlying tonnage values for the critical loss analysis presented in section 5.2.1 for the DBEA-commodity pairs screened for source competition. The receivers' available expanded tonnage describes what can be diverted from other origins that also serve the DBEA that is also independent of CP and KCS, representing the supply available elsewhere to receivers. The shippers' available

expanded tonnage describes what can be diverted to other destinations that is independent of CP and KCS, representing the available demand for the commodity elsewhere.

129. The outcome of the critical loss analysis is captured by the ratio of the total expanded tonnage affected by the combination of CP and KCS over the maximum of the receivers' or shippers' available tonnage. A ratio below one indicates that a combined CP/KCS would likely not find it profitable to increase prices.

EXHIBIT 21
Critical loss analysis for the second stage analysis of DBEA-commodity pairs screened for source competition

	Termination BEA Area (DBEA)	Commodity Code	Commodity Description	Critical Loss Analysis: Total Expanded Tonnage	Receivers' Available Tonnage	Shippers' Available Expanded Tonnage	Maximum Available Tonnage	Ratio of Affected to Available Volume
DBEA – Participating Screen								
1.	Amarillo, TX-NM, US	3312253	Plate, Iron Or Steel, n.e.c., Plain, Galvanized, etc	21,520	1,124,940	2,610,040	2,610,040	<0.01
2.	Chicago-Gary-Kenosha, IL-IN-WI, US	2599969	Kits, Furniture, Unassembled	1,360	–	–	–	–
3.	Dallas-Fort Worth, TX-AR-OK, US	3071149	Plastic Dishes, Cellular	1,640	13,880	27,200	27,200	0.06
4.	Des Moines, IA-IL-MO, US	3295232	Clay, Crushed, Ground Or Pulverized	18,960	1,253,360	2,491,316	2,491,316	<0.01
5.	Jackson, MS-AL-LA, US	2421184	Lumber Or Timber, Dried	30,120	1,140,800	16,785,920	16,785,920	<0.01
6.	{{{ [redacted] }}}	3312253	Plate, Iron Or Steel, n.e.c., Plain, Galvanized, etc	{{{ [redacted] }}}	–	308,660	308,660	{{{ [redacted] }}}
7.	Spokane, WA-ID, US	3332115	Lead Bars, Blocks Or Ingots	14,040	23,840	74,360	74,360	0.19
DBEA – Terminating Screen								
8.	–	–	–	–	–	–	–	–
DBEA – Originating Screen								
9.	Davenport-Moline-Rock Island, IA-IL, US	2821139	Polypropylene, Other Than Liquid	61,800	–	13,009,596	13,009,596	<0.01
10.	Michoacán de Ocampo, MX	2611135	Woodpulp, Not Powdered, n.e.c.	34,560	–	4,769,356	4,769,356	<0.01
11.	Nuevo León, MX	0113710	Wheat (Fertilized)	214,344	–	32,256,226	32,256,226	<0.01
12.	Nuevo León, MX	2631117	Pulpboard Or Fibreboard	124,560	–	17,067,072	17,067,072	<0.01
13.	Rochester, MN-IA-WI, US	3312253	Plate, Iron Or Steel, n.e.c., Plain, Galvanized, etc	30,760	–	2,435,200	2,435,200	0.01

Source: Confidential Waybill Sample, 2015–2019
Note: The critical loss analysis assesses the extent to which a combined CP/KCS would find it unprofitable to increase the price on shippers of a BEA-commodity pair. The total expanded tonnage describes the volume of commodity shipped to the DBEA. The receivers' available expanded tonnage summarizes the volume of the commodity that can be shipped to the screened DBEA from origins that serve the screened DBEA through a route independent from CP or KCS, representing the available supply of that commodity from these particular origins. The shippers' available expanded tonnage summarizes the volume of commodity that is shipped to other destinations that the origins of the screened DBEA can reach through a route independent from CP or KCS, representing the available demand for the commodity in these particular origins. The maximum available tonnage is the larger of the receivers' and shippers' available expanded tonnage. The outcome of the critical loss analysis is captured by the ratio of the total expanded tonnage affected by the CP and KCS combination over the maximum of the available expanded tonnage. A ratio below one indicates that enough diversion on either the receivers' or shippers' end renders it likely that a price increase would be unprofitable.

130. **Furniture kits moved to Chicago-Gary-Kenosha, IL-IN-WI**. This commodity only rarely ships to this BEA area – there are only {{{ }}} observed movements in the 2019 Waybill Sample. Incidentally, all of these movements were intermodal, which suggests other railroads serving the Chicago area were likely competitive options for the movements.[76] These {{{ }}} movements represent {{{ }}} carloads in 2019, well below the one-carload-per-day threshold. The shares are thus not a reliable measure of the competitive significance of CP and KCS for this BEA-commodity pair. Moreover, there are only {{{ }}} movements of furniture kits to *any* destination in the Waybill Sample for 2015–2019.[77] This commodity has limited competitive relevance. This BEA-commodity pair is not likely to have competition affected by a combination of CP and KCS.

131. **Plastic dishes moved to Dallas-Fort Worth, TX-AR-OK**. This BEA-commodity pair triggered the screen in 2019 and 2018. In earlier years (2015–2017), the data does include movements of plastic dishes to Dallas-Fort Worth but {{{ }}}.[78] This lack of persistence to the CP and KCS shares is one reason to conclude that competitive effects are not likely – shippers have demonstrated they can and do switch to other railroads. In addition, only {{{ }}} movements, representing {{{ }}} carloads, are observed in 2019, which is below the reliability threshold.

132. The critical loss analysis for plastic dishes moved to Dallas-Fort Worth also suggests there is little competitive concern. The volume affected by a hypothetical

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[76] See my workpaper 13.

[77] See my workpaper 14.

[78] {{{ }}}. See my workpaper 15.

price increases is only six percent of the volume of plastic dish demand available to shippers looking to divert their shipments from Dallas-Fort Worth if a combined CP/KCS attempted to increase the price in this area. This BEA-commodity pair is not likely to have competition affected by a combination of CP and KCS.

133. **Steel and iron plate moved to {{{ }}}.**

This commodity ships only rarely to {{{ }}}. Although the 2019 participating shares for CP and KCS were {{{ }}} percent and {{{ }}} percent, respectively, these shares are based on only {{{ }}} observed movements in the Waybill Sample.[79] With only {{{ }}} movements, the share for one of the railroads involved is going to be at least {{{ }}} percent.[80] These {{{ }}} movements, which expand for the Waybill Sampling frame to {{{ }}} carloads, are far below the reliability threshold used by the Board in past competitive analyses.[81] Shares for this BEA-commodity pair are not reliable measures of CP and KCS competitive significance.

134. In addition, the critical loss analysis confirms that a combined CP/KCS would not find it profitable to raise prices for this BEA-commodity pair. The volume affected by a hypothetical price increase is only {{{ }}} percent of the volume of steel plate

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[79] {{{ }}} See my workpaper 16. See Exhibit 11.

[80] Shares for CP, KCS, and combined CP-KCS were, respectively: in 2018, {{{ }}}; in 2017, {{{ }}}; in 2016, {{{ }}}; and in 2015, {{{ }}}. See my workpaper 17.

[81] Vellturo V.S., 2007, at p. 88.

demand available to shippers looking to divert their shipments from San Francisco if a combined CP/KCS attempted to increase the price in this area.[82] This BEA-commodity is not likely to have competition affected by a combination of CP and KCS.

135. **Clay moved to Des Moines, IA-IL-MO.** Similar to steel plate that is shipped to the Amarillo, TX-NM BEA, clay shipped to the Des Moines, IA-IL-MO BEA area only triggers the screen in 2019. In all other years of data, enough other railroads carried the commodity such that the screen would not have been triggered, so the shares of CP and KCS lack persistence. The {{{ }}} movements in 2019, representing {{{ }}} expanded carloads, also fall below the reliability threshold. The shares underlying the screens for this pair, therefore, do not demonstrate a commodity likely to experience competition issues from a CP and KCS combination. Additionally, the critical loss analysis of this BEA-commodity pair demonstrates that a combined CP/KCS would not find it profitable to increase price on shippers of clay shipped to the Des Moines, IA-IL-MO BEA.

[82] I do not find any origins that in 2019 ship steel plate to {{{ }}} independent of CP and KCS. This is not surprising, since CP and KCS happened to participate in {{{ }}} movements in 2019, and does not mean that there would be no available volume of steel plate for shippers to divert *to* {{{ }}}. Steel plate may be shipped relatively infrequently by rail to {{{ }}}, but it is not a rare commodity more generally. Large volumes of steel plate are shipped by rail throughout the U.S. each year – in 2019, I observe 828 rail movements totaling 2,831,800 expanded tons of steel plate to U.S. destinations in the Waybill Sample. See my workpaper 18. Moreover, origins of steel plate movements can be connected to {{{ }}} via a railroad routing that is independent of CP and KCS. Indeed, in 2019 more than 800,000 tons of steel plate shipped from sources that ship other commodities to {{{ }}} independent of CP and KCS. Shippers in these locations would only need to divert a small fraction of this volume to {{{ }}} in order to defeat a hypothetical price increase. The volume affected by a hypothetical price increase for steel plate shipped to {{{ }}} is {{{ }}}, which is less than {{{ }}} percent of the more than 800,000 expanded tons of steel plate that ships from origins that could be connected to {{{ }}} independent of CP and KCS. See my workpaper 19.

136. **Lumber or timber moved to Jackson, MS-AL-LA.** Shares of lumber or timber shipped to the Jackson, MS-AL-LA BEA area fluctuate from year to year such that the 2019 shares, which trigger the screen, do not persist in looking at prior years. Movements of lumber or timber to Jackson appear in all prior years of the data, but with shares for CP and KCS that would not have triggered the screen. The {{{ }}} 2019 movements, representing {{{ }}} shipped carloads, are approaching but still below the reliability threshold. Finally, the critical-loss analysis of this BEA-commodity pair suggests that a combined CP/KCS would not find it profitable to increase price on shippers of lumber or timber to the Jackson, MS-AL-LA BEA.

137. **Lead bars moved to Spokane, WA-ID.** The screen of lead bars shipped to the Spokane, WA-ID BEA area is based on shares for CP and KCS out of {{{ }}} 2019 movements representing {{{ }}} carloads, falling well below the reliability threshold. This is a BEA-commodity pair that is not even observed in prior years other than 2018. However, the shares observed in 2018 for CP and KCS would not have triggered the screen. This pattern suggests the shares lack persistence to the extent the movement is observed in a given year's data. A critical loss analysis of lead bars shipped to the Spokane, WA-ID BEA area demonstrates that a combined CP/KCS would not find it profitable to increase price on shippers of this commodity to this BEA area.

138. Five commodity-DBEA pairs trigger the originating screen. For each of the five pairs, the CP and KCS shares underlying the screen lack persistence – shares of CP and KCS observed on movements in prior years would not have triggered the screen. These pairs are all observed frequently enough in the 2019 data to be close to or above the

reliability threshold. Consequently, the lack of persistence in these shares is particularly informative about shippers' ability to return to the other railroads they relied upon in these prior years if CP and KCS were to attempt to raise their prices.[83] Moreover, the critical loss analysis for each of these commodity-DBEA pairs reveals that a combined CP/KCS would not find it profitable to raise prices on any of them. These include the following commodity-DBEA pairs:

- **Polypropylene moved to Davenport-Moline-Rock Island, IA-IL;**
- **Woodpulp moved to Michoacán de Ocampo, Mexico;**
- **Wheat (not organically grown) moved to Nuevo León, Mexico;**
- **Pulpboard or fiberboard moved to Nuevo León, Mexico;** and
- **Steel plate moved to Rochester, MN-IA-WI.**

7.3. Appendix: Detailed results for destination competition

139. Below, I describe the additional information used to determine whether the results of the OBEA-participating screen reflect the kind of competitive significance of CP and KCS for the remaining commodities listed in Exhibit 14 and not already discussed in section 5.2.2. I find that the remaining BEA-commodity pairs do not meet the reliability threshold, that shippers are able to defeat a price increase, or both.

140. **Exhibit 22** describes the detailed results of the reliability threshold for the OBEA-commodity pairs screened for destination competition presented in section 5.2.2. The columns document with green check marks the years in which shippers have enough

[83] In one of the five pairs, steel plate shipped to Rochester, MN-IA-WI, the shares based on movements in one of the prior years, 2016, would trigger the screen, however, this appears to be simply another manifestation of year-to-year fluctuations in share rather than suggesting persistence of the shares.

options available to them from other railroads. The exhibit also summarizes the total number of BEA-commodity pair movements and expanded carloads, and numbers colored in green indicate that the number of movements in the 2019 data does not meet the reliability threshold.

EXHIBIT 22
Reliability results for the second stage analysis of OBEA-commodity pairs screened for destination competition

	Origin BEA Area (OBEA)	Commodity Code	Commodity Description	Assesment of Reliability of Screened Shares: Pattern of Shares '15	'16	'17	'18	'19	Movements in 2019 Data	Total Carloads
OBEA – Participating Screen										
1.	Atlanta, GA-AL-NC, US	1451410	Kaolin (China Clay), Crude	✓	✓	✓	X	X	{{{	}}}
2.	Atlanta, GA-AL-NC, US	2621990	Paper, n.e.c., Not Printed	✓	✓	✓	✓	X	{{{	}}}
3.	Atlanta, GA-AL-NC, US	3295975	Pellets, Gas Well Fracture Supporting	–	–	–	–	X	{{{	}}}
4.	Capitale-Nationale, PQ, CA	2421184	Lumber Or Timber, Dried	✓	✓	✓	✓	X	{{{	}}}
5.	{{{ [redacted] }}}	2025970	Sugar Of Milk (Lactose), Refined	–	✓	✓	✓	X	{{{	}}}
6.	Davenport-Moline-Rock Island, IA-IL, US	2014350	Animal Tallow Or Fat, Inedible, Liquid	–	–	–	–	X	{{{	}}}
7.	Fargo-Moorhead, ND-MN, US	0134215	Peas, Canadian Field, Dried	–	✓	✓	✓	X	{{{	}}}
8.	Hamilton--Niagara Peninsula, ON, CA	2014350	Animal Tallow Or Fat, Inedible, Liquid	–	–	–	–	X	{{{	}}}
9.	San Antonio, TX, US	2621711	Calender Roll Paper	✓	✓	–	X	X	{{{	}}}
OBEA – Originating Screen										
10.	–	–	–	–	–	–	–	–	–	–
OBEA – Terminating Screen										
11.	Davenport-Moline-Rock Island, IA-IL, US	2046110	Corn Syrup (Glucose), Dehydrated	X	X	X	X	X	{{{	}}}
12.	{{{ [redacted] }}}	2092110	Soybean Oil	–	–	–	–	X	{{{	}}}
13.	Madison, WI-IL-IA, US	1441313	Sand Fracing 30/50 Mesh	X	X	X	X	X	{{{	}}}
14.	Madison, WI-IL-IA, US	1441316	Sand Fracing 40/70 Mesh	X	X	X	X	X	{{{	}}}
15.	Madison, WI-IL-IA, US	1441317	Sand Fracing 100 Mesh	✓	✓	✓	✓	X	{{{	}}}
16.	Madison, WI-IL-IA, US	2014350	Animal Tallow Or Fat, Inedible, Liquid	✓	X	X	X	X	{{{	}}}
17.	Minneapolis-St. Paul, MN-WI-IA, US	2093915	Linseed (Flaxseed) Oil	✓	✓	✓	X	X	{{{	}}}
18.	Northwest / Nord-ouest, ON, CA	2621115	Newsprint Paper	✓	✓	✓	✓	X	{{{	}}}
19.	Red Deer, AB, CA	2912111	Propane Gas, Liquefied	✓	✓	X	X	X	{{{	}}}
20.	Saskatoon--Biggar, SK, CA	2093342	Rapeseed Oil (Colza Oil)	✓	✓	✓	✓	X	{{{	}}}
21.	Thompson--Okanagan, BC, CA	2439120	Structural Beams	✓	✓	✓	✓	X	{{{	}}}

Source: Confidential Waybill Sample, 2015–2019
Note: The "Pattern of Shares" columns indicate years for which movements of the commodity shipping from the BEA area do not trigger the screen with a green check mark and years for which the screen is triggered with a red X. Dashes indicate years for which there are no observed movements of the commodity from the BEA. The last two columns summarize the number of BEA-commodity pair movements in the 2019 data, or the number of observations in the Waybill sample, and the total expanded carloads shipped via those movements. The green-colored movements and carloads indicate that the BEA-commodity pair does not meet the one-carload-per-day threshold, suggesting that the shares that triggered the screen are not reliable. The red-colored movements and carloads indicate that the pair meets the one-carload-per-day threshold. Total carloads are not adjusted for railcars carrying more then one intermodal unit. Doing so, adjusting carloads by the average units per flat car, would further reduce the number of carloads represented by these movements.

141. **Exhibit 23** describes the underlying tonnage values for the critical loss analysis presented in section 5.2.2 for the OBEA-commodity pairs screened for destination

competition. The receivers' available tonnage describes what can be diverted from other origins that ship to destinations served by the OBEA that is also independent of CP and KCS, representing the supply available elsewhere to receivers. The shippers' available tonnage describes what can be diverted to other destinations reached by the OBEA and that is independent of CP and KCS, representing the available demand for the commodity elsewhere.

142. The outcome of the critical loss analysis is captured by the ratio of the total expanded tonnage affected by the combination of CP and KCS over the maximum of the receivers' or shippers' available tonnage. A ratio below one indicates that a combined CP/KCS would likely not find it profitable to increase prices.

EXHIBIT 23
Critical loss analysis for the second stage analysis of OBEA-commodity pairs screened for destination competition

	Origin BEA Area (OBEA)	Commodity Code	Commodity Description	Critical Loss Analysis: Total Expanded Tonnage	Receivers' Available Expanded Tonnage	Shippers' Available Expanded Tonnage	Maximum Available Tonnage	Ratio of Affected to Available Volume
OBEA – Participating Screen								
1.	Atlanta, GA-AL-NC, US	1451410	Kaolin (China Clay), Crude	2,920	–	–	–	–
2.	Atlanta, GA-AL-NC, US	2621990	Paper, n.e.c., Not Printed	7,120	188,480	36,800	188,480	0.04
3.	Atlanta, GA-AL-NC, US	3295975	Pellets, Gas Well Fracture Supporting	29,864	81,708	46,408	81,708	0.37
4.	Capitale-Nationale, PQ, CA	2421184	Lumber Or Timber, Dried	33,560	17,433,600	45,960	17,433,600	<0.01
5.	{{{ [redacted] }}}	2025970	Sugar Of Milk (Lactose), Refined	{{{ [redacted] }}}	–	–	–	–
6.	Davenport-Moline-Rock Island, IA-IL, US	2014350	Animal Tallow Or Fat, Inedible, Liquid	25,320	649,360	–	649,360	0.04
7.	Fargo-Moorhead, ND-MN, US	0134215	Peas, Canadian Field, Dried	11,960	{{{ [redacted] }}}			
8.	Hamilton--Niagara Peninsula, ON, CA	2014350	Animal Tallow Or Fat, Inedible, Liquid	18,800	892,600	229,200	892,600	0.02
9.	San Antonio, TX, US	2621711	Calender Roll Paper	3,440	767,960	368,600	767,960	<0.01
OBEA – Originating Screen								
10.	–	–	–	–	–	–	–	–
OBEA – Terminating Screen								
11.	Davenport-Moline-Rock Island, IA-IL, US	2046110	Corn Syrup (Glucose), Dehydrated	60,560	–	–	–	–
12.	{{{ [redacted] }}}	2092110	Soybean Oil	{{{ [redacted] }}}	4,068,340	–	4,068,340	{{{ [redacted] }}}
13.	Madison, WI-IL-IA, US	1441313	Sand Fracing 30/50 Mesh	112,116	7,828,940	–	7,828,940	0.01
14.	Madison, WI-IL-IA, US	1441316	Sand Fracing 40/70 Mesh	741,919	19,613,713	–	19,613,713	0.04
15.	Madison, WI-IL-IA, US	1441317	Sand Fracing 100 Mesh	675,384	14,612,515	770,138	14,612,515	0.05
16.	Madison, WI-IL-IA, US	2014350	Animal Tallow Or Fat, Inedible, Liquid	18,000	826,520	–	826,520	0.02
17.	Minneapolis-St. Paul, MN-WI-IA, US	2093915	Linseed (Flaxseed) Oil	26,520	{{{ [redacted] }}}			
18.	Northwest / Nord-ouest, ON, CA	2621115	Newsprint Paper	30,960	256,120	37,360	256,120	0.12
19.	Red Deer, AB, CA	2912111	Propane Gas, Liquefied	172,000	7,150,702	392,479	7,150,702	0.02
20.	Saskatoon--Biggar, SK, CA	2093342	Rapeseed Oil (Colza Oil)	417,508	2,314,660	954,752	2,314,660	0.18
21.	Thompson--Okanagan, BC, CA	2439120	Structural Beams	21,080	654,640	–	654,640	0.03

Source: Confidential Waybill Sample, 2015–2019
Note: The critical loss analysis assesses the extent to which a combined CP/KCS would find it unprofitable to increase the price on shippers of a BEA-commodity pair. The total expanded tonnage describes the affected volume of commodity shipped from the OBEA. The receivers' available expanded tonnage summarizes the volume of the commodity that can be shipped to the BEAs served by the screened OBEA from any other BEA area that can ship the commodity to those BEAs through a route independent from CP and KCS, representing the supply of that commodity from other originations. The shippers' available expanded tonnage summarizes the volume of commodity that is shipped from any other BEA area to a destination that the screened OBEA can reach through a route independent from CP or KCS, representing the available demand for the commodity in that particular destination. The maximum available tonnage is the maximum between the receivers' and shippers' available tonnage. The outcome of the critical loss analysis is captured by the ratio of the total expanded tonnage affected by the CP and KCS combination over the maximum of the available tonnage. A ratio below one indicates that enough diversion on either the receivers' or shippers' end renders it likely that a price increase would be unprofitable.

143. **Kaolin (China Clay) moved from Atlanta, GA-AL-NC**. This OBEA-commodity pair triggers the screen based on shares that lack persistence. The {{{ }}} movements in the 2019 data, representing only {{{ }}} carloads, fall well below the reliability threshold. Moreover, there are only {{{ }}} total movements anywhere in the 2019 data. All {{{ }}} movements were intermodal,

suggesting that other railroads serving the Atlanta area or possible destinations were likely competitive options for the movements.[84]

144. **Paper moved from Atlanta, GA-AL-NC**. This OBEA-commodity pair triggers the screen based on shares that lack persistence. This is not a completely infrequent movement with {{{ }}} observations in the 2019 data, which all happen to be intermodal movements, so the year-to-year fluctuation in shares is particularly informative about shipper choices in prior years.[85] The critical loss analysis for this commodity-OBEA pair confirms that the combined CP/KCS would not find it profitable to raise prices for paper shipped from the Atlanta, GA-AL-NC BEA.

145. **Pellets for gas well fractures moved from Atlanta, GA-AL-NC**. This OBEA-commodity pair triggers the screen based on shares that lack persistence. Additionally, the shares are based on {{{ }}} 2019 movements representing only {{{ }}} carloads and well below the reliability threshold. Finally, the critical loss analysis confirms that a combined CP/KCS would not find it profitable to raise prices for the OBEA-commodity pair.

146. **Lumber or timber moved from Capitale-Nationale, QB, Canada**. This OBEA-commodity pair triggers the screen in 2019 based on shares that lack persistence despite the observation of sufficient movements in 2019, suggesting the shares in prior years are particularly informative of shippers' ability to return to other railroads if a combined CP/KCS attempted to raise prices. Additionally, the ratio of affected to available volume for the critical loss analysis of this OBEA-commodity pair is less than

[84] See my workpaper 20.
[85] See my workpaper 21.

one percent, confirming that a combined CP/KCS would not find it profitable to raise prices.

147. **Lactose moved from {{{ }}}**. This OBEA-commodity pair triggers the screen based on shares that lack persistence. Moreover, the shares are based on only {{{ }}} movements, representing {{{ }}} carloads, which is significantly less than the reliability threshold. Based on these factors, the screened commodity is not likely to experience competition issues from a combination of CP and KCS.

148. **Animal tallow or fat moved from Davenport-Moline-Rock Island, IA-IL**. This OBEA-commodity pair has no movements observed in the data from prior years and has only {{{ }}} 2019 movements, representing {{{ }}} carloads, suggesting that the shares that triggered the screen are not reliable. The critical loss analysis confirms that a combined CP/KCS would not find it profitable to raise prices for this OBEA-commodity pair.

149. **Dried peas moved from Fargo-Moorhead, ND-MN**. This OBEA-commodity pair trigger the screen based on shares that lack persistence. Moreover, the shares are based on only {{{ }}} movements in the 2019 data, representing {{{ }}} carloads, which is significantly less than the reliability threshold. The critical loss analysis yields a volume ratio of almost exactly {{{ }}}. Based on these factors, the screened OBEA-commodity pair is not likely to experience competition issues from a combination of CP and KCS.

150. **Animal tallow moved from Hamilton-Niagara Peninsula, ON, Canada**. This OBEA-commodity pair has no movements observed in the data from prior years, and has only {{{ }}} 2019 movements, representing {{{ }}} carloads, suggesting that the shares that triggered the screen are not reliable. The critical loss analysis confirms that a combined CP/KCS would not find it profitable to raise prices for this OBEA-commodity pair.

151. **Calendar roll paper moved from San Antonio, TX**. This OBEA-commodity pair triggers the screen based on shares that have only fleeting persistence. Prior to 2018, when movements of this pair are observed, the shares for CP and KCS would not have triggered the screen. Additionally, the shares are based on only {{{ }}} 2019 movements, representing {{{ }}} carloads, missing the reliability threshold. The critical loss analysis confirms that a combined CP/KCS would not find it profitable to raise prices for this OBEA-commodity pair.

152. **Soybean oil moved from {{{ }}}**.
This OBEA-commodity pair has no movements observed in the data from prior years, and has only {{{ }}} 2019 movements, representing {{{ }}} carloads, suggesting that the shares that triggered the screen are not reliable. The critical loss analysis confirms that a combined CP/KCS would not find it profitable to raise prices for the BEA-commodity pair.

153. **Frac sand moved from Madison, WI-IL-IA.** There are three grades of frac sand (30/50 Mesh, 40/70 Mesh, and 100 Mesh) that appear in the data as separate commodities, each triggering further investigation of movements from Madison, WI-IL-IA. The critical loss analyses for all three of these grades demonstrate that shippers

would readily divert enough frac sand of the relevant grade to defeat any attempted price increase by a combined CP/KCS. Moreover, for the 100 Mesh sand, the shares lack persistence. Because of these factors, all three grades of frac sand from Madison, WI-IL-IA are unlikely to experience competition issues from a combination of CP and KCS.

154. **Animal tallow moved from Madison, WI-IL-IA**. This OBEA-commodity pair triggers the screen with shares based on only {{{ }}} movements, representing {{{ }}} carloads, which are well below the reliability threshold. The critical loss analysis confirms that a combined CP/KCS would not find it profitable to raise prices for this OBEA-commodity pair.

155. **Linseed oil moved from Minneapolis-St. Paul, MN-WI-IA**. This OBEA-commodity pair triggers the screen based on shares that have only fleeting persistence. Prior to 2018, the shares for CP and KCS would not have triggered the screen. Moreover, the shares are based on only {{{ }}} 2019 movements, representing {{{ }}} carloads, which is less than the reliability threshold. Based on these factors, the screened commodity is not likely to experience competition issues from a combination of CP and KCS.[86]

[86] {{{ }}} originates volume of linseed oil from two BEAs in {{{ }}} that are located about 1.5 hours in driving distance apart. One BEA area appears to predominately serve demand in the west. However, if {{{ }}} were able to divert linseed oil volume from both of these {{{ }}} locations to the {{{ }}} BEA, in response to a hypothetical price increase on shipments there from the Minneapolis-St. Paul, MN-WI-IA BEA, the ratio measuring critical loss would be nearly equal to {{{ }}} instead of {{{ }}}. See my workpaper 22.

156. **Newsprint paper moved from Northwest, ON, Canada**. This OBEA-commodity pair triggers the screen based on shares that lack persistence. The critical loss analysis confirms that a combined CP/KCS would not find it profitable to raise prices for this BEA-commodity pair.

157. **Liquefied Propane Gas moved from Red Deer, AB, Canada**. This OBEA-commodity pair triggers the screen based on shares that lack persistence. Prior to 2017, the shares for CP and KCS would not have triggered the screen. Moreover, the critical loss analysis confirms that a combined CP/KCS would not find it profitable to raise prices for this BEA-commodity pair.

158. **Rapeseed oil moved from Saskatoon-Biggar, SK, Canada**. This OBEA-commodity pair triggers the screen based on shares that lack persistence. The critical loss analysis confirms that a combined CP/KCS would not find it profitable to raise prices for this BEA-commodity pair.

159. **Structural beams moved from Thompson-Okanagan, BC, Canada**. This OBEA-commodity pair triggers the screen based on shares that lack persistence. Moreover, the shares are based on only {{{ }}} 2019 movements, representing {{{ }}} carloads, suggesting that the shares that triggered the screen are not reliable. The critical loss analysis confirms that a combined CP/KCS would not find it profitable to raise prices for this BEA-commodity pair.

VERIFICATION

I, W. Robert Majure, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed this 28th day of October, 2021.



W. Robert Majure

Exhibit 19

Attachment 2

VERIFIED STATEMENT
OF
CHRISTOPHER A. VELLTURO, PH.D.

An Analysis of the Competitive Effects of the Proposed Combination of the Canadian National and Wisconsin Central Railroads

Before the Surface Transportation Board

April 2001

I. QUALIFICATIONS

I am a Principal of Analysis Group/Economics, Inc. I received a Bachelor of Science degree (*cum laude*) in applied mathematics and economics from Brown University in Providence, Rhode Island, and a Doctor of Philosophy (Ph.D.) degree in economics from the Massachusetts Institute of Technology (MIT) in Cambridge. While at MIT, I specialized in industrial organization and econometrics. During my tenure at MIT, I was awarded Bradley Fellowships in public economics (which is the study of how public policy decisions affect private sector incentives), and I have completed extensive training in that field. My Ph.D. thesis on the structural changes in the U.S. rail industry fostered by the passage of the Staggers Act, and their economic significance, was prepared under the guidance of Professor Ann Friedlaender, a visionary in rail regulatory reform. My thesis and its progeny have featured significantly in previous assessments of the competitive effects associated with rail industry consolidation.[1] I am called upon frequently to referee scholarly articles pertaining to the U.S. rail industry that are submitted to a number of the leading applied microeconomics journals.

I have studied structural, regulatory, and competitive issues relating to the rail industry for more than 15 years. I have published several papers in academic journals relating to regulatory and competitive determinants of rail efficiency and viability. This body of research focused significantly (though not exclusively) on rail consolidation and rail regulatory reform. I continue to conduct research on transportation issues generally, and rail issues in particular. I

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[1] "Cost Effects of Mergers and Deregulation in the U.S. Rail Industry" (with Berndt, *et. al.*) in *Productivity Issues in Services at the Micro Level*, ed. Zvi Griliches and Jacques Mairesse, Kluwer Academic Publishers, 1993; "Cost Effects of Mergers and Deregulation in the U.S. Rail Industry" (with Berndt, *et al.*), *Journal of Productivity Analysis*, 4, 127-144, 1993; "Rail Costs and Capital Adjustments in a Quasi-Regulated Environment" (with Friedlaender, *et. al.*), *Journal of Transport Economics and Policy*, 131-152, May 1993; "Deregulation, Mergers and Cost Savings in Class I U.S. Railroads, 1974-1986" (with Berndt, *et. al.*), *Journal of Economics and Management Strategy*, Vol. 1, No. 2, 1992.

recently assessed structural and competitive issues relating to the assimilation of Conrail into CSX and Norfolk Southern, and relating to Canadian National's acquisition of the Illinois Central railroad, both before the Surface Transportation Board. I presented testimony before the Board during the ANPR phase of the Board's rulemaking on Major Rail Consolidation Procedures.

I have extensive antitrust expertise and experience with respect, in particular, to the competitive ramifications of mergers and acquisitions. In the past seven years, I have conducted competitive analyses for over 120 proposed transactions. This work has spanned a broad array of industries, including: automobile manufacturing, grains and agricultural products, sugar, salt, fertilizers, chemicals, forestry products, machine tools, municipal waste, retail distribution, rail bed service equipment, petroleum and petroleum products, plastics, medical products and services, software, electronic funds transfer networks, lime, cement, computer and electronics manufacturing, and many others. In addition to the Board, I have presented my work before the United States Department of Justice (Antitrust Division), the Federal Trade Commission, the European Commission, the Canadian Competition Bureau, the Federal Reserve, and various state Attorneys General. My curriculum vitae is attached.

II. ASSIGNMENT AND FINDINGS

I have been asked by the Applicants to assess the competitive ramifications of the proposed combination of CN[2] and Wisconsin Central Transportation Corporation ("WC").

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[2]*Because I am conducting competition analysis based on the 1999 Waybill Sample, my shorthand* references to CN and WC are based on that year, and include, unless otherwise indicated, railroads that were within the two corporate families as well as short lines with no outlets except CN or WC. Accordingly, "CN" refers hereafter to Canadian National Ry. Co., Grand Trunk Corp. and Grand Trunk W. R.R. Inc., Illinois Cent. Corp. and Illinois Cent. R.R. Corp., Chicago Cent. & Pac. R.R. Co., Cedar River R.R. Co., Duluth Winnipeg and Pac. Ry., and, in addition, the sole-served short lines: Gloster S. R.R. Co., Mississippi and Skuna Valley R.R. Co., Tennken R.R. Co., and Old Augusta R.R. Co., Inc. Likewise, "WC" refers to Wisconsin Central Ltd., Algoma C. Ry. Inc., (continued...)

Specifically, I have been asked to evaluate whether there exists any identifiable set of customers – either traffic originators ("shippers") or recipients of products transported by rail ("receivers") – who would face higher prices or reduced service levels as a result of a meaningful reduction in rivalry in the provision of rail service by the two railroads. By "meaningful reduction," I mean a reduction in competition that would enable the merged railroad to sustain a significant price increase profitably (or, the economic equivalent, to profitably sustain a significant reduction in service). Absent any meaningful reduction in rivalry, the proposed combination cannot produce competitive harm.[3] I applied microeconomic and quantitative principles to these issues that I commonly utilize in analyzing the potential competitive harm resulting from mergers and acquisitions more generally.

To this end, I examined the possibilities for competitive interactions between CN and WC. The first element in such examination relates to shippers for whom the proposed Transaction would reduce the number of serving railroads from 2-to-1, or from 3-to-2. Even a cursory review of a North American rail route map clearly demonstrates the lack of commonly served points or parallel trackage between the CN and WC route systems. Mr. Richard Bottorff,[4] relying on an extensive analysis of the Official Railroad Station List, relevant switching tariffs, the Official Railway Guide, the Official Railway Equipment Register, information published by individual railroads on their Web sites, and consultations with operating and marketing personnel

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(...continued)
Fox Valley and W. Ltd., Sault Ste. Marie Bridge Co., and, in addition the sole-served short lines: Escanaba and Lake Superior R.R., Lake Superior and Ishpeming R.R. Co., and Tomahawk Ry. Ltd. Partnership.

[3] I also evaluated the potential for anticompetitive harm stemming from the end-to-end (or "vertical") nature of the proposed Transaction. Consistent with the findings in all other rail merger investigations, I found no potential for competitive harm stemming from such vertical issues. *See* Section IV, *infra*.

[4] The information and analysis provided by Mr. Bottorff and to which I refer is contained in Verified Statement of Richard L. Bottorff.

familiar with the locations, has concluded that there are no points where the number of rail carriers serving customers would, as a result of the CN/WC Transaction, be reduced from two to one (*i.e.*, there are no "2-to-1" shippers),[5] or from three to two (*i.e.*, there are no "3-to-2" shippers).[6] In the Superior-Chicago corridor, where WC provides haulage for CN, the number of serving railroads would change from five to four, as Mr. Bottorff discusses. No further economic analysis is necessary, given these conclusions, and I do not discuss them further.

Second, I considered the potential for a reduction in geographic competition between CN and WC to harm customers. Applicants asked me to examine geographic competition thoroughly, in order to provide the Board with an ample basis on which to conclude that this Transaction is "minor" under the Board's regulations, and must be approved under the statutory standards. I principally discuss source competition, which can arise where two railroads each provide transportation of a specific good that moves to a common destination from different origins. In theory, receivers of a particular good in a particular location might rely on such source competition to obtain competitive prices. Accordingly, I performed a detailed analysis of

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[5]One point in Canada – Oba, ON – is served by CN, WC, and no other rail carriers, so it is technically a 2-to-1 point. According to Mr. Bottorff, however, CN and WC do not compete for rail service to customers at Oba. There are no industries at that location, and WC only originates or terminates traffic at team tracks that it maintains there. (CN has no team tracks at Oba, and it neither originates nor terminates rail traffic there.) In 1999, 289 cars originated on WC at Oba, but all but one terminated in Canada on WC itself. The one exception was a single car terminating in Duluth, at a point that is served by a single railroad and is closed to switching for CN or any other railroad. Clearly, therefore, the CN/WC merger would not reduce competition for rail traffic to or from Oba.

[6]Traditionally, rail merger analysis has sought to identify 2-to-1 routes/locations because the STB has identified such service consolidations as problematic and typically in need of remedial action. The STB has historically examined 3-to-2 situations on a case-by-case basis, and generally required no remedial action in 3-to-2 corridor/location instances, due to the intensity of competition that typically remains when two railroads service a common corridor/location. The historical performance of two-rail competitive instances demonstrates that corridors/locations under these conditions continue to exhibit robust rail competition, thus confirming the efficacy of the STB's policy decision in this regard. Three-to-two structural changes do not even presumptively merit remedial action, but it is reasonable to identify them so that parties with specific concerns may address them through case-by-case analysis.

every instance in which CN and WC participate in movements of the same product to the same destination. In every instance, I found that receivers at these destinations have access to very large volumes from alternative competitive sources for each relevant product. These alternatives will continue to provide significant competitive discipline of the pricing and service level of the combined firm. Thus, the proposed Transaction will not create any opportunities for the combined firm to raise prices or reduce service levels.[7]

Third, I considered the potential for competitive harm at locations where the Transaction results in no reduction in the number of serving railroads. Obviously, such instances afford no potential for reduced rivalry between the two railroads (since no rivalry existed in the first place). The potential for any reduction in competition due to "vertical foreclosure" is also non-existent, as the proposed combination has no impact on how either railroad prices or serves the locations where one of them currently offers the only source of rail transportation.

III. ANALYSIS OF SOURCE COMPETITION

A. Overview

I provide an illustration of source competition in Exhibit 1. Consider customers receiving a particular product that take delivery in a destination BEA[8] designated DBEA-1. If the two merging roads in the upper panel – merging railroad 1 ("MRR1") and merging railroad 2

[7]We also examined the alternative form of geographic competition ("destination competition"), which can arise where two railroads each originate traffic of a specific good from a common location, though this traffic may be headed to different destinations. Theoretically, shippers located at a particular origin might rely on their choice *of railroads that can move the same product to different destinations to obtain competitive prices and service levels.* Our examination identified a very limited set of relevant flows, all from Chicago, that I describe in note 31, *infra*, and that Mr. Bottorff addresses.

[8]"BEA" refers to the Bureau of Economic Analysis (BEA) Economic Areas. The continental United States is divided into 172 BEAs. I discuss the economic basis and implications of a BEA-based analysis in the next section.

("MRR2") – were the only providers of service into DBEA-1 as in the top panel of Exhibit 1, the competitive problem would be obvious.

The competitive interaction may be more subtle, however. In the bottom panel of Exhibit 1, the same logistics exist, except that merging railroad 2 hands off its originating traffic of the relevant product to railroad 3 for ultimate delivery into DBEA-1. Here, too, receivers of the relevant product located in DBEA-1 may see them as rivals – merging railroads 1 and 2 both serve as originators of the relevant product, and as such, represent alternative sources of supply. A merger between the two merging railroads may, if there is no bottleneck at the destination, allow the combined firm to internalize this rivalry, and profitably raise the price (or reduce the service levels) for transportation of the relevant product into DBEA-1. By internalizing this rivalry, the combined firm recognizes that customers can no longer "play the rivals off one another," since the potential lost profits merging railroad 1 might lose to merging railroad 2 by raising its price too high (and losing the business) is no longer "lost" by the combined firm.

In order to assess the prospect that such anticompetitive behavior would be in the profit-maximizing interest of the combined firm as a result of this Transaction, it is constructive to turn to standard techniques and analyses undertaken by federal antitrust enforcement officials in their assessment of the competitive ramifications of mergers and acquisitions. In the U.S. Department of Justice and Federal Trade Commission Merger Guidelines, this analysis includes a consideration of relevant product and geographic markets where the merging firms actually overlap (or can potentially overlap). Once identified, these relevant markets are evaluated with respect to the degree of competitive overlap between the merging firms, the number and size of actual rivals to the merging firms in the relevant markets, and the number and size of potential rivals to the merging firms in the relevant markets. Relevant markets where the merging firms

have a very limited competitive overlap, or where other significant actual or potential rivals exist, are generally considered immune to potential anticompetitive harm resulting from the proposed merger.

In this context I undertook such an analysis of product/destination pairs to consider, more expansively, the potential competitive effects of the proposed combination between CN and WC. I began by identifying specific product/destination pairs (*e.g.*, corn delivered to the Chicago BEA) where CN and WC originate, terminate, or otherwise handle a significant portion (as identified by a "50/10" screen, described below) of the product destined for the relevant geographic area.[9] For the purposes of this report, I defined as a candidate for a more complete competitive analysis any traffic terminating in a BEA for which each of CN and WC in 1999: 1) originated, terminated, or interchanged (henceforward "participated" in) 10% or more of the total carloads of a commodity delivered to the BEA, if the combined share calculated on this basis without double-counting CN or WC participation would have been 50% or more of total delivered volume;[10] or 2) originated 10% or more of the total carloads of a commodity delivered to a BEA, if the combined originated share of the two roads would have been 50% or more; or 3) terminated 10% or more of the total carloads of a commodity delivered to a BEA, if the combined terminated share of the two roads would have been 50% or more. I describe my

[9]ALK Technologies, Inc. ("ALK") performed the analysis pursuant to my specifications, using the 1999 STB Waybill Sample.

[10]To avoid double-counting in the participation screen, the combined share had to be at least 10 percentage points higher than the greater of either railroad's participation share. I illustrate this point in Appendix A. Although the three screens may appear logically redundant, they are not. In product/DBEA pairs where CN and WC jointly participate in some movements (for example, CN originates and WC terminates the same movement), it is possible that the originating- or terminating-railroad screen will identify a flow that the participating-share screen does not. I illustrate this point also in Appendix A. In fact, the second approach noted in the text (originating-railroad screen) identified some flows not identified by the participating-share screen. (These additional flows are shown in the second panel of Exhibit 3.) The third approach (terminating-railroad screen) did not identify any additional flows.

specifications for this screen in Appendix A.[11] (I sometimes refer to the destination BEAs involved in these flows as "DBEAs" or "50/10 DBEAs" and to the combination of a traffic flow and a DBEA as "product/DBEA pairs" or "50/10 product/DBEA pairs.")

I am of course using this so-called "50/10" analysis not to draw any final conclusions about competitive effects, but as a screen to identify traffic that warrants further analysis. Traffic that the 50/10 test identifies may not be traffic for which CN and WC are in fact the effective rail constraints on each other, any more than a number of other railroads moving large volumes of traffic that is source-competitive with the CN and WC traffic. In any event, the screen does not provide any indication of the extent of source competition after the Transaction from other railroads, modes, and sources, which is the critical point and which I examine extensively in a separate analysis.

As the Board is aware, the use of quantitative screens is common in competition analysis. The Herfindahl-Hirschman Index ("HHI") is commonly used for this purpose by antitrust enforcement agencies although this index is not appropriate for use in the rail industry. I understand that the ICC has explained that the predictive power of "indices such as the HHI are less directly linked to market power in the railroad industry than they are in manufacturing or

[11] As the Board is aware, the Waybill Sample may in the case of "Rule 11" movements identify locations as destinations or origins that are in fact points of interchange. This limitation means that the Waybill may overstate CN and WC shares of movements to a BEA.

retailing."[12] The ICC's conclusions remain correct today.[13] Moreover, it is not practicable to apply HHIs to the rail industry.[14]

At the same time, a screen is a useful starting point in considering competitive effects. I find that the 50/10 screen, although itself an index, provides a reasonable filtering device with which to identify candidate product/DBEA pairs for further analysis. Parties in past merger proceedings have used the 50/10 analysis as a screen, and the ICC and the Board have accepted such evidence for that limited purpose.[15] I have applied the screen to rail traffic only, not taking into account truck competition. A substantial reduction in source competition is unlikely if one

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[12] *Union Pac. Corp. – Control – Chicago and N.W. Transp. Co.*, ICC Finance Docket No. 32133, Decision No. 25, slip op. at 86 (ICC served March 7, 1995) ("*UP/CNW*."). The ICC pointed out that, in manufacturing and retailing, "changes in industry output and changes in the number of firms operating in the industry are highly correlated." *Id.* Railroads, in contrast, generally have excess capacity, and therefore have "the economic incentive to reduce rates, expand output, and increase profits." *Id.*

[13] Thus, while mergers have reduced redundant capacity, the route system of an existing rail carrier exhibits relatively high fixed costs, a general if not entirely uniform absence of barriers to expansion (*i.e.*, the general absence of capacity limits along most specific routes), and highly differentiated rail services. These characteristics are present in sufficient degree to provide strong incentives for railroads to fully utilize capacity and to cheat on any attempt to collude, as well as the ability to expand or shift capacity across various routes. In industries with these characteristics, an HHI-based screen of competitive overlaps (and a preliminary assessment of their severity using HHIs) tends to significantly overstate the potential for competitive harm.

[14] Market shares measured by the Waybill Sample, which captures output, say little about capacity. It would not be practicable to measure the capacities of all railroads serving a relevant area, as doing so would require analyses of line densities, yard and main line operations and capacities, signaling and other technologies, and so forth.

[15] *See Union Pac. Corp. – Control & Merger – Southern Pac. Rail Corp.*, 1 S.T.B. 233, 396 (1996) ("*UP/SP*") (relying on evidence relating to source competition presented by applicants' witnesses Barber and Peterson, which included 50/10 screen as well as additional volume-based screen); Verified Statement of Richard J. Barber, UP/SP-23, at 371, 482-86 (filed Nov. 30, 1995), *UP/SP*; Verified Statement of Richard B. Peterson, *id.*, at 233-34 (same); *Union Pac. Corp. – Control – Missouri Pac.Corp.*, 366 I.C.C. 462, 528-29, 676-77 (1982) ("*UP/MP*") (relying on evidence relating to source competition presented by DOJ witness, which included 50/10 screen; ICC agreed with DOJ that the screen probably overstated potential loss of source competition because product competition would mitigate possible reductions in source competition). The ICC rejected 50/10 analysis as a basis for drawing conclusions about competition, as distinct from using it as a screen. *UP/CNW*, Decision No. 25, slip op. at 79.

of the Applicants has less than 10% of the relevant rail traffic, or if Applicants together would have less than 50%.[16]

The results of this screen, which I present generally in Exhibit 2, indicate that there are few product/destination pairs where CN and WC participate significantly in movements of the same product from different origins to the same destination. Exhibit 2 provides a list of the product/DBEA pairs and number of relevant carloads shipped by CN and WC for each pair that is generated after applying the participating, originating, or terminating 50/10 screen with respect to CN and WC. There are 31 product/DBEA pairs that are identified under the 50/10 screen when any CN/WC participation in traffic moving to a DBEA is counted, and an additional 21 product/DBEA pairs when CN and WC shares as originating railroads of traffic moving to a DBEA are counted.[17] (As I have already noted, our terminating-railroad screen revealed no pairs in addition to those identified by screening the participation shares.)

As can be seen in Exhibit 2, most of the 50/10 product/DBEA pairs involve combined CN/WC traffic volumes that are very small individually. For example, there are only 21 product/DBEA pairs where the combined volumes of the two railroads amount to more than a carload a day. Of those product/DBEA pairs, there are three that would amount to one train a week. Some are less than 100 carloads a year. I understand that the Board has stated that it must approve a transaction of this type "unless there will be adverse competitive impacts that are both

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[16]A combined share of under 50% implies that there is at least one other railroad (and probably more) originating or terminating significant volumes of the relevant product that move to the candidate DBEA. Given the expansive networks of many North American railroads, the likelihood for substantial additional volumes to be diverted from other destinations into the candidate DBEA (a concept I term "divertible capacity" that is developed, *infra*) is extremely high and obviates the need for any further analysis.

[17]In Exhibit 2, "PRR" and "ORR" refer, respectively, to "participating railroad" and "originating railroad."

'likely' and 'substantial.'"[18] The small CN/WC volumes within the 50/10 product/DBEA pairs indicate that this Transaction will not entail any such anticompetitive effects.

Critical Loss. Despite the insubstantial nature of these actual/potential interactions, Applicants asked me to conduct a detailed analysis of the potential for competitive harm. As already indicated, the ultimate question one seeks to answer in assessing the competitive consequences of a proposed merger is whether the merged firm will have the incentive and ability, post-merger, to raise prices (or reduce service). Accordingly, for the product/DBEA pairs identified by the screen, I evaluated the ability (both actual and potential) of other providers of transportation services to prevent the combined firm from raising prices (or reducing service) after the proposed combination. Other providers of transportation services provide such competitive discipline if they collectively have the ability and incentives to take sufficient volumes from the combined firm in the event of price increase so as to render such an increase unprofitable.

To find a price increase profitable, the combined firm must believe that the added contribution it will earn due to the higher price it will receive on the traffic it continues to carry after the price increase will be greater than the contribution it will lose as a result of some of the volume it currently serves moving to another provider (or ceasing to be moved) in response to the higher price. If the combined firm believes that its customers will seek to move a sufficient portion of their volumes to other providers and that these other providers have the capacity and incentive to take on this additional volume, then the losses associated with the price increase will be expected to exceed the benefit of the higher price earned on the retained volume. This

[18] *Kansas City S. Industries, Inc. – Control – Gateway W. Ry. Co.*, STB Finance Docket No. 33311, slip op. at 2 (STB served May 1, 1997).

minimum sufficient volume that renders such a price increase unprofitable is commonly referred to in antitrust as the "critical loss."[19] If the combined firm perceives that customer movements to others will exceed this "critical loss" then the merged firm will not have an incentive to raise prices after the combination. If the firm attempted an increase, it could not profitably sustain it. Thus, no anticompetitive harm can arise.[20] In Appendix B, I describe how I computed the critical loss for each product/DBEA pair identified by the 50/10 screen.

Competitive Alternatives and "Divertible Capacity." Having identified candidate product/DBEA pairs for further analysis, and having identified the critical loss volumes under each relevant product/DBEA pair that would ensure that the merged firm will not have the incentive to raise price and harm customers post-merger, I then sought to determine the extent to which rivals have the ability and capacity to supply the traffic demands of a sufficient volume of traffic for each product/DBEA pair to impose the critical loss. To complete this level of the analysis I considered the available "divertible capacity" that could serve each relevant product/DBEA pair.

The concept of "divertible capacity" identifies the potential entry/expansion of additional capacity into the market at issue. If the combined firm were to raise prices for a particular product/DBEA pair, it would create additional profit opportunities and incentives for other railroads (and other providers of transportation more generally) to capture additional volume at

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[19]Critical loss analysis has become a central part of many merger investigations at U.S. enforcement agencies and elsewhere. For an early treatise on the concept, see J. Hausman, G. Leonard, and C. Vellturo, "Market Definition Under Price Discrimination," *64 Antitrust L.J. 367* (1996).

[20]Note that reductions in service quality can be treated in the same fashion. In this instance, it is the "service-adjusted price" that may be increased by the combined firm if the loss in volume is sufficiently small. Once again, however, movements to rivals above the critical loss will discipline the combined firm with respect to its service level.

that DBEA. To the extent that these railroads (and their customers) have ready access to additional volumes that are currently serving other destinations, these incentives will cause these railroads (and their customers) to divert these volumes into the targeted product/DBEA. Where the available divertible capacity significantly exceeds the critical loss, it should deter the combined firm from raising its price, and would make it impossible for the combined firm profitably to sustain a price increase if it tried. I explain the methodology to identify divertible capacity in Appendix C.

Truck Divertible Capacity. Finally, as an additional consideration, I evaluated the magnitude of truck-based competition, including truck-based divertible capacity. Reebie Associates performed this analysis, pursuant to my specifications.[21] I am aware that, in the *Fox Valley* decision, the Board observed that, "[o]n the whole . . . motor carrier competition within Wisconsin is, as WCTC indicates, pervasive and growing." *Wisconsin Cent. Transp. Corp. – Continuance in Control – Fox Valley & W.*, 9 I.C.C.2d 233, 242 (1992). The more recent data amply confirm this view. In general, truck shares for traffic moving to the DBEAs identified in the 50/10 screen were very high (both inside and outside Wisconsin). Although these high truck shares are suggestive of strong truck competition, I did not draw conclusions simply from modal shares as to the potential of truck competition to constrain any post-merger price increases by a combined CN/WC. Instead, I conducted a truck-divertibility study, the method for which I describe in Appendix D, and the results of which I discuss below at the conclusion of subsection B.2.

[21]The Reebie data were only available on a 4-digit STCC level. As Mr. Bottorff confirms with respect to the products we are considering, a STCC-7 product will generally have similar characteristics regarding truck transportation as other products within the same STCC-4 group.

B. Competitive Analysis of 50/10 Product/DBEA Pairs

Exhibit 3 provides a detailed breakdown of the competitive analyses undertaken for each 50/10 product/DBEA pair. In every pair, I find that the proposed combination will pose no threat to competition. I discuss the specifics of my findings below. I begin with a general discussion of the information provided in Exhibit 3, and how these data relate to my findings.

Exhibit 3 consists of two panels. Each panel relates to flows of a commodity to a BEA. The first panel identifies participating-railroad-based 50/10 product/DBEA pairs and the second panel identifies originating-railroad-based 50/10 product/DBEA pairs above and beyond those identified by the participating-railroad screen. (Each panel is organized in descending order by the combined CN/WC volume in the product/DBEA pair.) As I have already noted, there are no separate terminating-railroad-based 50/10 product/DBEA pairs displayed in Exhibit 3 because each of those was identified by the 50/10 participation-based shares. The initial columns in Exhibit 3 identify the 7-digit product code (or "STCC") and the DBEA under consideration. The data upon which I relied to determine whether a competitive analysis was warranted for each product/DBEA pair appear next. All 50/10 product/DBEA pairs involve movements where the post-merger share of traffic for the combined firm exceeds 50%, and is at least 10 share points higher than either constituent firm's share prior to the combination. As I have already noted, the CN/WC volumes involved in these flows are generally small.

1. Treatment of "Bottleneck" Destinations

Seven of the product/DBEA pairs identified in Exhibit 3 involve Green Bay, WI as the DBEA. Mr. Bottorff has determined that Green Bay represents a WC bottleneck – WC is the only railroad with track serving the Green Bay BEA. As a bottleneck railroad, WC – prior to the Transaction – already must participate in all rail flows into and out of Green Bay. As a result,

the proposed combination does not enhance the degree of control in rail service that the WC has to or from Green Bay. With no change in the degree of control, no diminution in horizontal competition associated with the proposed combination can occur; therefore, I do not perform any divertible capacity analysis on these product/DBEA pairs, which I identify with a "Yes" in the bottleneck column of Exhibit 3.[22]

The only potential for anticompetitive harm that could theoretically arrive in such bottleneck circumstances is the potential for vertical foreclosure. I discuss the absence of vertical foreclosure issues in rail movements (the "one lump" approach) in Section IV, *infra*.

There are other 50/10 pairs where, for example, WC terminates 100% of rail shipments of a given product into a DBEA (albeit involving small volumes), *e.g.*, WC terminates all of the 80 carloads of iron bars into Appleton, WI that CN and WC originate, and Iron Bars/Appleton qualifies as a 50/10 product/DBEA pair under the originating traffic screen. I understand that Appleton, is not a bottleneck DBEA as at least one other railroad serves Appleton. Insofar as other railroad(s) offer potentially competitive access into the DBEA under consideration, a divertible capacity analysis is appropriate. If these alternative railroads do not offer an economically reasonable route into the relevant DBEA, then the DBEA represents an effective bottleneck and is subject only to the foreclosure consideration provided in Section IV. I identify with a "P" (possible) in the bottleneck column the product/DBEA pairs for which WC or CN terminated 100% of the traffic but as to which the DBEAs are served by other railroads. As a

[22]The product/DBEA pairs involving Green Bay are instances where WC and CN both originated traffic into Green Bay in volumes that pass the 50/10 originating threshold. This "competitive overlap" is illusory, however, since WC already controls CN's access into Green Bay.

conservative measure, I perform divertible capacity analyses for each of these 50/10 product/DBEA pairs.

2. Interactions at Non-Bottleneck Destinations

For each non-bottlenecked 50/10 product/DBEA pair (those with a "No" or a "P" in the bottleneck column of Exhibit 3), I perform an analysis of competition available through entry/expansion of transportation services by rail and, in certain instances, truck. First, I determine the critical loss required to defeat a 5% price increase on shipments destined for the 50/10 product/DBEA under study. As I explain in Appendix B, I evaluate the critical loss at a 50% gross margin (contribution) and at an 80% gross margin, to provide a plausible range of critical loss values.[23]

Having determined the critical loss volumes, I compute available divertible capacities and compare them to the critical losses. If the divertible rail capacities significantly exceed the critical loss, then the ability of other railroads to divert traffic into the DBEA under study will provide sufficient competition, post-merger, to prevent anticompetitive pricing by the combined firm. I initially consider what for convenience I will call direct divertible capacity ("DDC") and compute the ratio of DDC to the critical loss.

Historically, in critical loss-based analyses for mergers in other industries, I have sought to identify available divertible capacity of at least 2-3 times the critical loss to ensure sufficient post-merger competition. As a highly conservative measure in this case, I conclude that

[23] I have presented critical loss/divertible capacity analyses in the context of merger-related antitrust investigations in a wide variety of industries and to many antitrust/regulatory agencies. Industries where I have conducted critical loss/divertible capacity analyses include: paper, sugar, salt, fertilizers, chemicals, chemical derivatives, railroad equipment, textiles, television advertising time, and banking services (just to name a few). I have presented these analyses to the U.S. Department of Justice, the U.S. Federal Trade Commission, the Federal Reserve Board, the Federal Communications Commission, the Securities and Exchange Commission, and the European Commission, among others.

available DDC is sufficient to obviate any further analysis if the DDC/critical loss ratio exceeds 10.

As detailed in Exhibit 3, the available DDC/critical loss ratio in almost every 50/10 product/DBEA pair exceeds 10. Indeed, in most pairs, the available DDC dramatically dwarfs the requisite critical loss. For example, for corn to Chicago (which is the largest product/DBEA pair), the 127,154 carloads of DDC are over 88 times the critical loss (1,438 carloads), calculated on the most conservative of the contribution assumptions that I employ.[24] Woodpulp to Wausau is the second largest product/DBEA pair. For that pair, the 22,000 carloads of DDC are over 39 times the critical loss of 560 carloads, again calculated on the most conservative contribution assumption.[25] For the third largest pair, printing paper to Milwaukee-Racine, the DDC is just under 70 times the critical loss of 530 carloads. These are by no means the largest ratios. Given the sizeable practical and readily available rail capacity that can be brought to bear on the 50/10 product/DBEA pairs, I conclude that the proposed combination will not enable the combined firm to raise prices anticompetitively.

For three of the 50/10 product/DBEA pairs in which the combined firm participates in less than 100% of the movements of a commodity to a DBEA, the ratio of DDC to critical loss, calculated on the conservative contribution assumption, is less than my conservative benchmark

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[24]As discussed by Mr. Bottorff, over 50% of the originations of corn moving to Chicago attributed to WC in the 1999 Waybill Sample were due to an equipment shortage at WSOR. WSOR has since cured the shortage and is moving corn to Chicago in single-line service. WC movements have accordingly decreased. Therefore, the ratio in the future of DDC to critical loss will likely be even higher than 88, if the 50/10 screen identifies this product/DBEA pair at all.

[25]As I explain in Appendix B, the size of the critical loss is determined in part by the percentage contribution margin on the traffic that the combined firm would lose if it were to increase prices. The larger that margin, the smaller is the amount of lost traffic that would render the price increase unprofitable. Because what we are examining is small volumes of incremental traffic, which do not require additional trains or even locomotives, I used marginal contribution rates of 50% and 80%. At the plausible 80% rate, the ratio of DDC to critical loss for corn/Chicago is 141 and for woodpulp/Wausau is 63.

of 10.[26] These are small volumes.[27] In any event, as can be seen on Exhibit 3, for two of these three pairs (synthetic rubbers/Duluth-Superior, and paper waste scrap/Columbus, OH) the ratios of DDC to critical loss are still more than twice the ratios of 2-3 that I ordinarily consider sufficient. Available DDC for these pairs is thus significant and more than adequate to discipline pricing.

There is also a small group of low-volume product/DBEA pairs in which CN and WC participate in 100% of movements of the commodity to the 50/10 DBEA and the DBEA is not a bottleneck. The combined CN/WC volumes for each of these pairs involve less than a carload a day. For this small subset of product/DBEA pairs, there was by definition no DDC because in 1999 no other railroad participated in movements of the 7-digit STCC to the DBEA.[28] For this subset, and for the three small instances discussed above where the critical loss ratio was less than 10, we analyzed what I term supplemental divertible capacity ("SDC"). These SDC volumes are computed according to the criteria set forward in Appendix C. Generally, the methodology of the supplemental analysis is similar to that of the primary analysis. The main difference is that an origin can qualify as a source of divertible capacity if a railroad other than CN/WC moved the relevant 4-digit STCC product group from that origin to the 50/10 DBEA, although not the same 7-digit product, so long as the railroad is shipping that 7-digit STCC to

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[26]Where the DDC/critical loss ratio calculated on the 50% marginal contribution assumption is less than 10, it is also the case arithmetically that DDC is less than the CN/WC volume for the product/DBEA pair.

[27]For synthetic rubbers to the Duluth-Superior BEA, the total of CN and WC participation is 520 carloads; for paper waste/scrap to Columbus, OH, 80 carloads; and for specialty transformers to Houston, 120 carloads.

[28]This is not to say that no other railroads ever participate in these product/DBEA pairs but only that no other railroad participated in these pairs in the 1999 Waybill Sample. Given the small volumes in these product/DBEA pairs, it is possible that other railroads are participating but their movements were not sampled. It may also be possible in some of these 100% cases, however, that either CN or WC represents an effective bottleneck. If and where that is true, these pairs would be more appropriately considered under the one hump analysis of Section IV.

some other BEA from that same origin. As with the DDC volumes, I compare the available SDC volumes with the requisite critical loss volumes. These ratios (where applicable) appear in the right-hand most columns of Exhibit 3. As the results clearly indicate, almost every remaining 50/10 product/DBEA pair has access to additional volumes that are more than enough to ensure competitive pricing by the combined firm, post-Transaction. The three small exceptions pose no competitive problem.[29]

Finally, I also consider the competitive discipline that truck competition might bring to bear on the 50/10 product/DBEA pairs where the DDC/critical loss ratio is below 10. These instances consist of the 100% cases, and the three less-than-100% cases discussed above. The results of this analysis are provided in Exhibit 4. As previously noted, truck data is available at the 4-digit STCC level. We estimated the available 7-digit STCC level truck divertible capacity by multiplying the available 4-digit STCC truck divertible capacity by the proportion of each rail 4-digit STCC group moving to the DBEA that was comprised of the relevant rail 7-digit STCC product. This analysis revealed very large volumes of divertible capacity moving by truck.[30] For example, as I have already described, the DDC available by rail for synthetic rubbers destined for Duluth is five to just under nine times the critical loss amount. Because the rail DDC was less than ten times the critical loss volume, I undertook an analysis of divertible capacity available by using trucks, based on the relevant 4-digit STCC volumes. As shown on Exhibit 4, at the

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[29]The three small exceptions are specialty transformers to Houston (CN/WC combined volume is 120 carloads), wood particle board to Wausau (160 carloads), and iron bars to Appleton (80 carloads). As shown in Exhibit 4, for each of these product/DBEA pairs, the ratio of truck divertible capacity to critical loss is huge. Further, Mr. Bottorff discusses why it is likely that CN and WC are not in fact competing with each other with respect to specialty transformers moving to Houston, and additional reasons why a combined CN/WC could not in any event exercise market power with respect to any of the three pairs.

[30]These very large ratios provide additional confidence that any imprecision in our estimate of 7-digit STCC truck divertible capacity would not change the conclusion that such capacity is ample.

estimated 7-digit STCC level, the divertible capacity available through truck shipments is almost 501 times the critical loss computed on the conservative assumption of 50% marginal contribution.[31]

IV. COMPETITIVE ISSUES RELATING TO SOLE PROVIDER ("BOTTLENECK") LOCATIONS

There are locations within the CN and WC rail systems where CN or WC, as the case may be, is the only provider of rail service.[32] Also, there are small railroads that serve additional locations and that connect only to CN or only to WC.[33] Obviously, no competitive rivalry at these sole-served locations is eliminated as a result of the proposed combination, since, by definition, either CN or WC, as the case may be, cannot serve these locations.[34] Thus no "horizontal" antitrust issues can arise at these locations as a result of this combination.

Competitive concerns surrounding sole-provider locations typically involve "vertical" issues. Under a vertical theory of anticompetitive harm, the possessor of market power in one market uses this power as leverage to further its market power position in that market, or to extend its market power into other markets. In the context of the rail industry, concerns (in

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[31]An alternative form of geographic competition can arise where different railroads move the same commodity from the same origin to different destinations. The only points that CN and WC have in common in the U.S. are Superior and Chicago. (Oba is the only such point in Canada.) We applied the 50/10 screen to originations, and identified four product flows from Chicago (empty TOFC returns, plastics, carbon dioxide, and paper waste and scrap). For each of these flows, rail divertible capacity, and/or truck competition as discussed by Mr. Bottorff, are ample to ensure that CN/WC would be unable profitably to sustain an anticompetitive price increase.

[32]In contrast to my usage in Sections II and III, in this Section IV "CN" and "WC" refer only to railroads within the respective corporate families.

[33]All traffic on an exclusively served shortline from or to locations outside its network must travel through the network of the sole-seving third-party railroad.

[34]The 50/10 analysis that I have already described would identify traffic flows from these locations for which CN and WC may be in source competition with each other.

theory) arise where a railroad that provides sole access to various locations might use this sole access to disadvantage rivals, or extend its power beyond its current reach.

Economists and policy analysts of the rail industry have recognized that it is highly unlikely that such extensions of localized sole provider power can be extended as a result of a proposed combination where such an extension would not be possible absent a merger. The basic economic concept is referred to as the "one lump" theory. I provide a numeric illustration of the analysis in Appendix E.

Recognition that a bottleneck carrier's incentive and ability to extract all available economic rents associated with the overall traffic move is independent of its ownership position of any originating (or interconnecting) routes represents the long-standing basis upon which the ICC and STB have evaluated the end-to-end components of rail mergers. Shortly after passage of the Staggers Act, the ICC stated:

> A carrier with a destination monopoly will likely push the through rate as high as possible and keep the monopoly profits to itself . . .. [Shippers have asserted] that a neutral destination carrier . . . has an incentive to merge with an origin carrier in order to drive the through rate to the optimum profit-maximizing level. We are not convinced . . . that a carrier with a destination monopoly for steam coal traffic will generally be unable to execute the described rate strategy or, on the other hand, that a neutral destination carrier that is unable to execute the strategy would be significantly more capable of raising the through rate to the level that maximizes its profits after affiliation with an origin carrier.

UP/MP, 366 I.C.C. at 538.

The ICC reiterated the analysis in its *BN/SF* decision:

> Our experience has been that where a single rail carrier controls a destination segment, and no transportation alternatives are available, the shipper will be captive and the single rail carrier will be able to capture the preponderance of the economic profits. Conversely, when certain factors are present that limit a carrier's

> ability to take full advantage of a bottleneck, those factors will remain in place as effective safeguards after the merger.

Burlington N. Inc. – Control and Merger – Santa Fe Pac. Corp., 10 I.C.C.2d 661, 751 (1995). The Court of Appeals, in affirming this decision, noted that the "one lump" theory relied on by the ICC is a "broadly accepted economic proposition." *Western Resources, Inc. v. STB*, 109 F.3d 782, 788 (D.C. Cir. 1997).[35]

As it had in *BN/SF* (10 I.C.C.2d at 751), the Board recently rejected arguments that "the general applicability of the one-lump theory to mergers requires a set of explicit and rather implausible assumptions" and that "the circumstances in which the pure one-lump theory is likely to hold represent an 'extreme example.'" *CSX Corp. – Control and Operating Leases/Agreements – Conrail Inc.*, STB Finance Docket No. 33388, Decision No. 89, slip op. at 70 (STB served July 23, 1998) (*"CSX/NS/CR"*).[36]

Leaving aside the economic principles outlined in Appendix E that provide the analysis behind the one lump approach to end-to-end rail merger issues, and the extensive history at the ICC and the STB (in which the one lump approach has served as the cornerstone of the agency's consideration of vertical foreclosure issues), I understand that CN has offered further insurance that such vertical issues will not arise in the context of the proposed CN/WC combination. CN has committed to keeping all existing active gateways affected by the Transaction open on commercially reasonable terms. I find that this commitment provides safeguards against

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[35] I understand that the STB has left the door open for allegedly aggrieved shippers to demonstrate that any purported vertical foreclosure will lead to competitive injury (typically, higher prices of reduced service quality). *See, e.g., BN/SF*, 10 I.C.C.2d at 748 (quoting *Union Pac. Corp. – Control – MO-KS-TX Co.*, 4 I.C.C.2d 409, 476 (1988).

[36] For example, the Board pointed out that the one lump theory "does not predict that bottleneck carriers will always be able to execute a perfect price squeeze; it merely predicts that vertical integration will not increase the bottleneck carrier's market power over shippers." *CSX/NS/CR*, slip op. at 69.

potential competitive problems that are extremely unlikely to arise. Be that as it may, with these assurances in place, any shipper concerns (regardless of their economic or business veracity) should be eliminated.

CONCLUSION

I have examined competitive issues related to the proposed Transaction between CN and WC. It is clear to me that the Transaction will have no anticompetitive effects.

VERIFICATION

I, Christopher A. Vellturo, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on April 6, 2001.

Christopher A. Vellturo

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Dr. Vellturo has performed economic analysis and provided expert testimony in the context of mergers and acquisitions, antitrust litigation, intellectual property litigation, and other matters. He has provided economic analysis in over one hundred mergers and acquisitions spanning a broad array of industries. He has appeared before the U.S. Department of Justice, the Federal Trade Commission, various states' Attorneys General offices, the Federal Reserve Bank Board of Governors, and various Federal Reserve Banks on merger-related issues. He has also appeared at hearings before the European Commission. Dr. Vellturo has performed economic analysis relating to litigation matters in more than twenty-five antitrust actions and more than one hundred intellectual property actions. He has testified in U.S. District Court and before the American Arbitration Association.

Prior to joining Analysis Group/Economics, Dr. Vellturo was a Senior Vice President at National Economic Research Associates (NERA) and a Director of Cambridge Economics. He was previously a research associate for Dean Ann F. Friedlaender of the Massachusetts Institute of Technology.

Dr. Vellturo has published on a variety of topics, including merger and acquisition-related efficiencies, price discrimination, differentiated product analysis and market definition. His research has appeared in leading academic journals, including *Antitrust*, the *Antitrust Law Journal*, and the *Journal of Economics and Management Strategy*. Dr. Vellturo is a recipient of the Bradley Fellowship in Public Economics and has served as a referee for *American Economic Review* and *Rand Journal of Economics*.

Dr. Vellturo holds a Ph.D. in Economics from the Massachusetts Institute of Technology and a Sc.B. in Applied Mathematics and Economics from Brown University, where he graduated *magna cum laude* and *Phi Beta Kappa*.

EDUCATION

1989	Ph.D. in Economics, Massachusetts Institute of Technology *Primary Fields:* Econometrics, Industrial Organization *Secondary Fields:* Public Finance, Game Theory, Law and Economics
1983	Sc.B. in Applied Mathematics and Economics (*magna cum laude*), Brown University

PROFESSIONAL EXPERIENCE

2000-Present **Analysis Group/Economics**
Principal - Direct research and provide expert testimony on a variety of microeconomic issues with particular emphasis on antitrust, intellectual property, and mergers and acquisitions. Expert reports and testimony presented in U.S. District Court. Presented antitrust economic analyses to Federal Trade Commission, U.S. Department of Justice, Federal Reserve Bank Board of Governors and the European Commission.

1996-2000 **National Economic Research Associates, Inc.**
Senior Vice President (1999-00)
Vice President (1996-99)

1991-1996 **Cambridge Economics, Inc.**
Director - Directed research and provided expert testimony on a variety of microeconomic issues with particular emphasis on antitrust, intellectual property, and mergers and acquisitions. Prior expert testimony provided in U.S. District Court and before the American Arbitration Association. Presented antitrust economic analyses to U.S. Department of Justice, Federal Trade Commission (Antitrust Division), state Attorneys General offices, and the Federal Reserve Bank Board of Governors.

1989-1991 **National Economic Research Associates, Inc.**
Senior Consultant - Directed and performed research relating to issues of antitrust, intellectual property, mergers and regulation.

1987 **Department of Economics, M.I.T.**
Teaching Assistant - Undergraduate econometrics.

1985-89 **Dean Ann F. Friedlaender, M.I.T.**
Research Associate - Participated in research relating to transportation pricing and capital allocation responses to regulatory changes.

1983-85 **National Economic Research Associates, Inc.**
Research Associate - Conducted research on a wide variety of issues including antitrust, railroad rate setting, optimal landfill pricing, and PCB and asbestos abatement strategies.

AWARDS AND PROFESSIONAL ACTIVITIES

Recipient, Bradley Fellowship in Public Economics, 1987 and 1988-89

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Journal Referee for *American Economic Review* and *Rand Journal of Economics*

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SELECTED TESTIFYING EXPERIENCE (PAST FOUR YEARS)

- *Massachusetts Businessman's Association Inc., v. Blue Cross and Blue Shield of Massachusetts, Inc.*
  Superior Court of the Commonwealth of Massachusetts, (C.A. No. 97-02279)

- *Union Carbide Chemicals & Plastics Technology Corporation v. Shell Oil Company, Shell Chemical Company and CRI Catalyst Company.*
  U.S. District Court, District of Delaware, C.A. No. 99-274 (SLR)

- *Carl Zeiss Jena GmbH, Carl Zeiss Inc., v. Bio-Rad Laboratories, Inc., Cornell Research Foundation Inc. and Bio-Rad Laboratories, Inc., Cornell Research Foundation Inc., v. Carl Zeiss Jena GmbH, Carl Zeiss Inc*
  U.S. District Court, Southern District of New York, C.A. 98 CIV 8012

- *Sulzer Intermedics, Inc. v. Medtronics, Inc., et al.*
  U.S. District Court, Southern District of Texas, (C.A. H-97-3526)

- *Joseph E. Seagram & Sons, Inc., The Seagram Company Ltd. and JDC S.A. de C.V. v. St Maarten Spirits, Ltd., and St. Maarten Spirits Limited*
  Superior Court of the State of California, for the County of Los Angeles, (No. BC 191 681)

- *General Electric Capital Corporation v. DirecTV, Inc., Hughes Electronics Corporation and General Motors Corporation*
  U.S. District Court, District of Connecticut, 3.97 CV 01901 (PCD)

- *Bristol Technology, Inc. v. Microsoft Corporation*
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- *Forty-Niners Truck Plaza, Inc. v. Unocal Corporation*
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- *Dade Behring Marburg Gmbh, Syva Company v. Biosite Diagnostics, Inc.*
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- *Neles-Jamesbury, Inc. v. Fisher Controls International, Inc. and Fisher Service Company*
  U.S. District Court, District of Massachusetts, C.A. No. 94-40200

- *The Toro Company v. White Consolidated Industries, Inc. and WCI Outdoor Products, Inc.*
  U.S. District Court, District of Minnesota, C.A. No. 4-95-656

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- *Roll Systems, Inc. v. Wallace Computer Services Inc.*
  U.S. District Court, District of Massachusetts, C.A. No. 94-10372-MEL

- *Black & Decker (U.S.), Inc. and Black & Decker, Inc. v. The Coleman Co., Inc.*
  U.S. District Court, Eastern District of Virginia, C.A. No. 96-656-A

- *Century Wrecker Corporation v. Chevron, Inc.*
  U.S. District Court, Western District of Pennsylvania, C.A. No. 89-1452

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  Boston, Massachusetts, File No. D9268

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  U.S. District Court, District of Minnesota, C.A. No. 4-93-1070

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  American Arbitration Association, Arbitration No. 13 133 00388 93

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  U.S. District Court, District of Delaware, C.A. No. 89-533 (JJF)

AFFIDAVITS

- Expert Report in connection with *Union Carbide Chemicals & Plastics Technology Corp. and Union Carbide Corp. v. Shell Oil Company, Shell Chemical Company and CRI Catalyst Company* October 2000, U.S. District Court, District of Delaware, C.A. No. 99-274 (SLR).

- Expert Report in connection with *Carl Zeiss Jena GmbH, Carl Zeiss Inc., v. Bio-Rad Laboratories, Inc., Cornell Research Foundation Inc., and Bio-Rad Laboratories, Inc., Cornell Research Foundation Inc., v. Carl Zeiss Jena GmbH, Carl Zeiss Inc.*, May 2000 — U.S. District Court, Southern District of New York, (98 CIV. 8012 RCC (DFE)).

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- Expert Report in connection with *Joseph E. Seagram & Sons, Inc., The Seagram Company Ltd.* and *JDC S.A. de C.V. v. St Maarten Spirits, Ltd., and St. Maarten Spirits Limited*, August 1999 — Superior Court of the State of California, for the County of Los Angeles, (No. BC 191 681).

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- Expert Report in connection with *America Online, Inc. v. AT&T Corporation*, March 1999 — U.S. District Court, Eastern District of Virginia, C.A. (98-1821-A).

- Expert Report in connection with *Ashraf M. Dahod v. Bay Networks, Inc. and LanCity Corporation, Inc.*, September 1998 — U.S. District Court, District of Massachusetts, C.A. (No. 96-11907 REK).

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- Expert Report and Supplemental Expert Report in connection *with Roll Systems, Inc. v. Wallace Computer Services Inc.*, July 1996 and December 1996 — U.S. District Court, District of Massachusetts, C.A. No. 94-10372-MEL.

- Expert Report in connection with *Dynamic Manufacturing Inc. et al. v. Chevron Inc.*, April 1996 — U.S. District Court, Eastern District of Virginia, C.A. No. 2:95CV947.

- Expert Report in connection with *Century Wrecker Corp. v. Chevron Inc.*, March 1996 — U.S. District Court, Western District of Pennsylvania, C.A. No. 89-1452.

- Expert Report in connection with *Medtronic v. Pacesetter and St. Jude Medical Inc.*, February 1996 — American Arbitration Association.

- Expert Report in connection with *Cedar Ridge Trailer Sales et al. v. National Community Bank of New Jersey et al.*, December 1995 — Superior Court of New Jersey , C.A. No. BER-L-09277-92.

- Expert Report in connection with *Federal Trade Commission v. New Balance Athletic Shoe, Inc.*, 1995 — Boston, Massachusetts, File No. D9268.

- Expert Report in connection *with Minnesota Mining and Manufacturing Co. v. Avery Dennison Corp.*, 1995 — U.S. District Court, District of Minnesota, C.A. No. 4-93-1070.

- Expert Report in connection with *Minnesota Mining and Manufacturing Co. v. Norton v. Bay State Abrasives Co.*, 1994 — U.S. District Court, District of Delaware, C.A. No. 89-533 (JJF).

PUBLICATIONS AND PRESENTATIONS

"What Drives Consolidation?" Presented at the 28th Semiannual Members Meeting MIT/CRE, Cambridge, MA, May 14, 1998.

"Proving Unilateral Effects and Efficiencies in Merger Cases: A Demonstration." Presented at the 46th Annual ABA Antitrust Meeting, Washington, DC, April 1, 1998.

"Creating An Effective Diversion: Evaluating Mergers With Differentiated Products," *Antitrust*, Spring 1997.

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APPENDIX A

Detailed Specification of the Source Competition Analysis

We analyzed CN/WC participation (as intermediate, originating, or terminating carrier) in flows of a product to a DBEA, and divertible capacity for the product/DBEA pair. ALK Technologies, Inc. applied the 50/10 screen and performed the divertibility study pursuant to my specifications.

Data Utilized: The data utilized to complete the source competition analysis included shipment information from the 1999 STB Waybill Sample. Initially, total rail movements (in tons, carloads, and dollars) were collected by ALK. Product-level data were collected at the 7-digit STCC code level[1] for each destination BEA[2] (henceforward "DBEA") for traffic in which

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[1]For the purposes of this analysis, I assumed that 7-digit STCC level product codes represented a logical framework for the competitive analysis. This relatively narrow product grouping does not account for the potential that receivers of some products may have to substitute products classified under one 7-digit code for products classified under another 7-digit code. This product definition therefore may not address specifically some source-based competition where the products delivered by CN and WC are not directly substitutable but interact more indirectly. However, in any such instance, taking into account the other product would likely reduce the CN and WC shares of that more broadly defined product market. In any event, when we move beyond identifying potential problem flows under the 50/10 screen to examining the post-merger constraints on those flows, this specific approach to product definition is highly conservative: I do not consider any movements of any products other than those in the subject 7-digit STCC code to be potentially substitutable in disciplining the combined firm's conduct in each relevant product/DBEA pair.

[2]I selected a BEA-based regional classification over a station-based classification (multiple stations are typically found within each BEA). First, it is highly likely that products delivered into a common BEA (but to different stations) compete with one another on a downstream basis. For example, Oriented Strand Board ("OSB") (a wood-fiber based building product) delivered to warehouses located at different stations will ultimately face reshipment to final customers. To the extent that these warehouses compete for significant business against one another, the delivered prices of OSB across these stations will be tightly linked (though not necessarily identical). Given that BEAs are defined to identify units of common economic activity, the BEA-based approach is appropriate in this regard. Also, given the general proximity of stations within a BEA, and the low incremental cost of transporting products on rail once they are loaded and moving, rail traffic will travel significant incremental distances to obtain relatively small incremental delivered prices. Again, this implies that delivered prices across regionally-clustered stations will be very closely linked. Further, a narrower geographic focus would have identified fewer CN and WC flows as warranting further analysis. For purposes of screening, therefore, the BEA approach is conservative.

CN or WC participated.[3] For each product/DBEA pair for which at least one of CN or WC participated in delivering volume, the total rail volumes terminating[4] at that DBEA were also collected, to determine the total share of delivered volumes in which CN and WC participated.[5]

Identifying Candidates For Further Analysis: I sought to capture product/DBEA pairs where CN and WC each currently participate in the shipments of a non-trivial portion of total deliveries into the DBEA and where the combined firm will possess a significant share of this traffic. These shares were determined using three techniques: participating share, originating share and terminating share.

For the purposes of this report, I defined a product/DBEA pair to be a candidate for a more complete competitive analysis with respect to traffic terminating in a BEA for which each of CN and WC: 1) originated, terminated, or interchanged (henceforward "participated" in) 10% or more of all delivered volume, and if the combined participating share calculated on this

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[3]In this context "participation" includes all traffic where CN or WC is the initial rail carrier on the move, handles the traffic in an intermediate role, or terminates the traffic at the DBEA. Specific analyses with respect to originated and terminated traffic are also considered. As the Waybill Sample identifies only railroads receiving revenues as a long haul carrier, "originating," "terminating," and "participating" do not include carriers participating in a movement that receive revenue only from switching or haulage charges.

[4]Multi-carrier rail movements where participating railroads bill separately for their services (so-called "Rule 11" traffic) result in at least two waybills, one with an apparent termination and one with an apparent origin, at the point of interchange. Neither, either or both of these waybills may be captured in the Waybill Sample. Some origins and terminations in our analysis are therefore not true origins and terminations of rail movements, but rather interchanges of Rule 11 traffic.

[5]For purposes of the analysis, I assume that in every instance where CN and WC provide transportation services for the same product destined for a DBEA, the products being delivered by the two railroads are perceived as substitutable by some identifiable set of customers. Although I believe it to be generally accurate for most of the products under consideration, it bears mention that, for purposes of the present analysis, this is a conservative assumption. It is possible (and indeed likely) that in some instances, the products delivered by the two railroads – while being classified in the same 7-digit STCC – are not reasonable substitutes for one another. Where that is the case, any concern for a reduction in competitive rivalry between CN and WC evaporates, because no rivalry existed in the first place.

basis without double-counting would have been 50% or more of total delivered volume:[6] or 2) originated 10% or more of the total delivered carloads of a product/DBEA pair in 1999, and if the combined originating share of the two railroads was 50% or more; or 3) terminated 10% or more of the total delivered carloads of a product/DBEA pair in 1999, and if the combined terminating share of the two railroads was 50% or more. For example, for STCC code 0113215 (corn and maize products excluding popcorn) delivered into the Chicago-Gary-Kenosha BEA (#64), CN originated 29% of all carloads (7,092 delivered cars relative to DBEA total of 25,252 cars), while WC originated 28%. This product/DBEA pair is a candidate for further analysis under the origination screen, since CN and WC each accounted for 10% or more of originations into the DBEA of product 0113215, and the combined share of the two railroads exceeds 50% (57%).

A generic illustration of the participation screen would be as follows: where 100 carloads of a 7-digit STCC commodity terminate in a BEA, and (a) CN originated 35 of them and interchanged 15 of those carloads with WC (and 20 carloads with another carrier for termination at the same BEA), while (b) WC originated no volume, but terminated the 15 carloads of the CN, and (c) an additional 30 carloads is handed to WC by another carrier. In this instance, CN's participating share would be 35%, WC's participating share would be 45%,

[6] As I have already noted in the main body of my Verified Statement, in order to avoid double-counting under the participating-railroad screen, the combined share had to be at least 10 percentage points higher than the greater of either railroad's participation share.

and the combined participation share (with no double-counting of the 15 carloads that CN/WC interchange with each other) would be 65%, and therefore subject to further analysis.[7]

[7]Note that this example would not be captured as a candidate for further analysis if only the originating and terminating screens were used, since WC originates no traffic and CN delivers no traffic to the final DBEA. Conversely, the originating screen would identify a flow not identified in the participating screen in the following example involving interchange between CN and WC: a product/DBEA pair with 100 carloads, where CN originates 40 carloads that it also terminates; WC originates 10 carloads that it interchanges to CN for termination, and other railroads solely handle the remaining 50 carloads. The originating screen would identify this flow, because CN has a 40% share of originations, WC has a 10% share, and their combined share is 50%. The participating screen, however, would not identify this flow. As participating railroads, CN has a 50% share, WC has a 10% share, and their combined share avoiding double-counting of WC's 10 carloads is 50%. The participation screen does not identify this flow because the combined CN/WC share is not 10 percentage points greater than the larger of their individual participation shares.

APPENDIX B

Computing Critical Loss

The critical loss depends on the marginal contribution that the combined firm loses on the volumes that it no longer sells as the result of some customers taking their business elsewhere (or simply curtailing their demand) when the combined firm attempts a price increase. As an illustrative example, consider a merger in which the combined firm would earn $100 in revenue for each car delivered and incur $30 in marginal costs per car, for a per-car contribution of $70 per car. The combined firm will move 1,000 cars if it keeps its per-car price at $100. Total revenue will equal $100,000, and total contribution will equal $70,000 (($100/car - $30/car) x 1,000 car). Assume the combined firm considers whether to raise its price by $5 per car. If the combined firm loses 100 cars as a result of the price increase, then its total contribution under the price increase is (($105 - $30) × 900 cars) = $67,500. Thus the posited anticompetitive (*i.e.*, non-cost based) price increase will not be in the profit-maximizing interest of the firm, since it will lose more than the critical loss in volumes as a result of the price increase. If the volume loss were only 50 cars as a result of the price increase, then contribution under the price increase would be (($105 – $30) x 950 cars) = $71,250. In this instance, the volume loss resulting from the price increase is below the critical loss, and the combined firm would have the incentive to raise prices. The following formula determines the critical loss for a 5% price increase as a function of the percentage profit level (denoted by π):

$$\text{Critical Loss (expressed as a \% of total volume)} = .05 / \pi$$

In the example provided above, the critical loss volume is .05/0.7 or 7.14% of total cars sold, in other words .0714 × 1,000 cars = 71.4 cars. If the combined firm in the above example believes it will lose more than 71.4 cars of business (7.14% of its present volume) in response to a 5%

price increase, then the combined firm will not increase price anticompetitively as a result of the merger.

In my analysis, I use a range of plausible marginal contribution rates per car for rail services to determine a range of critical loss values for the combined CN/WC, post-transaction. As discussed in my detailed findings concerning each product/DBEA combination, the volumes that a combined CN/WC would have to lose in order to make a significant price increase unprofitable are very small. I therefore use marginal contribution rates of 50% and 80%. These are the assumed contribution margins on small incremental volumes, which generally do not require a new train or, ordinarily, an additional locomotive.[8] Given that these volumes represent additional carloads appended onto existing mixed-manifest trains, the avoided costs associated with not carrying these additional cars are very low, probably below 10% of revenue (implying a marginal contribution rate in excess of 90%). Avoided costs are indeed limited to direct fuel savings and, in some instances, car leasing/rental (or equivalent opportunity cost) savings.[9] These percentages are different from ordinary revenue-to-variable cost ratios, which identify margins on larger aggregations of traffic, and therefore reflect more of the overall costs

[8] The only exception to the *de minimis* nature of the critical loss volumes relates to corn. The critical loss volumes in corn are approximately 1,400 carloads, which, due to the nature of corn transportation and handling, could result in a reduction of about 14 unit trains per year. Thus the avoided costs of not delivering these tons might be somewhat higher. Nonetheless, I expect that the incremental profit foregone on lost corn transportation would be quite high, well in excess of 50%. Also, given the massive availability of divertible capacity in corn, my finding that there can be no anticompetitive price increase in corn transportation is essentially independent of the assumed marginal profitability rate (and its associated critical loss volume).

[9] In this context, it bears noting that *total* train operating expenses were 24% of rail freight revenue for Class I railroads in 1999 (Form R-1, Schedule 410, lines 419 and 13). Most of these operating expenses would not be incremental in the event a few cars were removed from a mixed-manifest train. Thus, the avoided costs associated with the carloads comprising the critical loss volume would likely be considerably lower than 24%, implying a marginal contribution rate well in excess of 76%.

of railroad operations and correspondingly smaller contribution margins.[10] I then determine whether sufficient alternative sources of the relevant product are available to customers at the DBEA so that the combined firm would find an anticompetitive price increase unprofitable. For example, for STCC code 2499110 (OSB), the combined firm, if it retains all of its current volumes, will handle approximately 4,200 cars into the Chicago BEA at current prices. Assuming a profit rate of 70%, the combined CN/WC would not undertake a 5% price increase if it expected that it would lose (0.05/ 0.7) x 4,200 = 300 cars of traffic, and the increase would be unprofitable if it tried to do so.

[10] I also spoke with ALK about the nature of the "avoided" cost exercise associated with a critical loss analysis. ALK indicated that a 20-50% (measured as a percent of net revenue) avoidable cost rate – implying a 50-80% marginal contribution rate – was highly conservative in that the likely avoidable cost would be considerably lower (thereby implying a higher lost marginal contribution rate and correspondingly lower critical loss volume), even for considerably larger incremental volumes than those under consideration in this analysis.

APPENDIX C

Rail Divertible Capacity

Exhibit 5 provides the framework under which I derive divertible capacity and its various forms. Here (for simplicity), three railroads (merging railroad 1, merging railroad 2, and railroad 3) are delivering the relevant product into destination DBEA1, each from a distinct origin (OBEA1, OBEA2, and OBEA3, respectively). My focus, at present, is on railroad 3 (not involved in the hypothetical merger between railroads 1 and 2). Under current market conditions, railroad 3 is transporting the relevant product to both DBEA1 and another destination, denoted DBEA2. Note that both the railroad and its originating customer at OBEA3 find it in their profit maximizing interest to ship volumes to two locations (DBEA1 and DBEA2).

The fact that the customer at OBEA3 and railroad 3 are willing to ship to both locations provides important information. At the margin (that is for the last shipment to both destinations), railroad 3 and the customer must earn the same profits on both deliveries. To see why this is so, consider a situation where the profits at DBEA1 for the railroad and its originating customer were higher than at DBEA2. In this situation, railroad 3 and the customer would agree to shift some of the volume currently destined to DBEA2 over to DBEA1, where they could agree to divide up the additional profits earned so that railroad 3 and its customer both earned additional profits. This diversion of volumes from one destination to the other would continue until the marginal profitability of traffic was equal across the two destinations.[11]

[11]Note that it is possible that railroad 3 and the customer would find that it was always more profitable (at current prices) to ship to DBEA1. In this instance, one should observe no volume destined for DBEA2 in the first place, thus violating the construct of the example.

Now consider the rest of the schematic provided in Exhibit 5. Say the combined railroad (the amalgamation of merging railroads 1 and 2) was to unilaterally raise the delivered price of the relevant product into DBEA1 by 5%. Receivers at DBEA1 would seek alternative sources of supply at some lower delivered price. Railroad 3 is already serving customers in DBEA1. Customers at DBEA1 would seek to acquire additional volumes from railroad 3 (and its originating customer at OBEA3) for some price below the new, higher price offered by the combined railroad. Would railroad 3 and its customer at OBEA3 have an incentive to provide additional volume at DBEA1? The answer is yes. Railroad 3 and its customer at OBEA3 would be able to provide additional volume at DBEA1 at a price that is higher than it currently earns at OBEA1. They would need only to undercut the merged firm a small amount to secure additional business (say by offering a price 2% below the new higher price being charged by the merged firm).

Where would railroad 3 source this volume? The shipper at OBEA3 may have some unused capacity, so that it could increase production and sell the increase profitably at the new higher prices available at DBEA1. This is plausible, because much of the time industries operate at least slightly below capacity. For example, a significant portion of the relevant products at issue in the candidate 50/10 DBEAs is forest products (such as lumber, wood particle board, and OSB). Production can be expanded relatively readily in the short-medium run by accelerating forest harvesting, and/or more fully utilizing board-forming equipment.

I chose to study a different potential shift in sources by examining rail movements of the same product (the same 7-digit STCC) or rail movements of products with similar transportation characteristics (the same 4-digit STCC) from origins with competitive rail routes to the BEA. In Exhibit 5, railroad 3 is already moving the 7-digit STCC commodity to

DBEA1. If a combined CN/WC instituted a significant price increase, railroad 3 and the shipper at OBEA3 would divert volume of the 7-digit STCC now serving DBEA2 into the more profitable opportunities afforded to them at DBEA1. This was our "direct" divertibility analysis. It is direct not in the sense that it is a stronger competitive constraint than the "supplemental" analysis, discussed below. Rather, where a railroad is already shipping the same STCC-7 product to the same DBEA, that simply was a logical place to begin the analysis.[12]

It is also possible that the incentives created by the higher prices instituted by the combined firm may create an incentive for railroad 3 to begin shipping additional volumes into DBEA1 even where it had not done so historically. The price flexibility provided by a price increase instituted by the combined firm may render shipments to DBEA1 profitable for railroad 3 and its customer at OBEA3 where such shipments had not been profitable otherwise. The additional volume that originates from locations that currently do not serve a specific DBEA may well represent "supplemental divertible capacity" if the posited higher prices create profitable opportunities at DBEA1 where none existed previously.

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[12]One might question whether such a redirection might harm customers at these other destinations as volumes are shifted away from them in response to the purported price increase at the destination under study. First, given that the volumes would be redirected to defeat the price increase if the price increase were undertaken, the railroad serving the destination under study will have no incentive to actually increase prices. In applied economic strategic interaction analyses such as the one under consideration here, it is the *credible threat* of such a movement that disciplines prices; in equilibrium, no such price change (and no such shifting of volumes) takes place and no customer at some other destination is required to seek alternative sources. Second, if the redirection to the 50/10 DBEA were to occur, the customers at these other destinations would seek to bid volumes away from still other destinations, including (quite likely) destinations other than those that are candidates to discipline the original destination under study. If so, then a "domino-effect" would ensue, thereby tightly linking the prices of all delivered products across all destinations. This would imply a national (or at the very least a super regional) market. In this context, the proposed combination of CN and WC would not involve any significant accumulation of rail traffic under common control, and therefore could not adversely affect competition. Finally, these concerns are further mitigated where the available divertible volumes are drastically higher than the critical loss and come from multiple DBEAs (thus the impact of diverted critical loss volumes from any single DBEA has a *de minimus* impact on competition at those DBEAs).

For the purposes of this analysis, I considered various sources of divertible capacity for a candidate 50/10 product/DBEA. These sources are depicted schematically in Exhibits 5 and 7 and algorithmically in Exhibits 6 and 8. Initially, I had analysts at ALK identify all railroads that originated relevant STCC code traffic destined for the 50/10 DBEA and the various OBEAs of that traffic (OBEA3 in Exhibit 5). ALK then identified all shipments of the relevant 7-digit STCC originated by the same railroad (railroad 3) out of this set of identified OBEAs that was destined for DBEAs other than the 50/10 DBEA under analysis (these other DBEAs are depicted schematically as DBEA2 in Exhibit 5). These volumes were treated as "direct divertible capacity" ("DDC") in evaluating the potential for the combined CN/WC to raise the price of delivered products into the relevant 50/10 DBEA. If railroad 3 used CN/WC to originate/terminate/interchange the shipment of the 7-digit STCC between OBEA 3 and DBEA1 but there is an alternative route between OBEA3 and DBEA1 that is less than 1.35 times the weighted average of railroad 3's route over CN/WC, then the shipment is also considered DDC.[13] The specifications for how ALK determined DDC volumes are provided in Exhibit 6.

I also evaluated the potential for supplemental divertible capacity ("SDC") to arise from OBEAs not currently providing the particular 7-digit STCC product into the 50/10 DBEA. This analysis was necessary in those cases where CN and WC originated 100% of the volume

[13]Thus, I excluded any such divertible capacities if they required access to the CN or WC system for any part of their route into the 50/10 DBEA, *unless* the divertible capacity could find its way into the DBEA through some alternative, non-circuitous route. In this context, circuity is defined as a total haul distance greater than 135% of the observed weighted average distance of movements of that commodity to that DBEA on routes on which CN or WC is the originating carrier, a terminating carrier, or an intermediate carrier. See Exhibit 6 for more detail. Mr. Bottorff confirmed this approach, as he discusses in his verified statement. Of total divertible capacity (DDC and SDC), 68% would travel less distance on a route not involving CN or WC than on the CN or WC route; 93% would travel no more than 10% further; and 95% would travel no more than 25% further.

of a product into a DBEA, and I also had it performed where the ratio of available DDC to the critical loss did not meet my conservative requirement of 10. I applied two screens to identify SDC volumes. First, I included all volumes of the 7-digit product originating from an OBEA and destined to BEAs other than the 50/10 DBEA under consideration, if a railroad was originating products in the same 4-digit STCC from the OBEA into the 50/10 DBEA without using CN/WC to originate/terminate/interchange the shipment. If the 4-digit STCC shipment used CN/WC to terminate/interchange the shipment, I determined whether that railroad had an alternative route to the 50/10 DBEA whose distance was not more than 1.35 times the weighted average of that railroad's 4-digit STCC routes over CN or WC, as in the algorithm for DDC. The schematics of this method are depicted in Exhibit 7. I reasoned that products in the same 4-digit STCC exhibit similar transportation characteristics (in terms of handling requirements and value/weight considerations). These OBEAs offered economically attractive sources from which a railroad could divert volumes of the 7-digit STCC product to the 50/10 DBEA, since other products with similar transportation characteristics were already being shipped by the railroad into the 50/10 DBEA. The specifications for this algorithm are provided in Exhibit 8.

Second, I included additional volumes under this supplemental divertible capacity category if the other railroad was originating the 7-digit STCC from an OBEA to DBEAs other than the 50/10 DBEA, and had a route from the OBEA to the 50/10 DBEA that is less than the observed distances of the routes in which CN or WC participated in moving the same 7-digit product into the 50/10 DBEA.[14] This analysis (in effect) draws a rail-distance-based radius

[14] I sought to disqualify long-distance shipments of very small volumes in determining the practical shipping distance of the relevant commodity. To this end, ALK determined the shipping distance of the 90th percentile carload of the movements in which CN or WC participated and used this distance as the relevant screen. For example, if 200 carloads of a given commodity were shipped by WC and/or CN into the DBEA in a given year, ALK captured the distance traveled by the 180th most-distant carload.

around the DBEA and classifies any volume originating in this area as divertible volume, subject to the ability of other railroads to access the DBEA on a route that is no longer than the routes in which CN or WC participated.[15] The algorithm for this 90th percentile screen is described in Exhibit 8.

If these available "divertible capacities" (either direct, supplemental, or both) into a 50/10 DBEA for the relevant product significantly exceeded the "critical loss" volume required to discipline pricing by the combined railroad, I determined that no competitive concerns would arise as a result of the proposed combination of CN and WC from a reduction in source-based competition on the relevant product into the 50/10 DBEA. I display our findings in Exhibit 3 and discuss them in the text of my verified statement.

[15]Again, I excluded all volumes that would require access to the CN and WC system in order to qualify as supplemental divertible capacity, unless the volumes could reach the 50/10 DBEA in a non-circuitous fashion without accessing CN or WC.

APPENDIX D

Truck Divertible Capacity—Method

We identified truck divertible capacity using a methodology analogous to the methodology that we used for rail. Reebie Associates performed the truck divertible capacity analysis pursuant to my specifications. We identified the volumes of the relevant 4-digit STCC commodity that are moving by truck to destinations other than the 50/10 DBEA from truck origins with competitive truck routes to the 50/10 DBEA. To determine that a truck route from an origin to a 50/10 DBEA was competitive, we simply limited our search for truck origins to those that are no further by highway from the 50/10 DBEA than the weighted average distance of 1999 truck movements of the relevant 4-digit STCC to the 50/10 DBEA. Because the Reebie data is at a 4-digit STCC level, we then estimated truck divertible capacity at the 7-digit STCC level as follows: we determined the relevant 7-digit rail movement to the 50/10 DBEA as a percentage of rail movements of the 4-digit STCC and multiplied this percentage by the 4-digit STCC truck divertible capacity.

APPENDIX E

Illustration of One-Lump Analysis

Consider a highly simplified example where a single railroad (railroad 1) acts as the sole provider of rail access between producer A located at origin OBEA A, and customer C located at destination DBEA C. (See top panel of Exhibit 9.) It costs producer A $30 to produce its product that is demanded by customer C. Customer C has another source of the relevant product (from a location other than OBEA A), but its delivered cost to customer C is $100. In this instance, railroad 1 is in a position to charge $70 for transportation (subject to regulatory constraints), thereby capturing the entire economic surplus represented as the gains to trade between product A and customer C.

I extend the analysis to involve two origins (OBEA A and OBEA B) in the bottom panel of Exhibit 9. At both origins the producers produce product at $30 per unit. Railroad A serves only OBEA A and railroad B serves only OBEA B. Neither road owns tracks that run to destination DBEA C (I also assume for clarity that railroads A and B serve no other destinations where there is any significant demand for the product at issue). I also assume that the incremental cost of transportation for railroad A and railroad B from their origins to the point at which they interchange with railroad 1 is $10. In this instance, railroad 1 will price its transportation services at $60, once again capturing the entire surplus available. The total cost of transportation for movements of product from OBEA A to DBEA C is $70 and OBEA B to DBEA C is $70, as source competition will drive railroad A's and railroad B's price for its segment of the movement to its incremental cost of $10. The total delivered price paid by customer C will remain $100, and producers at A and B will earn $30 in revenue.

Now assume that railroad 1 acquires railroad A. Regardless of the policy the newly merged road takes with respect to railroad B, the price paid by customer C will remain $100, and the revenue earned by producers will remain at $30. Even if the merged railroad were to deny railroad B access to customer C, there would be no change in the price paid by customer C or the revenues earned by the producer at Origin A. Importantly, in this scenario the merged railroad has no incremental incentive to deny producer B/railroad B access to customer C as a result of its merger with railroad A.[16] The merged railroad would still have an incentive to use railroad B if its marginal cost for this product/DBEA pair is less than that of the merged railroad A.

[16]Note that it might be argued that the merged railroad might seek to shut producer B out of the marketplace at C entirely, thus curtailing supply into C and driving prices up. However, railroad 1 already had the same ability (and, critically, the same incentives) to foreclose producer B from C prior to the merger. Thus, the merger changes nothing.

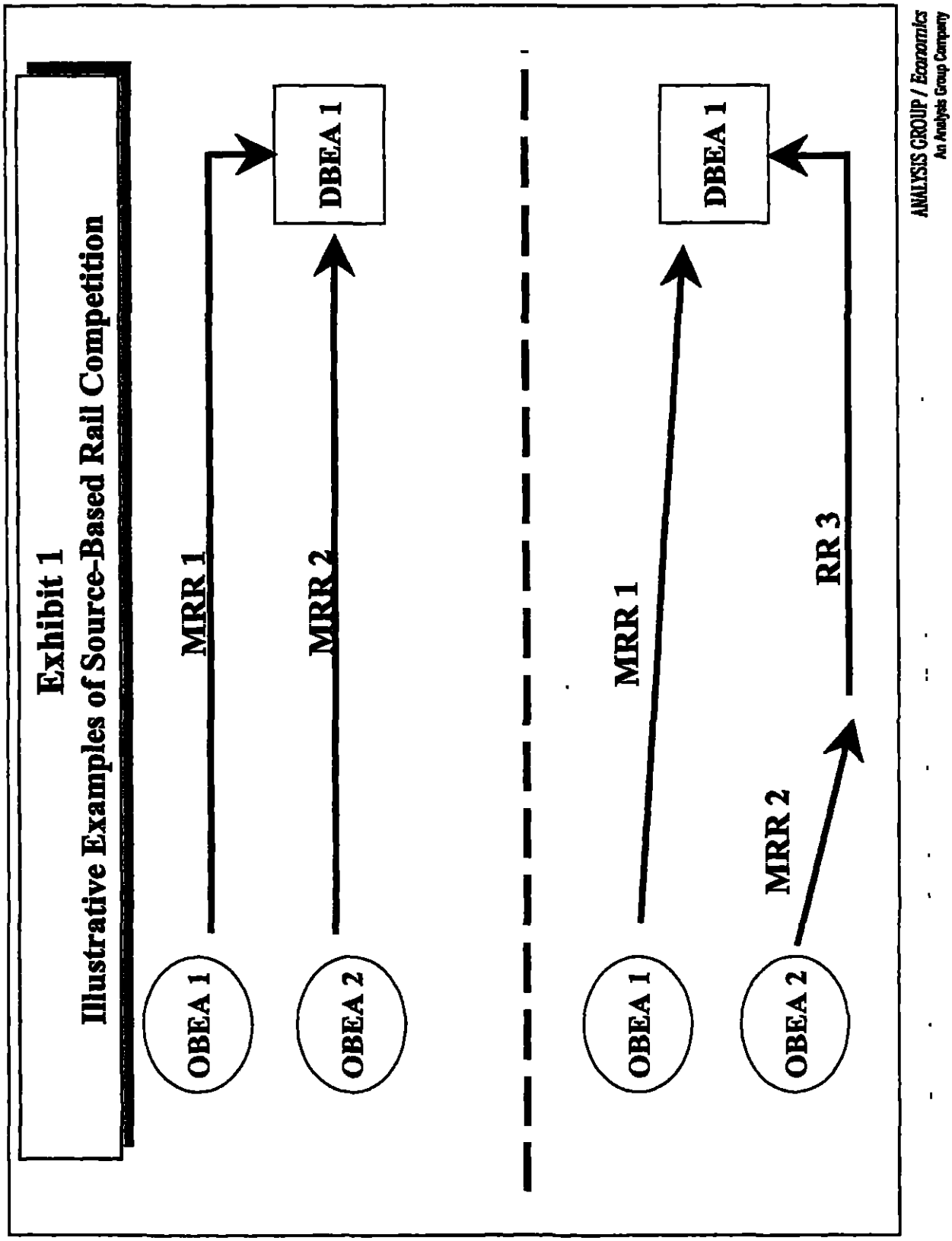
Exhibit 1
Illustrative Examples of Source-Based Rail Competition
OBEA 1
MRR 1
DBEA 1
OBEA 2
MRR 2
OBEA 1
MRR 1
DBEA 1
OBEA 2
MRR 2
RR 3
ANALYSIS GROUP / Economics
An Analysis Group Company

Exhibit 2
Product/BEA Pairs for 50/10 Analysis

PRR 50/10 Analysis of DBEAs

DBEA	Destination BEA Name	STCC7	Commodity Code Name	Carloads by CN/WC
64	Chicago-Gary-Kenosha, Il-In-Wi	0113215	Corn Exc Popcorn	14,384
64	Chicago-Gary-Kenosha, Il-In-Wi	2499110	Oriented Strand Board, Nec	4,200
63	Milwaukee-Racine, Wi	2621115	Newsprint	1,320
100	Des Moines, Ia	2631117	Pulpboard/Fiberboard	1,240
71	Nashville, Tn	2621216	Groundwood Paper,Uncoated	1,200
63	Milwaukee-Racine, Wi	2421184	Lumber Rough/Dressed	1,180
11	Harrisburg-Lebanon-Carlisle, Pa	2621345	Printing Paper Assorted Varieties	1,160
49	Cincinnati-Hamilton, Oh-Ky-In	2611135	Woodpulp	1,040
151	Reno, Nv	2621216	Groundwood Paper,Uncoated	880
57	Detroit-Ann Arbor-Flint, Mi	2621345	Printing Paper Assorted Varieties	876
15	Richmond-Petersburg, Va	2621216	Groundwood Paper,Uncoated	600
109	Duluth-Superior, Mn-Wi	2821245	Synthetic Rubbers	520
27	Augusta-Aiken, Ga-Sc	2621345	Printing Paper Assorted Varieties	520
70	Louisville, Ky-In	2621345	Printing Paper Assorted Varieties	440
170	Seattle-Tacoma-Bremerton, Wa	3295980	Roofing Granules	320
102	Davenport-Moline-Rock Island, Ia-Il	2819450	Muriatic Acid	280
67	Indianapolis, In	2621345	Printing Paper Assorted Varieties	280
41	Greenville-Spartanburg-Anderson, Sc	2621216	Groundwood Paper,Uncoated	240
2	Portland, Me	2821245	Synthetic Rubbers	200
3	Boston-Worcester-Lawrence-Lowell-Brockton, Ma-Nh	2631119	Pulpboard/Fiberboard	200
104	Madison, Wi	2621345	Printing Paper Assorted Varieties	200
51	Columbus, Oh	3312253	Iron Or Steel Plates	120
75	Tupelo, Ms	2621216	Groundwood Paper,Uncoated	120
6	Syracuse, Ny	3331115	Primary Copper,Alloy,Pig/Slab/Ingot	120
11	Harrisburg-Lebanon-Carlisle, Pa	2621216	Groundwood Paper,Uncoated	120
131	Houston-Galveston-Brazoria, Tx	3612911	Specialty Transformers Nec	120
109	Duluth-Superior, Mn-Wi	2812220	Caustic Soda	80
72	Paducah, Ky	2812410	Caustic Potassium	80
101	Peoria-Pekin, Il	2499110	Oriented Strand Board, Nec	80
51	Columbus, Oh	4024115	Paper Waste/Scrap	80
63	Milwaukee-Racine, Wi	2421195	Lumber Rough/Dressed	80

ORR 50/10 Analysis of DBEAs

DBEA	Destination BEA Name	STCC7	Commodity Code Name	Carloads by CN/WC
108	Wausau, Wi	2611135	Woodpulp	5,600
63	Milwaukee-Racine, Wi	2621345	Printing Paper Assorted Varieties	5,300
68	Champaign-Urbana, Il	2621345	Printing Paper Assorted Varieties	2,280
59	Green Bay, Wi	2821245	Synthetic Rubbers	960
59	Green Bay, Wi	2421184	Lumber Rough/Dressed	640
108	Wausau, Wi	2421184	Lumber Rough/Dressed	520
105	La Crosse, Wi-Mn	2499610	Wood Particle Board	440
59	Green Bay, Wi	2432158	Veneer/Plywood/Built Up Wood	320
63	Milwaukee-Racine, Wi	2621216	Groundwood Paper,Uncoated	320
59	Green Bay, Wi	2499610	Wood Particle Board	280
60	Appleton-Oshkosh-Neenah, Wi	2621990	Paper Nec	240
59	Green Bay, Wi	2499110	Oriented Strand Board, Nec	200
108	Wausau, Wi	4611110	Misc Mixed, Tofc	200
59	Green Bay, Wi	2411115	Sawlogs	180
59	Green Bay, Wi	2813320	Carbon Dioxide	160
108	Wausau, Wi	2499610	Wood Particle Board	160
2	Portland, Me	4611110	Misc Mixed, Tofc	120
108	Wausau, Wi	2819315	Sulphuric Acid	120
60	Appleton-Oshkosh-Neenah, Wi	3312468	Iron Bars	80
108	Wausau, Wi	1471620	Sulphur Crude	80
72	Paducah, Ky	4021125	Iron/Steel Scrap/Waste	80

Exhibit 3
50/10 Product/DBEA Pairs

PANEL 1: Participating Railroad 50/10 Product/DBEA Pairs

Product		Destination	Participating Carloads						Bottleneck Destination?	Critical Loss Required to Defeat 5% Price Increase		Direct Divertible Capacity ("DDC")			Supplemental Divertible Capacity ("SDC")		
			Canadian National		Wisconsin Central		Combined Railroad										
7-digit STCC	Product Description	Destination BEA ("DBEA")	Carloads	% of Traffic Into DBEA	Carloads	% of Traffic Into DBEA	Carloads	% of Traffic Into DBEA		At 50% Marginal Profit (Carloads)	At 80% Marginal Profit (Carloads)	Carloads	Ratio to Critical Loss (50% Marginal Profit)	Ratio to Critical Loss (80% Marginal Profit)	Carloads	Ratio to Critical Loss (50% Marginal Profit)	Ratio to Critical Loss (80% Marginal Profit)
0113213	Corn Sec Popcorn	Chicago-Gary-Kenosha, IL-In-WI	7,280	29%	7,092	28%	14,384	57%	No	1,438	899	127,154	88.40	141.44			
2499110	Oriented Strand Board, Nec	Chicago-Gary-Kenosha, IL-In-WI	2,520	42%	1,800	30%	4,200	70%	No	420	263	18,440	43.90	70.25			
2621115	Newsprint	Milwaukee-Racine, WI	920	51%	480	27%	1,320	73%	No	132	83	18,580	140.76	225.21			
2631117	Polyboard/Fiberboard	Des Moines, Ia	600	27%	640	29%	1,240	55%	No	124	78	57,120	460.65	737.03			
2621216	Groundwood Paper,Uncoated	Nashville, Tn	760	45%	440	26%	1,200	71%	No	120	75	7,280	60.50	96.80			
2421184	Lumber Rough/Dressed	Milwaukee-Racine, WI	980	75%	860	66%	1,180	91%	No	118	74	27,560	233.56	373 69			
2621345	Printing Paper Assorted Varieties	Harrisburg-Lebanon-Carlisle, Pa	200	14%	960	67%	1,160	81%	No	116	73	20,240	174.48	279 17			
2611155	Woodpulp	Cincinnati-Hamilton, Oh-Ky-In	440	29%	800	42%	1,040	54%	No	104	65	12,908	118.35	189 35			
2621216	Groundwood Paper,Uncoated	Reno, Nv	280	29%	600	63%	880	92%	No	88	55	2,120	24.09	38.55			
2621345	Printing Paper Assorted Varieties	Detroit-Ann Arbor-Flint, Mi	440	36%	436	35%	876	71%	No	88	55	16,080	183.56	293 70			
2621216	Groundwood Paper,Uncoated	Richmond-Petersburg, Va	320	42%	280	37%	600	79%	No	60	38	1,960	32.67	52.27			
2821345	Synthetic Rubbers	Duluth-Superior, Mn-Wi	240	40%	280	47%	520	87%	No	52	33	280	5.38	8.62	1,160	22 31	35 69
2621345	Printing Paper Assorted Varieties	Augusta-Aiken, Ga-Sc	280	28%	240	24%	520	52%	No	52	33	30,336	583 38	933 42			
2621345	Printing Paper Assorted Varieties	Louisville, Ky-In	360	60%	80	13%	440	73%	No	44	28	15,600	354.55	567 27			
3295980	Roofing Granules	Seattle-Tacoma-Bremerton, Wa	120	38%	200	63%	320	100%	F	32	20	0	0.00	0.00	3,940	123 13	197 00
2819450	Maleic Acid	Davenport-Moline-Rock Island, Ia-Il	200	63%	80	25%	280	88%	No	28	18	1,160	41 43	66.29			
2621345	Printing Paper Assorted Varieties	Indianapolis, In	80	25%	200	63%	280	88%	No	28	18	2,740	97.86	156.57			
2621216	Groundwood Paper,Uncoated	Greenville-Spartanburg-Anderson, Sc	160	50%	80	25%	240	75%	No	24	15	1,120	46.67	74.67			
2821345	Synthetic Rubbers	Portland, Me	80	33%	120	50%	200	83%	No	20	13	2,080	104.00	166.40			
2631119	Paperboard/Fiberboard	Boston-Worcester-Lawrence-Lowell-Brockton, Ma-Nh	120	40%	80	27%	200	67%	No	20	13	560	28.00	44 80			
2621345	Printing Paper Assorted Varieties	Madison, Wi	100	25%	100	25%	200	50%	No	20	13	2,160	108.00	172.80			
3312253	Iron Or Steel Plate	Columbus, Oh	40	33%	80	67%	120	100%	F	12	8	0	0.00	0.00	400	33 33	53.33
2821216	Groundwood Paper,Uncoated	Tupelo, Ms	40	33%	80	67%	120	100%	F	12	8	0	0.00	0.00	5,820	485.00	776.00
3331119	Primary Copper,Alloy,Pig/Slab/Ingot	Syracuse, Ny	80	50%	40	25%	120	75%	No	12	8	280	23.33	37.33			
2621216	Groundwood Paper,Uncoated	Harrisburg-Lebanon-Carlisle, Pa	80	40%	80	40%	120	60%	No	12	8	3,500	291.67	466.67			
3612911	Specialty Transformers Nec	Houston-Galveston-Brazoria, Tx	80	40%	40	20%	120	60%	No	12	8	0	0.00	0.00	40	3.33	5 33
2812220	Caustic Soda	Duluth-Superior, Mn-Wi	40	50%	40	50%	80	100%	P	8	5	0	0.00	0.00	1,160	145 00	232.00
2812410	Caustic Potassium	Paducah, Ky	40	50%	40	50%	80	100%	P	8	5	0	0.00	0.00	120	15 00	24 00
2499110	Oriented Strand Board, Nec	Peoria-Pekin, Il	40	50%	40	50%	80	100%	P	8	5	0	0.00	0.00	40	5 00	8 00
4084115	Paper Waste/Scrap	Columbus, Oh	40	33%	40	33%	80	67%	No	8	5	40	5.00	8 00	580	72.50	116.00
2421195	Lumber Rough/Dressed	Milwaukee-Racine, WI	40	33%	40	33%	80	67%	No	8	5	27,560	3,445.00	5,512.00			

Exhibit 3
50/10 Product/DBEA Pairs

PANEL 2: Originating Railroad 50/10 Product/DBEA Pairs

Product		Destination	Originating Carloads							Critical Loss Required to Defeat 5% Price Increase		Direct Divertible Capacity ("DDC")			Supplemental Divertible Capacity ("SDC")		
			Canadian National		Wisconsin Central		Combined Railroad										
7-digit STCC	Product Description	Destination BEA ("DBEA")	Carloads	% of Traffic Into DBEA	Carloads	% of Traffic Into DBEA	Carloads	% of Traffic Into DBEA	Bottleneck Destination?	At 50% Marginal Profit (Carloads)	At 80% Marginal Profit (Carloads)	Carloads	Ratio to Critical Loss (50% Marginal Profit)	Ratio to Critical Loss (80% Marginal Profit)	Carloads	Ratio to Critical Loss (50% Marginal Profit)	Ratio to Critical Loss (80% Marginal Profit)
2611135	Woodpulp	Wausau, WI	1,840	22%	3,760	44%	5,600	66%	No	560	350	22,000	39.29	62.86			
2621345	Printing Paper Assorted Varieties	Milwaukee-Racine, WI	1,200	13%	4,100	43%	5,300	56%	No	530	331	37,056	69.92	111.87			
2621345	Printing Paper Assorted Varieties	Champaign-Urbana, IL	800	20%	1,480	37%	2,280	57%	No	228	143	36,076	158.23	253.16			
2821265	Synthetic Rubber	Green Bay, WI	600	60%	360	36%	960	96%	Yes								
2421184	Lumber Rough/Dressed	Green Bay, WI	360	45%	280	35%	640	80%	Yes								
2421184	Lumber Rough/Dressed	Wausau, WI	240	35%	280	41%	520	76%	No	52	33	18,860	362.69	580.31			
2499610	Wood Particle Board	La Crosse, WI-Mn	120	19%	320	50%	440	69%	No	44	28	4,940	112.27	179.64			
2432152	Veneer/Plywood/Built Up Wood	Green Bay, WI	40	13%	280	88%	320	100%	Yes								
2621216	Groundwood Paper,Uncoated	Milwaukee-Racine, WI	200	50%	120	30%	320	80%	No	32	20	2,200	68.75	110.00			
2499610	Wood Particle Board	Green Bay, WI	80	29%	200	71%	280	100%	Yes								
2621990	Paper Nec	Appleton-Oshkosh-Neenah, WI	40	17%	200	83%	240	100%	P	24	15	0	0.00	0.00	1,040	43.33	69.33
2499110	Oriented Strand Board, Nec	Green Bay, WI	40	20%	160	80%	200	100%	Yes								
4611110	Misc. Mixed, Traffic	Wausau, WI	120	43%	80	29%	200	71%	No	20	13	98,788	4,939.40	7,903.04			
2411115	Shavings	Green Bay, WI	40	13%	140	47%	180	60%	Yes								
2813320	Carbon Dioxide	Green Bay, WI	80	50%	80	50%	160	100%	Yes								
2499610	Wood Particle Board	Wausau, WI	120	75%	40	25%	160	100%	P	16	10	0	0.00	0.00	40	2.50	4.00
4611110	Misc. Mixed, Traffic	Portland, Me	80	67%	40	33%	120	100%	P	12	8	0	0.00	0.00	300	25.00	40.00
2819315	Sulphuric Acid	Wausau, WI	40	20%	80	40%	120	60%	No	12	8	120	10.00	16.00	900	75.00	120.00
3312468	Iron Ores	Appleton-Oshkosh-Neenah, WI	40	50%	40	50%	80	100%	P	8	5	0	0.00	0.00	0	0.00	0.00
1471620	Sulphur Crude	Wausau, WI	40	50%	40	50%	80	100%	P	8	5	0	0.00	0.00	608	76.00	121.60
4021125	Iron/Steel Scrap/Waste	Paducah, Ky	40	33%	40	33%	80	67%	No	8	5	832	104.00	166.40			

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Exhibit 4
50/10 Product/DBEA Pairs - Truck Divertibility Analysis

PANEL 1: Participating Railroad 50/10 Product/DBEA Pairs

Product			Destination	Combined Railroad		Bottleneck Destination?	Critical Loss Required to Defeat 5% Price Increase (7-digit STCC)		1999 Rail 7-digit STCC into DBEA (tons)	1999 Rail 4-digit STCC into DBEA (tons)	Truck Share of Truck+Rail 4-digit STCC into DBEA	1999 Truck 4-Digit STCC into 50/10 DBEA				Truck Divertible Capacity from Origins in Radius of Weighted Average Inbound Truck Miles to 50/10 DBEA destinat for all US/Canada other DBEAs			Ratio of Estimated 7 Digit STCC Truck : 7-Digit STCC Rail Critical Loss	
7-digit STCC	4-digit STCC	Product Description	Destination BEA ("DBEA")	Originating Carloads	% of Traffic Into DBEA		At 50% Marginal Profit (Carloads)	At 50% Marginal Profit (Carloads)				Truck/ T-Canada Only	Tons	Carloads	Weighted Avg Inbound Truck Miles	4-digit STCC (Tons)	4-digit STCC (Carloads)	Estimated 7-digit STCC (Carloads)*	50% Marginal Profit (7-digit STCC)	80% Marginal Profit (7-digit STCC)
2821345	2821	Synthetic Rubbers	Duluth-Superior, Mn-WI	530	87%	No	52	33	51,040	100,970	11.2%		12,732	142	723	4,640,647	51,560	26,877	501	802
2295980	2295	Roofing Granules	Seattle-Tacoma-Bremerton, Wa	520	100%	P	32	20	31,920	202,800	36.8%		265,598	2,900	846	12,058,569	131,307	20,667	646	1,033
3312253	3312	Iron Or Steel Plate	Columbus, Oh	120	100%	P	12	8	9,888	130,382	75.2%		194,854	4,663	402	13,694,542	153,844	11,648	970	1,313
2821216	2821	Groundwood Paper,Uncoated	Tipsin, Mn	120	100%	P	12	8	8,160	140,894	33.2%		70,854	1,145	744	14,713,918	240,582	13,939	1,161	1,857
2812911	2812	Specialty Transformers Nec	Houston-Galveston-Brazoria, Tx	120	69%	No	12	8	20,600	20,513	49.9%		20,265	633	979	606,621	12,649	12,676	1,057	1,690
2812220	2812	Caustic Soda	Duluth-Superior, Mn-WI	80	100%	P	8	5	7,520	25,698	38.9%		16,274	169	302	3,318,675	34,585	10,097	1,262	2,019
2812410	2812	Caustic Potassium	Pulaski, Ky	80	100%	P	8	5	7,720	63,918	53.7%		74,274	768	426	16,214,834	167,953	20,283	2,536	4,057
3499110	2499	Oriented Strand Board, Nec	Pendy-Pablo, Il	80	100%	P	8	5	6,168	9,834	61.8%		14,610	191	637	19,846,252	259,254	176,777	22,097	35,355
4924115	4924	Paper Waste/Scrap	Columbus, Oh	80	67%	No	8	5	3,800	25,104	2.8%	Y	712	14	504	784,291	15,241	3,521	440	704

PANEL 2: Originating Railroad 50/10 Product/DBEA Pairs

Product			Destination	Combined Railroad		Bottleneck Destination?	Critical Loss Required to Defeat 5% Price Increase (7-digit STCC)		1999 Rail 7-digit STCC into DBEA (tons)	1999 Rail 4-digit STCC into DBEA (tons)	Truck Share of Truck+Rail 4-digit STCC into DBEA	1999 Truck 4-Digit STCC into 50/10 DBEA				Truck Divertible Capacity from Origins in Radius of Weighted Average Inbound Truck Miles to 50/10 DBEA destinat for all US/Canada other DBEAs			Ratio of Estimated 7 Digit STCC Truck : 7-Digit STCC Rail Critical Loss	
7-digit STCC	4-digit STCC	Product Description	Destination BEA ("DBEA")	Originating Carloads	% of Traffic Into DBEA		At 50% Marginal Profit (Carloads)	At 50% Marginal Profit (Carloads)				Truck/ T-Canada Only	Tons	Carloads	Weighted Avg Inbound Truck Miles	4-digit STCC (Tons)	4-digit STCC (Carloads)	Estimated 7-digit STCC (Carloads)*	50% Marginal Profit (7-digit STCC)	80% Marginal Profit (7-digit STCC)
2821590	2821	Paper Nec	Appleton-Oshkosh-Neenah, WI	540	100%	P	34	15	3,040	240,796	53.2%		274,163	4,481	433	6,978,930	99,363	1,254	52	84
2499810	2499	Wood Particle Board	Wausau, WI	180	100%	P	16	10	11,520	53,372	80.5%		220,383	2,579	374	3,913,159	51,118	11,034	690	1,103
4811110	4811	Misc. Mixed, Tofc	Portland, Me	120	100%	P	12	8	1,200	1,200	100.0%		11,179,313	736,461	229	24,751,938	4,924,440	4,924,440	410,370	656,592
3312468	3312	Iron Bars	Appleton-Oshkosh-Neenah, WI	80	100%	P	8	5	7,400	7,400	88.9%		54,836	668	371	4,240,731	49,823	49,783	6,223	9,957
1471420	1471	Sulphur Crude	Wausau, WI	80	100%	P	8	5	7,700	27,310	0.0%	Y	212	2	1,344	385,172	3,973	1,129	141	226

*Note: Estimated 7-digit STCC Truck (Carloads) = ([Rail 7-digit STCC (tons)/Rail 4-digit STCC (tons)]*4-digit STCC Truck (Carloads))

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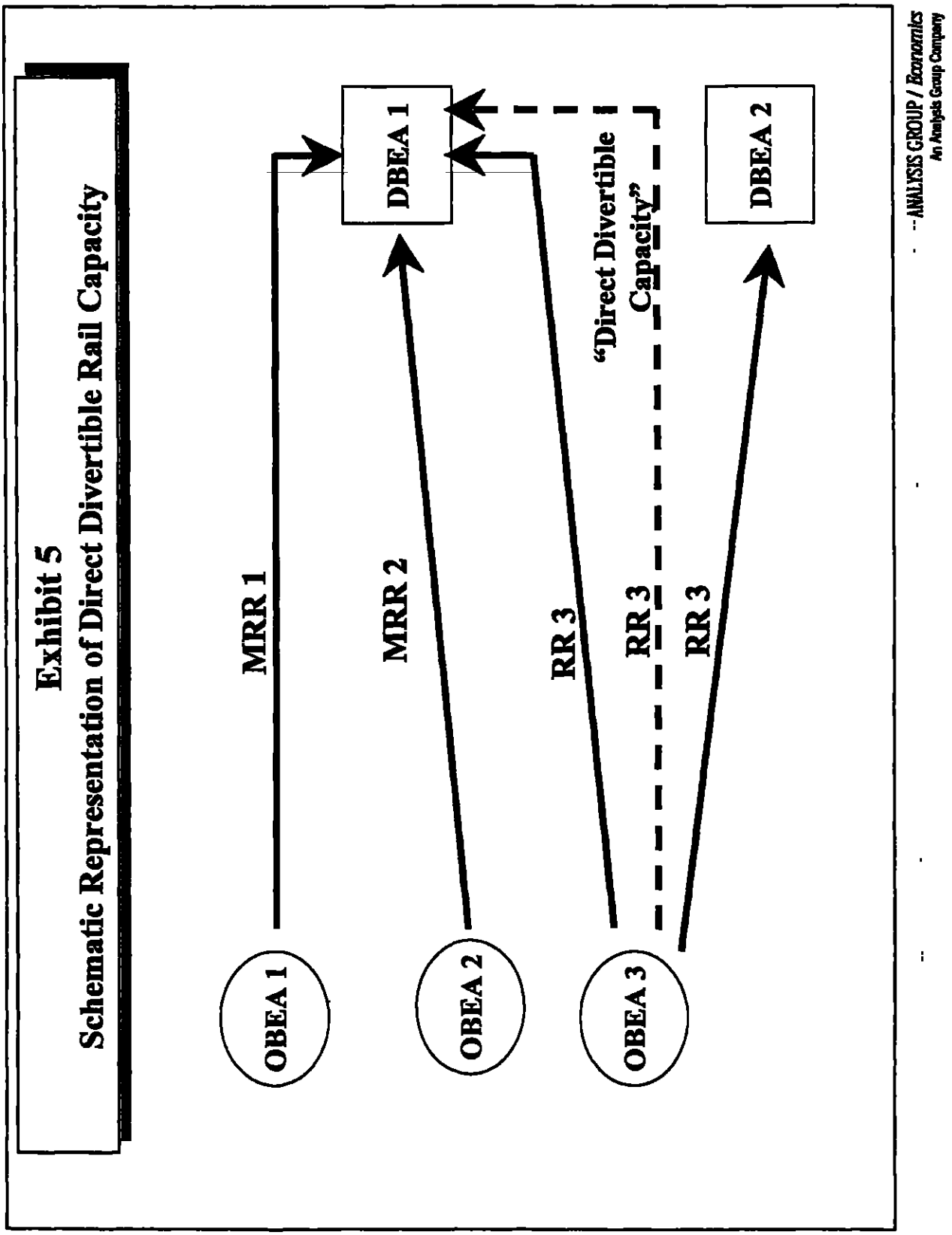
Exhibit 5
Schematic Representation of Direct Divertible Rail Capacity
MRR 1
MRR 2
RR 3
RR 3
RR 3
"Direct Divertible Capacity"
DBEA 1
DBEA 2
OBEA 1
OBEA 2
OBEA 3
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Exhibit 6
Algorithm for Direct Divertible Capacity

For those products where CN-WC originates less than 100% of shipments into DBEA 1, if RR3 ships the product (7-digit STCC) from OBEA 3 to DBEA 1, movements of that product by RR3 to other DBEAs (e.g., DBEA2) are considered Direct Divertible Capacity (DDC) if

- RR3 ships the product between OBEA 3 and DBEA 1 without using CN-WC to originate/terminate/interchange the shipment.

or

- If RR3 uses CN-WC to originate/terminate/interchange the shipment between OBEA 3 and DBEA 1 and RR3 has an alternative route between OBEA 3 and DBEA 1 that is less than 1.35 times the weighted average of RR3's route over CN-WC between OBEA 3 and DBEA 1, then the shipment is considered DDC.

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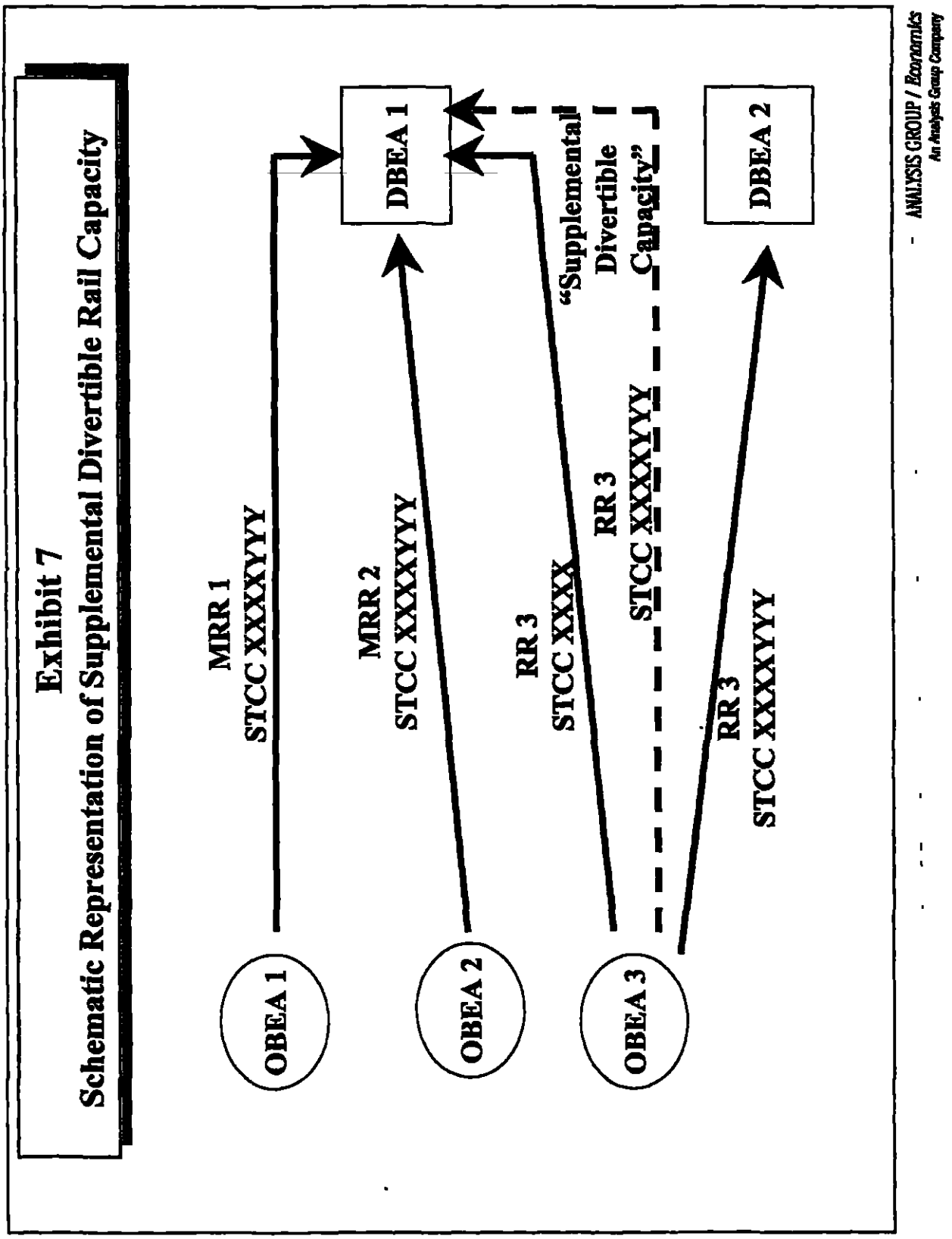
Exhibit 7
Schematic Representation of Supplemental Divertible Rail Capacity
MRR 1
STCC XXXXYYY
MRR 2
STCC XXXXYYY
RR 3
STCC XXXX
"Supplemental
Divertible
Capacity"
RR 3
STCC XXXXYYY
RR 3
STCC XXXXYYY
DBEA 1
DBEA 2
OBEA 1
OBEA 2
OBEA 3
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Exhibit 8
Algorithm for Supplemental Divertible Capacity

Movements of a product (7 digit STCC) from OBEA 3 to DBEA 2 in Exhibit 7 are considered Supplemental Divertible Capacity (SDC) for DBEA 1 if

•RR3 ships products in the same 4 digit STCC from OBEA 3 to DBEA 1 on a non-CN-WC route, then the shipment of the product from OBEA 3 to DBEA 2 is considered SDC.

or

•If RR3 uses CN-WC to originate/terminate/interchange the 4 digit STCC shipment between OBEA 3 and DBEA 1 and RR3 has an alternative route between OBEA 3 and DBEA 1 that is less than 1.35 times the weighted average of RR3's route over CN-WC between OBEA 3 and DBEA 1, then the shipment is considered SDC.

or

•If RR3 has an alternative route between OBEA 3 and DBEA 1 that is less than the distance traveled by the 90th percentile-distant carload (e.g., the distance traveled by the 180th most-distant carload of a total of 200 carloads) of CN/WC shipments of the 7 digit STCC to DBEA 1, then the shipment is considered SDC.

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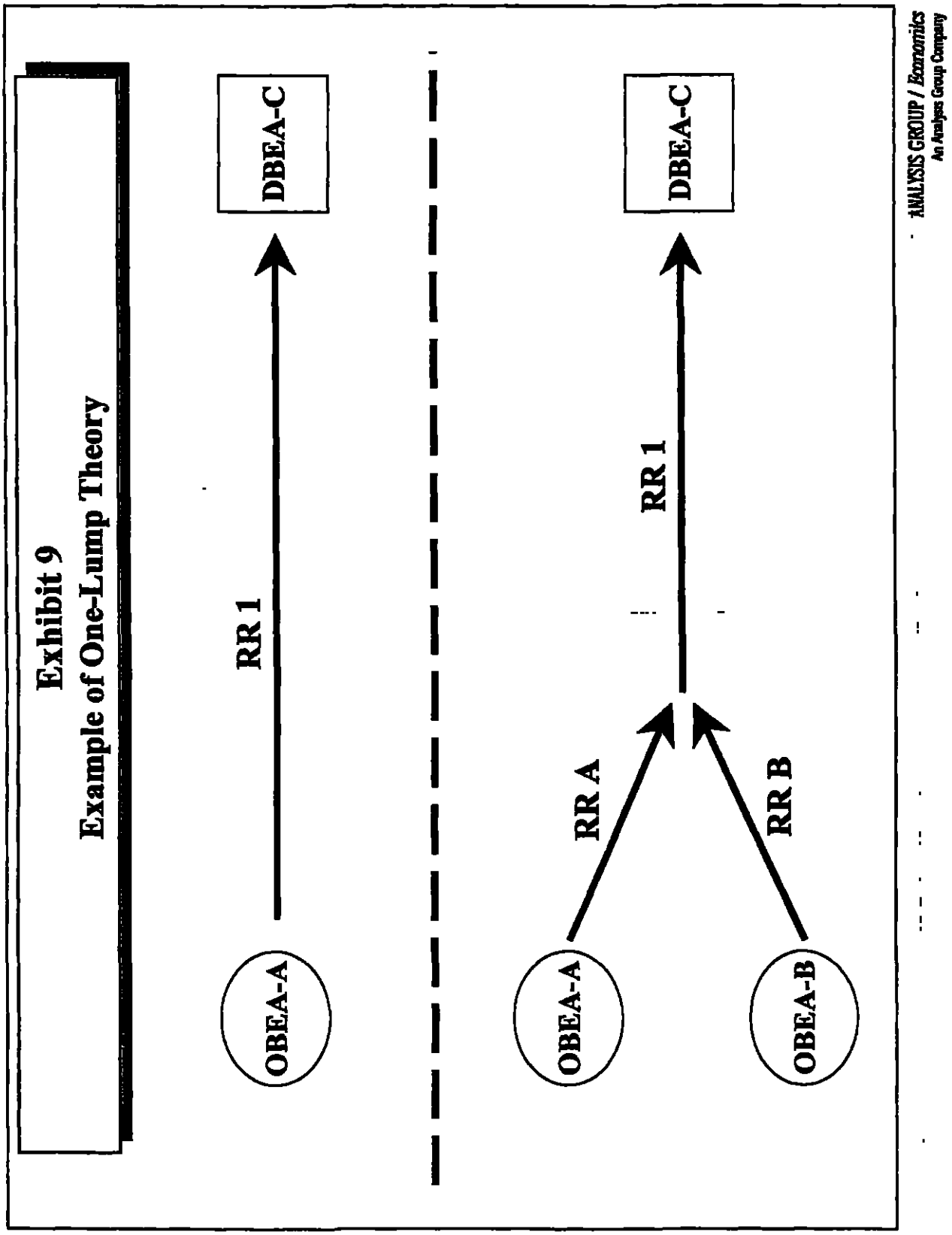
Exhibit 9
Example of One-Lump Theory
DBEA-C
RR 1
OBEA-A
DBEA-C
RR 1
RR A
RR B
OBEA-A
OBEA-B
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Attachment 3
Product/DBEA Pairs for 50/10 Analysis

Participating Railroad 50/10 Product/DBEA Pairs

DBEA	Destination BEA Name	7-digit STCC	Product Description	Carloads by CN/EJE
64	Chicago-Gary-Kenosha, IL-IN-WI	2911610	Asphalt (Asphaltum), By-Product Or Petroleum, Liquid, Other Than Paint,Stain	2,600
131	Houston-Galveston-Brazoria, TX	2911982	Petroleum Naphtha, Naphtha Distillate Or Naphtha Solvents	1,960
11	Harrisburg-Lebanon-Carlisle, PA	2912190	Liquefied Petroleum Gas, Nec, Compressed	1,520
131	Houston-Galveston-Brazoria, TX	2912181	Petroleum By-Product, Neconsisting Of Impure Bu- Tane, Butylene Or Butadi-Enes	1,040
64	Chicago-Gary-Kenosha, IL-IN-WI	2812220	Sodium (Soda), Caustic (Sodium Hydroxide), Liquid	800
96	St. Louis, MO-IL	3312140	Slabs, Iron Or Steel, In The Rough	620
64	Chicago-Gary-Kenosha, IL-IN-WI	2912122	Butene (Butylene) Gas, Liquefied, Or Isobutene (Isobutylene), Liquefied	400
14	Salisbury, MD-DE-VA	2912190	Liquefied Petroleum Gas, Nec, Compressed	200
64	Chicago-Gary-Kenosha, IL-IN-WI	2912128	Propylene	160
68	Champaign-Urbana, IL	2912190	Liquefied Petroleum Gas, Nec, Compressed	160
99	Kansas City, MO-KS	3312711	Terne Or Tin Plate, Plain, Lacquered Or Painted	160
178	Ontario	3312150	Breakdowns, Slab Or Sheetbars, Iron Or Steel, Viz.Unfinished Material Havin	80

Originating Railroad 50/10 Product/DBEA Pairs

DBEA	Destination BEA Name	7-digit STCC	Product Description	Carloads by CN/EJE
117	Sioux City, IA-NE-SD	3312332	Sheet, Steel, (Sheet Steel), In Coils, Plain Or Galvanized	600
59	Green Bay, WI-MI	4021125	Scrap, Iron Or Steel, Nec, Not Copper Clad, Having Value For Remel	320

Terminating Railroad 50/10 Product/DBEA Pairs

DBEA	Destination BEA Name	7-digit STCC	Product Description	Carloads by CN/EJE
64	Chicago-Gary-Kenosha, IL-IN-WI	2821140	Polystyrene, Other Than Liquid	2,920
64	Chicago-Gary-Kenosha, IL-IN-WI	3334110	Aluminum Billets, Blooms,Ingots, Pigs Or Slabs	1,080
64	Chicago-Gary-Kenosha, IL-IN-WI	3499904	Wheels, Nec, Iron Or Steel	80

Attachment 4
50/10 Product/DBEA Analysis

Panel 1. Participating Railroad 50/10 Product/DBEA Pairs

	Product		Destination		Participating Carloads								Critical Loss Required to Defeat 5% Price Increase		Direct Divertible Capacity ("DDC")			Supplemental Divertible Capacity ("SDC")		
					CN		EJ&E		Combined RR				Number of Carloads at			Ratio to Critical Loss at			Ratio to Critical Loss at	
	7-digit STCC	Product Description	DBEA	Destination BEA Name	Total Cars	Carloads	% Traffic into DBEA	Carloads	% Traffic into DBEA	Carloads	Combined Carloads	% Traffic into DBEA	Bottleneck Destination?	50% Marginal Profit	80% Marginal Profit	DDC Carloads Available	50% Marginal Profit	80% Marginal Profit	SDC Carloads Available	50% Marginal Profit	80% Marginal Profit
1	2911610	Asphalt (Asphaltum), By Product Or Petroleum, Lqued, Other Than Paint,Enam	64	Chicago-Gary-Kenosha, IL-IN-WI	4,324	840	19%	1,840	43%	2,680	1,134,564	66%	No	260	163	24,932	96	153			
2	2911982	Petroleum Naphtha, Naphtha Distillate Or Naphtha Solvents	131	Houston-Galveston-Brazoria, TX	3,680	1,480	40%	480	13%	1 960	4,867,840	53%	No	196	123	5,880	18	48			
3	2912190	Liquefied Petroleum Gas, Nec, Compressed	11	Harrisburg-Lebanon-Carlisle, PA	2,840	920	45%	600	29%	1 520	2,418,548	75%	No	152	95	5,468	36	58			
4	2912181	Petroleum By-Product, Nec,consisting Of Impure Be- Tene, Butylene Or Butadi-Ene	131	Houston-Galveston-Brazoria, TX	1,200	760	63%	280	23%	1,040	2,487 972	87%	No	104	65	0	0	0	1,040	10	16
5	2812220	Sodium (Soda), Caustic (Sodium Hydroxide), Liquid	64	Chicago-Gary-Kenosha, IL-IN-WI	1,320	640	48%	160	12%	800	627,888	61%	No	80	50	32,800	410	656			
6	3312140	Slabs, Iron Or Steel, In The Rough	96	St. Louis, MO-IL	1,016	180	18%	440	43%	620	246,556	61%	No	62	39	364	6	9	2,412	39	62
7	2912122	Butane (Butylene) Gas, Liquefied, Or Isobutane (Isobutylene), Liquefied	64	Chicago-Gary-Kenosha, IL-IN-WI	800	80	10%	320	40%	400	397,236	50%	No	40	25	2,640	66	106			
8	2912190	Liquefied Petroleum Gas, Nec, Compressed	14	Salisbury, MD-DE-VA	320	120	38%	80	25%	200	328,244	63%	No	20	13	3,760	188	301			
9	2912128	Propylene	64	Chicago-Gary-Kenosha, IL-IN-WI	160	80	50%	80	50%	160	189,632	100%	No	16	10	0	0	0	400	25	40
10	2912190	Liquefied Petroleum Gas, Nec, Compressed	68	Champaign-Urbana, IL	160	40	25%	120	75%	160	107 700	100%	No	16	10	0	0	0	31,760	1984	3174
11	3312711	Terne Or Tin Plate, Plate, Lacquered Or Painted	99	Kansas City, MO-KS	200	80	40%	80	40%	160	135,832	80%	No	16	10	400	25	40			
12	3312150	Rounddowns, Slab Or Sloughers, Iron Or Steel, Vac.Unfinished Material Howe	178	Ostuco	80	40	50%	40	50%	80	154,768	100%	No	8	5	0	0	0	1,120	190	104

Panel 2· Originating Railroad 50/10 Product/DBEA Pairs

	Product		Destination		Originating Carloads								Critical Loss Required to Defeat 5% Price Increase		Direct Divertible Capacity ("DDC")			Supplemental Divertible Capacity ("SDC")		
					CN		EJ&E		Combined RR				Number of Carloads at			Ratio to Critical Loss at			Ratio to Critical Loss at	
	7-digit STCC	Product Description	DBEA	Destination BEA Name	Total Cars	Carloads	% Traffic into DBEA	Carloads	% Traffic into DBEA	Carloads	Combined Carloads	% Traffic into DBEA	Bottleneck Destination?	50% Marginal Profit	80% Marginal Profit	DDC Carloads Available	50% Marginal Profit	80% Marginal Profit	SDC Carloads Available	50% Marginal Profit	80% Marginal Profit
1	3312332	Sheet, Steel, (Sheet Steel), In Coils, Plain Or Galvanized	117	Sioux City, IA-NE-SD	1 164	200	17%	400	34%	600	415,664	52%	No	60	38	20 612	344	550			
2	4021125	Scrap, Iron Or Steel, Nec, Not Copper Clad, Having Value Per Remel	59	Green Bay, WI-MI	320	280	88%	40	13%	320	70,880	100%	Yes	32	20						

Panel 3 Terminating Railroad 50/10 Product/DBEA Pairs

	Product		Destination		Terminating Carloads								Critical Loss Required to Defeat 5% Price Increase		Direct Divertible Capacity ("DDC")			Supplemental Divertible Capacity ("SDC")		
					CN		EJ&E		Combined RR				Number of Carloads at			Ratio to Critical Loss at			Ratio to Critical Loss at	
	7-digit STCC	Product Description	DBEA	Destination BEA Name	Total Cars	Carloads	% Traffic into DBEA	Carloads	% Traffic into DBEA	Carloads	Combined Carloads	% Traffic into DBEA	Bottleneck Destination?	50% Marginal Profit	80% Marginal Profit	DDC Carloads Available	50% Marginal Profit	80% Marginal Profit	SDC Carloads Available	50% Marginal Profit	80% Marginal Profit
1	2821140	Polystyrene, Other Than Liquid	64	Chicago-Gary-Kenosha, IL-IN-WI	4,680	2,080	44%	840	18%	2,920	2,336,640	62%	No	292	183	8,640	30	47			
2	3334110	Aluminum Billets, Blooms,Ingots, Pigs Or Slabs	64	Chicago-Gary-Kenosha, IL-IN-WI	1,200	240	20%	840	70%	1,080	1 401 188	98%	No	168	68	1,400	13	21			
3	3499984	Wheels, Nec, Iron Or Steel	64	Chicago-Gary-Kenosha, IL-IN-WI	128	48	37%	40	32%	88	68,384	67%	No	8	5				40	4	8

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Attachment 5
Product/OBEA Pairs for 50/10 Analysis

Participating Railroad 50/10 Product/DBEA Pairs

OBEA	Origin BEA Name	7-digit STCC	Product Description	Carloads by CN/EJE
64	Chicago-Gary-Kenosha, IL-IN-WI	1421990	Natural Stone, Nec, Broken Or Crushed, Including Chips, Grouts Or Sp	8,936
64	Chicago-Gary-Kenosha, IL-IN-WI	2911982	Petroleum Naphtha, Naphtha Distillate Or Naphtha Solvents	1,160
96	St. Louis, MO-IL	3312140	Slabs, Iron Or Steel, In The Rough	560
181	Alberta	4021125	Scrap, Iron Or Steel, Nec, Not Copper Clad, Having Value For Remel	480
110	Grand Forks, ND-MN	4021125	Scrap, Iron Or Steel, Nec, Not Copper Clad, Having Value For Remel	148

Terminating Railroad 50/10 Product/DBEA Pairs

OBEA	Origin BEA Name	7-digit STCC	Product Description	Carloads by CN/EJE
83	New Orleans, LA-MS	2991490	Coke, Nec, Or Coke, Ground	3,901
84	Baton Rouge, LA-MS	2819454	Phosphoric Acid	1,640
72	Paducah, KY-IL	2621345	Printing Paper, Less Than60 Percent Ground Wood Fibre, Other Than News- Print	560
76	Greenville, MS	2821140	Polystyrene, Other Than Liquid	320
64	Chicago-Gary-Kenosha, IL-IN-WI	3312839	Railway Track Rails, Ironor Steel, Nec	300
179	Manitoba	3499904	Wheels, Nec, Iron Or Steel	160
178	Ontario	2819931	Hydrogen Peroxide (Hydrogen Dioxide)	120

Attachment 6
Destination Competition
Assessment of Divertible Capacity for Common Shipments
Originated from OBEA1
DBEA 3
DBEA 1
DBEA 2
DBEA 4
OBEA 2
OBEA 1
OBEA3
RR3
RR3
RR3
MRR1
MRR2
RR4
RR4
RR4
The destination competition at issue is for movements into DBEA1 and DBEA2. Critical loss is therefore calculated based on total movements by MRR1 and MRR2 into those DBEAs
Actual shipments from OBEAX to DBEAy
Divertible capacity available from OBEAX to DBEAZ

Attachment 6-A
Divertible Capacity Under Destination Competition (Continued)
Elimination of "Double Counting" of Divertible Capacity Common to Multiple DBEAs

Note: Divertible capacity is calculated by adding divertible capacity at all DBEAs to which MRR1 and MRR2 move the product from OBEA1 (here, DBEA1 and DBEA2), except that capacity divertible into more than one DBEA (here, the RR3 shipments into DBEA3) is counted only once.

Actual shipments from OBEAx to DBEAy

Divertible capacity available from OBEAx to DBEAz

Quantitative economic solutions, LLC
Microeconomic Consultants

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Attachment 7
Destination Competition
Algorithm for Direct Divertible Capacity

For those products where CN-EJE terminates less than 100% of shipments from OBEA1 to DBEA1, if RR3 ships the product (7-digit STCC) from OBEA2 to DBEA1, movements of that product by RR3 from OBEAs (*e.g.*, OBEA2, but can be OBEA1) to other DBEAs (*e.g.*, DBEA3) are considered Direct Divertible Capacity (DDC) if:

- RR3 ships the product between OBEA2 and DBEA1 without using CN-EJE to originate/terminate/interchange the shipment

or

- RR3 used CN-EJE to originate/terminate/interchange the shipment between OBEA2 and DBEA1, and RR3 has an alternative route between OBEA2 and DBEA1 that is less than 1.35 times the weighted average of RR3's route over CN-EJE between OBEA2 and DBEA1

quantitative economic solutions, LLC
Microeconomic Consultants

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Attachment 8
Destination Competition Algorithm for Supplemental Divertible Capacity

Movements of a product (7-digit STCC) by RR3 from OBEA2 to DBEA3 are considered Supplemental Divertible Capacity (SDC) for OBEA1 to DBEA1 (currently served by CN-EJE) if:

- RR3 ships product in the same 4-digit STCC from OBEA2 to DBEA1 on a non-CN-EJE route

or

- RR3 uses CN-EJE to originate/terminate/interchange the 4-digit STCC shipment between OBEA2 and DBEA1, but RR3 has an alternative route between OBEA2 and DBEA1 that is less than 1.35 times the weighted average of RR3's route over CN-EJE between OBEA2 and DBEA1

or

- RR3 has an alternative route between OBEA2 and DBEA1 that is less than the distance traveled by the 90th percentile-distant carload (*e.g.* the distance traveled by the 180th most-distant carload of a total of 200 carloads) of CN-EJE shipments of the 7-digit STCC from OBEA1 to DBEA1

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Attachment 9
50/10 Product/OBEA Analysis

Panel 1 Participating Railroad 50/10 Product/OBEA Pairs

	Product		Origin			Terminating Carloads							Critical Loss Required to Defeat 5% Price Increase		Direct Divertible Capacity ("DDC")			Supplemental Divertible Capacity ("SDC")		
						CN		EJ&E		Combined RR				Number of Carloads at			Ratio to Critical Loss at			Ratio to Critical Loss at
	7-digit STCC	Product Description	OBEA	Origin BEA Name	Total Cars	Carloads	% Traffic from OBEA	Carloads	% Traffic from OBEA	Carloads	Combined Carloads	% Traffic from OBEA	Bottleneck Origin?	50% Marginal Profit	80% Marginal Profit	DDC Carloads Available	50% Marginal Profit	80% Marginal Profit	SDC Carloads Available	50% Marginal Profit	80% Marginal Profit
1	1421900	Natural Stone, Nec, Broken Or Crushed, Including Chips, Grnuls Or Sp	64	Chicago-Gary-Kenosha, IL-IN-WI	10,096	6,320	63%	2,616	26%	8,936	792,022	89%	No	894	559				216	0	0
2	2911902	Petroleum Naphtha, Naphtha Distillate Or Naphtha Solvents	64	Chicago-Gary-Kenosha, IL-IN-WI	1,360	680	50%	480	35%	1 160	1 197 984	89%	No	116	73	5,200	45	72			
3	3312140	Slabs, Iron Or Steel, In The Rough	96	St. Louis, MO-IL	560	240	43%	320	57%	560	269,640	100%	No	56	35				44 996	804	1286
4	4021125	Scrap, Iron Or Steel, Nec, Not Copper Clad, Having Value For Remel	181	Alberta	760	120	16%	360	47%	480	807,532	63%	No	48	30	1,640	75	55			
5	4021125	Scrap, Iron Or Steel, Nec, Not Copper Clad, Having Value For Remel	110	Grand Forks, ND-MN	268	40	15%	108	40%	148	114,715	55%	No	15	9	2,160	146	234			

Panel 2: Terminating Railroad 50/10 Product/OBEA Pairs

	Product		Origin			Terminating Carloads							Critical Loss Required to Defeat 5% Price Increase		Direct Divertible Capacity ("DDC")			Supplemental Divertible Capacity ("SDC")		
						CN		EJ&E		Combined RR				Number of Carloads at			Ratio to Critical Loss at			Ratio to Critical Loss at
	7-digit STCC	Product Description	OBEA	Origin BEA Name	Total Cars	Carloads	% Traffic from OBEA	Carloads	% Traffic from OBEA	Carloads	Combined Carloads	% Traffic from OBEA	Bottleneck Origin?	50% Marginal Profit	80% Marginal Profit	DDC Carloads Available	50% Marginal Profit	80% Marginal Profit	SDC Carloads Available	50% Marginal Profit	80% Marginal Profit
1	2991400	Coke, Nec, Or Coke, Ground	83	New Orleans, LA-MS	3,901	2,281	58%	1,620	42%	3 901	4 159 582	100%	No	390	244				1,574	4	6
2	2819434	Phosphoric Acid	84	Baton Rouge, LA-MS	2,288	680	31%	960	44%	1,640	1 717 456	75%	No	164	103	2,720	17	27			
3	2621345	Printing Paper Less Than60 Percent Ground Wood Fibre, Other Than News- Print	72	Paducah, KY-IL	760	480	63%	80	11%	560	219,856	74%	No	56	35	19,368	149	539			
4	2821140	Polystyrene, Other Than Liquid	76	Greenville, MS	320	280	88%	40	13%	320	161,236	100%	No	32	20				12,960	405	648
5	3312839	Railway Track Rails, Iron or Steel, Nec	64	Chicago-Gary-Kenosha, IL-IN-WI	460	188	41%	112	24%	300	106,192	65%	No	30	19				5,212	174	278
6	3499804	Wheels, Nec, Iron Or Steel	179	Manitoba	240	120	50%	40	17%	160	114,464	67%	No	16	10				60	3	4
7	2819911	Hydrogen Peroxide (Hydrogen Dioxide)	178	Ontario	160	80	50%	40	25%	120	82,980	75%	No	12	8				3,120	260	416

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Exhibit 20

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35087

CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION
– CONTROL –
EJ&E WEST COMPANY

VERIFIED STATEMENT
OF
CHRISTOPHER A. VELLTURO, PH.D.

I. QUALIFICATIONS

I am the founder and president of Quantitative Economic Solutions, LLC, a microeconomic consulting firm located in Cambridge, Massachusetts. I received a Bachelor of Science degree (*cum laude*) in applied mathematics and economics from Brown University in Providence, Rhode Island, and a Doctor of Philosophy (Ph.D.) degree in economics from the Massachusetts Institute of Technology (MIT) in Cambridge. While at MIT, I specialized in industrial organization and econometrics. During my tenure at MIT, I was awarded Bradley Fellowships in public economics (which is the study of how public policy decisions affect private sector incentives), and I have completed extensive training in that field. My Ph.D. thesis on the structural changes in the U.S. rail industry fostered by the passage of the Staggers Act, and their economic significance, was prepared under the guidance of Professor Ann Friedlaender, a leading expert in rail regulatory reform. My thesis and its progeny[32] have been featured significantly in previous assessments of the competitive effects associated with rail industry consolidation. I am called upon frequently to referee scholarly articles pertaining to the U.S. rail industry that are submitted to a number of the leading applied microeconomics journals.

I have studied structural, regulatory, and competitive issues relating to the rail industry for 25 years. I have published several papers in academic journals relating to regulatory and competitive determinants of rail efficiency and viability. This

[32] "Cost Effects of Mergers and Deregulation in the U.S. Rail Industry" (with Berndt, *et al.*) in *Productivity Issues in Services at the Micro Level*, ed. Zvi Griliches and Jacques Mairesse (Kluwer Academic Publishers, 1993), "Cost Effects of Mergers and Deregulation in the U.S. Rail Industry" (with Berndt, *et al.*), *Journal of Productivity Analysis*, 4, 127-144, 1993; "Rail Costs and Capital Adjustments in a Quasi-Regulated Environment" (with Friedlaender, *et al.*), *Journal of Transport Economics and Policy*, 131-152, May 1993; "Deregulation, Mergers and Cost Savings in Class I U.S. Railroads, 1974-1986" (with Berndt, *et al.*), *Journal of Economics and Management Strategy*, Vol. 1, No. 2, 1992

body of research focused significantly (though not exclusively) on rail consolidation and rail regulatory reform. I continue to conduct research on transportation issues generally, and rail issues in particular. I assessed structural and competitive issues relating to the assimilation of Conrail into CSX and Norfolk Southern, and the acquisitions by Canadian National Railway Company ("CN") of the Illinois Central Railroad Company and its affiliates: the Wisconsin Central Ltd. and its affiliates (together, "WC"); and the Duluth, Missabe and Iron Range Railway Company ("DMIR") and its affiliates, all before the Surface Transportation Board ("STB" or "Board").[33] I presented testimony before the Board during the ANPR phase of the Board's rulemaking on Major Rail Consolidation Procedures.[34]

I have extensive antitrust expertise and experience with respect, in particular, to the competitive ramifications of mergers and acquisitions. In the past ten years, I have conducted competitive analyses for over 100 proposed transactions. This work has spanned a broad array of industries, including: automobile manufacturing, grains and agricultural products, sugar, salt, fertilizers, chemicals, forestry products, machine tools, municipal waste, retail distribution, rail bed service equipment, petroleum and petroleum products, plastics, medical products and services, software, electronic funds transfer networks, lime, cement, computer and electronics manufacturing, and many others. In addition to the STB, I have presented my work before the United States Department of Justice (Antitrust Division), the Federal Trade Commission, the European

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[33] *See* Verified Statement of Dr. Christopher A. Vellturo, 1A Applicants' Rebuttal at 403-73, *Canadian Nat'l Ry – Control – Ill Cent Corp*, STB Finance Docket No. 33556 (filed Dec 16, 1998); Verified Statement of Christopher A. Vellturo, Ph.D., 1 Railroad Control Application at 233-283E, *Canadian Nat'l Ry – Control – Wisc Cent Transp Corp*, STB Finance Docket No. 34000 (filed Apr. 9, 2001); Verified Statement of Christopher A. Vellturo, Ph.D., Railroad Control Application at 65-153, *Canadian Nat'l Ry – Control Duluth, M & I R Ry*, STB Finance Docket No. 34424 (filed Nov. 5, 2003).

[34] Statement of Christopher A. Vellturo, Comments of Canadian National Railway at 67-100, *Major Rail Consolidation Procedures – Advanced Notice of Proposed Rulemaking*, STB Ex Parte 582 (Sub-No. 1) (filed May 16, 2000).

Commission. the Canadian Competition Bureau, the Board of Governors of the Federal Reserve System, and various state attorneys general. My curriculum vitae is provided as Attachment 1.

II. ASSIGNMENT AND CONCLUSIONS

I have been asked by CN to address the competitive ramifications of its proposed acquisition of the principal freight railroad assets of Elgin, Joliet and Eastern Railway Company ("EJ&E").[35] More specifically, I have been asked to evaluate whether there exists any identifiable set of customers – either traffic originators ("shippers") or recipients of products transported by rail ("receivers") – who would face higher prices or reduced service levels as a result of a reduction in competition in the provision of rail services by CN and the rail assets of EJ&E. I find that there will be no reduction in competition for any rail traffic as a result of the proposed transaction.

I examined the possibility for competitive interactions between CN and the EJ&E rail assets. The first element of my analysis considered whether shippers exist that are currently served by both railroads, and situations where the proposed transaction would reduce the number of rail options for such shippers from 2-to-1 or from 3-to-2. A review of a map of North American rail freight routes and their ownership structure clearly indicates that the proposed acquisition represents a combination that poses no threat to rail competition. I understand that Mr Gerald Radloff has conducted a study of the Official Railroad Station List and other industry information, and has determined that there is no shipper that will see its rail options reduced from 2-to-1 and no shipper that will see its

[35] In this proceeding, CN is seeking regulatory authority to acquire control of EJ&E West Company ("EJ&EW"), which is proposed to be created as a subsidiary of EJ&E and to which EJ&E proposes to transfer all of EJ&E's rail lines and related west of Buchanan Street in Gary, IN (plus the Dixie and hump leads near Kirk Yard in Gary). EJ&E would retain ownership of the remainder of its present rail lines and would be renamed the "Gary Railway." I understand that Gary Railway would continue to be owned by United States Steel Corporation ("USS") and would serve five customers in Gary, including the Gary Works of USS itself.

rail options reduced from 3-to-2 as a result of the proposed transaction. Given the absence of any significant competitive overlap for individual shippers, no economic analysis is necessary to conclude that the proposed transaction has no horizontal competitive effects, and I do not discuss any overlap shipper locations further

Second, I considered the potential for a reduction in geographic competition between CN and the EJ&E rail assets. Applicants asked that I examine geographic competition thoroughly, in order to provide the Board with a complete basis upon which to conclude that this Acquisition is "minor" under the Board's regulations, and that it should be approved. Geographic competition arises when two railroads provide transportation of a specific good that either is delivered to a common destination from a number of alternate sources served by the two railroads ("source competition" or "origin competition") or moves from a common point of origin to a number of destinations, where each of the two railroads participates in some segment of the move as originating, bridge, or terminating carrier ("destination competition").

With respect to source competition, I sought to determine if there exists any product where both the CN and EJ&E railroads originate, terminate, or otherwise handle a significant portion of the product destined for a common terminating BEA. I applied the same "50/10" screen to identify such potential source based issues as I applied when CN acquired WC. I discussed the screen extensively in my Verified Statement in that matter.[36] Specifically, I sought to identify product/destination pairs where each of the parties handled at least 10% of the traffic destined for a common BEA prior to the transaction, and the combined share of handled traffic by the combined firm after the transaction would be at least 50% Based on an analysis of statistics from the STB's Carload Waybill Sample, undertaken by Mr. Mark Hornung of ALK Technologies, Inc., according to my specifications, I understand that there are seventeen

[36] I provide a copy of my Verified Statement in the CN/WC proceeding as Attachment 2.

product/destination pairs that satisfy the 50/10 screen In every instance, I found that receivers at these destinations have access to very large volumes from alternative competitive sources for each relevant product (or, in one instance – that of STCC 3499904, iron or steel wheels, to Chicago, for which CN itself is the shipper – that CN and EJ&E are clearly not competing, and that in any event the portion of EJ&E not being acquired by CN (and which will be renamed the Gary Railway) will continue to handle the traffic independently, so that there will be no change in the competitive relationships between the railroads participating in the moves). These alternatives will continue to provide significant competitive discipline of the pricing and service level of the combined firm

With respect to destination competition, I sought to determine if there exists any product for which both the CN and EJ&E railroads originate, terminate, or otherwise handle a significant portion of the product originating from a common BEA. I applied the same "50/10" screen to identify such potential destination based issues. Specifically, I sought to identify product/origin pairs where each of the parties handled at least 10% of the traffic originating from a common BEA prior to the transaction, and the combined share of handled traffic by the combined firm after the transaction would be at least 50%. Based on an analysis of STB Waybill Sample statistics, undertaken by Mr. Mark Hornung of ALK Technologies, Inc., according to my specifications, I understand that there are twelve product/origin pairs that satisfy the 50/10 screen In every instance I found sufficient competition in the form of capacity divertible to those destinations to which shippers at the origin ship that any "across the board" price increase on originating shipments would be defeated by competition at the destinations (or, as in the case of STCC 3499904, iron or steel wheels, from Manitoba, that CN and EJ&E are clearly not competitors for the traffic at issue).

III. ANALYSIS OF SOURCE COMPETITION

A. Overview

As described in my Verified Statement in the CN/WC control proceeding, I used a "50/10" screen to identify product/destination pairs to in order to consider, more expansively, the potential competitive effects of CN's proposed acquisition of EJ&EW. I began by identifying specific product/destination pairs (*e g* , asphalt delivered to the Chicago BEA[37]) where CN and EJ&E originate, terminate, or otherwise handle a significant portion (as identified by a "50/10" screen, described below) of the product destined for the relevant geographic area.[38] For the purposes of this report, I defined as a candidate for a more complete competitive analysis any traffic terminating in a BEA for which each of CN and EJ&E in 2005 (the most recent year for which the STB Waybill Sample was

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[37] "BEA" refers to the Bureau of Economic Analysis (BEA) Economic Areas Before, 2004, the Bureau of Economic Analysis of the U.S. Department of Commerce had divided the continental United States into 172 BEAs (In 2004, the Bureau of Economic Analysis re-divided the continental United States into 179 BEAs.) The STB's Carload Waybill Sample for 2005, which was used for my analyses of geographic competition between CN and EJ&E, identifies origins and destinations by BEAs as defined before 2004; accordingly, the earlier BEA definitions are reflected in my analysis.

[38] Because CN is seeking to acquire, not all of EJ&E, but only that portion of EJ&E's lines being transferred to EJ&EW, the 50/10 screen would ideally have looked, not at all traffic originated, terminated, or handled by EJ&E, but only at traffic being handled to or from points to be served by EJ&EW, or over EJ&EW's lines. To put it another way, the screen should have excluded traffic to be handled by Gary Railway. This could only be done if it were possible to segregate traffic to and from the five customers to be served by Gary Railway from the rest of EJ&E's current traffic. The STB Waybill Sample, however, does not identify individual shippers, so traffic to and from those shippers could not be differentiated from traffic to other shippers in Gary, who after the Transaction would be served by EJ&EW. This means that in some cases, as will be seen below regarding iron or steel wheels to the Chicago BEA, and regarding coke from the New Orleans BEA, the 50/10 screen flagged a product/BEA pair in which the relevant EJ&E traffic would continue to be handled by the independent Gary Railway, independently of the combined CN/EJ&EW system, so that there could be no reduction in geographic competition for that traffic, even theoretically, after the combination.

available): (1) originated, terminated, or interchanged (henceforward "participated" in) 10% or more of the total carloads of a commodity delivered to the BEA, if the combined share calculated on this basis without double-counting CN or EJ&E participation[39] would have been 50% or more of total delivered volume, or (2) originated 10% or more of the total carloads of a commodity delivered to the BEA, if the combined originated share of the two roads would have been 50% or more; or (3) terminated 10% or more of the total carloads of a commodity delivered to the BEA, if the combined terminated share of the two roads would have been 50% or more.[40, 41]

I am, of course, using this so-called "50/10" analysis not to draw any final conclusions about competitive effects, but as a screen to identify traffic that warrants further analysis. Traffic identified by the 50/10 test may not be traffic for which CN and EJ&E are in fact the effective rail constraints on each other, any more than a number of other railroads moving large volumes of traffic that is competitive with the CN and EJ&E traffic. Moreover, as mentioned above, because the screen looks at all EJ&E traffic, where it would be more accurate to look only at traffic that would be handled by EJ&EW, it flags product/BEA pairs for which Gary Railway will continue to offer as effective geographic competition after the

[39] The screen for CN and EJ&E as participating railroad counted interline CN-EJ&E movements into the destination BEA toward both CN's and EJ&E's individual shares of movements in the product/destination pair at issue, but such movements were only counted once toward their combined share. In order to avoid double-counting, the sum of the two railroads' individual shares not only had to be at least 50%, but it had to be at least 10 percentage points higher than the greater of the two railroads' individual participation shares. (I discuss this point further in footnote 10 and Appendix A of my statement in the CN/WC proceeding.)

[40] I described my specifications for this screen in Appendix A of my Verified Statement in the CN/WC proceeding (Attachment 2). Among other things, that Appendix explained my definition of the relevant products and locations to be examined as 7-digit Standard Transportation Classification Codes ("STCC") and BEAs, rather than alternative product or geographic definitions.

[41] I sometimes refer to the destination BEAs involved in these flows as "DBEAs" or "50/10 DBEAs" and to the traffic flows defined by the combination of a commodity and the common DBEA as "product/DBEA pairs" or "50/10 product/DBEA pairs."

Transaction as EJ&E does now. In any event, the screen does not provide any indication of the extent of source competition after the Transaction from other railroads, modes, and sources, which is the critical point and which I examine extensively in a separate analysis.

B. Results of 50/10 Screen

The results of this screen, which I present generally in Attachment 3, indicate that there are few product/destination pairs where CN and EJ&E participate significantly in movements of the same product from different origins to the same destination.[42] Attachment 3 provides a list of the product/DBEA pairs that is generated after applying the participating, originating, or terminating 50/10 screen with respect to CN and EJ&E, and the number of relevant carloads shipped by CN and EJ&E for each pair. There are twelve product/DBEA pairs that are identified under the 50/10 screen when any CN/EJ&E participation in traffic moving to a DBEA is counted; an additional two product/DBEA pairs when CN and EJ&E shares as originating railroads of traffic moving to a DBEA are counted; and an additional

[42] Examples where the parties move products to a significant degree from the same origin BEA to the same destination BEA might be regarded as identifying possible issues of horizontal competition. The more fine-grained "2-to-1" and "3-to-2" assessments described above, however, would not have captured those examples unless it were shown that particular *shippers* in the origin BEA had the option of using CN or EJ&E to move the product to the specific destination. If, on the other hand, that assessment had been made, like the 50/10 screen, at the BEA level rather than the individual shipper level, then it would have concluded that the CN/EJ&EW Transaction presents no horizontal competitive issues, as Chicago – the only BEA served by both CN and EJ&E – is also served by BNSF, CP, CSX, NS, and UP, as well as several short line and regional railroads, making it at worst a "5-to-4" BEA. So conducting the horizontal competition assessment at the shipper level was a conservative (*i.e.*, overinclusive) approach.

On the other hand, a shipper-level analysis of geographic competition would have been impossible, because the STB Waybill Sample, needed to compute the railroads' percentage shares of total traffic in the flow at issue, does not identify individual shippers. The Waybill Sample would permit a 50/10 screen at the station (SPLC or FSAC) level, but my choice to conduct the screen at the BEA level was a more conservative approach, as each BEA typically contains many stations, and the use of the broader geographic area would be likely to identify more CN and EJ&E flows as warranting further analysis.

three product/DBEA pairs when CN and EJ&E shares as terminating railroads of traffic moving to a DBEA are counted.

As can be seen in Attachment 3, most of the 50/10 product/DBEA pairs involve combined CN/EJ&E traffic that represents relatively limited volumes with respect to the total traffic shipped by the parties. Only ten product/DBEA pairs involve traffic where the combined volumes of the two railroads amount to more than a carload a day (and only four have more than three carloads per day). I understand that the Board has stated that it must approve a transaction of this type "unless there will be adverse competitive impacts that are both 'likely' and 'substantial.'"[43] The small CN/EJ&E volumes within the 50/10 product/DBEA pairs indicate that this Transaction will not entail any such anticompetitive effects.

C. Critical Loss

Despite the insubstantial nature of these actual/potential interactions, CN asked me to conduct a detailed analysis of the potential for competitive harm As already indicated, the ultimate question one seeks to answer in assessing the competitive consequences of a proposed merger is whether the merged firm will have the incentive and ability, post-merger, to raise prices (or reduce service) Accordingly, for the product/DBEA pairs identified by the screen, I evaluated the ability (both actual and potential) of other providers of rail transportation services to prevent the combined firm (*i.e.*, CN after its acquisition of EJ&EW) from raising prices (or reducing service) after the proposed combination. Other providers of transportation services provide such competitive discipline if they collectively have the ability and incentives to take sufficient volumes from the

[43] *Fortress Inv Group LLC – Control – Fla E Coast Ry*, STB Finance Docket No 35031, slip op. at 4 (STB served Sept. 28, 2007); *accord, Kansas City S – Control – Kansas City S Ry*, STB Finance Docket No. 34342, slip op. at 16 (STB served Nov. 29, 2004); *Canadian Nat'l Transp Co – Control – Duluth, M & I R. Ry.*, STB Finance Docket No 34424, slip op. at 13 (STB served Apr. 9, 2004)

combined firm in the event of a price increase so as to render such an increase unprofitable.[44]

To find a price increase profitable, the combined firm must believe that the added contribution it will earn due to the higher price it will receive on the traffic it continues to carry after the price increase will be greater than the contribution it will lose as a result of some of the volume it currently serves moving to another provider (or ceasing to be moved) in response to the higher price. If the combined firm believes that its customers will seek to move a sufficient portion of their volumes to other providers and that these other providers have the capacity and incentive to take on this additional volume, then the losses associated with the price increase will be expected to exceed the benefit of the higher price earned on the retained volume This minimum sufficient volume that renders such a price increase unprofitable is commonly referred to in antitrust as the "critical loss " If the combined firm perceives that customer movements to others will exceed this "critical loss" then the merged firm will not have an incentive to raise prices after the combination. If the firm attempted an increase, it could not profitably sustain it. Thus, no anticompetitive harm can arise.[45]

Attachment 4 provides a detailed breakdown of the competitive analyses undertaken for each 50/10 product/DBEA pair. In every pair, I find that the proposed combination will pose no threat to competition. I discuss the specifics of my findings below. I begin with a general discussion of the information provided in Attachment 4, and how these data relate to my findings.

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[44] I did not systematically examine the competitive constraints offered by non-rail transportation modes (such as motor and water carrier), not because competition from those modes was necessarily insignificant, but because in almost every case rail competition alone was demonstrably sufficient to constrain the combined CN/EJ&EW, and it was more convenient to address the remaining cases individually.

[45] In Appendix B to my Verified Statement in the CN/WC proceeding (Attachment 2), I describe how I computed the critical loss for each product/DBEA pair identified by the 50/10 screen

Attachment 4 consists of three panels Each panel relates to flows of a commodity to a BEA. The first panel identifies participation-based 50/10 product/DBEA pairs. The second panel identifies originating-railroad-based 50/10 product/DBEA pairs above and beyond those identified as participating. The third panel identifies terminating-railroad-based 50/10 product/DBEA pairs above and beyond those identified as participating [46] (Each panel is organized in descending order by the combined CN/EJ&E volume in the product/DBEA pair.) The first three columns in Attachment 4 identify the 7-digit STCC product code and the DBEA under consideration. The data upon which I relied to determine whether a competitive analysis was warranted for each product/DBEA pair appear next. All 50/10 product/DBEA pairs involve movements where the post-merger share of traffic for the combined firm is at least 50%, and is at least 10 share points higher than either constituent firm's share prior to the combination As I have already noted, the CN/EJ&E volumes involved in these flows are generally small. I then determine the critical loss required to defeat a 5% price increase on shipments destined for the 50/10 product/DBEA under study. As I explained in Appendix B to my Verified Statement in the CN/WC control proceeding (Attachment 2), I evaluated the critical loss at a 50% marginal contribution and at an 80% marginal contribution, to provide a plausible range of critical loss values.[47]

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[46] In footnote 10 to my Verified Statement in the CN/WC proceeding (Attachment 2), I explain why the screen for originating and terminating shares is not redundant to the screen for participating shares.

[47] I have presented critical loss/divertible capacity analyses in the context of merger-related antitrust investigations in a wide variety of industries and to many antitrust/regulatory agencies. Industries where I have conducted critical loss/divertible capacity analyses include: paper, sugar, salt, fertilizers, chemicals, chemical derivatives, railroad equipment, textiles, television advertising time, and banking services (just to name a few) I have presented these analyses to the U.S. Department of Justice, the U.S Federal Trade Commission, the Board of Governors of the Federal Reserve System, the Federal Communications Commission, the Securities and Exchange Commission, and the European Commission, among others.

D. Competitive Alternatives and "Divertible Capacity"

Having identified candidate product/DBEA pairs for further analysis, and having identified the critical loss volumes under each relevant product/DBEA pair that would ensure that the merged firm will not have the incentive to raise price and harm customers post-merger, I then sought to determine the extent to which rivals have the ability and capacity to supply the traffic demands of a sufficient volume of traffic for each product/DBEA pair to impose the critical loss. To complete this level of the analysis I considered the available "divertible capacity" that could serve each relevant product/DBEA pair

The concept of "divertible capacity" identifies the potential entry/expansion of additional capacity into the location at issue. If the combined firm were to raise prices for a particular product/DBEA pair, it would create additional profit opportunities and incentives for other railroads (and other providers of transportation more generally) to capture additional volume at the destination BEA. To the extent that these railroads (and their customers) have ready access to additional volumes that are currently being transported to other destinations, these incentives will cause these railroads (and their customers) to divert these volumes into the targeted product/DBEA Where the available divertible capacity significantly exceeds the critical loss, it should deter the combined firm from raising its price, and would make it impossible for the combined firm profitably to sustain a price increase if it tried.[48]

Having determined the critical loss volumes, I computed available divertible capacities and compared them to the critical losses. If the divertible rail capacities significantly exceed the critical loss, then the ability of other railroads to divert traffic into the DBEA under study will provide sufficient competition, post-merger, to ensure continued competitive pricing by the combined firm I initially

[48] I explain the methodology to identify divertible capacity in Appendix C to my Verified Statement in the CN/WC proceeding (Attachment 2).

considered what for convenience I will call direct divertible capacity ("DDC") and computed the ratio of DDC to the critical loss

Historically, in critical loss-based analyses for mergers in other industries, I have sought to identify available divertible capacity of at least two to three times the critical loss to ensure sufficient post-merger competition. As a highly conservative measure in the present case, I conclude that available DDC is sufficient to obviate any further analysis if the DDC/critical loss ratio is at least ten.

E. Competitive Analysis of 50/10 Product/DBEA Pairs

As detailed in Attachment 4, the available DDC/critical loss ratio is at least ten in ten of the seventeen 50/10 product/DBEA pairs at issue. Indeed, in most of these pairs, the available DDC dramatically dwarfs the requisite critical loss. For example, for polystyrene to Chicago (which is the product/DBEA pair with the largest traffic flows), the 8,640 carloads of DDC are thirty times the critical loss (292 carloads), calculated from an assumed marginal contribution of 50% (the most conservative of the contribution assumptions that I employ). Asphalt by-product or liquid petroleum to Chicago is the second largest product/DBEA pair in terms of traffic flows For that pair, the almost 25,000 carloads of DDC are 96 times the critical loss of 260 carloads, again calculated on the most conservative contribution assumption. For the third largest product/DBEA pair, petroleum naphtha to Houston, the DDC is 30 times the critical loss of 196 carloads. These are by no means the largest ratios. Given the sizeable practical and readily available rail capacity that can be brought to bear on the 50/10 product/DBEA pairs, I conclude that the proposed combination would not enable the combined firm to raise prices anticompetitively.

For one of the 50/10 product/DBEA pairs (slabs, iron or steel, to St. Louis) in which the combined firm participates in less than 100% of the movements of a commodity to a DBEA, the ratio of DDC to critical loss, calculated on the conservative contribution assumption, is less than my conservative benchmark of 10 These are small volumes. In any event, as can be seen on Attachment 4, the ratios of

DDC to critical loss are still more than twice the ratios of two to three that I ordinarily deem sufficient. Available DDC for this traffic is thus significant and more than adequate to discipline pricing.

There is also a small group of low-volume product/DBEA pairs in which CN and EJ&E participate in 100% of movements of the commodity to the 50/10 DBEA and the DBEA is not a bottleneck. The combined CN/EJ&E volumes for each of these pairs involve less than a carload a day For this small subset of product/DBEA pairs, there was by definition no DDC because in 2005 no other railroad participated in movements of the 7-digit STCC to the DBEA. There was also one product/DBEA pair for which no DDC was available, and in which CN and EJ&E participate in a majority of the movements of the commodity to the 50/10 DBEA (87%), and the DBEA is not a bottleneck For these sets of traffic, and for the instance discussed above where the critical loss ratio was less than 10, we analyzed what I term supplemental divertible capacity ("SDC"). These SDC volumes are computed according to the criteria set forward in Appendix C to my Verified Statement in the CN/WC proceeding (Attachment 2) Generally, the methodology of the supplemental analysis is similar to that of the primary analysis. The main difference is that an origin can qualify as a source of divertible capacity if a railroad other than CN/EJ&E moved the relevant 4-digit STCC product group to the 50/10 DBEA, although not the same 7-digit product, so long as it is shipping that 7-digit STCC to some other BEAs from the same origins as the 4-digit STCC movements to the 50/10 DBEAs As with the DDC volumes, I compare the available SDC volumes with the requisite critical loss volumes. These ratios (where applicable) appear in the right-hand most columns of Attachment 4. As the results clearly indicate, except in one case, every remaining 50/10 product/DBEA pair has access to additional volumes that are more than enough to ensure competitive pricing by the combined firm, post-Transaction (As Gary L. Kolbe explains in his verified statement that accompanies the Application in this proceeding, the single exception, iron or steel wheels to Chicago, is one in which Gary Railway would continue to handle the EJ&E traffic at issue; as discussed above, there would therefore be no loss of

geographic competition for this traffic.) Thus, none of these remaining pairs pose any competitive problem.

One of the product/DBEA pairs identified in Attachment 4 involves Green Bay, WI as the DBEA. I understand from CN that Green Bay represents a CN bottleneck – CN is the only railroad with track serving the Green Bay BEA. As a bottleneck railroad, CN – prior to the Transaction – already must participate in all rail flows into and out of Green Bay. As a result, the proposed combination does not enhance the degree of control in rail service that CN has to or from Green Bay. With no change in the degree of control, no diminution in horizontal competition associated with the proposed combination can occur; therefore, I do not perform any divertible capacity analysis on this product/DBEA pair, which I identify with a "Yes" in the bottleneck column of Attachment 4.

The only potential for anticompetitive harm that could theoretically arrive in such bottleneck circumstances is the potential for vertical foreclosure. I discussed the absence of vertical foreclosure issues in rail movements (the "one lump" approach) in Section IV of my Verified Statement in the CN/WC proceeding (Attachment 2).

F. Conclusions

My analysis of those product/DBEA pairs that meet the 50/10 screen concludes that there is sufficient DDC or SDC available to thwart any potential anticompetitive price increases post-Transaction in relation to any shipments where the parties' participation in movements into a destination exceed the 50/10 screen.

IV. Analysis of Destination Competition

A. Overview

In "origin competition," I assess the potential for competitive issues to arise under the Transaction in instances where the parties both participate in rail traffic arriving at a given DBEA from (potentially) different OBEAs. Under "destination

competition," I assess the potential for competitive issues to arise where the parties both participate in rail traffic leaving a common OBEA that travels to different DBEAs.[49]

I began by identifying specific product/origin pairs (*e.g.*, broken or crushed natural stone originated from the Chicago BEA) where CN and EJ&E originate, terminate, or otherwise handle a significant portion (as identified by a "50/10" screen, described below) of the product originating from the relevant OBEA. For the purposes of this report, I defined as a candidate for a more complete competitive analysis any traffic originating from a BEA for which each of CN and EJ&E in 2005. (1) originated, terminated, or interchanged (henceforward "participated" in) 10% or more of the total carloads of a commodity originating from the BEA, if the combined share calculated on this basis without double-counting CN or EJ&E participation would have been 50% or more of total delivered volume; or (2) originated 10% or more of the total carloads of a commodity originating from a BEA, if the combined originated share of the two roads would have been 50% or more; or (3) terminated 10% or more of the total carloads of a commodity originating from a BEA, if the combined terminated share of the two roads would have been 50% or more.

The caveats I outlined in paragraph 10 with respect to source competition apply to destination competition as well.

B. Results of 50/10 Screen

The results of this screen, which I present generally in Attachment 5, indicate that there are few product/origin pairs where CN and EJ&E participate significantly in movements of the same product from the same origin to different destinations Attachment 5 provides a list of the product/OBEA pairs that is generated after applying the participating, originating, or terminating 50/10 screen with respect

[49] I sometimes refer to the origin BEAs involved in these flows as "OBEAs" or "50/10 OBEAs" and to the traffic flows defined by the combination of a commodity and the common OBEA as "product/OBEA pairs" or "50/10 product/OBEA pairs."

to CN and EJ&E, and the number of relevant carloads shipped by CN and EJ&E for each pair. There are five product/OBEA pairs that are identified under the 50/10 screen when any CN or EJ&E participation is counted. There are no product/OBEA pairs identified when CN and EJ&E acting as originating railroads in traffic originating at an OBEA are counted. Seven product/OBEA pairs are identified under the 50/10 screen when CN and EJ&E shares as terminating railroads of traffic moving from an OBEA are counted

As can be seen in Attachment 5, most of the 50/10 product/OBEA pairs involve combined CN/EJ&E traffic that represents relatively limited volumes with respect to the total traffic shipped by the parties. There are only seven product/OBEA pairs where the combined volumes of the two railroads amount to more than one carload a day (and only four have more than three carloads per day) The small CN/EJ&E volumes within the 50/10 product/OBEA pairs indicate that this Transaction will not entail any such anticompetitive effects.

C. Critical Loss and Competitive Alternatives

In the "origin competition" assessment, the relevant exercise to consider the competitive issues surrounding a product/DBEA pair was to determine whether sufficient alternatives existed at the DBEA such that any price increase hypothetically considered by the merging parties on all its incoming traffic to the DBEA would be defeated, as alternative sources of product currently moving into other destinations could be shifted into the DBEA at issue, ensuring that the potential volume losses associated with the price increase would exceed the "critical loss " In other words, recipients of product at the DBEA would have sufficient alternative sources to render such a price increase unprofitable, as the profits lost on diverted volumes would exceed any gains associated with the posited price increase.

In the "destination competition" assessment, the relevant exercise to consider is what competitive constraints exist that would prevent the combined system from raising prices on all traffic originating at the OBEA at issue. Because I am

addressing the risk of post-merger price increases on all of the traffic for the particular commodity originating at the OBEA at issue, I determined the critical loss by applying the critical-loss formula to all of that traffic. Correspondingly, as detailed below, I aggregated the "divertible capacity" for all of the destination BEAs[50] to determine if it exceeded the critical loss by the requisite ratio If it does, then any price increase on the traffic moving from that OBEA would likely be defeated.[51] In this context, the competitive alternatives at the DBEAs are still the focus of the divertible capacity analysis.[52]

I determined the critical loss required to defeat a 5% price increase on shipments originating from the 50/10 product/OBEA under study. I evaluated the critical loss at a 50% marginal contribution and at an 80% marginal contribution, to provide a plausible range of critical loss values.

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[50] As in my discussion of source competition, I sometimes refer to the destination BEAs involved in these flows as "DBEAs."

[51] When analyzing origin competition, it was only necessary to examine the possibility of diverting traffic into the single DBEA identified by the product/DBEA pair at issue. When analyzing destination competition, in contrast, it is necessary to examine the possibility of diverting traffic into the several DBEAs to which shippers from the OBEA identified in the product/OBEA pair at issue may be transporting the product identified in the product/OBEA pair.

I did not conduct a similar systematic calculation of divertible capacity for destination competition in the CN/WC proceeding, because the 50/10 screen applied in that case only identified four product/OBEA pairs, and CN witness Richard L. Bottorff demonstrated, through a narrative discussion, that rail divertible capacity and/or truck competition would be sufficient to prevent CN from profitably maintaining an anticompetitive price increase for any of the identified traffic flows after consummation of the CN/WC transaction Because the product/OBEAs flagged by the screen for destination competition in this case were more numerous, I determined that it would be more convenient to calculate divertible capacity than to provide a narrative discussion of each

[52] It is also possible that, in the face of the posited price increase, the originators of traffic at the OBEA could turn to alternative BEAs that are not DBEAs at present for that product code from that origin. This possibility is not assessed quantitatively in my analysis, since the competitive alternatives at the relevant destinations are more than adequate to ensure competition This additional competition at the origin provides further assurance that competitive issues will not arise.

D. "Divertible Capacity"

Having identified candidate product/OBEA pairs for further analysis, and having identified the critical loss volumes under each relevant product/OBEA pair that would ensure that the merged firm will not have the incentive to raise price and harm customers post-merger, I then sought to determine the extent to which rivals have the ability and capacity to supply the demands of a sufficient volume of traffic destined for the DBEAs served by the OBEA at issue to impose the critical loss. As noted above, to complete this level of the analysis I considered the available "divertible capacity" that could serve the DBEAs to which the combining railroads are currently transporting shipments of the relevant product from the OBEA at issue.

Having determined the critical loss volumes, I computed available divertible capacities and compared them to the critical losses. If the divertible rail capacities significantly exceed the critical loss, then the ability of other railroads to divert traffic into the destinations that the targeted product/OBEA pairs are currently serving should provide sufficient competition, after the combination, to ensure that the combined firm will be unable to raise rates to a supra-competitive level. I initially considered DDC and computed the ratio of DDC to the critical loss.

As above, as a highly conservative measure in the present case, I conclude that available DDC is sufficient to obviate any further analysis if the DDC/critical loss ratio is at least ten [53]

[53] I took care not to "double count" divertible capacity that could serve more than one of the DBEAs to which the combining railroads are transporting the relevant product from the OBEA at issue For example, if shipments from OBEA2 of the relevant product could be diverted to either DBEA1 or DBEA2 (which are served in this example by the parties out of the OBEA under consideration), the ability of this DDC to constrain prices across all relevant DBEAs at issue is limited to the total volume available for redirection. See Attachments 6 and 6A for a graphical illustration of this example. Attachment 7 details the algorithm used to derive DDC under destination competition. Attachment 8 details the algorithm used to derive SDC under destination competition

E. Competitive Analysis of 50/10 Product/OBEA Pairs

As with my analysis of origin competition, I find that the proposed combination will pose no threat to competition from a destination competition standpoint. Attachment 9 provides a detailed breakdown of the competitive analyses undertaken for each 50/10 product/OBEA pair.

For five of the relevant product/OBEA pairs, the DDC available to discipline pricing greatly exceeds ten. As a result, there are ample competitive disciplines in place to ensure the merged parties would find a post-transaction price increase for these products from these origins unprofitable.

The remaining product/OBEA pairs also present no issues from a competitive standpoint. While there is no DDC available for iron or steel slabs, in the rough (STCC 3312140), originating at the St. Louis BEA, there is SDC amounting to well over ten times the critical loss that would make a CN/EJ&EW rate increase for this traffic unprofitable. Similarly, there are large volumes of SDC available for polystyrene from the Greenville, MS BEA, railway track rails from the Chicago BEA and hydrogen peroxide from Ontario which would render a CN/EJ&EW rate increase for this traffic unprofitable. While there was apparently insufficient DDC or SDC for three remaining pairs,[54] CN witness Gary L. Kolbe explains in his verified statement, based on his examination of CN and EJ&E actual waybill data and discussions with CN and EJ&E personnel familiar with the traffic, that there would be no reduction in geographic competition as a result of the CN/EJ&EW Transaction. In the cases of coke from New Orleans and wheels for Manitoba, Mr. Kolbe explains that the 50/10 screen's identification of these product/OBEA pairs were false positives, because they were triggered by current EJ&E traffic that, after the CN/EJ&EW

[54] Natural stone, not elsewhere classified, broken or crushed, including chips, grouts, or spalls, other than limestone (STCC 1421990) originating in the Chicago-Gary-Kenosha, IL-IN-WI BEA, coke, not elsewhere classified, or coke, ground (STCC 2991490), originating in the New Orleans, LA-MS, BEA; and wheels, not elsewhere classified, iron or steel (STCC 349904) originating in Manitoba.

transaction, would continue to be handled by the independent Gary Railway Mr Kolbe also explains that CN's traffic in natural stone from the Chicago BEA all originates either at the Chicago Intermodal Terminal (and is thus subject to extensive competition from all railroads with intermodal facilities in the Chicago area), or from a single quarry near Kankakee. According to Mr Kolbe, CN does not see EJ&E as a competitive constraint on its rates or service from this quarry at all; the most immediate constraint is offered by NS, which also serves the quarry, or from trucks which carry a substantial percentage, in CN's estimate, of the stone that is originated at Chicago-area quarries and which is commercially substitutable for the stone originating at the single quarry served by CN.

F. Conclusions

My analysis of those product/OBEA pairs that meet the 50/10 screen concludes that there is sufficient DDC or SDC available to thwart any potential anticompetitive price increases post-transaction.

V. SUMMARY

I have examined competitive issues related to the proposed Transaction between CN and EJ&EW It is clear to me that the Transaction will have no anticompetitive effects.

VERIFICATION

I, Christopher A. Vellturo, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on October 29, 2007

Christopher A. Vellturo

Attachment 1

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CHRISTOPHER A. VELLTURO
President

Over the course of his career, Dr. Vellturo has performed a wide variety of economic and econometric analyses and provided expert testimony in the context of mergers and acquisitions, antitrust litigation, intellectual property litigation and numerous other matters spanning a broad array of industries. Dr. Vellturo has testified on economics-related matters in numerous U.S. District Courts, as well as at the Canadian Competition Bureau, and the American Arbitration Association. He has appeared before the U.S. Department of Justice, the Federal Trade Commission, various states' Attorneys General offices, the Federal Reserve Bank Board of Governors, and numerous other regulatory agencies on merger-related issues and other antitrust matters. Dr. Vellturo has also made appearances at hearings before the European Commission, and other antitrust enforcement agencies around the world. To date, he has performed economic analyses in over one hundred merger matters, in excess of seventy antitrust actions and well over one hundred intellectual property actions.

Prior to forming Quantitative Economic Solutions, LLC (QES), Dr. Vellturo was a Principal at Analysis Group/Economics (AG/E) and a Senior Vice President and member of the Board of Directors at National Economic Research Associates (NERA).

Dr. Vellturo has published on a variety of topics, including merger and acquisition-related efficiencies, price discrimination, differentiated product analysis and market definition. His research has appeared in leading academic journals, including *Antitrust*, the *Antitrust Law Journal*, and the *Journal of Economics and Management Strategy*. Dr. Vellturo is a recipient of the Bradley Fellowship in Public Economics and has served as a referee for *American Economic Review* and *Rand Journal of Economics*.

A Ph.D. graduate in Economics from the Massachusetts Institute of Technology, Dr. Vellturo also holds a Sc.B. in Applied Mathematics and Economics from Brown University, where he graduated *magna cum laude* and *Phi Beta Kappa*.

EDUCATION

1989 Ph.D. in Economics, Massachusetts Institute of Technology
Primary Fields: Econometrics, Industrial Organization
Secondary Fields. Public Finance, Game Theory, Law and Economics

1983 Sc.B. in Applied Mathematics and Economics (*magna cum laude*), Brown University

PROFESSIONAL EXPERIENCE

2002-Present **Quantitative Economic Solutions, LLC**
President/Manager – Direct research on microeconomic issues in litigation and non-litigation matters. Areas of particular focus include: antitrust, regulation, and damages assessment in intellectual property and contract matters.

2000-2002 **Analysis Group/Economics**
Principal - Direct research and provide expert testimony on a variety of microeconomic issues with particular emphasis on antitrust, intellectual property, and mergers and acquisitions. Expert reports and testimony presented in U.S. District Court. Presented antitrust economic analyses to Federal Trade Commission, U.S. Department of Justice, Federal Reserve Bank Board of Governors and the European Commission.

1996-2000 **National Economic Research Associates, Inc.**
Senior Vice President (1999-00)
Vice President (1996-99)

1991-1996 **Cambridge Economics, Inc.**
Director - Directed research and provided expert testimony on a variety of microeconomic issues with particular emphasis on antitrust, intellectual property, and mergers and acquisitions. Prior expert testimony provided in U.S. District Court and before the American Arbitration Association. Presented antitrust economic analyses to U.S. Department of Justice, Federal Trade Commission (Antitrust Division), state Attorneys General offices, and the Federal Reserve Bank Board of Governors.

1989-1991 **National Economic Research Associates, Inc.**
Senior Consultant - Directed and performed research relating to issues of antitrust, intellectual property, mergers and regulation.

1987 **Department of Economics, M.I.T.**
Teaching Assistant - Undergraduate econometrics.

1985-1989 **Dean Ann F. Friedlaender, M.I.T.**

Research Associate - Participated in research relating to transportation pricing and capital allocation responses to regulatory changes.

1983-1985 **National Economic Research Associates, Inc.**
Research Associate - Conducted research on a wide variety of issues including antitrust, railroad rate setting, optimal landfill pricing, and PCB and asbestos abatement strategies.

AWARDS AND PROFESSIONAL ACTIVITIES

1987-1989	Recipient, Bradley Fellowship in Public Economics
1986	M.I.T. Departmental Fellowship
1983	Phi Beta Kappa, Brown University
1983	Sigma Xi, Brown University
Present	Journal Referee for *American Economic Review* and *Rand Journal of Economics*
Present	Member, American Economic Association
Present	Member, American Bar Association

TESTIFYING HISTORY (PAST FOUR YEARS)

- *Sandata Technologies, Inc. v. Infocrossing, Inc.*
  U.S. District Court, Southern District of New York, Civil Action No. 05-CV-9546.

- *DePuy AcroMed, Inc. and Biedermann Motech GMBH v. Medtronic Sofamor Danek, Inc., f/k/a Sofamor Danek Group, Inc. and Medtronic Sofamor Danek, U.S.A. Inc.*
  U.S. District Court, District of Massachusetts, Civil Action No. 01-CV-10165 (EFH).

- *TV Guide Online, Inc. and TV Guide Online, LLC v. Tribune Media Services, Inc.*
  U.S. District Court, District of Delaware, Civil Action No. 05-CV-725-KAJ.

- *In Re. Polyester Staple*
  U.S. District Court, Western District of North Carolina, Charlotte Division, MDL Docket No. 3:03-CV-1516.

- *Merit Industries, Inc. v. JVL Corporation*
  U.S. District Court, Eastern District of Pennsylvania, Civil Action No. 03-CV-01618-TJS.

- Testimony before the Texas House of Representatives Committee on Regulated Industries in connection with Senate Bill 896.

- *Rochester Medical Corporation v. C.R. Bard Inc , Tyco International (US) Inc., Tyco Healthcare Group LP, Novation LLC, VHA Inc., Premier Inc., and Premier Purchasing Partners*
  U.S. District Court, Eastern District of Texas, Texarkana Division, C.A. No. 504-CV-060.

- *Smith Kline & French Laboratories, Ltd. and SmithKline Beecham Corp. d/b/a GlaxoSmithKline v Teva Pharmaceuticals USA, Inc.*
  U.S. District Court, District of Delaware, Civil Action No. 05-197.

- *Massachusetts Institute of Technology v. Harman International Industries, Inc.*
  U.S. District Court, District of Massachusetts, Civil Action No. 05-10990-DPW.

- *Tessera, Inc v. Micron Technology, Inc., Micron Semiconductor Products, Inc., Infineon Technologies AG, Infineon Technologies Richmond, LP, Infineon Technologies North America Corp., Qimonda AG*
  U.S. District Court, Eastern District of Texas, Marshall Division, Civil Action No. 2-05cv-94.

- *Gary D. Carter and Mary Elaine Carter v. CSX Transportation, Inc.*
  U.S. District Court, Western District of Kentucky, Louisville Division, Case No. 3:04-CV-487-S.

- *Anthony Park, Individually on Behalf Of Himself and On Behalf of All Others Similarly Situated v. The Thomson Corporation and Thomson Legal and Regulatory, Inc.*
  U.S. District Court, Southern District of New York, Case No. 05 Civ. 2931 (WHP).

- *Merck & Co., Inc. v Teva Pharmaceuticals USA, Inc.*
  U.S. District Court, District of Delaware, Civil Action No. 04-939.

- *Wavetronix, LLC v. Electronic Integrated Systems, Inc*
  U.S. District Court, District of Utah, Central Division, Civil Action No. 2:05 CV 00073 BJS.

- *Richard Lee Young and Tonya Young v. CSX Corporation, CSX Transportation, Inc., Dick Spatafore, and Bobby Ambrose*
  Circuit Court of Kanawha County, West Virginia, Civil Action No 03-C-2837.

- *WeddingChannel.com Inc. v. The Knot, Inc. and The Knot, Inc. v WeddingChannel.com Inc.*
  U.S. District Court, Southern District of New York, Civil Action No. 03 CV 7369 (RWS).

- *Advanced Technology Materials, Inc. v. Praxair, Inc. and Praxair, Inc. v. Advanced Technology Materials, Inc.* and *Praxair, Inc. and Praxair Technology, Inc. v. ATMI, Inc. and Advanced Technology Materials, Inc.*
  U.S. District Court, Southern District of New York, Civil Action No. 03 CV 5161 (RO) and U.S. District Court, District of Delaware, Civil Action No.: 03-1158-SLR.

- *In the Matter of the Arbitration Between Celanese LTD., et al., and JO Tankers AS, et al.*

- *Cross Medical Products, Inc v. Medtronic Sofamor Danek, Inc and Medtronic Sofamor Danek U.S.A. and Medtronic Sofamor Danek, Inc., Medtronic Sofamor Danek U.S.A. and SDGI Holdings, Inc v. Cross Medical Products, Inc*
  U.S. District Court, Central District of California, Southern Division, Case No. SACV 03-110 GLT (ANx).

- *Robert Bosch GMBH v. TRW Automotive, Inc., TRW Vehicle Safety Systems Inc., and TRW Automotive U.S. LLC*
  U.S. District Court, District of Arizona, Case No.: CIV-03-0045 PHX FJM.

- *Honeywell International Inc. against The GetPaid Corporation, a/k/a/ GetPaid Software, a/k/a Software Experts, Inc.*
  American Arbitration Association, Case No: 18 133 00073 03.

- *Samsung Electronics Co., Ltd. v. Tessera Technologies, Inc. and Tessera, Inc. and Tessera Technologies, Inc. v. Samsung Electronics Co., Ltd., Samsung Electronics America and Samsung Semiconductor, Inc.*
  U.S. District Court, Northern District of California, Oakland Division, Case No. C 02-05837 CW.

- *Merck & Co., Inc. and Merck Frosst Canada & Co. v. The Minister of Health and Novopharm Ltd.*
  Canada Federal Court, Federal Court File No. T-1627-03.

- *Verizon California Inc., a California Corporation v. Ronald A. Katz Technology Licensing, L.P., a California limited partnership*
  U.S. District Court, Central District of California, Case No. 01 CV-09871 RGK (RCx).

- *Massachusetts Eye and Ear Infirmary v. Novartis Ophthalmics, Inc. and QLT, Inc., QLT, Inc. v. Massachusetts Eye and Ear Infirmary, Evangelos S. Gragoudas, M D and Joan W. Miller, M D., The General Hospital Corporation v. Massachusetts Eye and Ear Infirmary, Evangelos S. Gragoudas, M.D. and Joan W. Miller, M.D.*
  U.S. District Court, District of Massachusetts, Civil Action No. 01-10747-EFH.

- *Milliken & Company v. Mohawk Industries, Inc , et al./ Shaw Industries Group, Inc., et al./ Interface, Inc., et al.*
  U.S. District Court, District of South Carolina, Spartanburg Division, Civil Action Nos. 7-02-3631-20/7-02-3632-20/7-02-3633-2.

- *Torah Soft, Ltd. v. Michael Drosnin*
  U.S. District Court, Southern District of New York, 2000 Civ.: 0676 (JCF).

- *Dresses for Less, Inc., DFL Management Inc , The DFL Apparel Group, an unincorporated association, Allison-Che' Fashions, Inc., Bicci Studio Ltd., Garden City Dresses for Less, Inc , Donald Weiner and Barbara Weiner, individually and derivatively as shareholder of Stella N. Bishop Fashion Corp., and I.S B. Fashions Corp. v. CIT Group/Commercial Services, Inc. and The Uptown Credit Group, Inc.*
  U.S. District Court for the Southern District of New York, C.A. No. 01 CIV. 2669 (WHP).

- *First Citizens Bank and Trust Company of South Carolina, as Conservator for Alex Compton, a minor and Alex Reid Compton and Lisa Compton, in their individual capacity, as the natural parents of Alex Compton, a minor v. CSX Transportation Inc.*
  U.S. District Court, District of South Carolina, Anderson Division, Civil Action File No. 8-01-4613-20.

- *Merck & Co., Inc v. Teva Pharmaceuticals USA, Inc.*
  U.S. District Court, District of Delaware, Civil Action No. 01-0048 –JJF.

- *The Toro Company v. White Consolidated Industries, Inc. and WCI Outdoor Products, Inc* U.S. District Court, District of Minnesota, Civil Action No. 4-95-656.

PUBLICATIONS AND PRESENTATIONS

"Differentiated Products" in *Issues in Competition Law and Policy*, ed. D. Wayne Collins, American Bar Association, *forthcoming*

"When Fraud on the Patent Office Violates Section 2: A Mock Trial." Presented at the 52nd Annual Spring Meeting of the ABA Section of Antitrust Law, Washington, DC, April 1, 2004

"What Drives Consolidation?" Presented at the 28th Semiannual Members Meeting MIT/CRE, Cambridge, MA, May 14, 1998.

"Proving Unilateral Effects and Efficiencies in Merger Cases: A Demonstration." Presented at the 46th Annual Spring Meeting of the ABA Section of Antitrust Law, Washington, DC, April 1, 1998.

"Creating An Effective Diversion: Evaluating Mergers With Differentiated Products," *Antitrust*, Spring 1997.

"Economic Battles in the Antitrust Wars: Network Industries and Their Relevance to Antitrust in the Computer Industry." Presented at the Washington State Bar Association's Thirteenth Annual Antitrust, Consumer Protection and Unfair Business Practices Conference, November 8, 1996.

"Differentiated Products: New Tools for New Methods." Presented at NERA's Seventeenth Annual Antitrust & Trade Regulation Seminar, Santa Fe, NM, July 5, 1996.

"Market Definition Under Price Discrimination" (with J. A. Hausman and G. K. Leonard), Antitrust Law Journal, Vol. 64, No. 2 (Winter 1996).

"Learning-by-Doing in the Context of Antitrust Analysis" (with J. Hausman), April 1995.

"An Economic Analysis of ATM Surcharging," prepared for Southeast Switch Inc., October 5, 1995.

"Deregulation, Mergers and Cost Savings in Class I U.S. Railroads, 1974-1986" (with Berndt, *et al.*), Journal of Economics and Management Strategy, Vol. 1, No. 2, 1992.

Exhibit 21

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC.

—CONTROL—

KANSAS CITY SOUTHERN; THE KANSAS CITY SOUTHERN RAILWAY COMPANY; GATEWAY EASTERN RAILWAY COMPANY; AND THE TEXAS MEXICAN RAILWAY COMPANY

VERIFIED STATEMENT

OF

STEVEN C. SALOP

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1. Qualifications and Assignment

1.1 Qualifications

1. I am Professor of Economics and Law and Georgetown University Law Center, where I teach courses in antitrust economics and law. I am also a Senior Consultant at Charles River Associates. My research and consulting focuses on antitrust, competition and regulation. I have written articles in various areas of antitrust and competition economics, law and policy with various co-authors. These articles have analyzed various economic, policy and legal issues in vertical and horizontal mergers, joint ventures, exclusionary and coordinated conduct. I have also written articles with various co-authors on the competitive effects of imperfect information, oligopoly interaction, network effects and monopolistic competition.

2. My work on the economic analysis and competitive effects of vertical mergers, as well as vertical merger enforcement policy and law, includes articles with various co-authors published in the American Economic Review, Yale Law Journal, Antitrust Law Journal, and the Review of Industrial Organization, among others. I was the lead panelist on the Vertical Merger panel at the FTC antitrust hearings in 2018. Along with several co-authors, I provided comments on the draft Vertical Merger Guidelines in March 2020. I have also written about the shortcomings of those Guidelines, which are now in the process of being revised. I have provided economic consulting on numerous vertical mergers with the Antitrust Division of the Department of Justice, merging parties, and third parties concerned with adverse competitive effects of specific vertical mergers.

3. I earned a BA degree at University of Pennsylvania, Summa Cum Laude in 1968 and a PhD in Economics from Yale University in 1972. Before joining the faculty of the Georgetown Law Center, I was a staff economist at the Federal Reserve Board, the Civil Aeronautics Board, and the Federal Trade Commission (FTC). At the FTC, I also served as the Assistant Director for Industry Analysis and the Associate Director for Special Projects. I have been honored with lifetime achievement awards from the Association of American Law Schools (AALS) Section on Antitrust & Economic Regulation (in 2019) and the American Antitrust Institute (in 2010). My Curriculum Vitae is attached at Appendix A.

1.2 Assignment

4. I am providing this statement at the request of Union Pacific Railroad Company (UP) in connection with the Surface Transportation Board's review of the proposed acquisition of control of Kansas City Southern (KCS) by Canadian Pacific (CP). I have been asked to focus on the effects of the transaction on competition for rail movements between the United States and Mexico through the Laredo gateway. UP relies on a KCS subsidiary, Kansas City Southern de México (KCSM), to transport a significant amount of U.S.-Mexico cross-border rail traffic south of Laredo.

5. I have been asked by counsel for UP to address several issues: (a) the applicability of the one-lump theory to the proposed merger; (b) whether the proposed merger raises substantial concerns of causing anticompetitive effects from foreclosure; and (c) whether there is an administrable methodology that the Board could require the post-merger firm to employ in order to set commercially reasonable interline rates, to prevent anticompetitive foreclosure.

2. Introduction and Executive Summary

6. This proceeding involves the proposed combination of CP and KCS. CP's network in Canada extends from the Port of Vancouver on the Pacific Coast to the Port of Saint John on the Atlantic Coast, and its network in the United States includes connections to Minneapolis, Chicago, Detroit, and Kansas City. KCS's operations center is in Shreveport, and its lines extend north to Kansas City, west to Dallas, east to Meridian, southeast to New Orleans, and south to Beaumont, Corpus Christi, the Laredo gateway, and Mexico. The rail networks of KCS and CP connect at Kansas City.

7. KCSM operates between Laredo (and Brownsville) and the industrial heartland of Mexico under a franchise obtained from the Mexican government. In 2005, KCS acquired a controlling interest in KCSM's predecessor, Transportación Ferroviaria Mexicana (TFM). At about the same time, KCS acquired control of the Texas Mexican Railway (TM). TM had rights to operate on UP lines between a connection with KCS in Beaumont and Corpus Christi, and TM owned its own line between Corpus Christi and Laredo.

8. UP has routes throughout the western United States, including an independent route between Laredo and the Upper Midwest. UP owns a 26% passive interest in Ferrocarril Mexicano (FXE), but has no control over FXE's operations or pricing.

9. UP and KCSM interchange a substantial amount of traffic at Laredo, including large quantities of finished automobiles and automobile parts moving between Mexico and the Upper Midwest. UP does not have its own rail lines in Mexico, and relies on KCSM's lines. At the same time, KCS's route north of Laredo is less efficient than UP's, and KCS does not have lines serving the Upper Midwest. KCS also has an alternative to UP: it moves traffic between Laredo and Corpus Christi, where it interchanges with BNSF Railway. BNSF has its own extensive network in the western United States. Shippers also can use KCS to move traffic between Laredo and Kansas City, where KCS can hand it off to CP. KCS also connects with other railroads at other points on its network.

10. In seeking authority to merge, CP and KCS emphasize the combined company's potential ability to divert a significant amount of traffic from KCSM-UP routes and KCSM-KCS-BNSF routes to single-line routes of the combined railroad (CPKC). My analysis mainly focuses on how CPKC can achieve such diversion by foreclosure arising from higher rates being charged to customers of carriers interlining with KCSM on movements between Mexico and the U.S., via the Laredo gateway.

11. Although the Board has traditionally relied on the "one-lump" theory to presume that end-to-end mergers are procompetitive, my economic analysis summarized in this report leads to the conclusion that the one-lump theory does not support such a presumption in this matter. Modern economic theory has recognized that the one-lump presumption does not apply under certain market conditions, in particular, when (a) the market participants sell differentiated products (i.e., products that shippers do not view as perfect substitutes at equal rates), or (b) the carriers set their rates based on imperfect information about each other's costs and rates. Both of these deviations from the conditions that are necessary to sustain the one-lump theory are present in the markets that will be affected by the proposed transaction. My report provides a series of models and examples based on the economics literature to illustrate these market conditions under which the theory does not apply and the impact that deviations from those conditions will have on the reliability of the presumption in this matter.

12. When the one-lump theory does not apply, an end-to-end merger between a monopoly carrier on one segment and one of the competing carriers on the other segment may have anticompetitive effects. I further conclude that this merger raises serious concerns about the likelihood of such effects on rates and service for shippers using the Laredo gateway. Absent an effective remedy, the merged firm will have both the incentive and the ability to implement anticompetitive strategies that foreclose competitors such as UP and BNSF that rely on interlining with KCSM. Specifically, CPKC will have the incentive and ability to drive traffic to CPKC by raising the rates that KCSM charges for interline movements on

routes where KCSM has an effective monopoly and CPKC competes with UP. As a result of the merger, foreclosure will generate incremental revenue and profits earned by the merged firm on those routes where KCS can interline with CP, over and above what KCS would earn before the merger if it foreclosed UP and BNSF with higher rates. By foreclosing competition from UP and BNSF with these higher rates, CPKC also will be able to raise its own rates and harm shippers. Thus, the post-merger foreclosure incentives rise above the level of any pre-merger incentives.

13. The evidence presented later in this report indicates substantial foreclosure concerns from the proposed CPKC merger. Two examples focused on movements between Chicago and Mexico of finished automobiles and automobile parts show that a hypothetical foreclosure strategy of KCSM charging UP prohibitive rates for these interline movements would be profitable for the merged firm. The merged CPKC would have an increased incentive and ability to raise KCSM interline rates due to the addition of the revenue and profits earned on the CP portion of diverted shipments.

14. Applicants attempt to allay concerns about foreclosure through the expert report of Dr. Robert Majure. He concedes that an end-to-end merger is capable of impairing competition in some circumstances. But Dr. Majure does not describe or explain those circumstances, nor does he analyze foreclosure concerns in depth to demonstrate that those concerns are not present here. Instead, Dr. Majure seems to assume that there must be *no incentive* for a vertically integrated monopolist to foreclose in this case because it must already be capturing all the monopoly profits without foreclosure and without the merger. But Dr. Majure provides no data or analysis to support that assumption. Instead, he attempts to dismiss the possibility of foreclosure by claiming that the prior acquisition by KCS of TM and KCSM's predecessor, TFM, which brought KCS control of the Laredo gateway, did not result in foreclosure. But the only data that Dr. Majure provides to support this claim is a snapshot of northbound traffic shares from 2019, fifteen years after the merger. Dr. Majure's analysis of that limited data sample lacks probative value, however, because it is equally consistent with a finding of "some foreclosure" as with "no foreclosure." Dr. Majure specifically does not address whether the shares he observes would have been different but-for the merger. He also fails to explain why the merger would not increase the foreclosure incentives in light of the ability to capture additional revenue and profits on the CP portion of diverted movements.

15. Dr. Majure also asserts that a vertically integrated merged carrier would have no *ability* to foreclose an unintegrated rival carrier to the detriment of shippers, if that rival can obtain interline service from another unintegrated carrier. To support this assertion, Dr. Majure suggests that shippers could discipline anticompetitive behavior by a post-merger KCSM by

turning to FXE for movements between Mexico and the U.S. However, he offers no evidence that FXE actually provides a viable option for all (or even most) shippers using KCSM. He also fails to address Applicants' economic incentive to raise rates on interline routes, even when shippers might feasibly use FXE, because he fails to acknowledge that CPKC could reasonably anticipate that FXE would raise its own rates in response, thus accommodating CPKC's rate increase and providing CPKC with a reinforcing incentive to raise its rates.

16. Applicants' witnesses Brown and Zebrowski state that the merged firm will be able to divert traffic from UP and others by reducing its costs and increasing its service quality.[1] Their formulation also essentially concedes an ability to foreclose. That is, if a merged firm with a monopoly on one segment can divert traffic by reducing its own costs, then it normally also can divert traffic by raising its rivals' costs. Reducing its own costs allows the firm to gain traffic by decreasing its rates, while raising rivals' costs allows the firm to gain traffic by causing the rivals to increase their rates. After the merger, CPKC can raise rivals' costs by raising the rates it charges for interline movements with those rivals.

17. Vertical mergers can also lead to downward pricing pressure from elimination of double marginalization (EDM). However, to whatever extent EDM may be a significant factor in this matter — and Applicants' submissions, including Dr. Majure's statement, do not suggest that it will be a significant (if any) factor — there is no reason to expect that any such downward pricing pressure from EDM would completely offset and reverse the upward pricing pressure from foreclosure incentives. Although Applicants' experts Brown & Zebrowski have claimed that the merger will result in efficiency benefits, they also assume that diversions from competing interline routes will not be the result of rate decreases. Moreover, UP witnesses have opined that the efficiencies that the parties claim from the transaction are overstated and that the merged firm will have to grow their single-line traffic and revenues by foreclosing, rather than by increasing competition.[2]

18. If the Board is inclined to approve the transaction, it would need to impose a remedy to prevent such harms. One potential behavioral remedy would be to require that when a shipper asks the merged firm to provide a rate for KCSM service that could be used as part

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[1] *Verified Statement of Richard W. Brown and Nathan S. Zebrowski* (October 29, 2021) (*hereinafter*, Brown & Zebrowski V.S.) at ¶¶5, 7, 11 in CPKC Application, *Canadian Pac. Ry. Corp.—Control & Merger—Kansas City. S.* (F.D. 36500) (*hereinafter*, APP).

[2] *See generally Verified Statement of Thomas C. Haley* (February 25, 2022) (*hereinafter,* Haley V.S.); *Verified Statement of Kenny Rocker and John Turner* (February 27, 2022) (*hereinafter*, Rocker & Turner V.S.). These statements, along with this one, are being submitted as part of Union Pacific's Comments on the APP.

of an interline rate with UP and a rate for CPKC single-line service on a competitive origin-destination route, the merged firm must provide the shipper a rate for KCSM service using the type of formula presented in this report for developing competitively reasonable Rule 11 rates. The Board should also protect against non-rate-based methods of foreclosure by requiring the merged firm to refrain from unilaterally changing operations affecting interline traffic moving via the Laredo gateway.

19. Specifically, I suggest that the Board consider the following administrable, readily enforceable formula for developing competitively reasonable Rule 11 rates: The Applicants state that "when a customer requests a rate for only the former-CP or former-KCS portion of an origin-to-destination routing, we will provide the shipper with a Rule 11 rate to the gateway."[3] Using this language, when a shipper asks CPKC to provide a rate for CPKC service on only former-CP or former-KCS/KCSM portions of an origin-to-destination route, and a rate for CPKC single-line service on a competitive route, the merged firm must provide a Rule 11 rate for the former-CP or former-KCS/KCSM portions that reflects a mileage-based prorate of its CPKC single-line rate. The prorate would be equal to the ratio of (a) the miles of the merged firm from the origin point to the interchange point to (b) the miles of the merged firm from the origin to the interchange *plus* the miles of the merged firm from the interchange point to the destination point. As I explain in detail below, this remedial approach allows the merged firm and shippers to obtain the benefits of the transaction, while at the same time protecting shippers from harm.

20. The remainder of this report is organized as follows. Section 3 explains why modern economic analysis rejects the one-lump theory in the circumstances presented by the proposed transaction. It also sets out general conditions under which end-to-end mergers have anticompetitive effects and the reasons why there are serious concerns of anticompetitive effects on routes where there is a monopolist on one segment and competition on the other, so that a procompetitive policy presumption would not be appropriate in this matter. Section 4 briefly explains why modern economic analysis does not support the view that the presence of a competing interline option like FXE would eliminate the ability and incentive of an integrated carrier to foreclose competition from a downstream rival. Section 5 provides empirical analysis that confirms that the merger raises substantial foreclosure concerns. Section 6 explains why Dr. Majure's analysis of the likely competitive effects of the proposed CPKC merger lacks probative value. Section 7 describes a prescribed formula for developing commercially reasonable Rule 11 rates for the monopoly segment of interline movements. The Appendices present details of the technical

[3] APP., *Verified Statement of John Brooks* (October 29, 2021) (*hereinafter*, Brooks V.S.) at ¶46.

economic analysis and models, as well as my Curriculum Vitae and a list of materials relied upon.

3. Modern Economic Analysis Rejects the Application of the One-Lump Theory to the Proposed Merger

21. The Board historically has relied on the "one-lump" theory to presume that end-to-end mergers with a monopolist in one segment and competition in the other segment will *not* cause competitive harm. In fact, the theory assumes that an end-to-end merger will have no economic effects on profits or rates. In analyzing petitions in opposition to the merger of the Burlington Northern Railroad and the Atchison, Topeka and Santa Fe Railway in 1997, the D.C. Circuit characterized the one-lump theory as a "broadly accepted economic proposition."[4] However, as discussed in detail in this section, the one-lump theory is not broadly accepted today. In fact, modern economic analysis makes it clear that it applies only under very limited market conditions that are not present in the case of the CPKC merger.

22. The economic underpinning of the one-lump theory in rail transport is the so-called "single monopoly profit" theory developed in the early industrial organization economics literature analyzing tying[5] and then applied to vertical mergers.[6] In this economic model applied to vertical mergers, one firm has a monopoly in producing an "input," while there is perfect competition among the competing firms, (*i.e.*, two or more firms with perfect information producing an undifferentiated (homogeneous) "output") that use the input and sell that output to consumers.[7] According to this theory, the monopolist would not need to acquire one or both of the competitors in the output market in order to be able to extract all of its input monopoly profits from consumers. That is, the acquisition does not change anything,

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[4] Western Resources, Inc. v. Surface Transp. Bd., 109 F.3d 782, 788 (D.C. Cir. 1997).

[5] Ward S. Bowman, *Tying Arrangements and the Leverage Problem*, 67 YALE L. J. 19 (1957). *See* also Aaron Director & Edward H. Levi, *Law and the Future: Trade Regulation*, 51 NW. U. L. REV. 281 (1956); M.L. Burstein, *The Economics of Tie-in Sales, 42* REV. ECON. & STAT. 68 (1960).

[6] R.H. Bork, THE ANTITRUST PARADOX 229 (1978).

[7] The logic of this "vertical" merger model also applies to mergers of complementary products. In that version, there is a monopoly producer of one of the complements and multiple competitors for the other complement. Consumers purchase a bundle of the two complementary products.

absent efficiencies, because there is only "one lump" of monopoly profits that can be extracted by the monopolist, and it can do so either with or without the acquisition.[8]

23. Even assuming that the theory could apply in some circumstances, it is important to recognize that the theory relies on several very restrictive assumptions about markets that greatly limit its applicability to transactions such as the proposed CPKC merger. Modern academic work has confirmed these limitations.[9] As detailed in this report, when there is an upstream monopolist, there are market conditions in which the single monopoly profit theory is upended. These involve conditions under which the competing downstream firms earn a positive margin over costs, arising from the fact that the companies are selling differentiated products or operating with imperfect information regarding each other's prices and costs.[10]

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[8] As stated by the ICC in a 1982 decision, "[A] carrier with a destination monopoly will likely push the through rate as high as possible and keep the monopoly profits to itself by playing off competing connecting carriers against one another in setting divisions. That is, the through rate will be at the level maximizing net revenue for the traffic, subject to regulatory limits, and the destination carrier will establish favorable through service with the origin carrier willing to take the lowest division of the through rate for its segment of the movement." *See Union Pac. Corp. —Control— Missouri Pac. Corp*, 366 I.C.C. 462, 538 (1982). The Applicants in the Burlington Northern/Atchison Topeka and Santa Fe merger referred to this as the "one-lump" theory. *See Burlington Northern, Inc.—Control & Merger—Santa Fe Pac. Corp.*, 10 I.C.C.2d 661,749 (1995). *See* also *Western Resources, Inc. v. Surface Transp. Bd.*, 109 F.3d 782, 787 (D.C. Cir. 1997).

[9] *See, e.g.,* Louis Kaplow, *Extension of Monopoly Power through Leverage*, 85 COLUM. L. REV. 515 (1985); Michael D. Whinston, *Tying, Foreclosure, and Exclusion*, 80 AM. ECON. REV.837 (1990); Michael H. Riordan & Steven C. Salop, *Evaluating Vertical Mergers: A Post-Chicago Approach*, 63 ANTITRUST L.J. 513 (1995); Dennis W. Carlton & Michael Waldman, *The Strategic Use of Tying to Preserve and Create Market Power in Evolving Industries*, 33 RAND J. ECON.194 (2002).

[10] Another general situation involves contractual negotiations with pre-payments, when the upstream monopoly firm negotiates input prices that contain lump sum payments (or take-or-pay contracts or large volume rebates) with each of the two competing downstream firms selling homogeneous products and the price terms offered to one competitor are not observed by the other competitor. In this negotiation structure, the monopoly carrier may be unable to implement the monopoly outcome in the pre-merger market because each firm will fear that the monopolist will opportunistically offer the other firm a better deal, which makes each firm unwilling to agree to the contract terms. However, by acquiring one of the competing carriers and foreclosing the unintegrated carrier, the vertically integrated carrier is able to charge the full monopoly price and earn monopoly profits. Hart & Tirole (1990) describe this result when the monopoly carrier makes take-it-or-leave-it contract offers, rather than engaging in bilateral bargaining. *See* Oliver Hart & Jean Tirole, *Vertical Mergers and Market Foreclosure*, BROOKINGS PAPERS ON ECONOMIC ACTIVITY – MICROECONOMICS 208 (1990). For a scenario with differentiated products and two-part tariffs, *see* R. Preston McAfee & Marius Schwartz, *Opportunism in Multilateral Vertical Contracting: Nondiscrimination, Exclusivity and Uniformity*, 84 AM. ECON. REV. 219-21 (1994).

24. Moreover, the results of modern economic analysis lead to greater concerns that vertical mergers will result in anticompetitive effects.[11] This highlights the need to take the limitations of the one-lump theory into account when determining whether to apply its presumption in a given case.

25. Similarly, vertical merger enforcement today also avoids presuming, based on the single monopoly profit theory, that all such mergers are procompetitive. For example, there have been three recent FTC vertical merger enforcement actions – Illumina/Grail,[12] NVIDIA/ARM,[13] and (most recently) Lockheed Martin/Aerojet Rocketdyne[14] – and a previous DOJ investigation (LAM/KLA) [15] that each involved allegations that the upstream

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[11] *See, e.g.*, Marissa Beck & Fiona Scott Morton, *Evaluating the Evidence on Vertical Mergers*, 273 REV. IND. ORG. (2021); Steven C. Salop, *Invigorating Vertical Merger Enforcement*, 127 YALE L.J. 1962 (2018); Gregory S Crawford, Robin S. Lee, Michael D. Whinston & Ali Yurukoglu, *The Welfare Effects of Vertical Integration in Multichannel Television Markets*, 86 ECONOMETRICA 891 (2018); Jonathan B. Baker, *Taking the Error out of "Error Cost" Analysis: What's Wrong with Antitrust's Right*, 80 ANTITRUST L.J. 1, 15-17 (2015); Jonathan B. Baker, *Exclusion as a Core Competition Concern,* 78 ANTITRUST L.J. 527 (2013); Serge Moresi & Steven C. Salop, *vGUPPI: Scoring Unilateral Pricing Incentives in Vertical Mergers,* 79 ANTITRUST L.J. 185 (2013); Jay Pil Choi, *Mergers With Bundling in Complementary Markets*, 61 J. IND. ORG. 553, 556 (2008); Yongmin Chen, *On Vertical Mergers and Their Competitive Effects*. 32 RAND J. ECON 667 (2001); Patrick Rey & Jean Tirole, *A Primer on Foreclosure*, *in* 3 HANDBOOK OF INDUSTRIAL ORGANIZATION 2145 (Mark Armstrong & Robert H. Porter eds., 2007); Michael H. Riordan, *Competitive Effects of Vertical Integration*, *in* HANDBOOK OF ANTITRUST ECONOMICS 145 (Paolo Buccirossi ed., 2008); Michael H. Riordan & Steven C. Salop, *Evaluating Vertical Mergers: A Post-Chicago Approach*, 63 ANTITRUST L.J. 513 (1995); Janusz A. Ordover, Garth Saloner & Steven C. Salop, *Equilibrium Vertical Foreclosure*, 80 AM. ECON. REV. 127 (1990); Michael Salinger, *Vertical Mergers and Market Foreclosure*, 103 Q.J. ECON. 345 (1988); Thomas G. Krattenmaker & Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power over Price*, 96 YALE L.J. 209 (1986).

[12] *FTC Challenges Illumina's Proposed Acquisition of Cancer Detection Test Maker Grail*, Federal Trade Commission Press Release (March 30, 2021), https://www.ftc.gov/news-events/press-releases/2021/03/ftc-challenges-illuminas-proposed-acquisition-cancer-detection.

[13] *FTC Sues To Block $40 Billion Semiconductor Chip Merger—Vertical deal between chip supplier Nvidia and chip design provider ARM*, Federal Trade Commission Press Release (December 2, 2021), https://www.ftc.gov/news-events/press-releases/2021/12/ftc-sues-block-40-billion-semiconductor-chip-merger.

[14] *FTC Sues to Block Lockheed Martin Corporation's $4.4 Billion Vertical Acquisition of Aerojet Rocketdyne Holdings Inc*. Federal Trade Commission Press Release (January 25, 2022), https://www.ftc.gov/news-events/press-releases/2022/01/ftc-sues-block-lockheed-martin-corporations-44-billion-vertical.

[15] *Lam Research Corp. and KLA-Tencor Corp. Abandon Merger Plans*, Department of Justice Press Release, October 5, 2016, https://www.justice.gov/opa/pr/lam-research-corp-and-kla-tencor-corp-abandon-merger-plans; *See* also *The Interesting Case of the Vertical Merger*, Jon Sallet, Deputy Assistance Attorney General for Litigation at Department of Justice Antitrust Division, Remarks as

firm was dominant and that the post-merger firm could use foreclosure strategies to undermine downstream rivals, to the detriment of consumers. The DOJ and FTC also issued new Vertical Merger Guidelines (VMGs) in June 2020 that did not adopt the single monopoly profit theory and did not presume that vertical mergers involving a monopolist in one market are procompetitive, merger guidelines that now are being revised to correct what the Agencies have characterized as legal and economic errors.[16]

3.1 The Limited Applicability of the One-Lump Theory

26. In this section, I illustrate the one-lump theory and its limitations in a concrete way, by considering the situation where one railroad has a monopoly on one segment of a through movement and merges with one of the two railroads that compete on the other segment to complete the movement. This scenario is illustrated below in Figure 1, which shows a through movement from an origin (O) through a common interchange point (I) to a destination (D). I denote Railroads X and Y as the "originating" carriers, each having routes from O to I. Railroad A is the "destination" carrier. It is a monopolist on the segment from I to D. In the through pricing model,[17] the shipper asks the originating Carriers X and Y for through rate quotes for the entire movement, and X and Y each obtains a (dollar) "division" from destination Carrier A for carriage on the destination segment.[18] Following the use of

Prepared for Delivery at ABA Fall Forum (November 17, 2016), https://www.justice.gov/opa/speech/file/938236/download.

[16] U.S. Department of Justice and The Federal Trade Commission, *Vertical Merger Guidelines* (June 30, 2020), available at https://www.ftc.gov/system/files/documents/reports/us-department-justice-federal-trade-commission-vertical-merger-guidelines/vertical_merger_guidelines_6-30-20.pdf. U.S. Department of Justice and The Federal Trade Commission, *Request for Information on Merger Enforcement* (January 18, 2022) at n.3, available at https://www.justice.gov/opa/press-release/file/1463566/download.

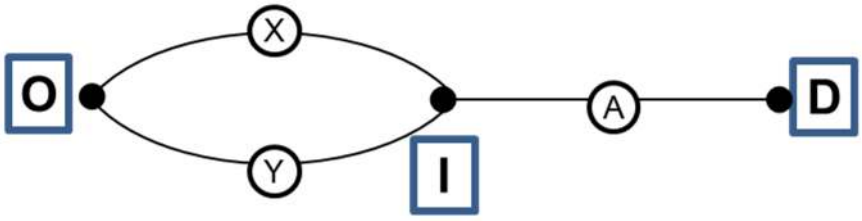
[17] This through pricing framework is the typical economics framework for vertical mergers. In this framework, the monopoly carrier is providing an "input" to the competing carriers, who then sell an "output" (i.e., interline service from O-to-D) to the shippers. Applying the jargon of inputs and outputs, the economics framework typically would refer to the monopoly carrier as "upstream" (*i.e.*, selling an input) and the competing carriers as "downstream" (i.e., selling the "output" to the customer). Most of the economic literature on vertical mergers applies this through pricing (e.g., upstream monopolist and downstream competitor) framework. The economic analysis of mergers of firms producing complementary products is analogous. *See* U.S. Department of Justice and The Federal Trade Commission, *Vertical Merger Guidelines* (June 30, 2020) at 9.

[18] This same framework obviously would carry over exactly to a movement in the opposite direction where the shipper asks Railroads X and Y for through rate quotes.

the term in the industry, Carrier A's *division* is the price or rate it gets for carrying the freight from I to D. [19]

27. If the one-lump theory holds, an acquisition by Carrier A of (say) Carrier X, will not have any anticompetitive effects. This is because Carrier A is presumably already extracting its full monopoly profit by charging a high (dollar) division for its I-to-D segment that is equal to the "one monopoly lump," and the acquisition therefore cannot increase its ability to exploit its market power.

Figure 1:
Illustration of Railroad Interconnection With a Monopolist on One Segment



28. Referring to Figure 1, assume that the two competing carriers (X and Y) on the originating segment O-I sell a homogenous product with identical marginal costs and compete solely on the basis of rates. Also assume that each carrier has perfect information about the other carriers' rates and costs for the movement at issue. Monopoly Carrier A has a marginal cost of $150.[20] Further suppose the competing Carriers X and Y, provide undifferentiated transportation, do not conspire with each other, and have identical marginal costs of $100. Assume also that the shipper has an alternative to rail transport that it would choose if the cost of rail transport were more than its "reservation price" of $400.[21] Thus, the $400 reservation price is the "monopoly" through rate.

[19] The division is treated as a dollar amount, not an agreed-upon fraction of whatever through rate is charged by the destination carrier. I understand the terminology developed when railroads used to establish divisions as a percentage of the through rate charged to the shipper.

[20] The marginal cost includes a competitive return on investment.

[21] The shipper's reservation price thus is the maximum through rate it is willing to pay, and would shift to another transportation mode or corridor if the quoted through rate exceeds this level.

29. Under these assumed conditions, competition between Carriers X and Y would drive their rate down to their marginal costs of $100.[22] Because Carrier A knows that Carriers X and Y will set their rates at $100 and also knows the shipper's reservation price, monopoly Carrier A would maximize its profits by charging a rate of $300 for its segment. The shipper would pay a total through rate equal to $400 (i.e., A's $300 monopoly price plus X's or Y's $100 rate).[23] This is equal to the shipper's reservation price. The monopoly carrier would earn a profit (i.e., price less marginal costs) of $150 (i.e., $300 - $150).

30. Under these assumed, perfect conditions, Carrier A's acquisition of Carrier X (and/or Carrier Y) would affect neither the total through rate paid by the shipper, nor Carrier A's profit.[24] Carrier A/X would earn the same profit regardless of whether it offered a single-line rate at $400 or its former division rate of $300 for its segment. In the case of a single-line rate, Carrier A/X would earn $400, while incurring the variable costs of $250 (i.e., $100 +$150) from handling the traffic on both segments, for a profit of $150 (i.e., $400 - $250) — the same amount it could earn by agreeing to its former division of $300 and costs of $150 to move the traffic over the I-to-D segment. Thus, according to the one-lump theory, Carrier A would not increase its profit if it foreclosed competition from Carrier Y, either by refusing to interline with Carrier Y or by raising its required division.[25]

31. This example rests on several assumptions, however, that make it apply only to very limited market conditions. It assumes that Carrier A is, in fact, already extracting its single monopoly profit, that is, there are no obstacles that prevent the pre-merger Carrier A from successfully earning that monopoly profit. To reach these results, it assumes that the

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[22] If either carrier offers a rate at some level above $100, the other carrier would undercut it. The model assumes that there is no collusion. The marginal costs include a competitive return on investment.

[23] The economics literature generally uses the term "prices" instead of "rates." I will use the terms interchangeably in this report.

[24] When all the other assumption are made, the one-lump theory still can apply if the shipper has elastic demand. For example, suppose that the shipper would choose to move two units by train if the total through rate were $390 per unit. Then, the monopoly carrier would set the division equal to $290 per unit and the two competing carriers would set through rates of $390 per unit. Because there is perfect competition between the two competing carriers, the monopoly carrier has no incentive to merge with one of the two competing carriers and, if it did, the merger would have no effect on the total through rate paid by the shipper.

[25] In this report, I often will focus on the use of price to foreclose, which I sometimes will refer to as "pricing foreclosure," rather than other non-price forms of foreclosure, such as causing delays, or an outright refusal to interline. Total foreclosure also may involve setting such a high division that interlining is prohibitively expensive for Carrier Y. I will discuss the profitability of a hypothetical total foreclosure strategy in a later section.

carriers are operating with perfect information about each other's costs and prices. And it also assumes that Carriers X and Y are selling homogenous (i.e., undifferentiated) products.

32. Modern economic analysis has confirmed that the one-lump theory does not apply in circumstances that deviate from these assumptions. In addition, absent these assumptions, foreclosure by the post-merger firm often is profitable and harmful to shippers. As I explain in more detail in the next two sections, both types of deviations from the assumed conditions— imperfect information and differentiated products — likely are present in the proposed transaction. Either of them would be sufficient to render the one-lump theory inapplicable in most real-world markets and specifically in this matter.

33. When the one-lump theory does not hold and there is monopoly in one segment but competition in the other segment (or competition in both segments), an end-to-end merger can lead to foreclosure and reduce competition, which in the rail context could take the form of increased divisions or segment fees levied by the monopoly carrier and increased interline rates charged by the competing carriers, higher single-line rates and harm to shippers. Thus, a procompetitive policy presumption also would be inappropriate in this matter.

34. In the absence of a one-lump presumption, these likely anticompetitive effects need to be balanced against any procompetitive benefits. In the polar case of a purely end-to-end merger between two monopoly carriers each protected by prohibitive entry barriers, neither of which faces any actual or potential competition, economic analysis suggests that the merger often can lead to lower rates.[26] This competitive benefit is referred to as "elimination of double marginalization" (EDM) and is driven by the idea that a lower price by one carrier benefits the other carrier by expanding its sales.

35. However, economic analysis demonstrates that the analysis and potential effects of vertical mergers differ substantially when there is competition at one or both levels. In those cases, EDM tends to be smaller because margins are lower. Even in the case of a monopoly carrier on one segment, when prices on the competitive segment exceed marginal costs due to product differentiation or imperfect information, the downward pricing pressure from EDM

[26] Absent cooperation, each carrier's rate setting would not take into account the benefits accruing to the other carrier from it setting a lower rate. By merging, the carriers would take these benefits into account and charge lower rates. There are two important exceptions, however. When there are monopolists at each level, they may be able to achieve the benefits of cooperation without a merger, relying instead on a contractual agreement or mutual trust, which means that the merger would not lead to lower prices. The role of entry barriers also is important: if these carriers were likely advantaged potential entrants (or entry sponsors) into each other's market, that fear of potential entry might have constrained their pre-merger prices all the way down to the competitive level. If so, the merger then would eliminate those constraints and so would lead to higher prices. See, e.g., Steven C. Salop, *Invigorating Vertical Merger Enforcement*, 127 YALE L.J. 1962, 1976-77 (2018).

often will be smaller than the upward pricing pressure from foreclosure. If a lower price by the merging competing carrier mostly diverts sales away from other competing carriers (that connect with the merging monopoly carrier), rather than expanding total market sales, the incentive to lower prices as a result of EDM could be quite small and is less likely to be the dominant pricing incentive generated by a merger. This is because the loss of profitable divisions on interline sales by the monopoly carrier is an "opportunity cost" of reducing the rate of the merging carrier on the competitive segment.[27] The relative magnitudes of the upward pricing pressure from foreclosure and the downward pricing pressure from merger-specific EDM are discussed below.

3.2 The One-Lump Theory Does Not Hold When the Carriers Have Imperfect Information About Each Other's Costs and Rates

36. Even if the competing firms sell homogenous products—that is, they compete only on price—the "one lump" theory does not hold in a market structure in which each pre-merger carrier faces imperfect information regarding the costs and rates of the other carriers. In such a market, the pre-merger monopoly carrier is generally unable to extract the full monopoly profit from the shipper, but is better able to do so after merging with one of the competing carriers. The merger creates an increased incentive and ability for the merged firm to foreclose rivals, leading to harm to both shippers and unintegrated carriers.[28]

37. This is not a minor exception to the conditions required for the one-lump theory. My understanding is that UP and KCS typically lack perfect information regarding each other's costs and rates offered to the shipper at the time that they quote their rates.[29] The costs incurred by the carriers for a particular shipment, and thus the rates offered by the carriers for that shipment, will differ according to numerous factors.[30] Similarly, where KCSM

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[27] This "opportunity cost" occurs whenever the increased sales resulting from the merged firm reducing its single-line rate to shippers involve diverting profitable sales away from a competing carrier that interconnects with the monopoly segment of the merged firm. For an example of this type of opportunity cost, *see* Carl Shapiro, *Vertical Mergers and Input Foreclosure: Lessons from the AT&T/Time Warner Case,* 59 REV. IND. ORG. 303, 325-26 (2021). *See* also Yongmin Chen, *supra* note 11; Moresi & Salop, *supra* note 11.

[28] This market structure is analyzed in detail in an economics article by Serge Moresi, David Reitman, Steven C. Salop & Yianis Sarafidis, *Vertical Mergers in a Model of Upstream Monopoly and Incomplete Information*, 59 REV. IND. ORG. 363 (2021).

[29] *See generally* Rocker & Turner V.S.

[30] *See* KCS and CP's Joint Responses and Objections to UP's Second Set of Discovery Requests, Response to Request No. 148. ("revenue and pricing are determined on a variety of factors and

provides its revenue requirements to UP and BNSF, KCSM typically does not know the costs of UP or BNSF or the rates they ultimately offer to shippers. Absent knowledge of the rates or costs of the other carriers, each carrier must base its rate offer on its expectations of the likely rates of the other carriers, as well as its own costs. This uncertainty creates the possibility that the monopoly carrier will not be able to set its pre-merger divisions at the monopoly level, which means that it is not earning its "one monopoly lump." Fearing that setting a high rate might lead to a total price above the shipper's reservation price and the loss of the traffic, the monopoly carrier will hold down its rate. A merger that reduces that uncertainty thus increases the likelihood that the merged firm will be able to profitably raise rates post-merger.[31]

38. In the pre-merger market, a monopoly carrier with imperfect information about the other carriers' costs and rates cannot obtain its "single monopoly profit" because it cannot set its own rate to ensure that the through rate is equal to, but does not exceed, the shipper's reservation price. Competition in the pre-merger market with imperfect information leads to the shipper obtaining a through rate below its reservation price some fraction of the time, in particular, when the competing carriers' costs are relatively low for the particular shipper's movement.[32] When their costs are higher, the shipper either pays its reservation price for the rail transport or chooses an alternative mode.[33] Combining the effects of the varied cost realizations for particular movements, the average through rate paid by the shipper in the pre-merger market will be less than its reservation price. In other words, some of the surplus accrues to the shipper and the competing carriers. In Appendix B, this analysis is illustrated with a numerical example.

39. Looking again at Figure 1, contrary to the one-lump presumption, a merger between the monopoly Carrier A and one of the carriers on the competitive segment —say, Carrier X— *does* change the incentives and ability of the merged firm to foreclose, by improving the

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considerations, including but not limited to the market, operating and cost considerations, the type of service, volume, risk premiums (such as hazardous materials or high- end commodities), asset availability, network capacity, competitive modes of transportation, and regulatory requirements. The same considerations apply to cross-border rates.")

[31] Moresi et. al., *supra* note 28. In the *Western Resources* case, *supra* note 4 at 791, the D.C. Circuit suggested that better information would not have an adverse effect on shippers. The Commission apparently did not contemplate the possibility that the monopoly carrier would recognize the risk that a high division might make it uneconomical for the competing carriers to set through prices at or below the shipper's reservation price; and that the monopoly carrier would respond to this risk by setting a lower division, and then the competing carriers would have sufficiently low costs such that they would compete the through price down to a level below the shipper's reservation price.

[32] For the general analysis, *see* Moresi et al., *supra* note 28.

[33] When the shipper chooses the alternative, it gains no surplus value, i.e., the shipper obtains the same value as if it paid a rate for rail transport on these carriers equal to its reservation price.

merged carrier's information. After, and as a result of, the merger, the merging carriers will now know each other's costs and prices, and thus will be able to set a single-line rate equal to the shipper's reservation price, extracting the full monopoly revenue from the shipper.[34] At the same time, the merged carrier will have increased incentives to act on its ability to foreclose by setting a high rate for interline service (or revenue requirement).[35] The shipper will end up worse off from the merger because it will always pay a through rate equal to its reservation price.

3.3 The One-Lump Theory Does Not Hold When the Competing Carriers Sell Differentiated Products

40. The previous model assumed the downstream competitors sold homogenous products—that they competed solely on price. However, the transport services provided by rail carriers are generally differentiated, not homogenous. The services can differ with respect to distance from a shipper's business to the origin and destination stations, the speed of the shipment, frequency and reliability, customer service, the likelihood of damage, payment terms, and so on. That differentiation leads rail transport rates to exceed marginal costs.[36]

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[34] The same reasoning and results apply for a Rule 11 rate since the shipper can obtain the rate from the monopoly carrier and then have the bidding competition between the two competing carriers. As with through rates, the shipper gains the benefit of pre-merger competition that allows it to pay a through rate that is, on average, below its reservation price and to earn a positive surplus. After the merger, the shipper is forced to pay a through rate equal to its reservation price and obtains zero surplus. At the same time, the merger increases the profits of the merging carriers and reduces the profit of the rival unintegrated carrier.

[35] The shipper is worse off because it will always pay a through equal to its reservation price, regardless of whether Carrier Y or Carrier X will win the competition post-merger. The merged carrier will set a division for its segment that is relatively high in the following sense. If the unintegrated rival Carrier Y has a sufficiently lower cost than Carrier X, then Carrier Y will win the competition for the shipper's business and the merged carrier will earn a higher profit from supplying interline service to Carrier Y than it would earn from its single-line rate (equal to the shipper's reservation price). This allows the merged firm to let Carrier Y serve the shipper when Carrier Y is significantly more efficient and, at the same time, to extract a portion of the efficiency rent of Carrier Y. See also the numerical example in Appendix B.

[36] *See*, e.g., Laurits R. Christensen Assoc. Inc., A STUDY OF COMPETITION IN THE U.S. FREIGHT RAILROAD INDUSTRY AND ANALYSIS OF PROPOSALS THAT MIGHT ENHANCE COMPETITION (2009) vol 2 at 10-5 ("estimate of the RPTM/MC ratio peaked at 217 percent in 1994 and has ranged in recent years between 150 and 170 percent"). *See* also Laurits R. Christensen Assoc. Inc., AN UPDATE TO THE STUDY OF COMPETITION IN THE U.S. FREIGHT RAILROAD INDUSTRY (2010) at 4-5.

41. When competing carriers sell differentiated products, the one-lump theory does not apply to an end-to-end merger involving a monopoly carrier and one of the competing carriers.[37] Because their products are not perfect substitutes, the competing carriers in the pre-merger market are able successfully to charge through rates that exceed their marginal costs. As a result, the monopolist cannot unilaterally achieve the monopoly outcome, and may have an incentive to merge with one of the two competing carriers. This basic structure applies to the CPKC merger.

42. In this matter, KCSM is a monopoly carrier for some UP movements originating or terminating in Mexico and KCS controls the Laredo gateway. UP and KCS today provide competing, differentiated service. Therefore, there already are foreclosure concerns involving movements on KCSM before this merger, and the CPKC merger exacerbates these foreclosure concerns. This is because the incremental revenue and profits on the CP segments of current actual and potential movement movements increases the financial gains to the merged firm of foreclosure of UP in the form of higher rates, even if the Laredo gateway is open.

43. In the post-merger market, a merged firm has greater ability to act on its incentive to foreclose unintegrated carriers in order to increase its division for the monopoly segment – to get closer to the monopoly profit it is unable to extract in the pre-merger market. This places upward cost pressure on the unintegrated carrier, which in turn places upward pressure on the carrier's through rate, ultimately harming shippers who prefer this interline movement. This also will permit and incentivize the merged firm to raise its single-line rate, thereby leading to harm to all shippers. Even taking into account the possibility of some EDM effects (which Dr. Majure does not suggest), there is certainly no economic basis for a general presumption that a vertical merger in such a market will be either procompetitive or competitively neutral, and there are strong reasons to expect net anticompetitive effects under the circumstances of the proposed transaction.

3.3.1 Simulation Model Analysis

44. When firms (or rail carriers) in vertically adjacent markets merge, the merger can involve foreclosure incentives that lead to upward pressure on prices. This occurs when the merged firm can cause customers of its unintegrated competitors to divert to the merging partner by raising the cost of using the unintegrated competitors. When one merging rail carrier has a monopoly position on its segment, it can foreclose the unintegrated competitors of its merging partner by eliminating their access to its segment or by raising the division it

[37] Economic analyses of vertical mergers with differentiated products dates back to Joseph J. Spengler, *Vertical Integration and Antitrust Policy*, 58 J. POL. ECON. 347 (1950). For more recent articles, *see* the articles cited in *supra* note 11, among others.

charges the unintegrated carrier for movements on its monopoly segment, or its Rule 11 rate for the segment.

45. In the first instance, the magnitude of the incentive to foreclose depends on the margins of the merging carriers and the diversion ratio from the foreclosed carriers to the merging partner. Foreclosure raises the costs of the carriers competing with the merging carrier, either directly if they pay the increased interline rate or indirectly if the increased interline division is paid by the independent carrier. In either case, foreclosure leads to upward pricing pressure on the rates paid by shippers. The merger also can lead to downward pressure on rates from merger-specific EDM, marginal cost savings or product quality improvements. The magnitude of the downward pricing pressure depends on the magnitude of the merger-specific benefits, as well as the opportunity cost discussed above, which also depends on margins and diversion ratios.[38]

46. The ultimate impact of the merger on shippers depends on the tension and magnitudes of these upward and downward pricing pressures. As a general matter, a vertical merger can lead to a diverse set of outcomes. In some cases, the merger can lead to higher rates borne by all shippers.[39] This is the expected outcome when the merger-specific efficiency benefits are small. The merger alternatively can lead to higher rates borne by the shipper customers that rely on interline movements with the foreclosed independent carriers, while leading to lower rates for the shippers that opt for single-line service by the merged carrier. The merger also can lead to lower rates charged to all shippers. This is most likely to occur when both merging parties have monopoly positions and the merger-specific EDM and merger-specific efficiencies are very large. Because carriers do not set uniform rates for all movements, a vertical merger can lead to a diversity of outcomes across commodity groups, routes and specific shippers.

47. What can be predicted is that the one-lump theory is rejected because the carriers' products and services are differentiated. (As explained above, the one-lump theory also is separately rejected because the carriers have imperfect information.) If there are only de minimis merger-specific EDM, marginal cost savings, and quality improvements, then one can predict with confidence that all shippers likely will be harmed. If there are no competitors on both segments, then one can predict that shippers will not be harmed.[40] But in the middle ground, the multitude of factors that enter into the determination of the impact of the merger on shippers means that it is not possible to make definitive general predictions that

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[38] For technical analysis, *see* Moresi & Salop, *supra* note 11.

[39] This was the outcome in the imperfect information model, where the imperfect information plays a analogous role to product differentiation.

[40] However, even this prediction is subject to the caveat noted earlier, *supra* note 26.

all shippers will benefit or that the transaction will be competitively neutral or positive. The facts will matter.

48. With sufficient data, one approach could be to estimate the upward pricing pressure on the through rate for interline movements on unintegrated carriers arising from the foreclosure incentives and, similarly, estimate the downward (or possibly net upward) pricing pressure on the single-line rate of the integrated carrier from the combination of the opportunity cost, merger-specific EDM, and other efficiencies. If the disparity between upward and downward pricing pressure (in either direction) is large, then a confident prediction might be made.[41] In a real-world merger, this prediction could differ across product categories, routes, and shippers. Applicants (and Dr. Majure) did not conduct this analysis.

49. One also could extend this upward and downward pricing pressure analysis by combining those factors into an equilibrium merger simulation model. However, this approach raises the additional complexity of having to assume a specific demand curve and type of competitive interaction among the carriers. Even if the type of demand curve were known, it would be necessary to estimate the structural parameters of demand, which is not simple. It would also be necessary to have detailed information on carriers' margins for both a complete pricing pressure analysis and for simulation modeling. Again, Dr. Majure (and Applicants) did not conduct this analysis.

50. In Section 5, I take a simpler approach to showing the foreclosure concerns from the proposed merger. As described there, I analyze the profitability of a hypothetical total foreclosure strategy by the merged firm, that is, denying UP access to KCSM for movements of finished automobiles and automobile parts between Mexico and Chicago. The merged firm could carry out this hypothetical total foreclosure strategy by raising its rates on interline movements with UP. (While the concern here is more on smaller rate increases than closing the Laredo gateway, the analysis of a hypothetical total foreclosure strategy is a standard, conservative approach to gauging foreclosure incentives. If a hypothetical total foreclosure strategy after a merger is profitable at current rates, that indicates that the merged firm will have an incentive to raise its division or rate charged for the monopoly segment.) That analysis is only illustrative in that it involves only examples of certain movements. It also does not analyze the impact of merger-specific cost savings and quality improvements, although UP witnesses have concluded that those efficiencies are small.[42]

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[41] *See* Moresi & Salop, *supra* note 11. *See* also Serge Moresi & Steven C. Salop, *When Vertical is Horizontal: How Vertical Mergers Lead to Increases in "Effective" Concentration*, 59 REV. IND. ORG. 177 (2021).

[42] Haley V.S. at ¶¶18–36.

51. I have also constructed two versions of a general simulation model that I describe in the remainder of this subsection. They are intended for the limited purpose of showing that the one-lump theory does not apply and that vertical mergers can lead to a wide variety of impacts, even after taking EDM into account. These models demonstrate that there is no economic basis for presuming that end-to-end rail mergers involving a monopoly carrier are procompetitive or competitively neutral. I am not using these simulation models to claim that this particular vertical merger is anticompetitive. Instead, this analysis demonstrates that one cannot use such general simulation models to claim that the proposed merger is procompetitive or even competitively neutral.[43]

52. One version of the model assumes that the carriers quote take-it-or-leave-it prices. The monopoly Carrier A quotes take-it-or-leave-it divisions to the competing Carriers X and Y, and the latter carriers quote take-it-or-leave-it through prices to the shipper, which is a common assumption in economic models of vertical integration. This structure of the model also captures Rule 11 pricing, where the shipper obtains the rates on the monopoly segment (i.e., one rate if the shipper will use Carrier X and a possibly different rate if it will use Carrier Y) and then has a bidding competition between the competing Carriers X and Y, where the information on the monopoly carrier's rates is taken into account. A second version of the model assumes that there is inter-carrier bargaining between the monopoly Carrier A and each of the competing Carriers X and Y over the divisions.

53. The simulation models are designed to capture a variety of demand and cost conditions. These varying demand and cost conditions can be thought of as reflecting the variations in characteristics of shippers, commodities, and origin-destination routes. The simulations thus recognize the effects of a merger may differ across origin/destination markets and commodities.[44] Even within a single origin/destination market for a specific commodity, the fact that the carriers do not set the same rate for every shipper and every movement means

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[43] In this regard, I want to emphasize that the models are not calibrated—that is, the values of the demand and cost parameters are not set to replicate any market shares or margins observed in this transaction. For one thing, every market is different. In addition, such calibration would be very difficult, if not impossible, to implement for this merger in an accurate way, and so would be subject to substantial criticisms. For an example of the controversial use of a vertical merger simulation model in litigation, *see* Shapiro, *supra* note 27; *United States v. AT&T, Inc.*, 310 F. Supp. 3d 161 (D.D.C. 2018); *United States v. AT&T, Inc.*, 916 F.3d 1029 (D.C. Cir. 2019).

[44] I also am not claiming that these are the only possible parameter assumptions. I expect that a different set of assumptions or a different demand structure could lead to different results. Such results would not undermine the validity of the conclusions I reach, as the simulation models are intended only to illustrate the diversity of effects of vertical mergers involving a monopoly carrier, the failure of the one-lump theory, and the potentially serious foreclosure concerns that can arise.

that a merger may harm some shippers while benefiting others with different demand characteristics or whose shipments have different costs.

54. The results of the simulation models show that some or all shippers can be harmed from foreclosure effects of end-to-end mergers. They also show the possibility that some shippers can be benefited. Because the simulations cover such a broad range of circumstances to capture different competitive interactions, the models indicate a wide range of possible results for particular shippers. This is precisely the point. While the one-lump theory implies that the price to shippers would not change as a result of a vertical merger when one of the merging parties appears to have a monopoly over certain routes, the simulations show that significant price changes are far from being the exception and, in fact, occur in a broad set of market conditions. Thus, these results make it clear that the one-lump theory does not apply when there is product differentiation in the competitive segment. An end-to-end merger can harm some or all shippers, even after taking any EDM into account. The simulation results thus also make it clear that a general procompetitive presumption cannot be justified with respect to the proposed merger on the basis of economic analysis.

3.3.1.1 Simulation Model with Carrier Take-It-or-Leave-It Pricing

55. The first version of the simulation model analyzes a scenario when the carriers face elastic demand from shippers and set take-it-or-leave-it rates. In the pre-merger market, the monopoly carrier sets divisions to the two competing carriers which then set interline rates. In the post-merger market, the unintegrated and integrated carriers compete for each shipper's movement. The integrated carrier sets a single-line rate and the independent carrier sets an interline rate, which depends in part on the division set by the integrated carrier for its monopoly segment.[45] The simulation model calculates a range of outcomes for a number of demand parameters and costs, which are combined to create a large number of diverse market conditions that lead in turn to a range of pre-merger market shares and rates for the two competing carriers, and divisions for the monopoly carrier. The model follows the railroad literature by assuming that the shippers' demand has a logit demand structure.[46]

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[45] The structure of the technical model equivalently assumes that the monopoly carrier offers its service to its merger partner at a nominal price equal to marginal cost and the merger partner sets the through rate for the shipper, although the merger effects do not depend on the magnitude of this nominal transfer price.

[46] Yanyou Chen, *Network Structure and Efficiency Gains from Mergers: Evidence from U.S. Freight Railroads*, Working paper (2021); Daniel Coublucq, *Demand Estimation with Selection Bias: A Dynamic Game Approach with an Application to the US Railroad Industry,* 94 DICE Discussion Paper (2013); Bart Jourquin, *Estimating Elasticities for Freight Transport Using a Network Model: An Applied Methodological Framework*, 9 J. TRANSP. TECH. 1 (2019).

56. The technical details of the model are described in more detail in Appendix C.[47] In some scenarios, the two competing carriers increase their through rates after the merger and, therefore, all shippers are harmed by the merger. In other scenarios, the interline rate of the unintegrated carrier rises while the single-line rate of the now-integrated carrier falls. In this latter scenario, the shippers that use the unintegrated carrier are harmed but the shippers that use the single-line rate are benefited.[48] Specifically, in this model, the single-line rate of the merged carrier rises when the pre-merger volume share of the merging competing carrier is less than about 25%, and often also when its share is in the 25-40% range. But when its pre-merger share exceeds 40%, the single-line rate of the merged carrier typically falls. Thus, this version of the model illustrates how a vertical merger can harm some or all of the shippers, depending on the particular demand and cost conditions. For this reason, a general or conclusive presumption of no anticompetitive effects resulting from a vertical merger in these market conditions, in the context of imperfect information and/or differentiated products, would not be appropriate.

3.3.1.2 Simulation Model With Inter-Carrier Bargaining

57. In a 1982 order, the ICC suggested that inter-carrier bargaining could lead to market conditions that would support application of the one-lump theory.[49] I have also analyzed a version of the model where the divisions charged by the monopoly carrier to the two competing carriers are determined through bilateral negotiations in which the two negotiating parties have equal bargaining power.[50] (By contrast, the previous version of the model, which included take-it-or-leave-it divisions, effectively assumed that the monopoly carrier has all the bargaining power.) As before, the model assumes that the competing carriers set take-it-or-leave-it through rates to the shipper. The simulation results for this

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[47] The simulation model builds on the approach in Gopal Das Varma & Martino De Stefano, *Equilibrium Analysis of Vertical Mergers*, 65 ANTITRUST BULLETIN 445 (2020), which uses the equivalent of through pricing. This article analyzes both take-it-or-leave-it inter-firm pricing and bargaining, as I do in this report. However, that article provides only a single example for demand and cost conditions rather than a range of market conditions. Gleb Domnenko & David S. Sibley, *Simulating Vertical Mergers and the Vertical GUPPI Approach*, (May 15, 2020) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3606641 also simulates vertical mergers for a range of market conditions, but with a different demand structure and more limited reporting of results.

[48] I am not claiming that it is impossible for both through rates to fall and all shippers to benefit from a hypothetical merger. As I describe in later sections, however, I conclude that the proposed CPKC merger is likely to lead to anticompetitive foreclosure, not lower rates for all shippers.

[49] *Union Pac. Corp. —Control— Missouri Pac. Corp*, 366 I.C.C. 462 (1982).

[50] Economists refer to this as "Nash Bargaining." *See* John Nash, *The Bargaining Problem,* 18 ECONOMETRICA 155 (1950); Ken Binmore, Ariel Rubinstein and Asher Wolinsky, *The Nash Bargaining Solution in Economic Modeling,* 17 RAND J ECON 176 (1986).

bargaining version of the model lead to a variety of pre-merger market shares and rates, as described in more detail in Appendix D.

58. In this bargaining version of the model, the impact of the vertical merger on shippers is more adverse. The merger always leads to an increase in the interline rate charged to shippers who opt for the unintegrated carrier. The merger also almost always leads to an increase in the single-line rate charged to shippers by the integrated carrier. When the single-line rate falls, it decreases only slightly. Moreover, the rate increases typically are larger than those in the previous model where the monopoly carrier sets take-it-or-leave-it divisions.

59. Thus, this inter-carrier bargaining version of the simulation model similarly demonstrates that the one-lump theory does not hold when carriers on the competitive segment offer differentiated products and services. It also indicates serious concerns about shipper harms from foreclosure in markets that have such characteristics. The likelihood and magnitude of shipper harms are higher in this scenario than those in the previous version of the model with take-it-or-leave-it divisions.

3.4 Implications for the Board's Analysis of the Proposed CPKC Merger

60. The economic analysis of vertical mergers carried out in this section shows the inapplicability of the one-lump presumption if the competing carriers are selling differentiated products or if the carriers have only imperfect information about each other's costs and rates. The one-lump theory fails for all but the polar case. Nor can one argue that the world is close to this polar case. Imperfect information and differentiated products are the norm, not the exception. And when there is imperfect information or differentiated products, end-to-end mergers can harm some or all shippers under normal conditions.

61. When the one-lump theory does not apply, there can be incentives to foreclose. Those foreclosure incentives already exist today, because KCS controls KCSM, and they will be enhanced by the merger with CP. This is because adding CP's revenue and earnings increases the financial benefits the post-merger firm will gain by diverting traffic to itself and away from rivals. While EDM might mitigate these foreclosure concerns, the results of the simulation model show how such benefits can and often do fall short. Nor have the Applicants provided any data or analysis to rebut the concerns, which the simulation models support, that the merger could result in anticompetitive foreclosure. Instead, as I discuss further in Section 6 below, Dr. Majure has essentially assumed away foreclosure and apparently has concluded that merger-specific EDM is not important.

4. Modern Economic Analysis Rejects the Assumption that There Is No Incentive or Ability to Foreclose When There Is a Competing Carrier for Each Segment

62. In this section, I briefly analyze the impact of the proposed merger on the portion of the traffic where FXE might be a feasible alternative for the Mexican leg of a rail movement.

63. In his statement, Dr. Majure discusses the situation where the potentially foreclosed rival has an alternative to the merged carrier, and concludes that the merged carrier has no ability (and hence no incentive) to foreclose. However, Dr. Majure does not carry out any actual economic analysis of this issue. Instead, he stops at the assumption that when there is an ostensible perfectly-substitutable alternative routing, this alternative will provide the same effective safeguard against rate increases after the merger as in the pre-merger market.[51] As Dr. Majure puts it,

> Next, consider the other hypothetical shipper, who can readily switch to another railroad or mode of transportation. Perhaps this second shipper can rely on FXE's network in Mexico as a suitable alternative to KCSM for originating its movements. For the shipper with ready alternatives, there would be no *ability* for a combined CP/KCS to force inferior terms on the shipper. Doing so would only lead to loss of the traffic – or failure to attract new traffic – contrary to the company's economic incentives.[52]

64. I understand that many shippers in fact cannot rely on FXE.[53] But, in addition, Dr. Majure fails to take into account that even where the second upstream carrier may provide a practical alternative to the merging carrier, the merger will change the economic incentives of the integrated carrier, as well as those of the unintegrated alternative carrier, in ways that reduce the effectiveness of the competitive safeguards that the alternative carrier provided before the merger.

65. I can explain this result with the following hypothetical scenario drawn from the economics literature. Instead of assuming that a railroad has a monopoly on one segment of a through movement, suppose there is a second carrier on that segment. This scenario is illustrated

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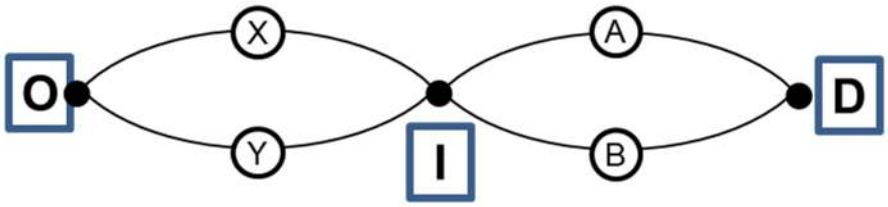
[51] Dr. Majure appears simply to rely on a quotation from the Board's BNSF 1995 merger decision that suggests that a merger will not weaken the "safeguards" provided by alternative carriers. (APP., *Verified Statement of W. Robert Majure* (October 29, 2021) (*hereinafter*, Majure V.S.) at ¶25.)

[52] Majure V.S. *supra* note 51 at ¶25 (emphasis in original).

[53] Rocker & Turner V.S. at 16.

below in Figure 2, where Railroads X and Y compete on the segment from O to I and Railroads A and B compete on the routes from I to D.

Figure 2: Duopoly Competition



66. Assume that Carrier B is not only a feasible alternative to Carrier A, but Carrier B has the same costs and product attributes of Carrier A, so it is a *perfect substitute* for Carrier A, and so there is intense pre-merger competition between Carriers A and B. Consider next the impact of a merger between Carriers A and X. Dr. Majure suggests that the existence of Carrier B would totally deter Carrier A from raising its fee to the unintegrated downstream Carrier Y (or to shippers that want to use Carrier Y).

67. But economic analysis of this simple model indicates that this conclusion is incorrect.[54] Despite the fact that Carrier B is a perfect substitute for the merging Carrier A, the merged carrier would still have a post-merger incentive to raise its division to Carrier Y. This is because the merged carrier would correctly anticipate that Carrier B would respond by raising the division it charges to Carrier Y. (Carrier B similarly would anticipate that Carrier A will have the incentive to raise its division.) This will lead to both carriers charging higher divisions. Thus, even if Carrier Y selects Carrier B for the origin segment, the higher division paid for that interline segment makes it more likely that the merged carrier will win the bidding, even when it sets a higher through rate than before the merger.

68. Thus, it is erroneous to focus solely on the technical "ability" to substitute. It is also necessary to analyze the impact of the merger on the "incentives" to foreclose. The mere technical "ability" to substitute does not eliminate the incentive of the merged carrier to foreclose by raising its division. To assume otherwise, as Dr. Majure appears to do, amounts to assuming that no vertical merger can raise competitive concerns when there are two carriers on both segments (or, more generally, two firms in each market).

[54] *See* Ordover et al., *supra* note 11.

69. When Carriers A and B are perfect substitutes with identical costs and quality, the pre-merger competition drives their rates down to marginal cost, so there is no EDM (put simply, there are no margins for the merger to eliminate). However, if they are imperfect substitutes, the carriers may be able to set pre-merger rates that are higher than their marginal costs, which means that a merger may permit some EDM. But there is no economic reason to think that downward pressure on rates will be the dominant factor. In fact, the greater is Carrier Y's ability to substitute between Carriers A and B, the lower is the likelihood that downward pricing pressure will be the driving factor in the merged carrier's incentives and the more likely it is that the rates offered to shippers by both carriers will rise. Moreover, the more inelastic is the aggregate demand for the service provided by Carriers X and Y, the greater will be the merged firm's opportunity cost of lowering its through rate. The opportunity cost also is higher if Carrier A charges a higher pre-merger rate to the independent Carrier Y than to its future merger partner, Carrier X.

70. Thus, economic analysis does not support a general proposition that an alternative upstream carrier eliminates the risk and potential shipper harms from pricing foreclosure that raises the cost of the unintegrated downstream rival. Even if there is a feasible "ability" to substitute, the merged carrier still may have an incentive to raise the fee it charges its unintegrated downstream competitor. This can lead to harm to shippers who end up paying higher rates and perhaps obtaining less preferred service. To the extent that the merged carrier has higher costs—for example, because it has inferior routings—efficiency also may suffer.

71. The structure of competition between UP and the merged CPKC on shipments to and from Mexico is somewhat more complicated than the hypothetical scenario just analyzed. Even when it is a feasible alternative, FXE is not a perfect substitute for KCSM.[55] KCS also currently has some power to raise its fees to CP on interline shipments, which means that there is potential for EDM if CP and KCSM merge. However, one cannot assume that the downward pricing pressure after such a merger will dominate the upward pricing pressure from foreclosure. In fact, if FXE and KCSM are very close competitors for UP, then foreclosure will tend to be more profitable, because the competition would have driven their pre-merger rates virtually down to marginal cost.

[55] The fact that UP has a partial ownership interest in FXE does not change the results. This is a passive ownership interest. UP does not have any control over FXE's prices. Thus, while UP would take into account that it recovers some fraction of FXE's overcharges on interline movements, that recovery does not make FXE a perfect substitute for KCSM and thus will not eliminate the effects of the foreclosure. Moreover, understanding that UP will "discount" the overcharges in this way gives FXE the incentive to raise its fees by even more than if there were no UP ownership interest.

72. In short, there are substantial foreclosure concerns even for shippers that view FXE as a possible substitute for KCSM. Simply observing that KCSM is not a monopolist, but faces FXE as a feasible alternative—and again, Dr. Majure presents that as a hypothesis, not an established fact—does not eliminate the ability or the incentive of the merged firm to engage in foreclosure strategies against UP on Mexican routes.

5. Empirical Analysis Confirms that the CPKC Merger Raises Serious Foreclosure Concerns

73. Brown and Zebrowski (B&Z) estimate divertible and likely diverted traffic that moves through the Laredo gateway. That is, they estimate a magnitude of traffic that they conclude potentially *could* be diverted from competitors to the merged CPKC. They then judged that a specific fraction of that divertible traffic likely *would* be diverted to the merged carrier as a result of post-merger quality improvements.

74. Figure 3 reports B&Z's estimates of the level of potentially divertible traffic to the merged firm that currently flows over the Laredo gateway as well as B&Z's estimates of likely diversion, with likely diversion being somewhat less than half of the potentially divertible traffic on average. Figure 3 reports the carloads, rather than the associated revenue. This analysis indicates substantial likely diversion, taking B&Z's assumptions at face value that there would be no foreclosure tactics by CPKC.

75. While B&Z assume that there is no foreclosure, their formulation essentially concedes an ability to foreclose by raising rivals' costs of competing interline movements. That is, if an integrated firm with monopoly power on one segment can divert traffic by reducing its own costs, then it normally also can divert traffic by raising its rivals' costs. Reducing its own costs allows the firm to gain traffic by decreasing its prices, while raising rivals' costs allows the firm to gain traffic by causing the rivals to increase their prices. After the merger, CPKC can raise rivals' costs by raising the KCSM rates it charges for interline movements with those rivals.

76. Even taking B&Z's estimates of likely diverted traffic at current rates as a given, the merged firm could further increase the traffic diversion rate by engaging in supplemental foreclosure tactics such as raising KCSM rates on interline movements or non-price foreclosure tactics. If those foreclosure tactics were to drive the diversion up to the level that B&Z viewed as potential diversion, that would involve more than twice the diversion rate they treated as likely. The merged firm has a greater incentive to engage in foreclosure than KCS does currently because shipments diverted from UP will allow the merged firm to capture the carloads (and associated revenue and profit) for the CP segments as well as the KCS segments.

Figure 3: B&Z Estimated Potential and Likely Diversions Through Laredo

Select Traffic Screened as Eligible For Diversion

Total Originated/Terminated at Laredo

	Potential Diversion (Carloads/ Containers)	Likely Diversion (Carloads/ Containers)	Percentage Likely Diverted
Intermodal	{{ }}	{{ }}	{{ }}
Automotive	{{ }}	{{ }}	{{ }}
Metals, minerals and consumer products	{{ }}	{{ }}	{{ }}
Energy, chemicals and plastics	{{ }}	{{ }}	{{ }}
Grain Products	{{ }}	{{ }}	{{ }}
Total	{{ }}	{{ }}	{{ }}

Source: Brown & Zebrowski V.S., workpaper "8 - Diversion Identification.xlsx"

77. Extending B&Z's analysis, a strategy of using foreclosure tactics to cause increased diversion likely would be profitable for the merged firm. I will use the illustrative example of diversion of movements of finished automobiles from Laredo to Chicago. I specifically will undertake the common analysis of evaluating the profitability of a hypothetical total foreclosure strategy of completely denying UP effective access to interlining with KCSM by raising KCSM's rates to prohibitive levels.[56] By this analysis, I am not predicting that CPKC will engage in such a total foreclosure strategy. Instead, I am using this analysis as a conservative gauge of the profitability of foreclosure by raising KCSM's rates.

78. To explain the basic methodology of this profitability analysis, suppose that the merged firm were to substantially raise the per carload rates charged for UP movements from Mexico origins to Laredo to prohibitively higher levels, where UP effectively would be totally foreclosed from using KCSM as a practical matter. To illustrate the impact of this hypothetical total diversion strategy on the profits of CPKC, assume initially in an overly optimistic way that UP were able to retain (say) half the movements subject to this foreclosure by trucking the merchandise to Laredo or using FXE instead, despite the higher cost of these alternatives. In that case, the merged firm would sacrifice the revenue and margin on half of the UP movements over KCSM (i.e., the movements that UP would retain by using trucks or FXE) but it would obtain the revenue and margin for carriage from

[56] Such a profitability analysis is routinely used in merger analysis. *See, e.g.,* Vertical Merger Guidelines (Example 2); Moresi & Salop, *supra* note 11 at 208. The profitability analysis is a conservative approach to foreclosure incentives. *Id.* at 208-10.

Laredo to Chicago on the half of the UP movements that it captures (i.e., the movements that it diverts from UP to itself).[57]

79. To estimate the increase in the revenue earned by the merged firm from this total foreclosure strategy, Figure 4 reports B&Z's estimates of the amount of revenue per carload that the merged firm would earn on movements diverted from UP and other carriers for finished automobile movements. If the merged firm would obtain the current UP rates on the Laredo-Chicago movement on diverted traffic, the merged firm would earn revenue of {{ }}.[58] KCS earns revenue of only {{ }} on KCSM movements that interline with UP at Laredo. Thus, if UP were able to retain as much as half the shipments after it was totally foreclosed from KCSM, the merged firm would gain {{ }} on the U.S. portion on the half of the shipments it captures, while losing the KCSM revenue of {{ }} on the half of the shipments that UP is able to retain. Thus, on balance, the total foreclosure strategy would dramatically increase CPKC's revenue.[59] Assuming that the percentage price/cost margins were not wildly different, the strategy would be highly profitable.[60] For other routes where the potential CPKC revenue gained is higher, foreclosure would be even more profitable.

80. Given these single line and KCSM rates, I next calculate the "critical percentage" of shipments that UP would have to retain in order for the total foreclosure strategy of the merged firm to be unprofitable. The critical percentage is about {{ }} to maintain the

[57] To keep the illustrative example simpler, I assume that BNSF is not a possible alternative carrier for these UP shipments. If it were, the merged firm also could foreclose BNSF from access to these or all Mexican shipments. That would make the analysis more complicated since the rate charged on shipments interlined to BNSF might be somewhat higher than that charged to UP. However, given the huge disparity between gains and losses from the foreclosure strategy, this simplification will not change the results.

[58] The mileage on CPKC would be about 300 miles longer than the UP mileage. However, B&Z assume that the merger would make the CPKC service competitive with UP (absent any foreclosure).

[59] Assuming that UP initially had 200 movements and the merged firm captures 100 of them, the merged firm would earn revenue of {{ }} in total on those 100 movements, while losing revenue of {{ }} on the lost KCSM movements.

[60] To show the profitability despite differential margins with an extreme (worst-case) example, suppose that the dollar margin on the KCSM movement is $1,000 (i.e., about {{ }} rate), while the dollar margin on the Laredo-Chicago movement is only $2,000 (i.e., about {{ }} rate). In this scenario, the merged firm would earn increased profits of $200,000 on those 100 movements gained, while losing profits of $100,000 on the 100 lost KCSM movements for a net increase in profits of $100,000 on those 200 original movements.

same revenue.[61] UP witnesses have explained that such a high retention rate is not viable.[62] While this analysis indicates that the merged firm would increase profits by totally foreclosing UP, it normally is more profitable to raise rates rather than totally foreclose.

81. As noted earlier, I am not suggesting that CPKC would close the Laredo gateway or charge such prohibitive rates so as to completely foreclose UP. Instead, the merger raises serious concerns that the merged firm would partially foreclose by raising KCSM rates on shipments through the Laredo gateway to Chicago and the upper Midwest in order to divert traffic to CPKC to some degree, and possibly also engage in some non-price foreclosure tactics that are difficult to detect.

Figure 4: CPKC Foreclosure Incentives: Finished Automobiles

CPKC Incremental Revenue from a UP Diverted Movement	{{ }}
Average KCSM Revenue for the Mexican Portion of a UP Movement	{{ }}

Sources:
1. Brown & Zebrowski V.S., workpaper "4 - Traffic Screening.xlsx"
2. Brown & Zebrowski V.S., workpaper "8 - Diversion Identification.xlsx"

82. Figure 5 provides a similar analysis for southbound automobile parts from Chicago to Laredo. UP would have to be able to retain at least a "critical percentage" equal to {{ }} of the shipments to prevent this total foreclosure strategy from increasing the net revenue of the merged firm.[63] Again, UP witnesses have explained that such a high retention rate is not viable.[64] And as discussed above, increasing rates by some amount is normally more profitable than totally foreclosing. This also shows a concern that the merger would lead to higher rates charged to UP. And, as with finished automobiles, it will be even more profitable for other movements when revenue gained is higher.

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[61] If UP retained { }} of the carloads, the merged firm's loss of the {{ }} per carload on this {{ }} of the shipments would equal the gain of {{ }} per carload on the {{ }} of shipments diverted by the merged firm. This assumes equal percentage margins on both segments. As noted above, if the percentage margins differ on the two segments, the critical percentage would be adjusted accordingly.

[62] Rocker & Turner V.S. at 11-16.

[63] If UP retained {{ }} of the carloads, the merged firm's loss of the {{ }} per carload on this {{ }} of the shipments would equal the gain of {{ }} per carload on the {{ }} of shipments diverted by the merged firm. This assumes equal percentage margins on both segments. As noted above, if the percentage margins differ on the two segments, the critical percentage would be adjusted accordingly.

[64] *See* Rocker & Turner V.S. at 11-16.

Figure 5: CPKC Foreclosure Incentives: Automobile Parts

CPKC Incremental Revenue from a UP Diverted Movement	{{ }}
Average KCSM Revenue for the Mexican Portion of a UP Movement	{{ }}

Sources:

1. Brown & Zebrowski V.S., workpaper "4 - Traffic Screening.xlsx"
2. Brown & Zebrowski V.S., workpaper "8 - Diversion Identification.xlsx"

83. The Applicants claim that the merger will lead to quality improvements and cost decreases.[65] They might try to argue that these would offset the foreclosure incentives indicated by this analysis. But UP witness Thomas Haley explains that a substantial portion of the single-line cost savings anticipated by Applicants is not merger-related.[66] Further, Mr. Haley explains that Applicants assume traffic will divert to longer, less efficient routes. His testimony suggests Applicants would have to grow their single-line traffic and revenues by foreclosing, rather than by increasing competition. In this regard, while B&Z attribute the diversion to cost and quality improvements, diversion alternatively could be achieved by raising the cost of UP interline movements by increasing the fee charged by KCSM to UP (or to shippers that want to use UP). Rate reductions for the purpose of inducing shippers to switch from UP to CPKC would be unnecessary if the merged carrier foreclosed competing carriers by raising the rate for KCSM's monopoly segment.

84. B&Z also are not claiming that rates on these competing movements will decline. For diverted traffic moving between Mexico and the United States through the Laredo gateway, B&Z apparently attribute all the diversions of traffic to quality improvements, not to rate decreases. This is because they assume that rate reductions are not needed to divert traffic away from UP's interline service on movements through Mexico, even though the diversion will move traffic to longer, less efficient routes. They assume that CPKC would offer rate reductions only "in order to attract traffic away from existing single-line service to CPKC single-line service."[67] Since UP will be interlining with KCSM, it will not be providing single-line service.[68] Thus, B&Z are effectively assuming that the merged firm's rates will

[65] *See*, e.g., APP., *Verified Statement of Dean Vargas* (October 29, 2021) (*hereinafter*, Vargas V.S.) at ¶41, Table 2.

[66] *See,* e.g., Haley V.S. at ¶¶13–17.

[67] Brown & Zebrowski V.S. at ¶32. ("[W]e considered it appropriate to assume that CP/KCS would be required to offer rate reductions averaging five percent in order to attract traffic away from existing single-line service to CP/KCS single-line service.") However, they do not treat movements that include KCSM as single-line. *See* Brown & Zebrowski V.S., workpaper "8 - Diversion Identification.xlsx".

[68] Brown & Zebrowski V.S., workpaper "8 - Diversion Identification.xlsx"

stay the same for all cross-border traffic diverted from UP. This assumption also suggests that shippers will not benefit from lower rates.

6. Dr. Majure's Analysis of Traffic Flows at Laredo Lacks Probative Value

85. Dr. Majure reports data on traffic shares for the northbound traffic that KCSM brought to the Laredo gateway from Mexico in 2019. Dr. Majure asserts that this analysis is "consistent" with the absence of foreclosure incentives at the Laredo gateway,[69] implies a preference for single-line service,[70] and demonstrates the potential benefits to shippers from a combination of CP and KCS.[71]

86. However, Dr. Majure's empirical analysis lacks probative value. This single snapshot of shares in 2019 (15 years after KCS's earlier acquisitions of TFM and TM) is equally consistent with the opposite of what Dr. Majure claims. Based solely on the analysis as presented, one cannot conclude one way or the other whether KCS's earlier acquisition resulted in any foreclosure of UP in the past, or whether the merged firm will foreclose UP in the future. Nor does this data provide evidence of a meaningful preference for single-line service or overall benefits to shippers from the merger.

6.1 Dr. Majure's Traffic Share Data Does Not Disprove the Existence of Foreclosure Concerns

87. In Exhibit 2 of his Verified Statement, Dr. Majure presents shares of northbound rail traffic passing through the Laredo gateway in 2019. Dr. Majure's exhibit is reproduced below in Figure 6.

[69] Majure V.S. at ¶30 ("That sizable percentage is consistent with KCS having an incentive to provide shippers with their preferred route and carrier…").

[70] Majure V.S. at ¶32-33.

[71] Majure V.S. at ¶34.

Figure 6: Reproduction of Dr. Majure's Exhibit 2

{{

}}

88. Dr. Majure reports that in 2019, KCSM interchanged {{ }} of shipments with UP at the Laredo gateway for which KCS can serve the final destination (Line 1 in Figure 6).[72] He claims that this "sizable percentage is consistent with KCS having an incentive to provide shippers [after the previous merger] with their preferred route and carrier – interchanging as necessary to meet the shipper's preference rather than forcing shippers to use KCS alone."[73]

[72] KCS also interchanges {{ }} of shipments with UP destined for areas that KCS cannot serve. (Line 2 of Figure 6). This equality in the percentage of shipments interchanged might be thought to suggest that KCS is not foreclosing any shipments to areas that it can serve. Dr. Majure properly does not make such a claim. This is because the commodity categories, shipment lengths and values and other factors are not constant. Nor is it likely that the equality would be found for apples-to-apples comparisons or for other years.

[73] Majure V.S. at ¶30.

89. This figure lacks probative value. This is because Dr. Majure provides no counterfactual against which to measure this {{ }} result. Without knowing what percent of carloads *would have been interchanged* with UP at Laredo had the KCS/TFM/TM transactions not been consummated (i.e., in the counterfactual "but-for" world), one cannot reasonably conclude that UP's {{ }} share in 2019 indicates that "interchange activity at the Laredo gateway demonstrates a combined CP/KCS would not have the ability and incentive to preclude its rivals' access to gateways."[74] These shares may be inconsistent with a claim of *complete foreclosure* of UP, but they do not establish that there has been *no foreclosure* arising from interline fee increases or higher KCSM divisions. For example, suppose that UP's share would have been 90% absent foreclosure resulting from the previous merger. In that case, a {{ }} UP share would be indicative of substantial foreclosure.

90. One possible benchmark might be to compare UP's share in 2019 to the level before all the effects of previous transactions occurred. That is, one might compare UP's share before the KCS/TFM/TM transaction versus 2019. As shown in Figure 7, UP's share of northbound shipments was 90% before the acquisitions. By 2019, the share had fallen to {{ }}, as discussed above. Similarly KCS share of southbound was only 9% and it is {{ }}much higher today, as shown in Figure 8 below. Thus, this is equally "consistent" with the acquisitions leading to foreclosure of UP.

Figure 7: Pre-KCS/TFM/TM Shares of Movements via All U.S./Mexico Gateways

Railroad	Northbound	Southbound
UP	90%	79%
KCSR/Tex Mex	3%	9%

Source: Kansas City Southern —Control— the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company, STB Finance Docket No. 34342 at 12 (2004).

91. As Dr. Majure recognized at his deposition,[75] there are other possible explanations that also are "consistent" with the decline in UP's share post-2004/2005 and the corresponding

[74] Majure V.S. at ¶31.

[75] Deposition of W. Robert Majure, February 7, 2022 at 229, ("It's very hard to make that kind of comparison over a long period like this. And in particular, there are a lot of things that have been changing that would affect this. . . So I would expect changes to happen from investments. I would expect changes to happen from—changes in demand over time. . . So even just the composition of what the traffic is is probably changed somewhat. So those are just some of the reasons why trying to do this over time might lead to a misleading conclusion.").

increase in KCS's share, such as secular improvements in KCS service over this period. These alternatives reduce if not totally eliminate the probative value of the change in the shares. But I note that if Dr. Majure's reasoning regarding the {{ }} in 2019 were to be credited, then so must also be this decline from {{ }} in 2004-2005 down to {{ }}. That is, this large reduction in UP's share over time (and the corresponding increase in KCS's share) equally could be said to be "consistent" with foreclosure by KCS.[76]

92. Dr. Majure's apparent conclusion that his Exhibit 2 rebuts foreclosure concerns also ignores the fact that the foreclosure incentives would be increased after the merger because of the incremental revenue earned on the CP portion of movements diverted to the merged firm from the foreclosure. For example, Figure 6 indicates that there are {{ }} movements to areas not served by KCS today that the merged CPKC could serve and for which UP currently obtains a { }} share at Laredo. These movements are ones that the merged firm could divert from UP, BNSF or others by raising the rate for KCSM's monopoly segment. This is another reason why his Exhibit lacks probative value.

93. In addition, because Dr. Majure does not take into account the likelihood and potential harms from foreclosure, his conclusion that the merger likely will benefit shippers on these routes also lacks probative value.

6.2 Analysis of Southbound Traffic Through the Laredo Gateway Does Not Support Dr. Majure's Conclusion that There Are No Foreclosure Concerns

94. Dr. Majure did not analyze southbound traffic through the Laredo gateway in his report. However, there are similar foreclosure concerns relating to southbound traffic: KCSM could increase the rate for southbound movements interchanged with UP at the Laredo gateway in order to increase the cost to shippers of using UP for the U.S. portion of a movement and thereby increase traffic obtained by KCS instead. Figure 8 presents UP and KCS' 2019 shares of southbound carloads interchanged with KCSM at the Laredo gateway in the same format used by Dr. Majure in his northbound analysis. UP's share of southbound traffic (i.e., share of traffic interchanged at the Laredo gateway from areas KCS serves) is only {{ }}, far less than the {{ }} share Dr. Majure found for northbound traffic.

95. Had Dr. Majure analyzed southbound traffic in his report, and if he had applied his rule on northbound traffic that a "sizable percentage [share of UP] is consistent with KCS having an incentive to provide shippers with their preferred route and carrier … rather than forcing

[76] Dr. Majure refers to {{ }} rate of interchange traffic as "consistent with KCS having no ability to force shippers into using KCS." (Majure V.S. at ¶31.)

shippers to use KCS alone,"[77] he then should have concluded that UP's "small" {{ }} share of traffic from areas that KCS serves (versus {{ }} share for traffic from areas that KCS does not serve) is "consistent" with a significant foreclosure concern.[78] Similarly, KCS's "large" {{ }} share of southbound carloads from areas is much higher than the {{ }} of northbound traffic he flagged. Thus, Dr. Majure should have concluded that this high rate indicated that foreclosure was occurring.

96. Of course, these metrics also are subject to the same criticism of Dr. Majure's analysis that I made earlier: these figures do not compare this percentage to an estimated percentage in the but-for world absent the merger.

Figure 8: Shares of Southbound Traffic Interchanged at Laredo Gateway with KCSM

			KCS Share at Laredo Gateway		
Area	**Total Carloads**	**UP share at Laredo Gateway**	**Total KCS Share [A = B + C]**	**BNSF to KCS at Robstown or Corpus Christi [B]**	**KCS share before Robstown or Corpus Christi [C]**
KCS serves…	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
KCS does not serve…	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
KCS does not serve and CP serves…	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
… and UP and BNSF do not serve	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
… and UP or BNSF serves	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
All traffic through Laredo to Mexico	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}

Sources:
CP-KCS Traffic Tapes, 2019
Confidential Waybill Sample, 2019
CP Intermodal Containers to Railcar Conversion Factor.xls
KCS R-1 Annual Report, 2019

[77] Majure V.S. at ¶30.

[78] Dr. Majure writes that he did not report these southbound traffic figures because "[w]hile UP's concern could have applied to southbound traffic as well, I test the effect on the northbound traffic as I can readily categorize movements of this traffic in terms of whether an interchange with another railroad happened as early in the movement as feasible." Majure V.S. at note 17. However, the primary statistic needed for the southbound analysis is UP's share in areas KCS serves, which can readily be calculated using a definition for "serves" focused on origin points that is comparable to the termination points used in the northbound analysis.

6.3 Dr. Majure's Data Do Not Provide Evidence of a Preference for Single-Line Service

97. Dr. Majure also suggests that the data reported in Figure 6 above demonstrate a shipper preference for single-line service.[79] Dr. Majure specifically points to the fact that KCS has a higher share at the Laredo gateway when it is able to provide single-line service beyond Laredo/Robstown/Corpus Christi ({{ }}, as shown in line 1) than it does for traffic bound for areas where KCS could not deliver to the ultimate destination ({{ }}, as shown in line 2). However, just as it is not possible to draw a conclusion about foreclosure in the absence of an estimate of the outcome absent the merger, it also is not possible to draw a conclusion about shipper preferences for single-line service from Dr. Majure's Exhibit 2. This higher share could have been the result of foreclosure rather than preference for single-line service or some other product differentiation or cost factor.

98. Other data do not indicate a strong preference for single-line service. For example, Figure 9 reports northbound carload shipments through Laredo to Kansas City for finished automobiles. KCS *single-line* movements accounted for only {{ }} of finished automobiles from Laredo to Kansas City, whereas UP *interline* movements accounted for {{ }} of these shipments. Thus, these percentages do not indicate a strong preference for single-line service provided by KCS.

Figure 9: Northbound Finished Automobile Shipments through Laredo to Kansas City-2019

Routing Railroads North of Mexican Border	Total Carloads	Share
KCS Total	{{ }}	{{ }}
KCS-BNSF	{{ }}	{{ }}
KCS	{{ }}	{{ }}
UP Total	{{ }}	{{ }}
UP	{{ }}	{{ }}
Total	{{ }}	

Source: Brown & Zebrowski V.S., workpaper "4 - Traffic Screening.xlsx"
Note: Movements with railroad routing "KCS-NS" are grouped with movements with railroad routing "KCS".

[79] Majure V.S. at ¶32. ("That difference, {{ }} percent [KCS share] where KCS could offer a single-line service compared to {{ }} [KCS share] where they could not, suggests that shippers have a preference for single-line service.").

6.4 Dr. Majure's Flawed Argument that There Are No "Pre-Existing Constraints" on Foreclosure

99. At his deposition, Dr. Majure suggested that it was important to identify whether there was an "unexploited pre-merger way to influence competition that becomes feasible to implement as a result of the merger."[80] He identified this as "one of the conditions for when a vertical merger might have an anticompetitive effect."[81] He also testified that he reached "the conclusion that they don't have any unexploited power in a way that might be unlocked by a merger."[82] In its Response to CSX Interrogatory 27, Applicants' counsel fulsomely described Dr. Majure's statement as demanding identification of a "pre-existing constraint" that prevents CP and/or KCS from engaging in conduct that would lessen competition absent the merger, and that there is a "credible mechanism" by which the merger would make the constraint "no longer bind," so that "unexploited potential to impair competition could be realized" after the merger.

100. Stated more simply, Dr. Majure and the Applicants suggest that it is necessary for the Board or opponents to identify pre-merger constraints on successful foreclosure conduct and explain how the merger would relax or eliminate these constraints. As noted above, Dr. Majure testified that he was unable to identify any such constraints.

101. But such pre-merger constraints are not difficult to identify here. There are legal and economic reasons why CP and KCS would improve their ability to engage in successful anticompetitive conduct by merging rather than cooperating absent the merger. These reasons are the pre-merger constraints that are relaxed or eliminated by the merger.

102. Consider the scenario of foreclosure of UP by KCSM. Absent the merger, it is conceivable that CP and KCS/KCSM could strike a foreclosure contract by which CP would compensate KCS in consideration of KCS engaging in conduct to raise the costs of UP and BNSF for their interline movements (e.g., by raising KCSM rates or delaying shipments of UP and BNSF) in order to cause some shippers to divert to CP/KCS interline movements. The profitability analysis in Section 5 explains that this foreclosure would increase the combined profits of CP and KCS/KCSM. Thus, one might hypothesize that they could reach a mutually beneficial deal to share the profits absent the merger and thus the merger would not have incremental foreclosure effects. Stated differently, this reasoning might be assumed to imply that there is no pre-merger constraint that the merger would unbind.

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[80] *See, e.g.,* Majure Deposition at 90.

[81] *Id.*

[82] *Id.* at 71.

103. However, this would-be pre-merger contract would face an obvious *legal constraint*. The agreement would violate Section 1 of the Sherman Act. As stated, it amounts to a naked exclusionary agreement that would harm competition and competitors. The parties similarly would be in legal jeopardy—in light of both antitrust and STB constraints —if they re-framed the pre-merger contract to make CP the exclusive interline partner of KCS, since the contract would likely harm shippers. These legal constraints are a clear "pre-existing constraint" that would (in the Applicants' words) "limit the feasibility of arrangements CP and/or KCS could have, as separate entities, to align their respective incentives and abilities in a fashion that would lessen competition."[83]

104. This would-be pre-merger agreement also would face an *economic constraint* from the combination of private information and related strategic bargaining incentives of the two parties. CP and KCS/KCSM would have to agree on how to divide the increased profits from the foreclosure. In that negotiation, each side would have the incentive to understate its benefits and overstate its costs in order to claim a larger share of the anticompetitive pie.[84] As a result, they may well fail to reach an agreement, even ignoring legal constraints on such an agreement such as the Sherman Act and other legal restrictions. (Of course, these legal constraints make agreeing on relative costs and benefits and arranging for the side payments even harder, given the need to avoid detection.) The merger solves this problem of private information and strategic bargaining incentives by permitting open communication and eliminating the need to allocate the gains between the two separate parties. Indeed, the Applicants make the analogous argument about such information/bargaining constraints in explaining why CP and KCS would be unable to achieve the claimed efficiency benefits absent the merger.[85]

105. Similar informational/bargaining incentive constraints also would constrain CP and KCS from achieving the foreclosure benefits the merger allows that I discussed in Section 3.2. That section explains how the vertical merger leads to information exchange between the merging Carriers A and X and how that information sharing permits the merged Carrier A/X profitably to raise the division quoted to Carrier Y, while in turn causing shippers to pay higher rates on average. In principle, Dr. Majure might postulate that Carriers A and X could have cooperated in the pre-merger world by exchanging the requisite information and sharing the higher profits. However, this information sharing would be constrained by the

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[83] KCS and CP's Supplemental Joint Responses and Objections to CSXT's Second Set of Discovery Requests, Response to Int. No. 27.

[84] This is a standard constraint when bargaining parties have private information. It has been used to explain why parties do not always settle litigation in advance of spending enormous sums, why there are wars, and other more mundane examples of two parties failing to reach a mutually beneficial agreement.

[85] Brooks V.S. at ¶¶28-36.

same sort of private information/strategic bargaining incentives constraints as above. Each party would have the incentive to misrepresent in order to get a large share of the profits. This is not simply a theoretical constraint. As UP witnesses Rocker & Turner have explained, UP and other carriers maintain confidentiality over their Rule 11 rates quoted to shippers and do not share them with other carriers.[86] Moreover, rational shippers would have the incentive to prohibit such information sharing that would lead to higher rates.

106. Finally, it is important to add that Dr. Majure makes the assumption that there is no foreclosure today, and that any foreclosure incentives are neutralized by the KCS previous and current commitments. However, as discussed above, his claim of no-foreclosure is unsupported, due to the fact that he made no effort to identify what would have occurred in the but-for world absent KCS's acquisition of the Mexican rail assets, as he conceded in his deposition.[87] An assumption that the KCS current commitments also would prevent significant foreclosure by CPKC is flawed because it ignores the fact that CPKC's post-merger incentives to evade adherence to the commitments in order to foreclose are greater than KCS's standalone incentives. This is because the merged firm will capture the larger combined revenue and profits from the foreclosure, as discussed in Section 5. That is, there will be a greater post-merger incentive to evade whatever pre-merger constraints occur from the commitments (or constraints from any other pre-merger impediments that might not be observable to outsiders). And in light of how difficult it must be is to detect violations of the rate commitments (as discussed in the next section), it also follows that foreclosure risks are increased by the merger.

7. A Specific Commercially Reasonable Rule 11 Rate Methodology for CPKC's Monopoly Segments Can Avoid Foreclosure Concerns

107. In this section, I discuss a commercially reasonable Rule 11 rate formula to address foreclosure concerns raised by the merger.

7.1 Applicants' Commitments are Vague and Insufficient

108. The analysis in this report confirms that there are significant anticompetitive foreclosure concerns raised by the merger. Dr. Majure suggests that CP has made commitments sufficient to prevent any foreclosure. As he explains, "CP's willingness to make the same sort of commitments adopted by KCS at Laredo [in the KCS-KCSM merger]. . . " means

[86] Rocker & Turner V.S. at 9-10. *See* also Deposition of John Brooks, February 4, 2022, at 51-52.

[87] Majure Deposition at 102-107.

that "CP/KCS should be expected to interchange traffic even where it can offer an enhanced service if the shipper, nevertheless, prefers a different routing or wants to use a different carrier."[88]

109. Applicants have stated a commitment, through CP's Executive Vice President and Chief Marketing Officer John Brooks, to maintain Laredo as an open gateway, pursuant to a previous commitment that KCS made in 2003 with its acquisition of what became KCSM.[89] By "open" gateway, Mr. Brooks states first that CPKC will maintain the "operational efficiency" of gateways like Laredo "to maintain efficient operations… wherever traffic levels warrant—in terms of both the through train services to and from the gateways as well as the operational capabilities and infrastructure necessary to carry out efficient interchange."[90]

110. Applicants have also committed generally to maintaining the "commercial viability" of gateways like Laredo, such that "when a customer requests a rate for only the former-CP or former-KCS portion of an origin-to-destination routing, we will provide the shipper with a Rule 11 rate to the gateway."[91] By this commitment, Mr. Brooks states that "we will not make it impossible to construct viable interline options for shippers by refusing to quote commercially reasonable rates."[92]

111. However, this pricing commitment is vague and incomplete. Mr. Brooks' statement does not define either "viable" or "commercially reasonable rates." Nor is it clear whether this commitment applies to KCSM rates to-or-from the Laredo gateway. Without a firm understanding of what this rate entails, the commitment is meaningless.

112. This concern about the vagueness of CP's commitments is buttressed by some of the ambiguities in Mr. Brooks' Verified Statement, which includes many of the promises summarized above but which also raises additional questions. Importantly, Mr. Brooks distinguishes between interlining (a) on routes where the combined CPKC "will not reach" and where they will "obviously" maintain their ability to interchange efficiently (e.g.,

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[88] Majure V.S. at ¶38.

[89] Brooks V.S. at ¶¶35, 42. Brooks further states that "CP also looks forward to stepping into KCS's shoes to continue cooperating with UP on interline traffic over the important Laredo gateway."

[90] Brooks V.S. at ¶45.

[91] Brooks V.S. at ¶46.

[92] *Id*. "Commercial viability" is not the same as "commercial reasonableness." Mr. Brooks' "commercial viability" standard would appear to allow CP to attempt to engage in margin squeezes by raising its Rule 11 rates for its segment of interline movements. That standard would allow substantial single-line rate increases by the integrated carrier, to the detriment of shippers.

interchange with UP at the Kansas City gateway serving Powder River Basin coal)[93] and (b) traffic that either CP or KCS interchange today but that CPKC can potentially "serve better" with their integrated routing post-merger (e.g., service from Mexico through Laredo to the Upper Midwest).[94] Regarding the latter, Applicants offer only a "promise" not to try to foreclose non-integrated competitors that customers may prefer to use because "that would hurt us in the long run by damaging the value of our brand as a promise of customer value."[95] This suggests that Applicants understand the difference between routes on which there might be an incentive to foreclose an interline "competitor," and those with an interline "partner" where this incentive is missing. Yet Applicants make only vague promises not to foreclose competitors, and those are premised only on maintaining CPKC's brand value with customers. This type of commitment is flatly insufficient to protect competition and shippers.

113. Applicants have conceded the fact that its commitments are insufficient. In its letter to the NITL, CP explained this insufficiency as follows:

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}}[96]

114. KCSM states that it sets rates to all users on a non-discriminatory basis.[97] However, a commitment for KCSM to charge the same nominal rate for shipments that interchange with UP at the Laredo gateway as for the same or similar shipments that interchange with KCS

[93] Brooks V.S. at ¶39. Brooks also refers to these as "friendly" connections—i.e., ones where each partner needs the other to serve the customer. Brooks V.S. at ¶28.

[94] Brooks V.S. at ¶40.

[95] *Id*.

[96] Letter from CP to National Industrial Transportation League (June 25, 2021) (CP-HC-00000851-854) at ¶¶2-3.

[97] KCS and CP's Joint Responses and Objections to UP's First Set of Discovery Requests, Response to Request No. 63. ("All Commercial rates are to be offered to shippers in a non-discriminatory manner. As a result of the interplay of these laws, if KCSM provides one shipper with a rate from Mexico to the Laredo gateway, it must in general also provide other shippers with a similar rate.") KCS and CP's Joint Responses and Objections to UP's Third Set of Discovery Requests, Responses to Request Nos. 176, 186.

would not prevent foreclosure.[98] KCS (or CPKC) can achieve an effective price foreclosure goal by setting a high nominal rate for KCSM that raises UP's costs to whatever level is desired and then setting whatever KCSM/KCS (or CPKC) through rate as desired by adjusting the Rule 11 rate on the KCS segment in the US or the single-line rate.[99] KCS has this discretion. It explains that it sets rates on the basis of numerous factors "including but not limited to the market, operating and cost considerations, the type of service, volume, risk premiums (such as hazardous materials or high end commodities), asset availability, network capacity, competitive modes of transportation, and regulatory requirements."[100] At the same time, KCS has discretion because the portion assigned to KCSM vs. KCS would be purely an accounting matter for the combined corporation.[101]

115. Indeed, Applicants have essentially conceded that it would be impossible for UP (or the Board) to determine whether KCSM's current rates are reasonable or not. As Applicants' attorneys explained in response to UP's Motion to Compel,

> The Board did not define "commercially reasonable" in its 2004 Tex Mex decision. See Tex Mex Decision at 19. There are no set metrics; there are no dollar caps. There is no ruler by which UP could even determine, at this later date and with full hindsight, whether a particular rate offered for one customer in 2019 for intermodal traffic between Mexico City and Kansas City is "commercially reasonable" without wild speculation.[102]

116. A commitment that is not easily enforceable because it lacks any metrics or any basis on which to evaluate compliance offers no protection to competition or shippers.[103] Only an administrable and enforceable methodology for setting and determining commercially reasonable rates for interline movements can mitigate the risk of anticompetitive foreclosure.

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[98] This same basic analysis applies to shipments that interchange with BNSF at Corpus Christi or Robstown.

[99] *See, supra* note 97 at No. 168. KCS and CP's Joint Responses and Objections to UP's Second Set of Discovery Requests, Response to Request No. 148.

[100] *Id.*

[101] It is possible that tax consequences could differ. However, this likely would be a second-order effect.

[102] Applicants' Reply To UP's Motion to Compel (Feb. 7, 2022).

[103] *See*, e.g., Antitrust Division, Department of Justice, MERGER REMEDIES MANUAL (September 2020) at 8, 16.

7.2 A Proposed Commercially Reasonable Rate Formula for CPKC Monopoly Segments

117. The Board should consider the following methodology for the determination of commercially reasonable Rule 11 rates for KCSM movements to-and-from the Laredo gateway. I refer to this methodology as the Competitively Reasonable Rate (CRR) formula. Under the CRR formula, when a shipper asks CPKC for a single-line rate for the portion of a movement served by CPKC and a Rule 11 rate solely for the monopoly portion, CPKC would set KCSM's Rule 11 rate as a prorated percentage of the merged firm's single-line rate for the entire movement. In the case of UP movements involving the Laredo gateway, the CPKC monopoly portion would be the portion from the Mexican origin or destination point to the Laredo gateway. In the case of BNSF movements, the CPKC monopoly portion would be the portion from the Mexican point to the BNSF interchange point at Robstown or Corpus Christi. The prorated percentage in the CRR formula would be set equal to the ratio of the KCSM miles (or the KCSM and KCS miles, in the case of BNSF movements) to the KCSM/KCS/CP single-line miles from the origin to the destination (or to an interchange with another carrier).

118. To illustrate, suppose that CPKC quotes a through rate of $6000 for a class of merchandise for movements from its origin station in Mexico to Chicago. Suppose that the KCSM miles from the origin station to the Laredo gateway represents one-third (i.e., 33.3%) of the miles for the merged firm's full movement to Chicago. In that case, the CRR for KCSM's share of the movement to the Laredo gateway would be $2000 (i.e., 33.3% x $6000). These rates would be disclosed to the shipper, not to the competitors of the merged firm.

119. To paraphrase the Applicant's language that "when a customer requests a rate for only the former-CP or former-KCS portion of an origin-to-destination routing, we will provide the shipper with a Rule 11 rate to the gateway,"[104] the CRR might be phrased as follows: when a shipper requests a rate for CPKC service on only the former-CP or former-KCS/KCSM portions of an origin-to-destination route and a rate for CPKC single-line service on a competitive route, the merged firm must provide a Rule 11 rate for the former-CP or former-KCS/KCSM portions that reflects a mileage-based prorate of its single-line rate. The prorate would be equal to the ratio of (a) the miles of the merged firm from the origin point to the interchange point to (b) the miles of the merged firm from the origin to the

[104] Brooks V.S. at ¶46.

interchange *plus* the miles of the merged firm from the interchange point to the destination point.[105]

120. This CRR formula has several advantages over other more complex methodologies.[106] First, the administrative costs are low. The CRR is straightforward for the merged carrier to calculate and implement. Compliance also can be easily monitored by the shipper, which will be given both rates by the merged CPKC. Thus, it can be enforced the shipper itself. It similarly is simple for the Board (or an arbitrator) to resolve disputes under this approach, unlike the great complexity and interminable disputes associated with efforts to actually estimate the relevant marginal costs of the two segments and other factors.[107] Second, the CRR protects competition. It ensures access to commercially reasonable interline rates; it prevents the integrated carrier from engaging in a margin squeeze against the interline carrier; and it does not permit the unintegrated carrier automatically to see the single-line rate. Third, the CRR does not regulate the single-line rate; it simply sets the Rule 11 rate on the monopoly segment in accordance with CPKC's own rate decisions.

7.3 The CRR Formula Will Not Reduce Competition

121. Applicants might attempt to argue that the CRR formula will force rate equalization and deter rate reductions driven by lower costs in the same way as the now-discredited DT&I

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[105] The Applicant's Michael R. Baranowski has not suggested that KCSM's operating costs should be treated as exceeding KCS's cost. As he stated, "I also assumed, based on high-level comparisons of KCS and KCSM costs per unit of output that KCS URCS costs are a reasonable surrogate for KCSM costs for diverted volumes. (APP., *Verified Statement of Michael R. Baranowski* (October 29, 2021) (*hereinafter*, Baranowski V.S.) ¶22 at 415.) Applying the MSP adjustment avoids any argument that CPKC would be disadvantaged by the CRR methodology.

[106] These complex alternatives might include a specified mark-up over some measure of costs; the rates charged before the merger, adjusted for objectively measured cost and other changes; rates charged on other comparable routes unaffected by the merger; etc. These alternatives all involve judgment calls (e.g., the level of the mark-up; the particular routes or historical period used as benchmarks; any other factors used to adjust rate levels). As a result, they involve higher administrative cost and complexity that also could lead to more disputes and an inability to resolve these disputes quickly.

[107] Allowing the CPKC the discretion to base the division on its own estimate of the relative costs of the two movements would effectively permit it to set a very high rate for the interline segment under the guise of it being reasonable under the circumstances. In its responses to discovery, KCS states that it assigns revenue divisions between KCS and KCSM "based on the circumstances particular to the move, including but not limited to mileage divisions, operating cost considerations, overall base costs (such as higher fuel costs in Mexico or additional security needs), WACC differences in the United States and Mexico, and regulatory requirements (such as TUCE (Max) rate considerations in Mexico)" KCS and CP's Joint Responses and Objections to UP's Second Set of Discovery Requests, Response to Request No. 148. This approach would be impossible for the shipper or a third party to evaluate easily in real time, but rather would lead to more disputes that would be difficult to resolve in an accurate or timely way.

conditions. However, this criticism is not well-founded. This is because the CRR is far narrower than the DT&I conditions[108] and is formulated to preserve competition among the carriers. In particular, the CRR does not constrain the single-line rate of the merged firm; it simply bases the Rule 11 rate on the monopoly segment of the carrier's independently-determined rate. Nor does the CRR require a negotiation with the competing interline carrier.

122. Applicants also might argue that the CRR formula will reduce competition by diminishing its incentive to reduce its rates in response to cost savings achieved by the merger. While it is the case that reductions in CPKC's single-line rates will lead to some reductions in the CRR, the CRR will not reduce competition for several reasons.

123. First, this argument overlooks the fact that the goal and impact of the CRR is to prevent price foreclosure that would otherwise occur, and which would lead to *higher* single-line rates and *higher* rates charged on interline routes. As demonstrated by the economic analysis presented in this report, CPKC will have the ability and incentive to foreclose unintegrated competitors by raising its rates for its portion of interline movements that would allow it to raise its single-line rates. By preventing that foreclosure, competition will be maintained, not deterred.

124. Second, any reduction in the Rule 11 rate caused by the CRR will amount to only a fraction of the reduction in the single-line rate. For example, suppose that CPKC were to reduce its costs by $100 and decided to reduce its single-line rate by $50, taking the other $50 as an increase in its margin. If its monopoly segment accounted for one-third of the mileage of the total movement, the CRR would fall by $15. Even if the interline competitor passed on this entire $15 fee reduction, it would not be able to match CPKC's single-line rate reduction. Thus, CPKC could still gain more business and a higher margin.

[108] Rulemaking Concerning Traffic Protective Conditions In Railroad Consolidation Proceedings, 366 I.C.C. 112 (1982).

VERIFICATION

I, Steven C. Salop, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on February 27, 2022.

/s/ Steven C. Salop

Appendix A. Professor Salop's Curriculum Vitae

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https://www.law.georgetown.edu/faculty/steven-c-salop/
https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=68535

PERSONAL Born, December 23, 1946; Married to Judith R. Gelman, three children; U.S. Citizen.

FIELDS OF SPECIALIZATION

Industrial Organization, Competition and Antitrust Policy, Economics of Information, Economic Analysis of Law.

DEGREES

Ph.D.	Economics, Yale University, 1972
M. Phil.	Economics, Yale University, 1972
B.A.	University of Pennsylvania, 1968

AWARDS

AALS Antitrust Section Lifetime Achievement Award (2019);

AAI Antitrust Achievement Award (2010);

Summa Cum Laude, with Honors in Economics, University of Pennsylvania, 1968;

Schoenbaum Prize in Economics, University of Pennsylvania, 1968;

NSF Graduate Fellowship, 1968-72;

Phi Beta Kappa, 1968.

EMPLOYMENT EXPERIENCE

Professor of Economics and Law, Georgetown University Law Center (at GULC since August 1981).

Guest Scholar, Brookings Institution, 1990-1991.

Visiting Professor, Massachusetts Institute of Technology, Spring 1986.

Visiting Interdisciplinary Professor, Georgetown University Law Center, July 1981-June 1982.

Associate Director for Special Projects, Bureau of Economics, Federal Trade Commission, January 1980-June 1981.

Assistant Director for Industry Analysis, Bureau of Economics, Federal Trade Commission, September 1979-January 1980.

Deputy Assistant Director for Consumer Protection, Bureau of Economics, Federal Trade Commission, December 1978-September 1979.

Economist, Division of Consumer Protection, Bureau of Economics, Federal Trade Commission. July 1978-December 1978.

Visiting Professor, Department of Economics, University of Pennsylvania, September 1977-June 1978.

Economist, Office of Economic Analysis, Civil Aeronautics Board, September 1977-July 1978.

Economist, Federal Reserve Board, July 1972-September 1977.

Adjunct Professor, Department of Economics, George Washington University, September 1975- January 1978.

PUBLICATIONS

Books and Reports

Strategy, Predation and Antitrust Analysis. Editor. Federal Trade Commission, 1981.

Consumer Post-Purchase Remedies. With H. Beales et al., Federal Trade Commission Staff Report, 1980.

Consumer Information Remedies. With L. Kantor et al., Federal Trade Commission Staff Report, 1979.

Articles

"A Suggested Revision of the 2020 Vertical Merger Guidelines," ANTITRUST BULLETIN (2022) *(Forthcoming)*

"Vertical Mergers in a Model of Upstream Monopoly and Imperfect Information," REVIEW OF INDUSTRIAL ORGANIZATION (2021) (with Serge Moresi, David Reitman & Yianis Sarafidis)

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"Probability, Presumptions and Evidentiary Burdens in Antitrust Analysis: A Post-Chicago Rule of Reason," U. PA L. REV. (2020) (with Andrew I. Gavil)

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"Getting Your Deal Done Under the Vertical Merger Guidelines," ANTITRUST SOURCE (October 2020)

"Five Principles for Vertical Merger Enforcement Policy," ANTITRUST (Summer 2019) (with Jonathan Baker, Nancy Rose & Fiona Scott-Morton)

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"Revising the Vertical Merger Guidelines: Policy Issues and an Interim Guide for Practitioners," JOURNAL OF ANTITRUST ENFORCEMENT (2016) (with Daniel P. Culley)

"Modifying Merger Consent Decrees: An Economist Plot to Improve Merger Enforcement Policy," ANTITRUST (2016)

"Evaluating Joint Ventures: An Economic Analysis Checklist," ANTITRUST (2016)

"The Evolution and Vitality of Merger Presumptions: A Decision-Theoretic Approach," ANTITRUST LAW JOURNAL (2015)

"Antitrust, Competition Policy, and Inequality," GEORGETOWN LAW REVIEW ONLINE (2015) (with Jonathan Baker)

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"More Value for the Legal Dollar: A New Look at Attorney-Client Fees and Relationships." With R. Litan. JUDICATURE (1994).

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"Exclusionary Vertical Restraints: Has Economics Mattered?" AMERICAN ECONOMIC REVI*ew* (May 1992).

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"Implications of the Georgetown Project for Treble Damages Reform." Senate Judiciary Committee, March 21, 1986.

"Policing Deceptive Advertising." Serial No. 97-134, 97th Congress.

"Comment on Golbe and White, 'Time Series Analysis of Mergers.'" In Auerbach et al., MERGERS AND ACQUISITIONS, NBER.

"Policy Implications of Conference Papers." In Auerbach et al., MERGERS AND ACQUISITIONS, NBER.

"Evaluating Uncertain Evidence with Sir Thomas Bayes." JOURNAL OF ECONOMIC PERSPECTIVES (Summer 1987).

"Entry Barriers, Consumer Welfare and Antitrust Reform." In Bock et al., ANTITRUST AND NEW VIEWS OF MICROECONOMICS. Conference Board, 1986.

"Buy American, Save Your Job?" In J. Tobin et al., MACROECONOMICS, PRICES AND QUANTITIES. Brookings Institution, 1983.

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"Comment on R. Schmalensee, 'On the Use of Economic Models in Antitrust.'" In O. Williamson et al., ANTITRUST LAW AND ECONOMICS, 1980.

"Review of K. Lancaster, 'Variety, Equity and Efficiency,'" JOURNAL OF ECONOMIC LITERATURE, 1980.

Unpublished Papers and Teaching Materials

"Potential Competition and Antitrust Analysis: Monopoly Profits Exceed Duopoly Profits" (Report for OECD Conference) (May 2021)

"Antitrust Economics and Law Lecture Decks,"
Posted at https://georgetown.app.box.com/folder/127214186510

"Strategic Incentives in Non-Coasian Litigation" (with Erik Hovenkamp), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3821133. This is a revised version of our earlier article, Asymmetric Stakes and Antitrust Litigation

"An Enquiry Meet for the Case: Decision Theory, Presumptions, and Evidentiary Burdens in Formulating Antitrust Legal Standards" (January 2018)

"The Appropriate Legal Standard and Sufficient Economic Evidence for Exclusive Dealing under Section 2: the FTC's *McWane* Case," (with Sharis Pozen and John Seward) (August 2014)

"Economic Reasoning for Lawyers: Cases and Materials" (2010)

SELECTED PROFESSIONAL ACTIVITIES

Co-Chair, Georgetown Global Antitrust Enforcement Symposium (2013- present)

ABA Antitrust Masters Course (2016, 2014, 2012, 2010)

American Antitrust Institute (AAI) Advisory Board

ABA Antitrust Presidential Transition Taskforce (2012)

Associate Editor, JOURNAL OF INDUSTRIAL ECONOMICS (1997-2000)

Advisory Committee, FTC Hearings on Global and Innovation-Based Competition (1996).

Associate Editor (Industrial Organization), JOURNAL OF ECONOMIC PERSPECTIVES (1987-1993).

ABA Antitrust Task Force on Second Requests (1990).

Advisory Board, Georgetown Project on Treble Damages (1986-1987).

Associate Editor, JOURNAL OF INDUSTRIAL ECONOMICS (1983-1988).

Associate Editor, INTERNATIONAL JOURNAL OF INDUSTRIAL ORGANIZATION (1984-1989).

Secretary, Antitrust Section, American Association of Law Schools (1983-1984).

Memberships: American Economic Association, American Bar Association, Phi Beta Kappa.

Nominating Committee: American Economic Association, 1982.

Economics Editorial Advisor, JOURNAL OF CONSUMER RESEARCH, 1982.

OTHER ACTIVITIES

Senior Consultant, Charles River Associates

President, Salop Economics Inc. (1982-present)

Board of Directors, Charles River Associates (1998-2008)

Board of Trustees, The Lowell School (1989-1995)

Appendix B. Numerical Example of Foreclosure with Imperfect Information

The analysis of pre-merger and post-merger competition can be illustrated with a numerical example where the shipper obtains through rates from the competing carriers. The results do not depend on the specific parameter values of the example.[109] As in the example of the one-lump theory (see paragraphs 36–39 above), suppose that the shipper's reservation price is $400 and that demand is inelastic (say, equal to 1 unit) for any price below $400. However, assume now that instead of the competing carriers each having a cost of $100, their costs for the specific movement for the specific shipper may be different and may fall anywhere (independently and uniformly) within a range of $50 to $150, so that the cost of either competing carrier is equal to $100 *on average*, but may differ for a particular shipper's movements. Assume further that neither competing carrier knows the other's cost and, more importantly, that the monopoly carrier does not know the costs of the competing carriers. To show the effect of imperfect information in the simplest context, one can continue to assume that the monopoly carrier's cost is $150 and that the competing carriers know this cost.[110] Furthermore, when the competing carriers bid for the shipper's movement, one can assume for simplicity that they each observe the division that the monopoly carrier has quoted to the other competing carrier.

Under these conditions, in the pre-merger market, each competing carrier will offer a through rate to the shipper that depends on its own total cost, its expectations about likely rates offered by the other competing carrier, and the bid process used by the shipper.[111] The total cost of a competing carrier includes the division quoted by the monopoly carrier, which I discuss further

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[109] Moresi et al., *supra* note 28, demonstrates that the one-lump theory is rejected under general conditions when the monopoly carrier has imperfect information regarding the competing carriers' costs and the shipper has inelastic demand up to its maximum reservation price. The numerical example presented in this appendix is consistent with that article, and the equilibrium prices reported here were calculated using the formulas provided in the article.

[110] If the monopolist's costs also vary, the analysis is more complicated. But the one-lump theory still does not apply.

[111] In the formal model of Moresi et al., *supra* note 28, the carriers' "offers" are their "best" (i.e., minimum) price offers. The shipper chooses the carrier by running sequential bid rounds where each carrier continues to lower its prices until one of the carriers drops out. A carrier will drop out rather than bid below its costs. Thus, in this situation, the winning bidder will be the carrier with the lower cost realization. But it will be paid a price above its own costs, at a level just below the cost of the other, higher cost carrier. For example, if the two carriers have costs of $80 and $120 respectively for a particular movement, the $80 cost carrier will win the competition and be paid a price of $119.99, that is, approximately $120. In technical economic terms, this is equivalent to what economists denote as a "second price" auction. However, as shown in that article, the main post-merger results are the same in the scenario where the carriers make sealed-bid offers, what economists denote as a "first price" auction, and the pre-merger results have the same expected value.

below. Each competing carrier thus will offer a through rate to the shipper that depends on its costs for the specific movement and will have an incentive to offer a higher through rate in situations where its costs are higher. The shipper will then choose the movement with the lowest through rate.

The monopoly carrier bases its own division quotes on its imperfect information about the competing carriers' likely costs and mark-ups. To illustrate, suppose that the monopoly carrier knows that the competing carriers have costs in the $50-$150 range, but does not know the actual costs or resulting contributions to the through rate each will bid to the shipper in its through rate offer. It would not make economic sense for the monopoly carrier to set a division higher than $350. If it did, the competing carriers would be unable to offer through rates that do not exceed the shipper's reservation price of $400, even at the minimum cost of $50.

Applying the analysis in the Moresi et al. article, the monopoly carrier will quote a division to each competing carrier of $283.33 to maximize its *expected profits*.[112] Each competing carrier would then form its own through rate offer to the shipper using this quote from the monopoly carrier, along with its own cost and its expectations of the cost and resulting rate of the other competing carrier. Note that, if a competing carrier's cost is higher than $116.67 (which is possible since costs are anywhere between $50 and $150), then that carrier will not bother to bid since it cannot offer a through rate below the shipper's reservation price of $400. However, if both competing carriers have costs below $116.67, then the winning bid is less than $400 and thus the shipper will obtain some "surplus" value. For example, if the through rate paid is $390, the shipper will obtain a surplus of $10 (i.e., $400 - $390). But if the costs are sufficiently high – say, each competing carrier has a cost of $120 – then the two competing carriers will not be able to offer rates below the shipper's reservation price of $400, and so the shipper will go elsewhere.

To summarize, competition in the pre-merger market with imperfect information leads to the shipper obtaining a through rate below its reservation price some fraction of the time, in particular, when the competing carriers' cost realizations are relatively low. When their cost realizations are higher, the shipper either pays its $400 reservation price for the rail transport or chooses the alternative. Combining the effects of the various possible cost realizations for particular movements, the average through rate paid by the shipper (conditional on the shipper using rail transport) will be less than its reservation price. The monopoly carrier is unable to extract the full monopoly profit margin, contrary to the one-lump theory. Instead, some of the surplus accrues to the shipper and the competing carriers.

Consider next the effect of a vertical merger between the monopoly carrier and one of the competing carriers on the other segment. After the merger, the vertically-integrated carrier

[112] The pre-merger equilibrium division of $283.33 is obtained using the formula in Moresi et al., *supra* note 28.

offers a division to the independent competing carrier, and then the two carriers bid through rates to the shipper. However, when the now-integrated monopoly carrier quotes the division to the independent competing carrier, it does so based on the perfect information it now has about the cost of its merger partner and – as before – on the imperfect information it has about the cost and through price offer of the unintegrated competing carrier.[113]

One possible strategy is for the integrated carrier to offer a full monopoly single-line rate of $400 to the shipper and a prohibitively high division to the independent carrier that makes it impossible for the independent carrier to offer a through rate that does not exceed the shipper's $400 reservation price. Since the independent carrier's costs are no less than $50, the monopoly carrier can quote a division of $350 or more, in which case the through price offered by the independent carrier to the shipper necessarily will exceed $400. An equally profitable alternative would be to offer a division to the independent carrier such that the merged firm would earn the same profit margin from the division as it would from its single-line rate of $400. For example, if the costs of the merged carrier for the entire movement are $270 (i.e., $150 incurred by the monopoly carrier and $120 incurred by the merging competing carrier), it could earn profit of $130 (i.e., $400 - $270) by winning the movement at its single-line rate of $400. Alternatively, the merged carrier could quote a division of $280 to the independent carrier; the latter would win against the single-line bid of $400 whenever its cost realization is smaller than $120 (i.e., $400 - $280) and the merged carrier would earn a profit of $130 (i.e., $280 - $150) regardless of which carrier wins the bidding competition.

But a more profitable strategy is for the monopoly carrier to offer a single-line price to the shipper of $400 and quote a division to the independent carrier that is somewhat higher (i.e., between $280 and $350 in the above example) and will assure that the monopoly carrier earns a *larger* profit (than $130) if the independent carrier wins the interline movement than the monopolist would earn if it won the single-line bid at $400. To illustrate, suppose the costs of the merged carrier for the entire movement are $270 (as before) and the monopoly carrier quotes a division to the independent carrier of $315.[114] If the independent carrier's costs exceed $85, then it will not be able to bid a through rate of less than $400 and still cover its costs, in which case the merged firm will win the movement at a single-line rate of $400 and earn profits of $130 (i.e., $400 less its costs of $270). But, if the independent carrier's costs are below $85, then the merged firm would earn profits of $165 (i.e., $315 minus its costs of $150) on the interline segment (since the independent carrier has sufficiently low costs to offer a through rate below $400). For example, if the independent carrier has costs of (say) $80, it would have total costs of

---

[113] The single-line rate offered by the merged carrier to the shipper accounts for "elimination of double marginalization" (EDM) incentives from the merger.

[114] The post-merger equilibrium division of $315 is obtained using the formula in Moresi et al., *supra* note 28.

$395 (i.e., $80 + $315 for the interline segment) and in principle could offer a through rate between $395 and $400. It would have the rational incentive to offer a through rate of just below $400, say a rate of $399 (or even $399.99). This is because it would properly anticipate that the merged firm was offering a single-line rate of $400. Thus, the independent carrier could offer a rate of $399 (or $399.99) to the shipper and still win the movement. As a result, the shipper would pay a total through rate of virtually $400.

To summarize, the vertical merger harms the shipper. The shipper pays a total through rate of $400 if the cost realization of the unintegrated competing carrier is $85 or above, and a rate of virtually $400 if the competing carrier's cost is less than $85. These $400 rates are equal to the shipper's reservation price, so the shipper obtains zero surplus. Thus, after the merger, the shipper always pays $400 for rail transport (in which case it obtains no surplus).[115] By contrast, the shipper sometimes does obtain a positive surplus in the pre-merger world as a result of the imperfect information. This occurs when the costs of the competing carriers are relatively low so that the winning rate is less than the shipper's reservation price.

The merger harms the shipper by improving the information available to the merged carrier and, in this numerical example, gives the merged carrier an incentive to foreclose the independent carrier by raising the interline fee from $283.33 to $315.[116] Post-merger, the rate paid by the shipper will never be less than $400 (or $399.99). The higher rate resulting from the merger also leads the profits of the monopoly carrier and its merger partner to rise, relative to their pre-merger profits.

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[115] In this numerical example, the highest cost realization of a competing carrier is $150 and the cost of the monopoly carrier is $150, and therefore the maximum total cost is $300, which is smaller than the shipper's reservation price of $400. It follows that, post-merger, the shipper always obtains at least one bid at $400 (from the merged carrier). Moresi et al., *supra* note 28, also consider situations where the maximum total cost is higher than the shipper's reservation price, in which case post-merger the shipper sometimes does not obtain any bid and must use an alternative transport mode.

[116] In general, the division quoted to the independent carrier can increase or decrease post-merger. *See* Moresi et al., *supra* note 28, Proposition 3. However, the shipper is nonetheless always harmed.

Appendix C. Equilibrium Simulation Model With Upstream Monopoly and Differentiated Products, Downstream Duopoly: Take-It-or-Leave-It Offers

This technical appendix describes the first equilibrium simulation model.

C.1. Description of the Merger Model

In the model, there are two rail transport segments. The monopoly segment is served by a single monopolist carrier, referred to as Carrier A. The competitive segment is served by two competing carriers, referred to as Carriers X and Y. Shippers use these carriers for their through movements. There are thus two competing rail options for a shipper. One option is to use Carriers A and X, and the other option is to use Carriers A and Y. The model assumes that shippers view these two options as non-homogeneous, differentiated transport services.

In the pre-merger market, Carriers A, X, and Y each sets its rate to maximize its own profit. The model formally assumes through pricing both pre-merger and post-merger.[117] It further assumes that Carrier A quotes divisions for its segment to the two competing Carriers X and Y. Given these divisions offered by Carrier A, the competing Carriers X and Y offer through rates to shippers.

In the post-merger market, Carriers A and X operate as a single vertically-integrated Carrier A/X, that sets a single-line rate to the shipper and a division to Carrier Y, in order to maximize its total profits from the two segments. The model assumes that Carrier A/X quotes a division for its monopoly segment to Carrier Y, and then the two Carriers A/X and Y compete by offering through rates to the shipper.[118]

There are two common technical interpretations of shipper demand in this model. One interpretation is that there are numerous shippers with the same general disutility from price, but with idiosyncratic preferences for carriers, so that not all shippers select the same competing carrier. Under this interpretation, each of the two competing carriers faces a demand function that measures the total demand for its services and that depends on the two through rates set by both competing carriers. A second interpretation is that the carriers have imperfect information about the shipper's preferences. Under this interpretation, each of the two competing carriers faces a "demand function" or a winning probability function that measures the probability that

[117] The model also captures Rule 11 pricing when the shipper obtains the rate on the monopoly segment before the competing carriers set their competitive quotes.

[118] The model follows the basic approach in Das Varma & De Stefano, *supra* note 47. *See* also Domnenko &. Sibley, *supra* note 47.

the carrier will be selected by the shipper and that depends on the two through rates offered to the shipper.[119]

In addition, there also are two technical interpretations of the structure of the shippers' bid requests and the associated bidding competition. One interpretation is that each shipper specifies the total volume it wants to ship, runs a "first-score" auction for all of its volume, and each of the two competing carriers submits a (sealed) bid for the shipper's entire volume.[120] Under this interpretation, each of the two competing carriers faces a winning probability function and rates are total payments for the specified volume. EDM here reflects the fact that a lower bid to the shipper leads to an increased probability of winning the shipper's business. Another interpretation is that each of the two competing Carriers X and Y (or A/X and Y after the merger) posts its unit rate (e.g., per carload) and then, based on the posted unit rates, a shipper with particular preferences for a volume of shipments chooses which carrier to use and how much volume to ship.[121] Under this interpretation, each of the two competing carriers faces a demand function for its transport services that is "downward sloping" (such that a higher price yields lower demand), and rates are per unit of volume shipped.[122]

The simulation model is run for many different values of the demand and cost parameters, so as to generate a range of pre-merger market shares (or winning probabilities) and prices, and a variety of merger effects on prices of rail transport services.[123]

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[119] Quoting a lower rate increases the probability of winning.

[120] A first-score auction generalizes a first-price auction by allowing carriers to offer differentiated products and allowing shippers to choose the product with the highest score (i.e., utility net of price). A first-score auction where non-price product characteristics are fixed is equivalent to a Nash-Bertrand pricing game where shippers select only a single product, as is the case under a standard logit demand structure. *See* Nathan H. Miller, *Modeling the Effects of Mergers in Procurement*, 37 INT'L J. IND. ORG 201 (2014).

[121] Under this interpretation, shippers' behavior is somewhat different than in the standard logit model since they choose both a carrier and a volume. (In the standard logit model, all shippers want to ship one unit and each shipper chooses a single carrier to transport that unit.) Nevertheless, the model assumes that the competing Carriers X and Y face demand functions that have a logit-like shape.

[122] Post-merger, one can think of the monopoly carrier (Carrier A) transferring its service internally to the merger partner (Carrier X) at a nominal price equal to marginal cost, although the merger effects do not depend on the magnitude of this nominal transfer price.

[123] By contrast, Das Varma & De Stefano, *supra* note 47 consider only a single numerical example.

C.2. Description of the Simulation Analysis

The simulation model is formulated as a two-stage game:

> Stage 1. Carrier A sets the divisions that Carriers X and Y must pay to Carrier A for transport services on Carrier A's monopoly segment. Carrier A sets the divisions to maximize its own profit. (Post-merger, Carrier A/X sets the division that Carrier Y pays for transport services on the monopoly segment. Carrier A/X maximizes its total profits, i.e., the total profits of former Carriers A and X.)
>
> Stage 2. Carriers X and Y compete for the shippers' business by simultaneously setting through rates.[124] Each carrier seeks to maximize its own profit. (Post-merger, Carriers A/X and Y simultaneously set through rates. Carrier A/X sets its single-line rate to maximize its total profits, i.e., the total profits of former Carriers A and X.)

The pre-merger model is solved using backward induction. This involves deriving the equilibrium rates set by Carriers X and Y (in stage 2), for any given divisions set by Carrier A (in stage 1), and then deriving the equilibrium divisions, assuming that Carrier A correctly anticipates how changing the divisions would affect the through rates of the two competing carriers and hence their volumes of transport on the monopoly segment. The post-merger model also is solved in a similar way using backward induction.

The model assumes that shippers have heterogeneous preferences over the carriers' services. Following the railroad literature, the model assumes that carriers face demand functions (or winning probability functions) that have a logit structure.[125] The model further assumes that each shipper has three shipping options available: Carrier X and Carrier A; Carrier Y and Carrier A; and an alternative mode of transport for the entire through movement. Under the logit structure, the first two options are called the "inside goods" and the third option is called the "outside good."

The model captures the heterogeneous preferences of shippers by using the standard discrete choice modeling approach and applying it to a large number of different bidding competitions. Each bidding competition is different because there are many different through movements (e.g., different origins and destinations) and many different product categories. As discussed earlier, each bidding competition can be interpreted as involving either a large number of heterogeneous shippers or a single shipper with preferences that are unknown to the competing carriers. Thus, a

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[124] The model assumes that Carriers X and Y engage in standard Bertrand-Nash competition with differentiated products and perfect information about each other's cost and demand functions.

[125] *See* Yanyou Chen, *Network Structure and Efficiency Gains from Mergers: Evidence from U.S. Freight Railroads*, Working paper (2021)

shipper may have a preference for Carrier X over Carrier Y, even if both carriers charge the same through rate, while a different shipper may have a preference for Carrier Y over Carrier X.[126]

For each bidding competition, the utility of a shipper from using Carrier X or Carrier Y depends on (i) a demand "fixed effect" that is specific to the carrier (V_X or V_Y) and is the same for all shippers; (ii) the through rate charged by the carrier (p_X or p_Y); (iii) a "price coefficient" (b) that is the same for all shippers and captures the shippers' marginal utility of income and affects the elasticity of demand faced by the carriers; and (iv) an idiosyncratic preference shock (e_{jX} or e_{jY},) that captures each shipper's personal preferences. The utility from using the outside good is, without loss of generality, normalized to a shock e_{j0} (i.e., the systematic component of the utility for the outside good, which is common across shippers, is normalized to zero).

The underlying demand structure can be summarized as follow:

- The utility of shipper j from using Carrier X is given by: $U_{jX} = V_X - b*p_X + e_{jX}$
- The utility of shipper j from using Carrier Y is given by: $U_{jY} = V_Y - b*p_Y + e_{jY}$
- The utility of shipper j from using the outside good is given by: $U_{j0} = e_{j0}$

The model is solved for the following parameter values in order to generate a very broad range of results:

- Three possible values for each of the two fixed effects V_X and V_Y (i.e., 8, 12, and 16);
- Three possible values for the price coefficient b (i.e., 0.05, 0.075, and 0.1);
- Three possible values for each of the two unit costs of production incurred by the two competing Carriers X and Y (i.e., 20, 25, and 30).
- Three possible values for the unit cost of production incurred by the monopoly Carrier A (i.e., 5, 7.5, and 10).
- The "preference shocks" $\{e_{jX}, e_{jY}, e_{j0}\}$ are distributed over $[-\infty, +\infty]$ with Gumbel (extreme value) distribution and are independent of each other.[127]

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[126] *See* Steven T. Berry, *Estimating Discrete-Choice Models of Product Differentiation*, 25 RAND J. ECON. 242 (1994); Jeffrey M. Perloff & Steven C. Salop, *Equilibrium with Product Differentiation*, 52 REV. ECON. STUD. 107 (1985); Simon P. Anderson, André De Palma, & Jacques-François Thisse. *Demand for Differentiated Products, Discrete Choice Models, and the Characteristics Approach, 56* REV. ECON. STUD. 21 (1989).

[127] This is a standard assumption. *See, e.g.,* Gregory J. Werden and Luke M. Froeb, *Unilateral Competitive Effects of Horizontal Mergers*, in Paolo Buccirossi (ed.), ADVANCES IN THE ECONOMICS OF COMPETITION LAW (2006).

It follows that the simulation analysis comprises a total of 729 different combinations of the demand and cost parameters (i.e., $3^6 = 729$). Each combination can be thought of as corresponding to a different bidding or price competition.

C.3. Simulation Model Results

The simulation model generates a sample of pre-merger equilibrium outcomes ("pre-merger bidding or price competitions"). For each pre-merger outcome, the simulation model computes the post-merger equilibrium outcome and calculates the merger effects on prices.

The simulation results can be summarized as follows. These results are then illustrated in the Figures below.

a. Result 1: The merger of Carriers A and X always leads the vertically-integrated Carrier A/X to increase the division (W_Y) charged to the unintegrated Carrier Y.

b. Result 2: The merger of Carriers A and X always leads to an increase in the through rate (P_Y) that carrier Y charges to shippers.

c. Result 3a: The merger of Carriers A and X tends to lead to an increase in the through rate (P_X) that the merged Carrier A/X charges to shippers when the pre-merger volume share (S_X) of merging Carrier X is less than about 25%, and often also when that share is in the 25-40% range.

d. Result 3b: The merger of Carriers A and X tends to lead to a decrease in the through rate (P_X) that the merged Carrier A/X charges to shippers when the pre-merger volume share (S_X) of the merging Carrier X exceeds about 40%, and sometimes also when that share is in the 25-40% range.

The following Figures show these results. Each dot represents a different bidding or pricing competition (with a different set of cost and demand parameters).

Figure C1 shows (on the vertical axis) the post-merger percentage changes in the division (W_Y) charged to the unintegrated Carrier Y for all the various values of the pre-merger equilibrium volume share (or winning probability) of merging Carrier X implied by the model (on the horizontal axis).[128] To make it easier to read, Figure C2 shows the same results but restricts attention to bidding or pricing competitions where Carrier X has a pre-merger equilibrium volume share (or winning probability) smaller than or equal to 50%. Figure C3 and Figure C4

[128] The shares (or winning probabilities) are calculated excluding the outside good.

respectively show the post-merger percentage changes in the through rates (P_Y and P_X) that the unintegrated Carrier Y and the merged Carrier A/X charge to shippers.

Figure C1

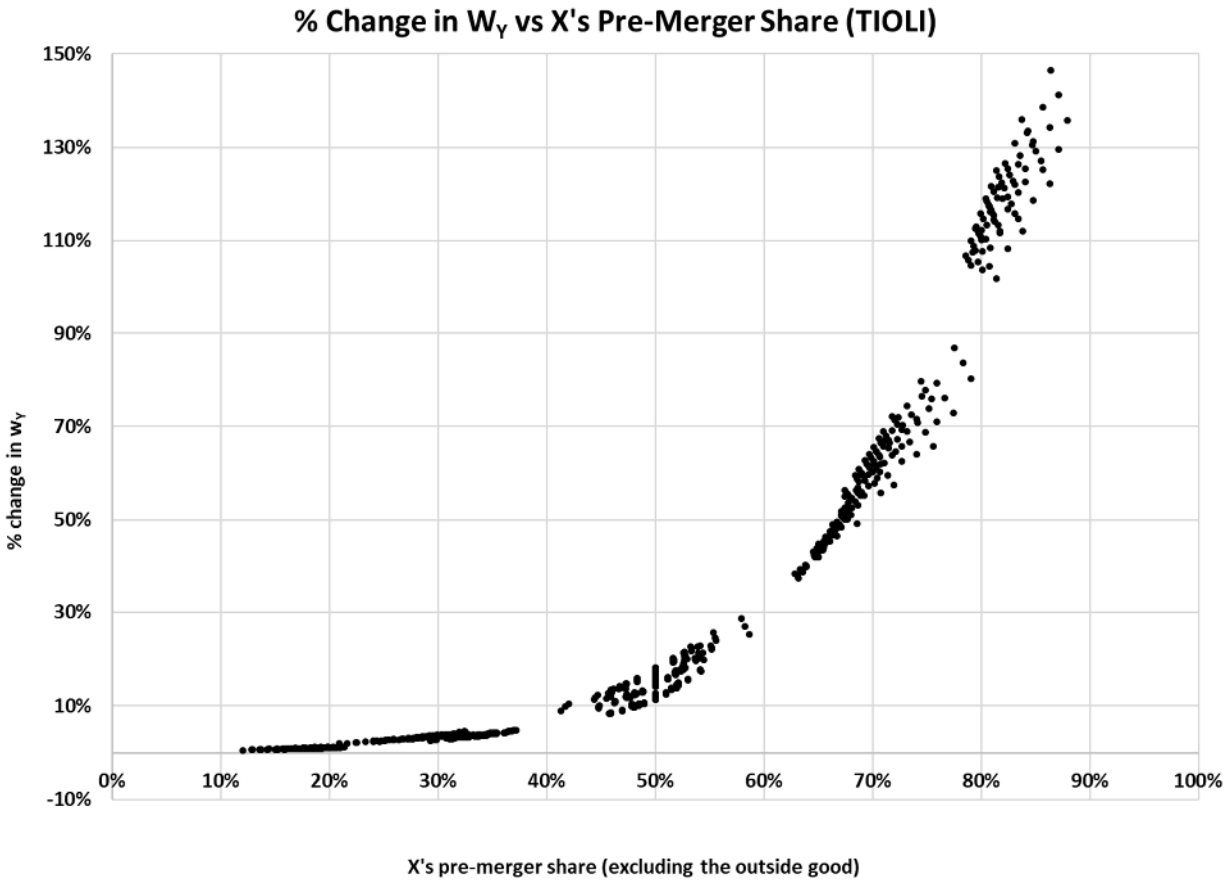

% Change in W_Y vs X's Pre-Merger Share (TIOLI)
150%
130%
110%
90%
70%
50%
30%
10%
-10%
% change in w_Y
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
X's pre-merger share (excluding the outside good)

Figure C2

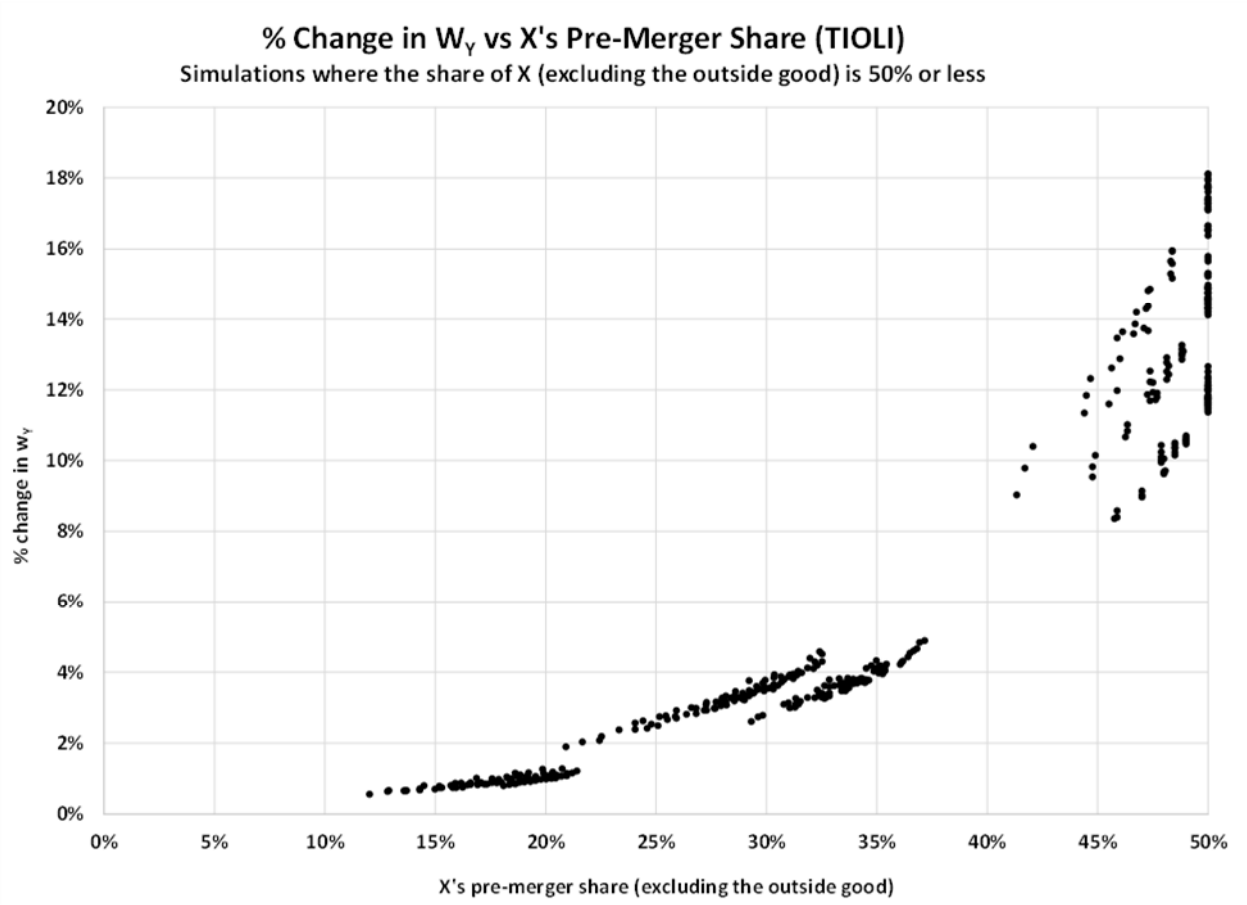

% Change in W_Y vs X's Pre-Merger Share (TIOLI)
Simulations where the share of X (excluding the outside good) is 50% or less
% change in w_Y
20%
18%
16%
14%
12%
10%
8%
6%
4%
2%
0%
0%
5%
10%
15%
20%
25%
30%
35%
40%
45%
50%
X's pre-merger share (excluding the outside good)

Figure C3

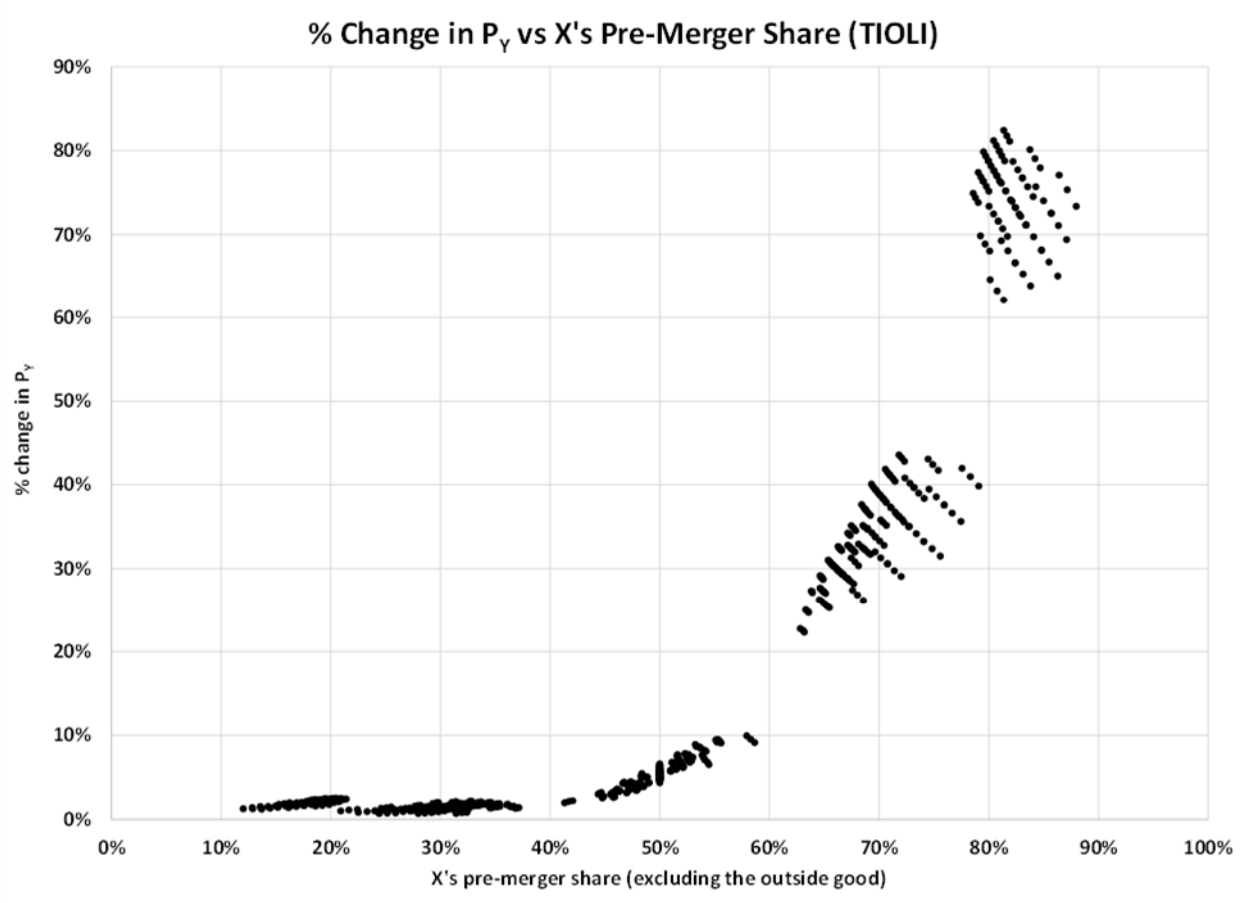
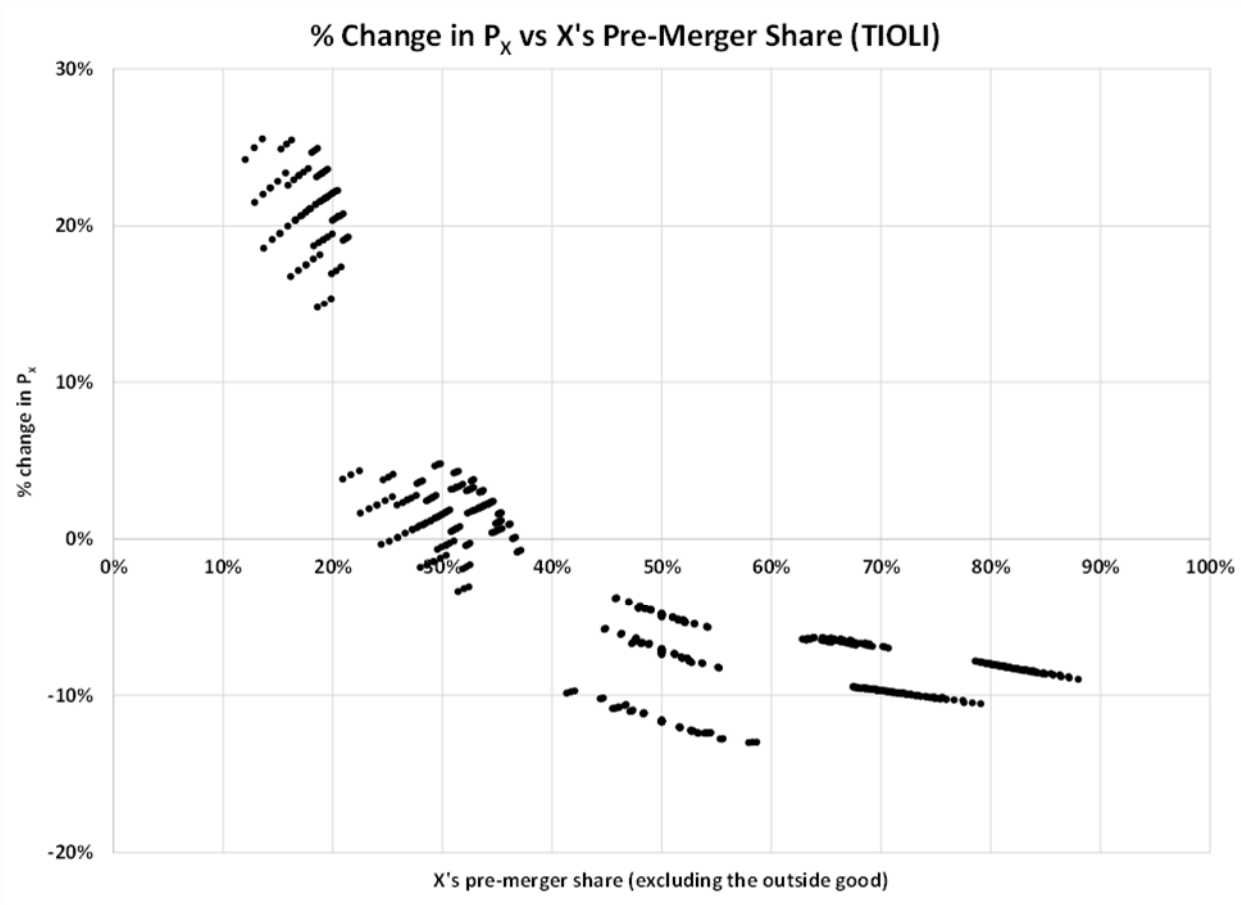

% Change in P_Y vs X's Pre-Merger Share (TIOLI)
% change in P_Y
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
X's pre-merger share (excluding the outside good)

Figure C4


% Change in P_X vs X's Pre-Merger Share (TIOLI)
30%
20%
10%
0%
-10%
-20%
% change in P_x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
X's pre-merger share (excluding the outside good)

Appendix D. Equilibrium Simulation Model With Upstream Monopoly and Differentiated Products, Downstream Duopoly: Inter-Carrier Negotiations

This appendix describes the variant of the equilibrium simulation model described in Appendix C with inter-carrier negotiations. Since many assumptions are the same in the two models, I will focus mainly on the differences between the models.

D.1. Description of the Merger Model

In the pre-merger market, Carriers A and X negotiate the division for Carrier X's through movements, and at the same time Carriers A and Y negotiate the division for Carrier Y's through movements. Given these negotiated divisions, the competing Carriers X and Y offer through prices to shippers.

In the post-merger market, Carriers A/X and Y negotiate the division for Carrier Y's through movements, and then the two Carriers A/X and Y compete by offering through rates to the shipper.

D.2. Description of the Simulation Analysis

The simulation model is formulated as a two-stage game:

Stage 1. Carrier A simultaneously negotiates bilaterally with each of Carriers X and Y over the division for each carrier's through movements. (Post-merger, Carriers A/X and Y negotiate the division for Carrier Y's through movements.) The model assumes that negotiating carriers have equal bargaining power.[129]

Stage 2. Same as in Appendix C.

The pre-merger model is solved using backward induction. This involves deriving the equilibrium rates set by Carriers X and Y (in stage 2), for any given divisions negotiated between Carrier A and Carriers X and Y (in stage 1), and then deriving the equilibrium divisions negotiated among the three carriers, assuming that all three carriers correctly anticipate how changing the divisions would affect the through rates of the two competing carriers and hence

[129] I use the standard Nash-in-Nash bargaining assumption. *See*, for example, Allan Collard-Wexler, Gautam Gowrisankaran, and Robin S. Lee, "*Nash-in-Nash*" *Bargaining: A Microfoundation for Applied Work*, 127 J. POL. ECON. 163(2019).

their volumes of transport on the monopoly segment and the competitive segment. The post-merger model also is solved in a similar way using backward induction.

The model is solved for the same sets of parameter values as in Appendix C.

D.3. Simulation Model Results

The simulation model generates a sample of pre-merger equilibrium outcomes ("pre-merger bidding or price competitions"). For each pre-merger outcome, the simulation model computes the post-merger equilibrium outcome and calculates the merger effects on prices.

The simulation results can be summarized as follows. These results are then illustrated in the Figures below.

- Result 1: The merger of Carriers A and X always leads to the vertically-integrated Carrier A/X negotiating a higher division (W_Y) with the unintegrated Carrier Y.

- Result 2: The merger of Carriers A and X always leads to an increase in the through rate (P_Y) that carrier Y charges to shippers.

- Result 3: The merger of Carriers A and X almost always leads to an increase in the through rate (P_X) that the merged Carrier A/X charges to shippers.

The following Figures show these results.

Figure D1 shows (on the vertical axis) the post-merger percentage changes in the division (W_Y) negotiated with the unintegrated Carrier Y for all the various values of the pre-merger equilibrium volume share (or winning probability) of merging Carrier X implied by the model (on the horizontal axis). Figure D2 shows the same results but restricts attention to bidding or pricing competitions where Carrier X has a pre-merger equilibrium volume share (or winning probability) smaller than or equal to 50%. Figure D3 and Figure D4 respectively show the post-merger percentage changes in the through rates (P_Y and P_Y) that the unintegrated Carrier Y and the merged Carrier A/X charge to shippers.

Figure D1

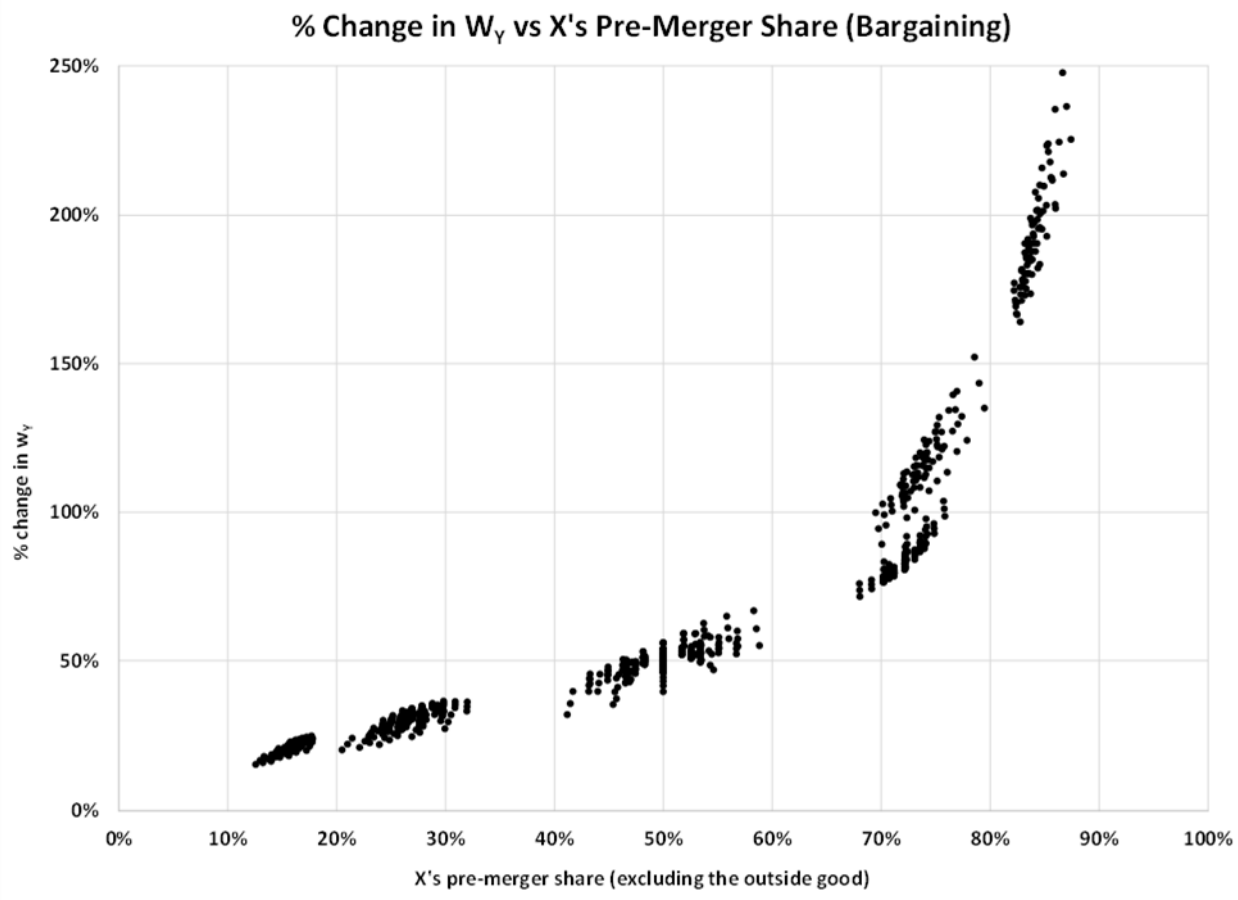

% Change in W_Y vs X's Pre-Merger Share (Bargaining)
250%
200%
150%
100%
50%
0%
% change in w_Y
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
X's pre-merger share (excluding the outside good)

Figure D2

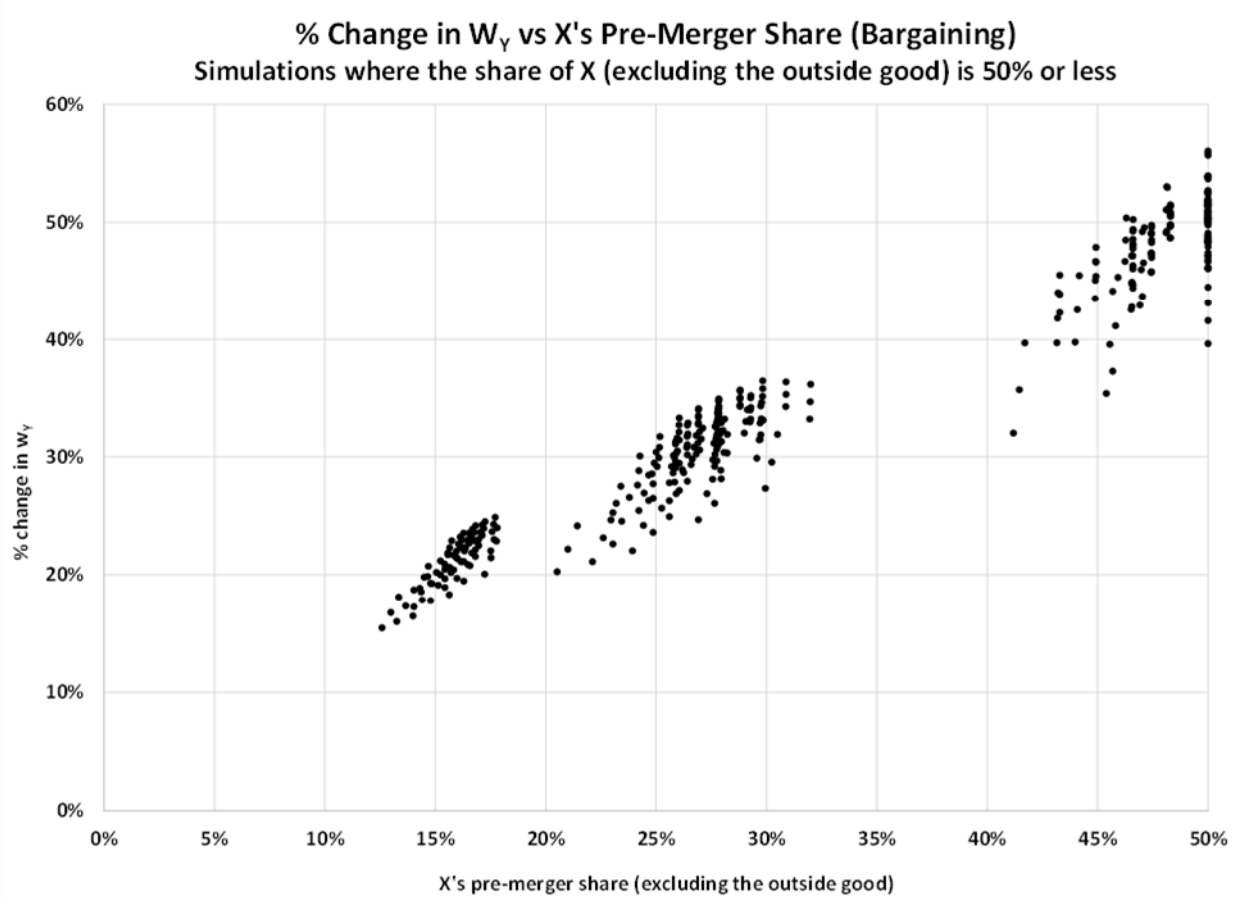

% Change in W_Y vs X's Pre-Merger Share (Bargaining)
Simulations where the share of X (excluding the outside good) is 50% or less
% change in w_Y
60%
50%
40%
30%
20%
10%
0%
0%
5%
10%
15%
20%
25%
30%
35%
40%
45%
50%
X's pre-merger share (excluding the outside good)

Figure D3

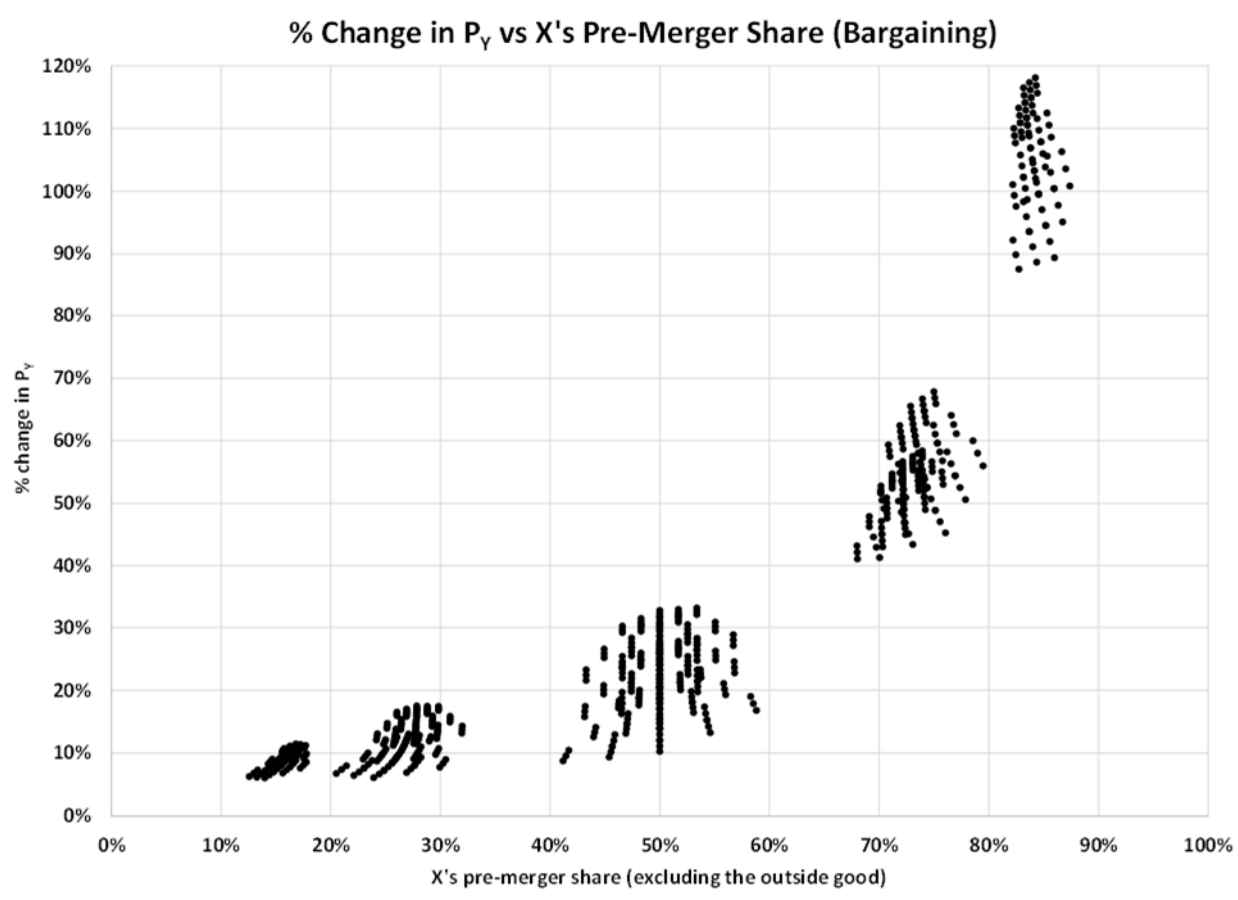

% Change in P_Y vs X's Pre-Merger Share (Bargaining)
120%
110%
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
% change in P_Y
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
X's pre-merger share (excluding the outside good)

Figure D4

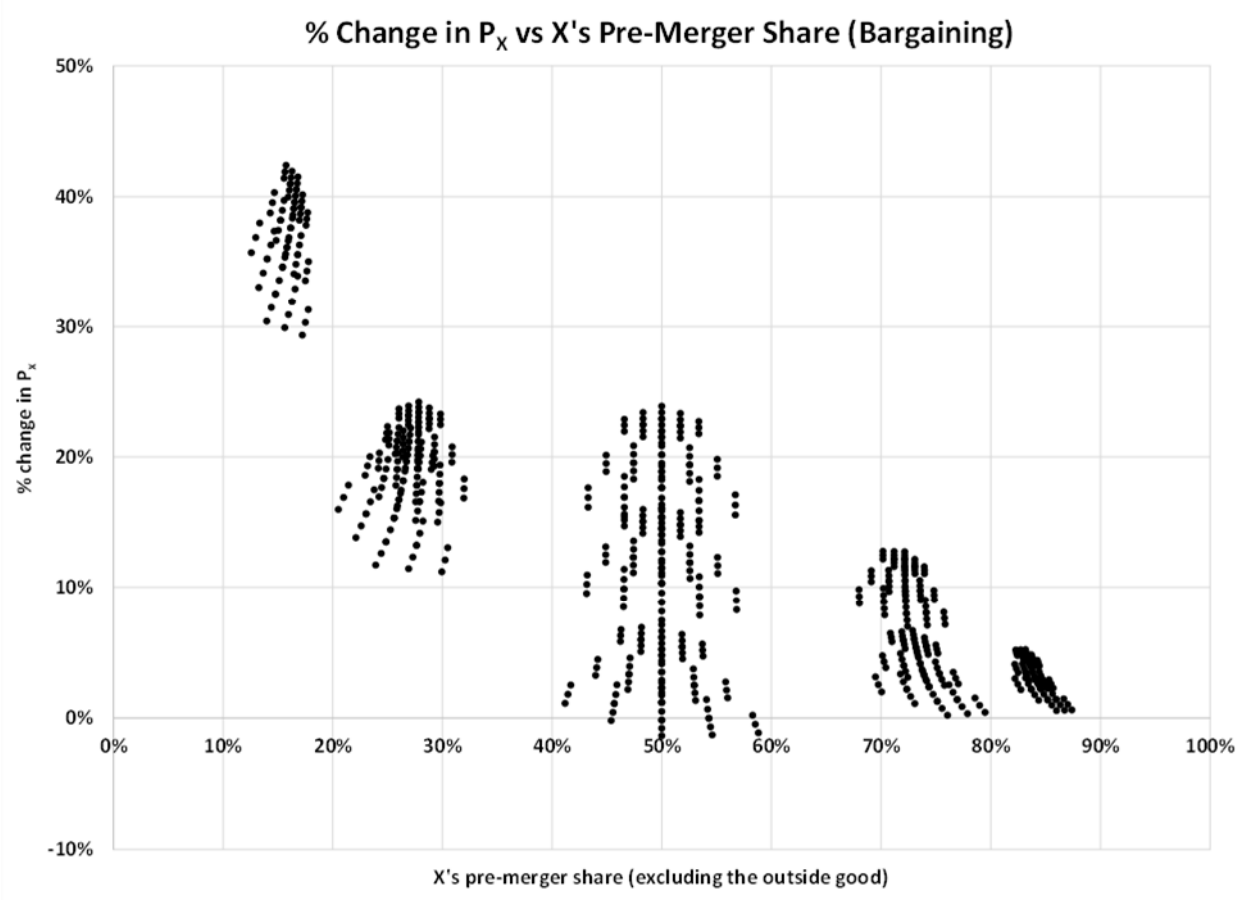

% Change in P_X vs X's Pre-Merger Share (Bargaining)
50%
40%
30%
20%
10%
0%
-10%
% change in P_x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
X's pre-merger share (excluding the outside good)

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Exhibit 22

191633

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October 16 1998

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Re: Finance Docket No. 32760 (Sub-No. 26),
Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al.

Dear Secretary Williams:

Enclosed for filing are a signed original and 25 copies of the public version of Reply Comments of Formosa Plastics Corporation, U.S.A. and a floppy disc convertible to WordPerfect 7.0, containing the text of such comments and the Reply Verified Statement of Richard A. Heinle. The filing also contains a copy of a pleading filed by a third party for which we have no floppy disc.

Under separate cover, we are furnishing the Board with an original and 25 copies of the Highly Confidential version of this pleading, under seal. We will serve a copy of the Highly Confidential version on those outside counsel or consultants for parties of record who furnish us with an appropriate Undertaking executed in accordance with the Board's Decision No. 2 served in this matter of May 19, 1998.

Sincerely,

Andrew P. Goldstein

Andrew P. Goldstein
Attorney for
Formosa Plastics Corporation, U.S.A.

Enclosures

APG/rmm

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BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 26)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

REPLY COMMENTS OF FORMOSA PLASTICS CORPORATION, U.S.A.

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Dated: October 16, 1998

PUBLIC VERSION -- REDACTED

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 26)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY -- CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

REPLY COMMENTS OF FORMOSA PLASTICS CORPORATION, U.S.A.

I. INTRODUCTION

The "UP Opposition to Condition Applications" (hereafter "Opposition") filed September 18, 1998 by Union Pacific Railroad Company ("UP") contains little that is directly responsive to the July 8, 1998 Comments and Request for Remedial Conditions of Formosa Plastics Corporation, U.S.A. (hereafter "FPC Opening Comments"). FPC seeks service directly from The Burlington Northern and Santa Fe Railway Company ("BNSF"), which has "closed door" trackage rights over the UP line presently serving FPC. UP devotes less than half a page to FPC at the end of its Opposition (Vol. I at p. 235), ignoring significant elements of FPC's evidence

and legal arguments. FPC has made an unrebutted showing that the remedial condition it seeks not only is operationally feasible and can be imposed without disrupting UP operations, but actually will reduce demands on UP's main line and related infrastructure. The United States Department of Transportation notes that FPC's proposal "offers to provide additional capacity on a congested [UP] line" and "may have merit."[1/]

UP's tactic rests in part on the false claim that UP service to FPC has improved dramatically. UP proffers the Verified Statement of Mr. Dennis J. Duffy in support of this claim. However, as detailed in the Reply Verified Statement of FPC Vice President Richard A. Heinle filed herewith as Reply Exhibit A, this claim is untenable.[2/]

In many important respects, UP service to FPC is worse than ever, and "improvement" is a weak defense where service remains inadequate. Moreover, when service on parts of UP's system improves, it is at the expense of service on other parts of the system. It is not correct to conclude that UP has solved its problems. It is correct to conclude that UP service has worsened in those markets -- so important to FPC -- where the merger enhanced UP's market share and power.

1/ Comments of the U.S. Department of Transportation, September 18, 1998, at 12.

2/ FPC is filing two versions of FPC Witness Heinle's Reply Verified Statement, one public and one Highly Confidential under seal.

UP's legal analysis is also unavailing. Through misstatement and sleight of hand, UP argues for an excessively narrow inquiry in this proceeding. Even where UP's arguments are supportable, they fail to rebut (and in many respects, fail even to acknowledge) FPC's showing. Relief for FPC is justified whether measured by the standards advanced by FPC or even those advocated by UP.

II. THE BOARD SHOULD REJECT THE LIMITS ON ITS REMEDIAL AUTHORITY THAT UP SEEKS TO IMPOSE

UP wastes no time in attempting to limit the scope of this proceeding. At page 5 of its Opposition, UP seizes on one phrase from the Board's May 19, 1998 Decision instituting this subdocket, and claims that the only issue presented here is "whether there is any relationship between the market power gained by UP/SP through the merger and the failure of service that has occurred here, and if so, whether the situation should be addressed through additional remedial conditions." Opposition statement, quoting from Decision No. 1 at page 5.

As will be seen, the answer to these questions is yes, but UP ignores other, broader formulations of the Board's inquiry, including the statement on the same page that the Board "should thoroughly explore anew the legitimacy and viability of longer-term proposals for new conditions to the merger as they pertain to service and competition in that region."

Having begun with an excessively narrow statement of the issues to be addressed, UP moves swiftly to narrow those issues even further. UP's "market power" issue illustrates this process.

In the phrase from Decision No. 1 quoted by UP in footnote 2 on page 5 of the Opposition, the Board asked "whether there is any relationship between any market power gained by UP/SP through the merger" and the meltdown. On page 5, UP poses as its first two questions whether the merger gave UP enhanced market power and whether that increased market power caused the service problems. By page 6 of the Opposition, the issue has again been reformulated, into why UP would have used its increased market power to cause the meltdown.

In this way, UP positions itself to argue that no remedial action is proper because it did not deliberately cause the meltdown by exploiting increased market power to make more money.

Further sleight of hand follows in succeeding pages. Thus, where the Board assumed UP gained market power as a result of the merger, and asked whether there was "any relationship" between market power and the meltdown, UP argues that it did not gain any market power. See Opposition at 26-49, under the heading "The Merger Did Not Cause an Increase in Market Power in the Houston/Gulf Area."

Upon examination, UP's claim appears to rely heavily (but unsurprisingly) on an excessively narrow definition of market power. UP asserts, for instance, that FPC's explanation of how the merger narrowed its marketing options should be dismissed because "[i]t is of course well established that end-to-end consolidations do not eliminate competition." Opposition statement at 38, fn. 9. However, the UP/SP merger was not an end-to-end consolidation

insofar as FPC is concerned. Before the merger, [ ] percent of FPC's domestic shipments from Point Comfort moved via UP; after the merger, [ ] percent of those shipments moved via UP, an increase of [ ] percent See the Opening Verified Statement of FPC Witness Heinle and the Reply Verified Statement of FPC Witness Heinle at 4.

It is also clear from the record that UP has exploited its increased market power over FPC. Before the meltdown occurred, UP effectively forced FPC to give UP [

] UP did so by the simple expedient [

] To survive in the marketplace, FPC had no choice but to contract with UP, and that contract [

] as well as rail rates that still exceed 180% of variable cost. See the Opening Verified Statement of FPC Witness Heinle and the Opening Verified Statement of FPC cost consultant Charles L. Carroll. UP's Opposition does not dispute any of this evidence.

The merger greatly enhanced the volume of FPC traffic moving via UP's longhaul and enhanced UP's market power over FPC. These conditions positioned UP to take advantage of its Gulf Coast monopoly over FPC.

When the meltdown struck, UP's responses to FPC's requests for help were too little and too late, even though FPC is one of the nation's largest shippers of plastics components. To help insure

adequate rail service, FPC had made extensive investments in rail related facilities, including a large private siding at its Formosa, TX facility, and a fleet of [ ] private cars. UP simply appropriated FPC's private siding, and it allowed cycle times on FPC's cars to double, cutting car utilization in half. And because of the [ ] FPC could not divert cars to other railroads once they reached gateways. Here again, these facts were established in FPC's opening evidence, and are unrebutted in UP's Opposition.

It is ridiculous for UP to suggest that it did not gain increased market power over FPC as a result of the merger, and use that market power in ways that exacerbated the service failures. Aside from claiming generally that it gained no market power from the merger, UP evades the fact of its acquisition of market power over SP customers, and discusses "1-1" shippers like FPC only with respect to whether the merger adversely affected source competition. See, e.g., UP Opposition at 28. As UP there states, 1-1 shippers that were captive to SP before the merger were captive to UP after it. But this produced a clear increase in market power for UP, if not viewed merely as a matter of source competition.

In any event, FPC was worse off. As FPC Witness Heinle explained in his Opening Statement (at 11), some of the worst transit time increases FPC experienced were over routes that performed efficiently as UP/SP joint routes, prior to the merger, and UP service to former SP points remains at crisis levels. See Heinle Reply V.S. at 2-3. These service failures are not the mere

result of debilitated SP infrastructure and beyond causation by UP; service to SP points was perfectly acceptable prior to the merger. Heinle Opening V.S. at 11; Reply V.S. at 2.

At page 60 of its Opposition, after having spent 33 pages arguing (unpersuasively) that it did not gain any increased market power in the merger, UP argues that it did not use its increased market power to cause the service problems.

The essence of UP's argument here is that it had no incentive to cause the meltdown, and it relies for this proposition on the testimony of an antitrust expert, Dr. Jerry Hausman. Contrary to the last sentence of paragraph 2 of Dr. Hausman's statement, his curriculum vitae is not attached to his verified statement, which means that FPC must rely on his statement (which does not mention experience with rail matters) in assessing his expertise. But that is not the main problem with Dr. Hausman's statement.

Dr. Hausman concludes that the service problems of the merged railroad are not due to the exercise of market power by UP because, while monopolies may reduce service quality to increase revenues, the meltdown was costly to UP. The Board is asked to conclude that UP did not intend the meltdown to occur, and therefore cannot fairly be subjected to new conditions.

Simply stated, this reasoning is specious. Surely, no rational shipper believes UP wanted the meltdown to occur. But it does not follow that UP is blameless. At least three points must be made here.

First, nothing in Dr. Hausman's V.S. (or in the rest of UP's Opposition) eliminates the possibility that the meltdown was an unintended result of the merger. Assume for the moment that UP believed that it could deliver the improved service it promised when it sought authorization to absorb SP. Assume further that UP took what it regarded as all appropriate steps to implement the merger but, despite its best efforts, the meltdown occurred. If UP simply "bit off more than it could chew," does this relieve UP of responsibility for the damage caused, or relieve the STB of the need to consider corrective action? Absolutely not. One of the major concerns raised by the recent consolidations in the rail industry is precisely that the resulting "mega-railroads" are too big and too protected against competition from other railroads.

Even with the best will in the world, rail monopolists are likely to be less attentive to service than railroads facing vigorous competition. Given the enormous market power it enjoyed as a result of the merger, UP had no reason to fear that a catastrophic service failure would lead to the mass defection of its customers to other carriers. In a case like this, effective remedial action by the Board is a surrogate for the discipline of the marketplace. Take that away (as UP seeks to do) and shippers face the worst of both worlds.

Second, assume UP tried to cut corners in its implementation of the merger, in order to pay for SP or maximize the return on its investment in SP. Assume, in other words, a gamble by UP that it could eliminate SP personnel, engage in hard-nosed bargaining with

rail labor, understaff key positions and scrimp on data processing systems. It could take these risks because so much of its traffic base was captive. The results were disastrous, but UP seeks to evade full responsibility.

Once again, nothing in Dr. Hausman's V.S. (or in the rest of UP's Opposition) eliminates this explanation. Dr. Hausman states (V.S. at 6):

> For the decrease in service levels to be an exercise in market power, UP's costs would need to decrease.... However, UP's actions in response to the service problems have led to increased costs, not the decreased costs that would be expected if market power were being exercised.

This is a glaring non-sequitur. The fact that UP was hurt by the meltdown no more proves that UP did not cause the meltdown than burns on a reckless arsonist prove that he did not set the fire that burned him. As noted above, a key component of the problem here is that monopolists are more likely than competitors to make miscalculations, because they face fewer risks than competitors.

Finally, even if UP took no undue risks, and did everything possible to prevent a meltdown on the system as a whole (i.e., even if UP was a wholly innocent bystander when the service problems arose), nothing in Dr. Hausman's V.S. or in the rest of the UP Opposition establishes that market power and captivity were irrelevant to UP's allocation of service among its injured customers.

A pleading recently filed by UP in fact discloses that UP indeed does allocate its resources with the degree of its customers' captivity in mind. In its July 28, 1998 filing in Ex Parte No. 573, Service Order No. 1518, Rail Service for Construction Materials in Texas, UP stated that it "uses the following priorities:

1 -- Amtrak

2 -- Priority Intermodal

3/4 -- Other Intermodal and Automotive

5 -- Manifest"

UP letter to STB Secretary Williams, July 28, 1998 at 3.

FPC's shipments are moved as manifest traffic because they are in single car quantities shipped to diverse destinations, and are handled on manifest trains. Manifest trains receive inferior service to intermodal and automotive trains because intermodal and automotive traffic is not captive. As UP states: "Intermodal and automotive traffic can move by truck" or by other railroads. Ibid at 5. During times of constrained capacity, captive traffic, such as FPC ships, receives inferior service to that provided traffic which has competitive alternatives.

Where competition exists, service failures like the UP meltdown are (1) less likely to occur, and (2) more likely to be remedied quickly and effectively when they do occur. It is the premise of the great deregulatory initiatives of the last two decades in trucking, air transportation, natural gas, electricity and telecommunications that competition produces better service at

lower cost than monopolies, even where regulation is vigorous and effective. UP has been able to find an economics expert to argue against these basic economic principles only by the device of distorting the terms of the inquiry.

Contrary to UP's claims, the service meltdown cannot be fully divorced from the merger. While not every degree of the meltdown may be attributable to the merger, it is both irrational and contrary to the evidence -- at least to FPC's evidence -- to conclude that there is no relationship between the merger and the service disaster that followed. FPC's experience is that the merger brought about service problems to former SP destinations that simply did not exist prior to the merger, and that UP service to the former SP points is significantly worse now than before.

UP, being the originating carrier now as then on all FPC shipments, had access to data with which to refute those FPC claims, if they could be refuted. UP did not present any such data or offer any refutation of FPC's evidence. The Board should conclude that the post-merger failures experienced by FPC are merger related at least in part, and that FPC's evidence satisfies any necessary establishment of a nexus between the merger, the expanded market power which the merger gave UP over at least FPC's traffic, and the service failures experienced by FPC.

III. THE REMEDIAL CONDITIONS SOUGHT BY FPC ARE AMPLY JUSTIFIED

UP's attempt to argue that regulatory relief is foreclosed because (1) it gained no market power as a result of the merger and

(2) it did not plan the meltdown must be rejected. The former contention is incredible and the latter is irrelevant. The real question presented is "the legitimacy and viability of longer term proposals for new conditions to the merger as they pertain to service and competition" in the Houston/Gulf area. Decision No. 1, served May 19, 1998, at 5.

UP argues that the Board's actions must be governed by business as usual. At page 5 of its Opposition, UP states that "under longstanding merger law," deciding whether to impose conditions "has three aspects: (a) whether the proposed condition is narrowly tailored to address whatever specific merger-caused harm has been identified ...; (b) whether the condition is operationally feasible; and (c) whether the condition will cause harms that outweigh any benefit of imposing it."

Assuming arguendo that the Board intends to apply only UP's version of "longstanding merger law" in this proceeding, the condition proposed by FPC meets the three tests cited by UP. However, FPC submits that the Board's response to the "unprecedented" and extraordinary conditions in the wake of the UP/SP merger should not be so limited. Other well-established bases for Board action, such as the principles underlying the Board's competitive access rules, provide further support for the relief requested by FPC, but are completely ignored in UP's Opposition.

A. "Longstanding Merger Law" Supports FPC's Proposed Conditions

The statute plainly gives the Board authority to impose conditions, including trackage rights, in merger proceedings. Indeed, when Congress reviewed the statute's merger provisions in enacting the ICCTA, the principal change it found necessary was to make this authority explicit, by adding the underscored final clause to the following sentence in 49 U.S.C. § 11324:

> The Board may impose conditions governing the transaction, including the divestiture of parallel tracks and the granting of trackage rights and access to other facilities.

The Board has exercised this statutory authority sparingly. In its UP/SP Merger Decision,[3/] for example, the Board said it would be guided by the position taken by the ICC in Union Pacific -- Control -- Missouri Pacific; Western Pacific, 366 I.C.C. 462 (1982). The ICC stated its position in that decision as follows:

> [W]e will not impose public interest conditions on a railroad consolidation unless we find that the consolidation may produce effects harmful to the public interest (such as an anticompetitive reduction of competition in an affected market), that the conditions to be imposed will ameliorate or eliminate the harmful effects, that the conditions will be operationally feasible, and that the conditions will produce public benefits (through reduction or elimination of the possible harm) outweighing their harm to the merger.

3/ STB Finance Docket No. 32760, Union Pacific Corp., et al. -- Control and Merger -- Southern Pacific Rail Corp., et al., Decision No. 44 (served Aug. 12, 1996) at p. 144.

366 I.C.C. at 565.

Notably, the Board in this proceeding has the rare advantage of hindsight in considering whether the UP/SP merger "may produce effects harmful to the public interest (such as an anticompetitive reduction of competition in an affected market)." The merger produced severe harm to the public interest -- if the public interest is to be equated with reliable rail service, as FPC thinks it is -- which has not yet been remedied. More and more shippers, including FPC, question whether UP will ever be able to provide the levels of service needed by shippers in the Houston/Gulf area.[4/]

UP Witness Duffy contends that the service UP provides FPC "has improved significantly since the fall of 1997 and early 1998," V.S. at 5, though he also concedes (id.) that service quality has not been fully restored to FPC's or UP's satisfaction. However, FPC Witness Heinle's Reply Statement demonstrates that in key FPC markets in Arizona and California, including markets formerly open to SP, UP service does not match pre-merger service. For example, average transit times to Stockton and South Fontana, CA, and to Fowler, AZ are significantly worse than they used to be. Heinle Reply Statement at 2-3. Mr. Duffy's testimony on UP service to gateways is also unreliable. It is derived from UP-generated data that is internally inconsistent reflecting as many as four different transit times for the same movements in the same month.

[4/] In its Quarterly Progress Report filed July 1, 1998 in Finance Docket No. 32760, at pp. 9-10, BNSF stated: "Although there have been some periods of sporadic improvement, it is clear that the service problems are continuing and are likely to persist."

Heinle Reply Statement at 5-10. Service to UP gateways may have improved somewhat, but Mr. Duffy's testimony cannot be taken as a reliable basis for concluding that service has been restored to pre-merger levels.

Reduced competition and anticompetitive conduct by UP have been amply demonstrated by FPC, and have not been denied by UP. In fact, the frequent attacks by UP on what it calls "open access" in its Opposition (e.g., Opposition at 126-127 and 235), show UP's proclivity to employ slogans to sustain a monopoly, notwithstanding its own unprecedented inability to meet its customers' most basic needs.

Open access is simply UP's derogatory (and misleading) term for competition. UP apparently hopes to invoke the image of free access to its entire system. However, as explained below, the access sought by FPC is narrowly tailored to remedy the specific problem faced by FPC and is no more than the kind of remedy that the Act contemplates for limited competitive access in terminal areas. UP is also put in the awkward position of fighting to preserve market power it gained when it acquired SP, while elsewhere denying that it gained any market power. UP cannot have it both ways.

There can be no doubt that the remedial condition sought by FPC -- access to BNSF at Formosa, TX -- would ameliorate the service problems faced by FPC. At a minimum, shipments that could move BNSF direct or BNSF to gateways would avoid UP bottlenecks and

congested interchange points, and UP crews and locomotives could assist in reducing backlogs elsewhere on the system.

The operational feasibility of FPC's proposal is undisputed by UP. Moreover, BNSF, which has "closed door" trackage rights over the UP main line that serves FPC, and is therefore familiar with train operations on that line, has confirmed not only that BNSF is willing to serve FPC, but that it can do so without impairing BNSF service to other customers. See Verified Statement of Ernest L. Hord, filed July 31, 1998 (copy attached as Reply Exhibit B).

Further, because FPC is willing to construct a turnout from the UP main line to enable all switching for FPC to be done on FPC's private siding, FPC's proposal will have the effect of alleviating congestion on the UP main line where all trains must now stop, blocking the main line, while FPC is switched. In the words of BNSF: "This handling ... would reduce demands on UP's line and address the need for capacity and infrastructure in the Gulf Coast." Hord V.S. at 2. UP takes issue with none of these benefits which FPC and BNSF envisage as a result of the FPC proposal for direct BNSF service.

The last issue is whether the benefit to be gained from imposition of FPC's remedial condition would outweigh its harm to the merger. In its Opening Comments, FPC explained that, in conjunction with access for BNSF, it would be willing to expand the capacity of its private siding significantly, permitting storage of up to [ ] cars.

Not only would this significant investment benefit FPC, but it would also benefit UP and UP's other customers, by relieving congestion and eliminating UP's current practice of blocking its own main line for up to two hours while loading or unloading FPC trains. See the Opening Verified Statement of FPC Witness Ronnie Bounds, and Witness Bounds' Exhibits.

This evidence (like many of FPC's points) is ignored in UP's Opposition. Instead, UP argues that granting FPC's condition would be harmful because "[t]he KCS/Tex Mex, Dow, Formosa [i.e., FPC] and CP&L access proposals would create new or additional rail competition for $419 million per year in UP traffic."[5/] Notably, UP admits that it "did not attempt to determine precisely what percentage of this traffic would be lost if the proposed conditions were granted." Opposition at 84.

This is unacceptable, for several reasons. In the first place, UP cannot demand the protection of "longstanding merger law," and simultaneously refuse to participate in the cost/benefit analysis called for by its own precedents.

Second, as noted above, the benefits to UP and its customers of FPC's proposal are considerable. Relieving congestion on UP's main line will simplify UP's operations and produce efficiencies that will have a positive impact on locomotive utilization, car utilization, crew costs, operating performance, and customer

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[5/] A far smaller figure for FPC's traffic is broken out in UP Witness Peterson's V.S. (Highly Confidential version), at page 30.

satisfaction. UP does not take one penny of these savings or benefits into account.

Third, the only reason FPC is before the Board seeking relief is that UP failed to provide the services it promised when it sought permission to acquire SP. UP should not be heard to demand the exclusive right to haul freight, fail to deliver on its commitments, and then claim that protection should be withheld from adversely affected shippers to protect UP's monopoly revenues.

The Board has ample authority, and a compelling basis on this record, for granting the remedial conditions FPC seeks.

B. If Necessary, the STB Can and Should Look Beyond Merger Law in Dealing with the UP Meltdown

In its Opposition, UP frequently appears to be arguing that the STB did not err in approving the UP/SP merger when it issued Decision No. 44 in Docket No. 32760, over two years ago. UP apparently hopes to shift the focus from the meltdown to the merits of the Board's original decision. To the extent that this is its goal, UP misconceives the nature of the Board's original decision and of this subdocket.

It is true that FPC sought (and was denied) competitive access in the original merger proceeding that was similar to the relief requested in this subdocket. FPC also believes that such access, if permitted then, would have mitigated the adverse impacts of the meltdown.

But the suggestion that remedial action in this subdocket cannot be ordered unless the Board concludes that its original merger decision was wrong is unsupported by law or policy. This is another spurious obstacle to relief that UP has attempted to construct. The Board already has rejected UP's argument that prior denial of a party's request for remedial conditions has res judicata effect. See Decision No. 1, at 5.

It was apparent to all that UP's proposed merger with SP represented a major consolidation in the rail industry, concentrating service for Western shippers in the hands of two major railroads, UP/SP and BNSF. Even though its decision can be criticized in retrospect, the STB deserves credit for retaining jurisdiction over the merger's implementation. It also deserves credit for reopening the proceeding, to address issues beyond the scope of the Emergency Service Order proceeding.[6/]

As the Board recognized in its decision instituting this subdocket, "[t]he virtual shutdown of rail service in the Houston/Gulf Coast area that occurred after the UP/SP merger -- and which, after many months, has yet to be normalized -- is unprecedented." Decision No. 1, at p. 5. Whether or not the

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[6/] At various points throughout its Opposition statement, UP refers to the Board's decision of July 30, 1998 in Service Order No. 1518 (Sub-No. 1), declining to extend the Board's October 31, 1997 Service Order beyond August 2, 1998, as evidence that UP service has been restored to normal, or at least acceptable, levels. However, the July 30 Decision is precedent for nothing other than the conclusion that the "emergency," which is a statutory prerequisite for service order relief, has abated. It is precisely because the end of the emergency did not mean the end of service problems in the Houston/Gulf Coast area that this proceeding is taking place.

original merger decision was correct, the Board and the shipping public have been confronted with an extraordinary situation that continues unabated with respect to Gulf Coast traffic destined to western points and that warrants extraordinary corrective measures.

In its Opening Comments, FPC argued at length that the Board's competitive access procedures are relevant here. To be sure, those procedures have traditionally been seen as available only in terminal areas. But those procedures have also traditionally not been invoked in the context of a merger proceeding.[7/]

In merger proceedings, the Board's conditioning powers are essentially unrestricted by the statute. In 49 U.S.C. § 11324(c), the only constraint placed on the Board's authorization to "impose conditions ... including ... trackage rights and access to other facilities" is as follows:

> Any trackage rights and related conditions imposed to alleviate anti-competitive effects of the transaction shall provide for operating terms and compensation levels to ensure that such effects are alleviated.

In other words, Congress not only gave the Board wide discretion to condition its approval of merger applications, but directed the Board to insure that any trackage rights or other forms of access it may impose achieve their intended purpose.

[7/] It also bears mentioning that the Board has expressed interest in improving its competitive access procedures to increase their effectiveness as remedies for poor service and/or anticompetitive conduct by railroads. See the Board's Decision served April 17, 1998, in Ex Parte No. 575, Review of Rail Access and Competition Issues, at pp. 6-7.

Railroads must not be allowed to use pricing or operational restrictions to defeat shipper protections.

As the UP stresses repeatedly, ICC and Board precedent, a.k.a. "longstanding merger law," has created restrictions on the Board's remedial powers that appear nowhere in the statute. However, as demonstrated above, FPC's proposal satisfies those restrictive standards. A fortiori, FPC's suggested remedy is appropriate in the context of this unprecedented proceeding, whose sole purpose is remedial.

Given the breadth of the STB's authority to take corrective action in response to the meltdown, it is difficult to argue against the proposition that the Board may also consider competitive access type remedies. The UP does not even try to contest FPC's arguments on this point. By analyzing the ICC's Midtec decision,[8] FPC showed that it meets the standards set forth there for competitive access relief. See FPC's Opening Comments at 11-23.

It is clear that FPC has experienced both inadequate service and anticompetitive conduct by UP since the merger. It is equally clear that FPC is captive to UP. See FPC's Opening Comments at 15-16, noting that FPC has no alternative to rail for most shipments, and the Opening Statement of FPC Witness Heinle at 3-5. But for that captivity, FPC would have been better able to protect itself when UP service in the Houston/Gulf area collapsed.

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[8] Midtec Paper Corp. v. Chicago & North Western Transportation Co., 3 I.C.C. 2d 271 (1986), aff'd., Midtec Paper Corp. v. United States, 857 F.2d 1487 (D.C. Cir. 1987).

These facts would plainly make out a case for trackage rights relief under 49 U.S.C. § 11102(a) or reciprocal switching relief under 49 U.S.C. § 11102(c), if FPC were in a traditional terminal or switching area. BNSF passes by FPC's front door, but is precluded from serving FPC under UP's anticompetitive and restrictive trackage rights arrangement with BNSF.

The Board may not yet be ready to adopt a general policy of using its broad authority in merger cases to promote competition.[9/] It nevertheless can and should be more flexible in dealing with an extraordinary and unprecedented situation like that presented here. This is not just a merger proceeding; we are dealing here with a merger that produced such calamitous results as to require an unprecedented emergency service order and reopening.

The type of relief FPC seeks is provided for in the statute (49 U.S.C. §§ 11324 and 11102), and in STB regulations, and is strongly supported by the policies underlying the Act. Except in the most general terms (e.g., maligning the statutory remedy of competitive access as "open access"), UP has neither rebutted, nor responded to, FPC's main arguments.

Judging from its Opposition, UP plainly continues to believe that it paid good money for SP and SP's captive customer base, and must therefore continue to be the sole railroad to which shippers

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9/ But see the Board's treatment of East of the Hudson shippers in the recent Conrail Control proceeding, STB Docket No. 33388, CSX Corporation, et al. -- Control and Operating Leases/Agreements -- Conrail, Inc., et al., Decision No. 89, served July 23, 1998, at pp. 79-82. The Board there departed from its policy of granting relief only in "2-1" situations.

like FPC may have access, come hell or high water. It is precisely this attitude, and the accompanying abuses of the shipping public, that led Congress to regulate railroads in the first place, more than 100 years ago. There could be no worse signal to send to the few remaining major railroads than that the Board will not intervene vigorously even in the face of an unprecedented virtual shutdown of rail service. Protecting railroads from competition is not the central policy of the statute, even when their service is good.

IV. CONCLUSION

For the reason set forth herein and in FPC's Opening Comments, FPC urges the Board to require, as a condition of the UP/SP merger, that BNSF be allowed to provide service to FPC at Formosa, TX, under terms that will permit BNSF to be an effective competitor to UP. To the extent necessary to effectuate this relief, FPC should be relieved from its contractual minimum volume commitments to UP, consistent with the Board's grant of such relief in other merger proceedings.

Respectfully submitted,

Andrew P. Goldstein
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(202) 393-5710

Attorneys for
Formosa Plastics Corporation, U.S.A.

Dated: October 16, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served on all parties of record by first-class mail, postage prepaid, this 16th day of October, 1998.

Andrew P. Goldstein

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PUBLIC VERSION -- REDACTED

REPLY VERIFIED STATEMENT

OF

RICHARD A. HEINLE

My name is Richard A. Heinle. I am employed as Vice President Vinyl/Chlor-Alkali Division, by Formosa Plastics Corporation, U.S.A. ("FPC"). I have previously submitted a verified statement in this proceeding.

I have had an opportunity to review the opposition statement filed by Union Pacific Railroad Company ("UP") on September 18, 1998, insofar as that statement pertains to FPC, especially the verified statement of UP Vice President Dennis J. Duffy ("Duffy V.S."). I and my staff have also had an opportunity to review excerpted work paper data pertaining to FPC shipments supplied to our counsel by UP in response to his request for the work papers supporting Mr. Duffy's testimony pertaining to transit times for FPC traffic. Of course, I am familiar with FPC's own transit time experiences and data.

The thesis of Mr. Duffy's testimony is that UP has made such major strides toward improved service since early 1998 as to negate any need for remedial action by the Board. While certain aspects of UP's service are better now than in February or March of 1998, there has been a lasting deterioration of UP service to important western markets, including especially the territory formerly served by Southern Pacific Transportation Company ("SP"). Moreover, there

are serious and pervasive internal inconsistencies in the work paper data furnished by UP that totally undercut the reliability of Mr. Duffy's claims of improved UP service to gateways.

Service to Western Points

California and Arizona account for nearly 25 percent of FPC's U.S. market sales from its Point Comfort, TX facility. UP service to that market shows no sign of lasting improvement.

With my opening verified statement I included graphs to portray the movement of loaded and empty cars by UP between Formosa, TX, and Stockton, CA, a former SP point now served by UP, which is a major FPC destination. FPC's shipments originate at Formosa, which is served only by UP. Prior to the UP/SP merger, Stockton was open to UP, SP, and BNSF, but BNSF routings were not used by FPC for reasons explained in the Highly Confidential version of my opening verified statement.

Our opening statement graph of Stockton shipments demonstrated that UP transit times, for both loaded and empty cars, were approximately twice as long through April 1998 as they had been in late 1996 and early 1997, before the post-merger UP "meltdown" began. These conditions did not improve in the summer of 1998. FPC car tracing data shows that average transit times from Formosa to Stockton in June and July 1998 were 30 or more days -- the worst performance ever by UP. Return shipments of empty cars from Stockton to Formosa showed some improvement in the summer of 1998 versus early 1998, but were still at levels higher than pre-meltdown performance.

FPC's transit time experience to and from Stockton is not atypical of our experience with transit times to other former SP destinations. South Fontana, CA, near Los Angeles, is a UP point formerly served by SP, where FPC does a sizeable volume of business. In 1996, transit time on loaded cars from Formosa to South Fontana averaged 14 days. In the first seven months of 1998, UP transit times for loaded cars to South Fontana averaged 21 days, with July 1998 being the worst month of all at 27 days.

Fowler, AZ is another former SP point now served by UP. It is not a point to which FPC makes shipments every month, but we did ship to Fowler from Point Comfort in the second half of 1996 and our outbound shipments averaged 11.4 days. In May, June, and July 1998, our outbound shipments to Fowler averaged 20 days each. These examples typify the worsening UP service that FPC has been receiving since UP attempted to amalgamate SP points into the UP system.

Mr. Duffy states, in his September 18 filing (Duffy V.S. at 5): "Service to Southern California has not yet returned to where UP and Formosa would like, but now that the congestion in that area has cleared in the last 10 days transit times should improve significantly." No hard data was offered by UP to substantiate this claim. I do not believe that Mr. Duffy's optimism is warranted, and I certainly disagree that the appropriate service standard is what UP would "like". Service should be at pre-merger levels that are commercially acceptable, and that is not where UP service is.

Service to one of FPC's most important market areas -- the California-Arizona market -- has gotten appreciably slower since UP acquired SP and took over SP's routings. When UP acquired SP, UP's market share of FPC domestic destination traffic served from Point Comfort went from [ ]percent to [ ] percent, an increase of more than [ ] percent, but UP service worsened dramatically, falling far below service provided by SP. Poor UP service to customers in these markets is imposing substantial costs on FPC, as described in my opening statement. These costs are manifest in many ways, including the all-important but intangible customer satisfaction level which has been dropping since UP's service problems began, and our operating costs, which have skyrocketed.

It is only because of UP's market power that the railroad has felt it could continue to provide inadequate service while refusing to accept full responsibility for the damage it has caused FPC. Without the reduction in competition resulting from the UP/SP merger, FPC would have been in a better position to deal with service problems. We must have a reliable, permanent alternative to UP service, especially as FPC gears up to expand shipments from the Point Comfort facility to the substantial extent described in my opening verified statement.

Gateway Service

Mr. Duffy devotes much of his FPC-specific testimony to a discussion of UP service on FPC gateway traffic. He alleges that service has improved by 39 to 51 percent since February/March 1998

to four gateways: Chicago, East St. Louis, Memphis, and New Orleans (Duffy V.S. at 2); and he discusses both loaded and empty moves between Formosa and those gateways (Duffy V.S. at 5-6).

We have examined the FPC-specific data furnished to us by UP in response to our request for Duffy work papers related to his FPC testimony. We were furnished, in fact, three sets of such data, all denominated as Highly Confidential, so that I cannot disclose their contents in the public version of this statement. One has "average transit" times from Formosa to Chicago, East St. Louis, Memphis, and New Orleans for the months of January-August 1998 (hereinafter "Work Paper 1"). The next set has "average transit" times from Formosa to the four Work Paper 1 gateways for just the month of August 1998 ("Work Paper 2"). The third set of work papers reflects transit times to the same four gateways plus two other gateways; and also to Houston, TX, Fontana, CA, and Stockton, CA separately for loaded cars and empty cars on a monthly basis from January 1997 through September 1998, inclusive ("Work Paper 3").

A comparison of the three sets of work papers shows differing transit time claims by UP to the same gateways during the same months; in some instances, there are four different transit times to the same gateway for the same month. Set forth below is a table which examines the Duffy work paper transit times in days from January to August, 1998, which are the only months that Work Paper 1 and Work Paper 3 have in common.

Daily Transit Times in UP Work Papers

Chicago

	Work Paper 1	Work Paper 3*	Work Paper 2
1998			
January	[		
February			
March			
April			
May			
June			
July			
August			]

* **Loaded Cars In bold**

East St. Louis

1998	Work Paper 1	Work Paper 3*	Work Paper 2
January	[		
February			
March			
April			
May			
June			
July			
August			]

* Loaded Cars In Bold

Memphis

	Work Paper 1	Work Paper 3*	Work Paper 2
1998			
January	[		
February			
March			
April			
May			
June			
July			
August			]

* **Loaded Cars In Bold**

New Orleans

	Work Paper 1	Work Paper 3*	Work Paper 2
1998			
January	[		
February			
March			
April			
May			
June			
July			
August			]

* **Loaded Cars In Bold**

It is difficult, if not impossible, to reconcile these disparate transit times. For instances, to the Chicago gateway, Work Paper 1 shows an average transit time (presumably loaded and empty combined) of [ ] days in January 1998, while Work Paper 3 shows a transit time of [ ] days for loads and [ ] days for empties, neither of which correlates to the [ ] days in Work Paper 1. If the Work Paper 3 numbers for loads and empties are averaged for January 1998, the result is a transit time of [ ] days, which also bears no relationship to the [ ] days in Work Paper 1.

The same confounding observations apply to the majority of the monthly entries supplied by UP in those months for which Work Paper 1 and Work Paper 3 have movement data in common. If the average of the Work Paper 3 loaded and empty transit times equaled the Work Paper 1 transit times, the discrepancies between the three sets of figures would not be so significant. But the Duffy work papers offer no way of reconciling the three sets of figures. And, for the month of August 1998, the work papers include a fourth transit time figure which likewise is irreconcilable with any of the other three figures supplied for that month.

FPC does not deny that there has been an improvement in UP service to several gateway points, but Mr. Duffy's testimony does not provide a reliable measure of that improvement. FPC's own records show, for example, that, while transit times to the Memphis gateway have dropped since February, as Mr. Duffy claims, they nevertheless remain 30 percent worse than in 1996. Transit times from Formosa to Council Bluffs, IA, another domestic gateway, averaged slightly over 17 days in June and July 1998, compared with 9 days in 1996. Outbound shipments to Houston averaged 5.0 days in 1996 and for the first six months of 1997. In May 1998 they averaged 7.0 days; in June they averaged 7.5 days; and in July they averaged 8.5 days, a trend toward worse, not improving, service.

This is an indication that UP is not capable of operating its entire system efficiently so as to provide timely and unwasteful service throughout. When service over part of the system improves, service elsewhere on the system fails. UP's performance indicates

that it has not been able to fix its western service, particularly at points formerly served by SP. Those are the single most important markets for FPC on the UP system. Prior to the UP/SP merger, FPC had western customers that could be reached via either UP or SP routing, including our largest California market at Stockton, affording some measure of protection against service failures on one road or the other. Post-merger, that choice of routing is unavailable, since all of the former SP destinations now are in UP's hands.

The poor service UP has provided in its expanded markets directly follows the enhanced market power it gained in the merger, but a remedy readily is available. Though ignored by UP, FPC reiterates that it is willing and able to provide improved rail facilities for access by UP and BNSF at Formosa. BNSF is currently prevented from serving FPC only by the restrictions placed on BNSF's grant of trackage rights, in order to keep FPC (and other shippers) captive. Not only would access for BNSF be operationally simple, but it would benefit both FPC and UP by reducing congestion on UP's line between Corpus Christi and Houston.

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VERIFICATION

I hereby certify, under penalty of perjury, that I have read the foregoing statements and that its contents are true, and that I am authorized to make and submit the same.

Richard A. Heinle
Vice President
Vinyl/Chlor-Alkali

10/15/98

REPLY EXHIBIT B

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July 31, 1998

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 711
Washington, D.C. 20423

Re: Finance Docket No. 32760 (Sub-No. 26), Union Pacific Corp., et al. -- Control and Merger – Southern Pacific Rail Corp., et al.

Dear Secretary Williams:

The Burlington Northern and Santa Fe Railway Company hereby submits for filing in the above-captioned proceeding the original and twenty-five (25) copies of the Verified Statement of Ernest L. Horn as its comments on the Comments and Request for Remedial Conditions of Formosa Plastics Corporation, U.S.A., filed on July 8, 1998. Also enclosed is a 3.5-inch disk containing the text of this pleading in WordPerfect 6.1 format.

I would appreciate it if you would date-stamp the enclosed extra copy of this filing and return it to the messenger for our files.

Sincerely,

Erika Z. Jones / KAK

Erika Z. Jones

Enclosures

VERIFIED STATEMENT
OF
ERNEST L. HORD

My name is Ernest L. Hord. I am Vice President, Operations of The Burlington Northern and Santa Fe Railway Company ("BNSF") on the UP/SP Lines. My business address is 24125 Aldine Westfield Road, Spring, TX 77373.

I joined BNSF in October 1996. Prior to that time, I was employed by Southern Pacific for 31 years and held various positions in the Operations Department, including General Manager and Assistant Vice President-Transportation, culminating in my last position as Assistant to Executive Vice President-Operations.

Since joining BNSF, I have taken on responsibility for the start-up and implementation of service on the track and territory to which BNSF gained access under the Board's Decision No. 44 in Finance Docket No. 32760 (served August 12, 1996). In that capacity, I have become familiar with BNSF's, as well as UP's, operations in Texas and the Gulf Coast area.

The purpose of the Verified Statement is to describe from an operating standpoint how BNSF would serve the Formosa Plastics Corporation, U.S.A. ("FPC") at Formosa, Texas were the Board to grant FPC's request for remedial conditions filed on July 8, 1998, and comment upon the efficiency of those operations.

Pursuant to trackage rights granted by the Board in the UP/SP merger proceeding, BNSF currently operates over UP's line between Algoa and Corpus Christi, TX. That line passes through Formosa, TX, to which FPC has built a nine mile industrial track from its Point Comfort facility. FPC currently provides switching service with its own engines between the facility and Formosa.

If the Board were to grant FPC's request, BNSF would be able to pick-up and set out FPC traffic at Formosa, TX, without interference with UP operations on the line or adversely affecting BNSF's present operations. All necessary switching interchanges between FPC and BNSF would occur at FPC's marshaling yard near the Formosa interchange. With FPC's planned expansion of that marshaling yard as described in the Verified Statement of Ronnie Bounds ("V.S. Bounds"), attached to FPC's July 8 filing, the new FPC yard facilities would permit a switching interchange between FPC and BNSF that would not utilize or block the UP main line. BNSF has capacity on its existing train service on the Algoa line to provide service to FPC.

In addition, with the building of a second turnout as described in V.S. Bounds, trains approaching from the southwest could head directly onto the FPC siding. The head-end engine could, if necessary, be uncoupled and moved to what was the rear of the train, and could then pull the train back on to the main line via the existing turnout to the northeast. In that manner, BNSF trains would not need to stop on the UP main line at all if those trains were to provide service to switch FPC. This handling, made possible by FPC's planned yard expansion, would reduce demands on UP's line and address the need for capacity and infrastructure in the Gulf Coast.

UP trains, which approach FPC from both east and west, could operate in a similar manner.

In sum, it would be operationally feasible and practical for BNSF to interchange traffic with FPC at Formosa, TX and BNSF would be able to do so in a manner that would not cause disruption to train operations on UP's main line or any adverse impact on present BNSF operations on the Algoa line.

VERIFICATION

THE STATE OF TEXAS)

COUNTY OF TARRANT)

Ernest L. Hord, being duly sworn, deposes and says that he has read the foregoing statement and that the contents thereof are true and correct to the best of his knowledge and belief.

THERESA E. HARPER
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
JULY 7, 2001

Ernest L. Hord

Subscribed and sworn before me on this 30th day of July, 1998.

Notary Public

My Commission expires:

July 7, 2001

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of July, 1998, a copy of the foregoing was served, by first-class mail, postage prepaid, or by a more expeditious manner of delivery, on all Parties of Record in the above-captioned proceeding.

Kathryn Kuseke

Kathryn Kuseke

191631
191632

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BRIAN L. TROIANO
ROBERT A. WIMBISH

DONALD E. CROSS (1923-1986)

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October 16, 1998

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 "K" Street, N.W.
Washington, D.C. 20423-0001

RE: STB Finance Docket No. 32760 (Sub-Nos. 26 and 28), Union Pacific Corp., et al. -- Control and Merger -- Southern Pacific Corp., et al.

[Houston/Gulf Coast Oversight]

Notice of Address Change

Dear Secretary Williams:

Submitted herewith in the above-captioned proceeding are an original and 25 copies of the verified statement of Lorenzo E. Cantu, President and Chief Operating Officer of the Brownsville & Rio Grande International Railroad ("BRGI"). A copy of Mr. Cantu's verified statement is to be included with The Burlington Northern and Santa Fe Railway Company's ("BNSF") Rebuttal to the Union Pacific Railroad's Reply, which we understand will be filed today with the Board. As a party of record in this proceeding, BRGI has elected to file the enclosed verified statement independent of the BNSF filing out of an abundance of caution.

Copies of the enclosed verified statement will be served upon all parties of record in the above-captioned proceeding.

I note that several parties in this proceeding are sending filings to me at our firm's previous address at 1920 "N" Street. I would request that the Board and all other parties of record review their service records and, if necessary, revise them to reflect our correct address, which is as follows:

Robert A. Wimbish
REA, CROSS & AUCHINCLOSS
1707 "L" Street, N.W.
Washington, D.C. 20036

Counsel for the Brownsville & Rio Grande
International Railroad

Thank you for your attention. Please do not hesitate to contact me, if you have any questions concerning this submission.

Sincerely,

Robert A. Wimbish

Counsel for Brownsville & Rio Grande
International Railroad

Enclosure

cc: All parties of record

BROWNSVILLE AND RIO GRANDE
INTERNATIONAL RAILROAD

P.O. Box 3818
Brownsville, Texas 78523-3818
Phone: (210) 831-7731
Fax: (210) 831-2142

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Re: Finance Docket. No. 32760 (Sub-Nos. 26 and 28)

My name is Lorenzo "Larry" E. Cantu. I am the President & Chief Operating Officer of the Brownsville & Rio Grande International Railroad ("BRG"). The BRG is located at the Port of Brownsville, Texas and serves as a terminal switching carrier for this area.

I am filing this Verified Statement in support of the Burlington Northern and Santa Fe Railway's ("BNSF") request that the Board grant permanent bidirectional overhead trackage rights on UP's Caldwell-Flatonia-Placedo line. I believe that this request will benefit our railroad and our shippers and will result in service improvement, needed operational flexibility and the ability to avoid adding unnecessary traffic to the Houston terminal area.

As the Board is already aware, I previously submitted a verified statement in this proceeding, in which I stated my support for BNSF's requests for conditions in the Harlingen-Brownsville area. (Clearly, the Brownsville area conditions would directly enhance BRG operations.) I have since had further discussions with representatives of BNSF, and they have persuaded me that I should state my support for other specific portions of BNSF's recent proposals to the STB in this proceeding — specifically, (1) BNSF's request for permanent bi-directional overhead trackage rights on UP's Caldwell-Flatonia-Placedo line, and (2) BNSF's request that it be granted the right, wherever in the Houston/Gulf Coast area UP institutes directional operations impacting BNSF's operations over trackage rights lines, and BNSF has trackage rights over some, but not all of the directional routes UP establishes, to join in those directional flows via additional trackage rights over UP.

I offer my support to the two enumerated BNSF proposals (in addition to the Brownsville area relief for which I already have stated my support), because I recognize that the requested conditions could contribute greatly to improved BNSF service to and from the Brownsville area. Indeed, BNSF's proposed bi-directional rights on UP's Caldwell-Flatonia-Placedo line would keep BNSF trains out of the Houston area, thus avoiding potential congestion, and shortening BNSF's route to Brownsville by approximately 100 miles in each direction. Naturally, I support any operating proposal that enhances service to and from the Brownsville area.

For all these reasons, the Board should grant BNSF's request to maintain these bi-directional overhead trackage rights on a long-term basis. This would benefit our railroad and our shippers and will result in service improvements for both the UP and BNSF to provide greater operational flexibility and reduce congestion in the Houston terminal area.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 15th day of October, 1998.

Sincerely,

Lorenzo "Larry" Cantu

MAYRA H LEAL
Notary Public, State of Texas
My Commission Expires
January 29, 2002

Mayra H. Leal

GN-38, FD 36873
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GREATER HOUSTON PARTNERSHIP
Chamber of Commerce · Economic Development · World Trade

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October 15, 1998

The Honorable Vernon Williams
Case Control Unit
Attn: STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Surface Transportation Board
1925 K. Street, N.W.
Washington, DC 20423-0001

26

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RE:

STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Union Pacific Corporation, et. al.
-- Control and Merger --
Southern Pacific Rail Corporation, et. al.

HOUSTON/GULF COAST OVERSIGHT

Dear Secretary Williams:

Enclosed is the statement of the Greater Houston Partnership presenting its rebuttal comments relating to statements by the Union Pacific Railroad dated September 18, 1998 opposing all condition applications filed in this proceeding requesting additional conditions to the merger of the Union Pacific and Southern Pacific.

An original and 25 copies are enclosed, together with a 3.5 inch computer disk containing a copy of the statement in WordPerfect format.

Respectfully submitted,

Roger H. Hord
713-844-3625

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GREATER HOUSTON PARTNERSHIP
Chamber of Commerce • Economic Development • World Trade



October 15, 1998

The Honorable Vernon Williams
Case Control Unit
Attn: STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Surface Transportation Board
1925 K. Street, N.W.
Washington, DC 20423-0001

RE:

STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Union Pacific Corporation, et. al.
-- Control and Merger --
Southern Pacific Rail Corporation, et. al.

HOUSTON/GULF COAST OVERSIGHT

Dear Secretary Williams:

Enclosed is the statement of the Greater Houston Partnership presenting its rebuttal comments relating to statements by the Union Pacific Railroad dated September 18, 1998 opposing all condition applications filed in this proceeding requesting additional conditions to the merger of the Union Pacific and Southern Pacific.

An original and 25 copies are enclosed, together with a 3.5 inch computer disk containing a copy of the statement in WordPerfect format.

Respectfully submitted,

Roger H. Hord

Roger H. Hord
713-844-3625



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Union Pacific Corporation, et. al.
-- Control and Merger --
Southern Pacific Rail Corporation, et. al.

HOUSTON/GULF COAST OVERSIGHT

REBUTTAL COMMENTS OF THE GREATER HOUSTON PARTNERSHIP ON COMMENTS OF UNION PACIFIC RAILROAD

This statement presents the comments of the Greater Houston Partnership (GHP) regarding statements by the Union Pacific Railroad dated September 18, 1998 opposing all condition applications filed in this proceeding requesting additional conditions to the merger of the Union Pacific and Southern Pacific. Because the GHP recommendations were among those accepted for consideration by the Surface Transportation Board (STB), the GHP is filing these rebuttal comments.

The Greater Houston Partnership

The Greater Houston Partnership is Houston's principal business organization and is dedicated to building prosperity in the Houston region. The Partnership has 2,400 members from virtually every industry sector throughout the eight-county Houston region. The Partnership's Board of Directors is composed of 112 corporate CEO's of organizations in the Houston region.

Partnership members employ almost 600,000 people, which is one out of every three employees in the region.

GHP Maintains Position

The GHP maintains the view stated in our July 8, 1998 filing that we "must seek incremental changes in rail service to help secure a competitive Port and industrial sector." With this filing we reconfirm our principles and recommendations contained in that filing.

We believe rail service and rail competition for shippers served by one railroad in a community served by three or more carriers is superior to service and competition afforded a captive shipper in a community served by only two railroads where one of those railroads has an 80% market share. We note the apparent similarities in Houston's request for additional rail competition and issues in Conrail merger in the New York-New Jersey area. In this case, the STB applied lessons learned in the Houston-Gulf Coast merger of UP-SP by assuring shippers of competition from two rail carriers where before the merger, only one carrier existed. We believe the STB should revisit the Houston decision via this case to seek equitable means of injecting what is missing in the original merger formula, greater competition for shippers served by a single carrier. If the Union Pacific truly believes, as it states in UP-1 on page 155, that competition in this market would be so devastating that they would rather consider the "least drastic means" by divesting itself of the entire franchise, it reveals the extent of the dilemma we face in Houston in seeking additional competition and improved service.

The GHP restates the following recommendations:

1) The STB should provide a mechanism for all railroads serving Houston to buy trackage rights and access rights at an equitable price to the following areas to provide greater competition for Houston area shippers:

a) The trackage currently owned by the Port of Houston and operated by the Port Terminal Railroad Association (PRTA);

b) The trackage historically owned by the Houston Belt and Terminal RR prior to it dissolution; and

c) Additional trackage as determined by the governing body of the neutral switch and shippers as allowed by financial considerations.

2) Operation of a neutral dispatching, switching, and car movement system should be undertaken by a single third party. The operator should be the reconstituted PTRA as described below serving as the governing authority over the trackage accumulated as recommended above.

3) The Union Pacific should be encouraged to reach an agreement with other long haul carriers to arrange the sale or lease of abandoned trackage and underutilized rights of way and switching yards which might allow shippers and the Port of Houston additional rail system competitiveness, capacity, flexibility and geographic access. The STB should mediate the negotiations of the parties involved.

4) The STB should order the reconstituted PTRA to develop a regional master plan of added facilities and operations needed to provide system capacity in excess of demand for the foreseeable future.

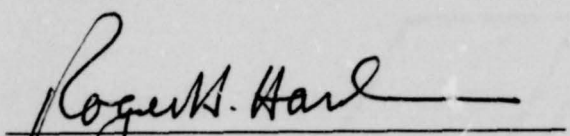
5) The Port of Houston, owner of the PTRA, and all long haul railroads serving Houston should be full and equal voting members of the PTRA Board.

6) The STP should provide a mechanism for the railroad [which had] temporary rights to buy permanent rights at an equitable price from the owning railroad if an investigation indicates actual or expected improvement in performance and competitiveness in the Houston-Gulf Coast freight rail system.

These recommendations are contained in the GHP Board of Directors' resolution on *Competition in Houston Freight Rail Service*. The GHP Board's resolution emphasizes that Houston's rail system performance must be "in the top tier of United States cities," which means that service and rates must be truly competitive in order for Houston's port and its local industries to compete effectively in domestic and international markets. The GHP Board stated a preference that the private sector rectify noncompetitive situations through equitable compensation, but it realizes that federal statutes and regulations constitute a fundamental roadblock in some cases and should be modified.

CERTIFICATE OF SERVICE

I, Roger H. Hord, certify that, on this 15th day of October, 1998, caused a copy of the attached document to be served by first-class main, postage prepaid, on all parties of record in Finance Docket No. 32760 (Sub-No. 26-32).



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BEFORE THE
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FINANCE DOCKET NO 32760 (Sub-No. 26)
FINANCE DOCKET NO. 32760 (Sub-No. 29)
FINANCE DOCKET NO. 32760 (Sub-No. 30)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
-CONTROL AND MERGER-
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

HOUSTON/GULF COAST OVERSIGHT

REBUTTAL COMMENTS OF THE PORT OF CORPUS CHRISTI AUTHORITY

Pursuant to Surface Transportation Board Decision No. 6 dated August 7, 1998 in the above-referenced proceeding, the Port of Corpus Christi Authority (the "Port") respectfully files these rebuttal comments in partial support of one of the additional remedial conditions contained in the consensus plan submitted July 8, 1998 by the Chemical Manufacturers Association, the Railroad Commission of Texas, the Texas Mexican Railway Company ("Tex Mex"), the Society of the Plastics Industry, Inc., the Texas Chemical Council, and the Kansas City Southern Railway Company (the "Consensus Parties"), and in full support of one of the additional remedial conditions submitted July 8, 1998 to the STB by The Burlington Northern and Santa Fe Railway Company ("BNSF"). Although the Port generally is very pleased with the benefits generated by th UP/SP merger as conditioned by the STB in its August 6, 1996 decision, certain trackage rights requested by the Consensus Parties and BNSF have the potential to provide even greater efficiencies, and should be granted, as discussed below, by the STB.

OVERALL THE PORT AND ITS SHIPPERS HAVE BENEFITTED FROM THE UP/SP MERGER AS APPROVED BY THE STB

The Port continues strongly to support the UP merger with the SP and the initial conditions that the STB imposed on the approval of the merger. The STB action has enabled the Port and its shipper customers to (a) continue to have the dependable services of the UP, (b) replace the erratic service of the financially strapped SP with the very competitive service of a strong and viable Class I railroad, the BNSF, and (c) maintain the viability of services by a third smaller regional railroad, the Texas Mexican Railway Company.

Now two years after the STB decision, the Port continues to experience growing direct benefits from the UP/SP merger. For example, the combined UP/SP system plus entry of BNSF is providing the Port with access to new markets not previously available in the form of increased export grain business moving via both the UP and BNSF. Other new import/export business opportunities also are in various stages of development.

This is not to say that the Port was unaffected by the well-publicized service and congestion situation. However, current service is fluid with no significant delays or service interruptions and as long as the railroads continue to focus on providing levels of competitive service which are responsive to customers' requirements, and participate in forums with the shippers such as established in Review of Rail Access and Competition Issues, STB Ex Parte No. 575, the Port and its shipper customers will continue to obtain increased benefits from the merger.

TEX MEX SHOULD BE ALLOWED TO PURCHASE THE VICTORIA/ROSENBERG LINE ON TERMS COMMERCIALLY ACCEPTABLE TO BOTH UP AND TEX MEX

The Consensus Parties request that the STB

Require UP/SP to sell to Tex Mex its line between Milepost 0.0 at Rosenberg and Milepost 87.8 at Victoria, TX. Tex Mex would re-construct this line and, when completed, grant UP/SP and BNSF trackage rights between Rosenberg and Victoria to facilitate UP's directional traffic on the Brownsville

> Subdivision. Grant Tex Mex related trackage rights over the two miles on the south end of this line between Milepost 87.8 and the point of connection at UP/SP's Port LaVaca branch at Victoria.

See, 63 F.R. 42482, 42484 (August 7, 1998).

In response, the UP, in its September 18, 1998 Opposition to Condition Applications at Vol 1, pages 213-214, states that

> UP has agreed to sell the Wharton Branch [between Rosenberg and Victoria, Texas] to Tex Mex, and the parties have reached agreement in principle on an arbitration process to determine the sale price.

As amended by and conditioned on UP's requirement that the sale be on a commercially reasonable basis, and the other limitations contained in the UP September 18th statement, the Port supports the request of the Consensus Parties that Tex Mex be allowed to purchase, restore and operate the former SP Victoria/Rosenberg Line, with the UP and BNSF offered access to the Line on reasonable terms and conditions. Currently the parties are trying to operate 1990's railroads in the region with a 1950's infrastructure. The sale of the Victoria/Rosenberg Line to Tex Mex and subsequent reconstruction will go a long way toward restoring and modernizing the infrastructure and provide the additional capacity needed for future shippers through the Port. For example, there are rice suppliers and rice elevators located in the region which could benefit from the reconstruction of the Line.

The Port expects that the STB, in keeping with its policy to refrain from imposing conditions greater than necessary to ameliorate the results of the merger, will defer imposing any immediate resolution of the UP/Tex Mex disputes but instead will impose a condition approving of the sale of the Line to Tex Mex, and providing the parties with a sufficient amount of time to resolve commercially the remaining issues. The Port further would expect that the Tex Mex, should it receive the trackage rights requested, will be required by the STB to be responsive to shipper needs, including quoting reasonable rates, and will cooperate with the Port in developing business opportunities.

Except for this one condition, the Port takes no position on the other trackage rights and market access sought by the Consensus Parties on behalf of the Tex Mex.

BNSF'S REQUEST FOR PERMANENT RIGHTS ON THE CALDWELL/FLATONIA/PLACEDO ROUTE SHOULD BE GRANTED

BNSF has requested a condition that would allow it permanent bidirectional overhead trackage rights on UP's Caldwell/Flatonia/Placedo route to avoid congested UP lines between Algoa and Corpus Christi, TX. See, 63 F.R. at 42484. The UP opposes this request, stating that UP will maintain BNSF's temporary trackage rights as long as UP employs directional running on the Line, but when the UP discontinues directional running, it wants to end BNSF's rights on this route as BNSF again will have the ability to utilize the Houston-Placedo route.

Despite the UP opposition, the Port supports the BNSF request as it is the only way to assure that once directional running ends, that BNSF will not have to transit through Houston to and from Corpus Christi, and risk enveloping Corpus Christi traffic in possible Houston congestion. The temporary rights provided to BNSF have shown that BNSF is a competitive alternative to the UP, and to deny BNSF the permanent right to this trackage is to risk the competitive discipline that BNSF brings to the Corpus Christi market, and to deprive shippers of the certainty of a competitive alternative which shippers need to plan their long-range transportation requirements. There are substantial public benefits to BNSF maintaining rights to this trackage, and BNSF should be afforded these rights on a permanent basis, subject only to agreement on reasonable commercial terms acceptable to the UP.

The Port takes no position on any of the other BNSF requests for conditions.

CONCLUSION

The Port of Corpus Christi appreciates the opportunity to file these comments. For the reasons stated above, the condition

requested by the Consensus Parties as to the Victoria/Rosenberg Line, as modified by the UP comments, and the BNSF request for permanent rights on the Caldwell/Flatonia/Placedo route, should be granted.

Respectfully submitted,

Paul D. Coleman

Paul D. Coleman
Hoppel, Mayer & Coleman
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 296-5460

Attorneys for:
The Port of Corpus Christi Authority

October 16, 1998

CERTIFICATE OF SERVICE

I, Paul Coleman, hereby certify that a true copy of the Rebuttal Comments of the Port of Corpus Christi Authority was served on this 16th day of October, 1998, by hand delivery upon the Honorable Vernon Williams and by first class mail, postage paid upon all other parties of record.

Paul D. Coleman

Paul D. Coleman

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BY HAND

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Room 711
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 32760 (Sub-No. 26),
and Related Sub-Dockets

Dear Secretary Williams:

Please note the following errata in UP/SP-356, in the last line on p. 2, change "210" to "270."

Also, we are enclosing a verification to the Handley statement in UP/SP-358. This verification was inadvertently omitted in our September 18 submission.

Sincerely,

Arvid E. Roach II

Attorney for Union Pacific Corporation, Union Pacific Railroad Company and Southern Pacific Rail Corporation

cc: All Parties of Record



VERIFICATION

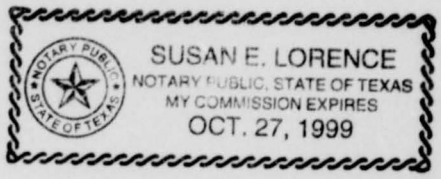
STATE OF TEXAS)
) ss.
COUNTY OF HARRIS)

I, Howard (Eddy) Handley, Jr., being duly sworn, state that I have read the foregoing statement, that I know its contents and that those contents are true as stated.

Howard E Handley Jr
Howard (Eddy) Handley, Jr.

Subscribed and sworn to before me this
8th day of October, 1998

Susan E. Lorence
Notary Public



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Commonwealth Consulting Associates

September 21, 1998

Office of the Secretary
Case Control Unit
ATTN: STB Finance Docket No. 32760 (Sub-No.26)
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

D

Re: STB Finance Docket No. 32750 (Sub-No. 26) - 191361
Union Pacific Corp., et al. – Control & Merger – Southern Pacific Corp., et al.

(Sub-No. 26) Houston/Gulf Coast Oversight Proceeding

(Sub-No. 28) Burlington Northern and Santa Fe Railway Company— - 191362
Terminal Trackage Rights—Texas Mexican Railway Company

(Sub-No. 29) Burlington Northern and Santa Fe Railway Company— - 191363
Application for Additional Remedial Conditions Regarding Houston/Gulf Coast Area

(Sub-No. 30) Texas Mexican Railway Company, et al.— - 191364
Request For Adoption of Consensus Plan

Dear Secretary Williams:

Pursuant to Board decision dated, September 10, 1998 in this proceeding, Shell Oil Company and Shell Chemical Company hereby give notice that they have served all parties of record with copies of previously filed pleadings.

Respectfully submitted,

David L. Hall

David L. Hall

C.C.

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Commonwealth Consulting Associates

July 7, 1998

Office of the Secretary
Case Control Unit
ATTN: STB Finance Docket No. 32760 (Sub-No.26)
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 32760 (Sub-No. 26)
Union Pacific Corp., et al. – Control & Merger – Southern Pacific Corp., et al.
Houston/Gulf Coast Oversight Proceeding

Dear Secretary Williams:

Enclosed for filing in the above-referenced docket are an original and twenty-five copies of the Request for New Remedial Conditions of Shell Oil Company and Shell Chemical Company. Also enclosed is a 3.5 inch diskette, containing the Request in a format which may be converted to Word Perfect 7.0.

Respectfully submitted,

David L. Hall

13103 FM 1960 West · Suite 204 · Houston, Texas 77065-4069 · Tel (281) 970-6700 · Fax (281) 970-6800

BEFORE THE

SURFACE TRANSPORTATION BOARD

WASHINGTON, D. C.

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Finance Docket No. 32760 (Sub-No. 26)

Union Pacific Corp., et al. – Control & Merger – Southern Pacific Corp., et al.
Houston/Gulf Coast Oversight Proceeding

REQUEST FOR NEW REMEDIAL CONDITIONS
OF
SHELL OIL COMPANY
AND
SHELL CHEMICAL COMPANY

Brian P. Felker
Manager of Products Traffic
Shell Chemical Company
One Shell Plaza
Post Office Box 2463
Houston, Texas 77252

Due Date: July 8, 1998

BEFORE THE

SURFACE TRANSPORTATION BOARD

WASHINGTON, D. C.

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FINANCE DOCKET NO. 32760 (SUB-NO. 26)

UNION PACIFIC CORP., et al. -- CONTROL & MERGER --
SOUTHERN PACIFIC RAIL CORP., et al.
HOUSTON/GULF COAST OVERSIGHT PROCEEDING

SHELL OIL COMPANY
AND
SHELL CHEMICAL COMPANY

REQUEST FOR NEW REMEDIAL CONDITIONS

Shell Oil Company and/or Shell Chemical Company "for itself and as agent for Shell Oil Company" (hereinafter jointly referred to as "Shell"), in response to the opportunity afforded by the Surface Transportation Board (Board or STB) by its Decision served May 19, 1998 in Finance Docket No. 32760 (Sub-No. 26), Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp., et al., Houston/Gulf Coast Oversight Proceeding, hereby file a joint request for new remedial conditions. Both companies are corporations, the address of which is One Shell Plaza, Post Office Box 2463, Houston, Texas 77252.

SHELL INTEREST

Shell owns and operates a petrochemical plant at Deer Park, Texas which generates approximately 12,500 annual rail carloads, inbound and outbound. In addition, Shell ships to and receives from other Houston/Gulf Coast region facilities approximately 8,000 annual rail carloads. Because of the global nature of our business, Shell operations worldwide have been significantly impacted by the UP service meltdown in the western United States and particularly in the Houston/Gulf Coast region. The inability of the UP to provide timely and efficient rail service has delayed deliveries to customers. Shell plants have also experienced delays in the inbound shipment of raw materials. This has resulted in disrupted production processes and, in one case, a Shell plant shutdown.

It is our belief that these degraded service levels are a direct consequence of the diminution of rail competition in the Houston/Gulf Coast region. It is in Shell's interest, and indeed in the interest of the U.S. economy, to restore rail competition to this vitally important industrial region. By instituting this proceeding the Board has positioned itself to implement policies which will facilitate the restoration of Houston/Gulf Coast region rail competition.

RECOMMENDATIONS FOR NEW REMEDIAL CONDITIONS

It is important to preface our recommendations by stating that Shell does not condone the taking of property nor support the forced sale of assets. Shell does advocate free, open, and unfettered competition. These recommendations offer the opportunity to reconcile these two important principles.

Shell recommends adoption and implementation, with modifications as noted below, of the Consensus Plan proposed by representatives of the Chemical Manufacturers Association (CMA), Society of Plastics Industries (SPI), Texas Chemical Council (TCC), Texas Railroad Commission (TRC), Texas Mexican Railway Company (Tex Mex), and the Kansas City Southern Railway Company (KCS). The STB should:

- Permanently adopt the following provisions of Emergency Service Order No. 1518 dated October 31, 1997, as extended by Supplement 1 issued December 4, 1997 and Supplement 2 issued February 25, 1998, collectively referred to as ESO 1518 herein;
    - ◊ Issue permanent authority to the Tex Mex to receive and transport any traffic to or from shippers served by The Port Terminal Railway Company (PTRA) or the former Houston Belt & Terminal Railway Company (HBT), as granted temporarily under ESO 1518. This would remove the requirement imposed in Decision No. 44 of the UP/SP merger which denied Tex Mex access to such traffic unless it had prior or subsequent movement on the Tex Mex between Corpus Christi and Laredo.
    - ◊ Establish permanent Tex Mex trackage rights over the UP between Placedo and Algoa, Texas and over the BNSF between Algoa and TN&O Junction with a trackage rights fee equivalent to that established for BNSF over UP track in UP/SP Merger Decision No. 44.

- Restore neutral switching lost in Houston with the dissolution of HBT by UP and BNSF and open the Houston/Gulf Coast region to competition. With PTRA as the neutral switch carrier, the neutral switching area should include;
  - ◊ All industries and trackage served by the former HBT.
  - ◊ All industries and trackage served by the PTRA.
  - ◊ All shippers located on the former SP Galveston Subdivision between Harrisburg Junction and Galveston.
  - ◊ Galveston over both the UP and former SP routes between Houston and Galveston, and including all industries located along these lines.
- Grant PTRA access to the former SP and UP yards at Strang and Galveston to facilitate service to local industries, as well as the switching and classification of rail cars for those railroads which interchange with PTRA.
- Require neutral dispatching, located, managed and administered by the PTRA within the neutral switching area.
- Grant all railroads serving Houston terminal trackage rights over all tracks within the neutral switching area to enable PTRA to route trains in the most efficient manner.
- Require UP and BNSF to restore the Port of Houston Authority as a full voting member of the PTRA Board and add the Tex Mex to the PTRA Board.
- Facilitate the sale by UP to Tex Mex of the former SP line between Milepost 0.0 at Rosenberg and Milepost 87.8 at Victoria, Texas. While the Consensus Plan advocates requiring UP to sell this track, Shell would prefer the parties

agree to the transfer of this asset at a mutually acceptable price. If no such agreement can be reached the matter should be submitted to arbitration.

- Require reconstruction of the Rosenberg to Victoria line by Tex Mex and grant UP and BNSF trackage rights over that line when completed.
- Grant Tex Mex trackage rights over the UP line between Milepost 87.8 and the UP Port Lavaca Branch at Victoria with a trackage rights fee equivalent to that established for BNSF over UP track in UP/SP Merger Decision No. 44.
- Require Tex Mex to relinquish current trackage rights on the UP Glidden Subdivision between Tower 17, Rosenberg and Flatonia upon commencement of Tex Mex operations over the Rosenburg-Victoria line as set forth above.
- Facilitate the sale by UP to Tex Mex of Booth Yard in Houston. While the Consensus Plan advocates requiring UP to sell this Yard, Shell would prefer the parties agree to the transfer of this asset at a mutually acceptable price, under mutually acceptable conditions. If no such agreement can be reached the matter should be submitted to arbitration.
- Facilitate Tex Mex/KCS construction of a new rail line along the right of way adjacent to the UP Lafayette Subdivision between Dawes and Langham Road in Beaumont and the subsequent exchange of this line for the UP Beaumont Subdivision between Settegast Junction, Houston and Langham Road, Beaumont, with BNSF and UP trackage rights over Settegast Junction to Langham Road and Tex Mex trackage rights between Dawes and Langham Road. While the Consensus Plan advocates requiring UP to participate in this

transaction, Shell would prefer the parties agree to the transaction under mutually acceptable conditions. If no such agreement can be reached the matter should be submitted to arbitration.

CONCLUSIONS

We are fifteen months into what is arguably the most financially devastating railroad service emergency in U.S. history. We believe that this is due in large part to inadequate consideration of the impact of the recent spate of railroad consolidations on competition. It is obvious that significant changes are required to the conditions under which UP was granted the right to purchase and control SP et al.

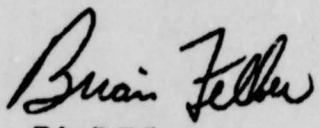
The Board is charged with ensuring a safe and efficient rail system (49 USC 10101(3)). The rail system in the west, and particularly in the Houston/Gulf Coast region has been neither safe nor efficient. This is due in large part to the reduction in competition as a western duopoly was granted through recent merger proceedings.

Absent external (competitive) pressure, railroads have developed an internal focus as they struggle to pay the premiums for the protection from competition which they have purchased through their mergers. Industries protected from competition become weak industries.

The STB mandate can best be fulfilled and the railroad industry strengthened through vigorous rail to rail competition. At the present time such competition does not exist. We believe that implementation of the foregoing recommendations, with the cooperation of all parties involved, would not only facilitate the restoration of railroad competition to the Houston/Gulf Coast region, but also strengthen the railroad industry.

Respectfully submitted,

SHELL CHEMICAL COMPANY
For itself and as Agent for Shell Oil Company
By its Manager of Products Traffic



Brian P. Felker
One Shell Plaza
Houston, Texas 77252

Dated: July 7, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of July, 1998, copies of the Request for New Remedial Conditions of Shell Oil Company and Shell Chemical Company were served by first class mail, postage prepaid, in accordance with the rules of the Surface Transportation Board on the U.S. Secretary of Transportation, and all other parties of record.

Brian P. Folker
Manager of Products Traffic
Shell Chemical Company
One Shell Plaza
Post Office Box 2463
Houston, Texas 77252

Commonwealth Consulting Associates

August 10, 1998

Honorable Vernon A. Williams
Office of The Secretary
Case Control Unit
Attn: STB Finance Docket No. 32760 (Sub-No.26)
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Surface Transportation Board Finance Docket No. 32760 (Sub-No. 26)

Dear Secretary Williams:

Please accept this letter as Notice of Intent to Participate in the proceeding referenced above and add my name to the service list as a party of record. Commonwealth Consulting Associates will file comments on behalf of Shell Chemical Company and Shell Oil Company.

Respectfully submitted,

David L. Hall
Commonwealth Consulting Associates
13103 F.M. 1960 West
Suite 204
Houston, TX 77065

Voice: (281) 970-6700
Fax: (281) 970-6800
E-Mail: commonwealth_consulting@compuserve.com

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DONELAN CLEARY
WOOD & MASER, P.C.

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Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Finance Docket No. 32760 (Sub-No. 26); *Union Pacific Corporation, et al. - Control and Merger -Southern Pacific Rail Corporation, et al. [Houston/Gulf Coast Oversight]*

Dear Secretary Williams:

On July 8, 1998, the Dow Chemical Company ("Dow") filed a Highly-Confidential version and a Public version of its Request for Additional Conditions (DOW-1) in the above-referenced matter. As per the Surface Transportation Board's Order dated September 9, 1998, we have served a copy of the public version on all parties of record within 10 days after service of that Order and service list.

We will provide a copy of the Highly Confidential version upon request and proof that the requestor has signed the Undertaking in this proceeding; such requests should be put to the attention of Stacy S. Hubbard.

Sincerely,

Jeff Moreno/SSH

Jeffrey O. Moreno
Counsel for the Dow Chemical Company

cc: Parties of Record

DONELAN CLEARY
WOOD & MASER, P.C.

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Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Finance Docket No. 32760 (Sub-No. 26); *Union Pacific Corporation, et al. - Control and Merger -Southern Pacific Rail Corporation, et al. [Houston/Gulf Coast Oversight]*

Dear Secretary Williams:

On July 8, 1998, the National Industrial Transportation League ("League") filed its Comments and Request for Remedial Conditions submitted on behalf of the League in the above-referenced matter (NITL-4). As per the Surface Transportation Board's Order dated September 9, 1998, we have served a copy of the public version on all parties of record within 10 days after service of that Order and service list.

Sincerely,

Nicholas J. DiMichael
Counsel for the National Industrial Transportation League

cc: Parties of Record

DONELAN CLEARY
WOOD & MASER, P.C.

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Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Finance Docket No. 32760 (Sub-No. 26); *Union Pacific Corporation, et al. - Control and Merger -Southern Pacific Rail Corporation, et al. [Houston/Gulf Coast Oversight]*

Dear Secretary Williams:

On July 8, 1998, E. I. Dupont De Nemours and Company filed its Request For New Remedial Conditions (DUPX-1) in the above-referenced matter. As per the Surface Transportation Board's Order dated September 9, 1998, we have served a copy of the public version on all parties of record within 10 days after service of that Order and service list.

Sincerely,

Frederic Wood

Frederic L. Wood
Counsel for E. I. Dupont
De Nemours and Company

cc: Parties of Record

ATTORNEYS AND COUNSELORS AT LAW
1100 New York Avenue, Suite 750, N.W., Washington, D.C. 20005-3934, Tel: 202-371-9500, Fax: 202-371-0900

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006-1882

ERIKA Z. JONES
DIRECT DIAL (202) 778-0642
ejones@mayerbrown.com

MAIN TELEPHONE
202-463-2000
MAIN FAX
202-861-0473

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September 21, 1998

VIA HAND DELIVERY

Office of the Secretary
Surface Transportation Board
Case Control Unit
1925 K Street, N.W.
Washington, DC 20423-0001

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26

Re: Finance Docket No. 32760 (Sub-Nos. 26, 30 and 32)

Dear Secretary Williams:

Enclosed please find the original verification for Ernest L. Hord whose verified statement was filed on September 18, 1998, as part of The Burlington Northern and Santa Fe Railway Company's Comments, Evidence and Arguments on Requests for New Remedial Conditions in Additional Oversight Proceeding (BNSF-9).

If you have any questions, please contact me at (202) 778-0642. Thank you.

Sincerely,

Erika Z. Jones

Erika Z. Jones

Enclosure

CN-38, FD 36873
PUBLIC VERSION

VERIFICATION

THE STATE OF TEXAS)

COUNTY OF TARRANT)

Ernest L. Hord, being duly sworn, deposes and says that he has read the foregoing statement and that the contents thereof are true and correct to the best of his knowledge and belief.

Ernest L. Hord

Ernest L. Hord

Subscribed and sworn before me on this 17th day of Sept., 1998.

Susan E. Lorence

Notary Public

My Commission expires: 10/27/99

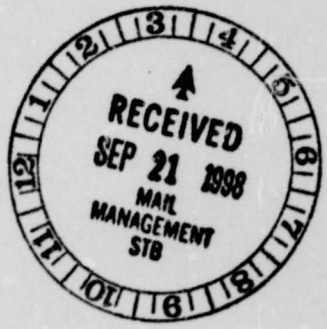
SUSAN E. LORENCE
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
OCT. 27, 1999

191284

A&NR

Angelina & Neches River Railroad Co.

DAVID M. PERKINS
President & General Manager



September 17, 1998

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Office of the Secretary
Surface Transportation Board
Case Control Unit
Attn: STB Docket No. 32760 (Sub.-No. 26)
1925 K Street, N.W.
Washington, D.C. 20423-0001

re: Union Pacific Corporation, et. al – Control and Merger –Southern Pacific Rail Corporation, et. al ; Houston /Gulf Coast Oversight [STB Finance Docket No. 32760 (Sub.-No. 26)]

Dear Mr. Secretary:

Enclosed for filing are an original and twenty-five (25) copies of the Statement of Angelina & Neches River Railroad Co. in the above reference docket proceeding. We have also enclosed a computer diskette containing our filing in Word Perfect 5.0 format which can be converted to Word Perfect 7.0. (Unfortunately, we do not have access to the 7.0 version; however, your version will read this file).

One copy of this filing has been sent to UP's representative and Administrative Law Judge Stephen Grossman. Copies have also been sent to all parties of record on the Service List issued September 9th.

Sincerely,

David M. Perkins

David M. Perkins
President & General Manager
Angelina & Neches River Railroad Co.
P. O. Box 1328
Lufkin, TX 75902-1328
Telephone: 409/634-4403

DMP/rk
enclosures

CN-38 FD 36873
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A&NR-2

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub. No. 26)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY

-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

HOUSTON / GULF COAST OVERSIGHT PROCEEDING

STATEMENT OF
DAVID M. PERKINS
PRESIDENT & GENERAL MANAGER
ANGELINA & NECHES RIVER RAILROAD COMPANY

My name is David M. Perkins and my business address is Angelina & Neches River Railroad Company ("A&NR"), P. O. Box 1328, Lufkin, TX 75902. I am President and General Manager of the A&NR, a class III railroad, providing general freight service on approximately 12 miles of mainline track. The A&NR interchanges traffic with the Union Pacific/Southern Pacific ("UP/SP") at Lufkin, Texas. UP/SP is our only trunk line connection. Therefore, A&NR and the industries located on our line are completely dependent on UP/SP as the only means of rail access for our customers.

IDENTITY AND INTEREST OF A&NR: A&NR serves a number of industries on its lines. Principal customers include: (1) Donohue Industries, a manufacturer of newsprint and telephone directory paper; (2) Lufkin Industries whose principle products are oil field equipment and castings; (3) Georgia Pacific Resins; (4) Texas Foundries whose principal product is castings; (5) Precision Lumber Company-- a lumber reload facility; (6) American Color Graphics

whose products include printed materials, and (7) Dunagan Warehouse which is both a dry and cold storage facility. The A&NR handles an average of five-thousand (5000) rail cars per year for these customers. Rail service to all of these facilities has been severely impacted as a result of the erratic service of the UP/SP in the Houston and Gulf Coast area.

In Finance Docket No. 32760, the A&NR supported the merger of Union Pacific and Southern Pacific. We believed that the combined UP and SP would create a much larger pool of equipment and motive power for East Texas. We also believed timeliness of service would improve due to the volume of traffic allowing trains to fill out faster and more frequently. In our filing, we encouraged the Board that "wherever feasible, the Commission should also impose conditions which allow the other, smaller Western railroads access to key routes and markets."[1] The A&NR believes sound transportation policy should foster and promote intramodal competition among all of the nation's rail systems.

Located 110 miles north of Houston , the A&NR Railroad and its customers have been seriously and adversely impacted by the service crisis in Houston and the Gulf Coast as if we were physically located in Houston. We have experienced:

- severe reductions in the frequency and reliability of local service from Houston and Shreveport;
- a complete breakdown in communication with UP/SP operating managers;
- increased transit times for movements via the UP/SP; and
- a 40% decline in rail traffic through the third quarter 1998 as compared to the same period in 1997

These operating problems are attributable in part to the UP's service "melt-down" in Houston; and in part to the operational changes of UP/SP made in the Southern Tier on February 1, 1998. "Directional running", using the parallel SP and UP lines to run one way traffic between Houston and Chicago, has added additional traffic and congestion over the mainline at the expense of local service to short line railroads and their customers. We submit that overhead trackage rights granted to the BNSF, as a competitive condition of the UP/SP merger, have contributed to the additional congestion and our service issues. When communications break down between the

[1] Verified Statement of David M. Perkins, Angelina & Neches River Railroad dated Oct. 12, 1995, page 5

short line and its trunk line connection as has occurred here, the trunk line is defacto using its market power by ignoring a customer segment it considers captive.

Unless the UP/SP can restore service to the consistent and sustained levels provided by SP pre-merger, we believe additional conditions would be warranted to address local service inadequacies in east Texas as well as Houston and the Gulf Coast. We applaud the Board for its actions to date and its willingness to open the record and explore additional remedial conditions.

A&NR RAILROAD AND OUR CUSTOMERS: As the Board is acutely aware, the implementation of the UP/SP merger in Houston and the Gulf Coast has not been a success story. Like many other businesses, the A&NR and its customers have suffered through local service deficiencies due to the UP/SP problems. The following discussion is useful for the Board's understanding of how short line railroads and their customers have been competitively affected since this merger was approved. Our intent is not to belabor the past. However, we believe the Board should consider how remedial conditions sought by Class I and II railroads in Houston and the Gulf Coast impact Class III rail carriers in East Texas. Short line railroads and their customers need not be subject to continued burdens associated with UP's acquisition of the SP .

Physically located in Lufkin, the A&NR is somewhat unique in that it *sometimes* receives UP/SP rail service both from the Houston (to the south) and/or from Shreveport, Louisiana (to the north). From July, 1997 through August, 1998, A&NR has not received consistent service from either direction. Directional traffic flows began working with some regularity around the end of April 1998 with local service from both directions improving to the point that A&NR received five (5) day a week service. This "improved service", however, was short-lived. In late May 1998, the UP/SP changed operations to service A&NR three times per week from both directions. Tri-weekly service is the absolute minimum A&NR's customers need to operate their businesses. Unfortunately, the tri-weekly service crews have been unable to provide reliable service -- therefore our customers continue to suffer from poor service.

This lack of consistent service, despite local service from two directions, has resulted in a loss of business to the A&NR. During the second week of June 1998, Georgia Pacific's resin plant notified the A&NR that it would discontinue shipping resin to Temple, Texas via rail for a minimum of 90 days unless UP/SP service improves dramatically. UP/SP's extraordinarily long

transit time jeopardized the finished resin product which has a shortened shelf life in warmer weather.

Similarl outbound rail shipments of newsprint from Donohue Industries have declined by 28% due to diversion of production to other facilities or to truck because of poor rail service by UP. As the largest customer of the A&NR , the impact of this lost business is substantial. Donohue has eighteen customers who will no longer accept rail shipment because of the UP/SP service problems resulting in a loss of 440 rail shipments to the A&NR per year. The effect is a 23% reduction A&NR's total revenue from one shipper alone. Unlike shippers who may have redress through the Courts for consequential damages related to the UP/SP service, short line railroads have no redress. In response to such dramatic losses in business, short line railroads must take actions to reduce their fixed costs, including deferring maintenance (other than safety) and employee reductions.

While there are numerous stories of total service failures, none paints a better picture than a car of newsprint that left Lufkin on February 27, 1998 destined for El Paso, TX. Twenty-one (21) days later on March 19th the car was spotted at Ashley, TX, an El Paso suburb-- but not close to the actual consignee. The UP/SP computer records showed the car as being delivered on the same day. On March 29th, the car was returned to Lufkin as empty. The car arrived at the A&NR in Lufkin on May 2nd -- 34 days after being released! On May 7th the car was physically opened for another load, we discovered the car still loaded with the February order. These types of problems, repeated over and over, clearly demonstrate why shippers are abandoning rail transportation for highway carriage.

Securing adequate equipment is also a problem although the merger was supposed to create a much larger pool of equipment. Dunagan Warehouse has a need for refrigerated cars for some of its shipments. For example, on September 2, 1997, the A&NR placed an order with UP/SP for 12 refrigerated cars ("reefers") for Dunagan. On September 5th, the A&NR ordered an additional 8 reefer cars for a total of 20. UP/SP told A&NR that it was unable to supply the equipment due to tight car supply caused by pre-trip servicing. On a daily basis, A&NR contacted UP/SP for reefer cars. AS UP/SP failed to supply the equipment, Dunagan made new arrangements with its customer and on October 6th changed the order to 12 reefers. UP/SP still could not supply the cars. On the same day in an attempt to help this frustrated customer,

A&NR attempted to secure the equipment from BNSF. Although BNSF had the required equipment, BNSF was unable to supply the equipment because its trackage rights from Shreveport to Houston is limited to overhead trackage rights. A&NR had no choice but to pursue the matter with UP/SP. On October 15, 1997 –some 44 days from the first order – three reefer cars arrived in Lufkin from Van Buren, Arkansas. These three cars represented the full extent to which UP/SP could fill this order. Ironically, the BNSF could have supplied equipment had it been authorized by the Board to serve short line railroads on those UP/SP lines where they were granted trackage rights.

When a trunk line railroad cannot meet its service obligations, not only does industry suffer, short line railroads suffer as well. The A&NR's fortunes rise and fall in direct relation to those of its shippers **and** with the its sole trunk line connection. The UP/SP recovery has neither been consistent nor timely and east Texas businesses, as shown in these examples, have suffered.

Unintentional Effect from the Board's Prior Decision: On November 20,1996, [2] the Surface Transportation Board announced its decision clarifying *"the new facilities condition"* imposed in the UP/SP Merger Decision No. 44. In that decision, the STB confirmed that BNSF would be permitted to serve **new** customer facilities and new transload facilities on all UP and SP lines where BNSF received trackage rights as a result of the merger. The Board noted that the purpose of the new facilities and transload conditions were intended to serve two purposes: (1) so that the post-merger competitive options provided by BNSF v. UP/SP competition would replicate the pre-merger competitive options provided by the UP vs. SP competition; and (2) so that BNSF could achieve sufficient traffic density on its trackage rights lines. Unfortunately, the Board's decision to grant BNSF access to new shippers locating on UP/SP mainline between Houston and Shreveport creates a serious, and we believe, an unintentional disadvantage for short line railroads with physical connections to the trunk carrier's main line operation. Shortline railroads have little prospect of developing a larger shipper base on their existing railroad lines when shippers have the option to locate *"new facilities"* on the UP/SP mainline and with access to both UP/SP and the BNSF.

The A&NR encourages the Board to seek comments from other short line railroads concerning their ability to attract new customers since *"the Board's new facilities condition"* was imposed. We submit that short line railroads may have been inadvertently disadvantaged by the implication of this condition and some adjustment may be warranted. However, this discussion may be more properly considered in the "general" oversight proceeding, Finance Docket No. 32760 (Sub. No. 21) that began on July 1, 1998 since this situation may be beyond the Houston and Gulf Coast region.

A&NR POSITION: The AN&R believes the merger has not produced the efficient and improved transportation applicants assured the Board, shippers, and its short line connections would result from the merger. The failure to timely achieve these benefits is cause now for the Board to examine its prior decisions in the initial merger proceeding and take action to ensure rail-to-rail competition and local service is available in Houston, the Gulf Coast, and all of east Texas.

UP/SP service continues to be less than consistent -- despite the best efforts of the UP/SP. East Texas industries located in Lufkin, TX are completely dependent upon the UP/SP as the only means of rail access. The A&NR has provided continuous rail service to Lufkin and the East Texas area for the past 98 years with only a single trunk line connection. Not even on SP's presumed brink of bankruptcy did A&NR and its customers suffer such significant and extensive losses in business as those following the UP/SP merger. Our customers have converted many of their rail shipments to truck to meet their marketplace demands. Customer dissatisfaction continues with little prospect for recovery. Temporary improvements in UP/SP service are no longer acceptable and more drastic action may be required. While the Board recently found that there is no longer a "service emergency"[3] under the terms of 49 USC § 11123 in the Houston area, the UP/SP system continues to be fragile and service difficulties remain.

HOUSTON /GULF COAST REGION: The Board has retained jurisdiction and the authority to impose additional conditions (if the facts warrant) as discussed in the UP oversight proceeding

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[2] See Decision No. 61, Finance Docket No. 32760 (Sub Nos. 1, 2, 19) dated November 19, 1996
[3] STB Service Order No. 1518 (Sub. No. 1) served July 31, 1998

(Sub.-No. 21) The Board has retained five years of oversight "to ensure that merger related competitive problems do not develop". [4] Although UP wants us to believe that SP would have failed if not for the merger with UP, the fact remains that SP provided consistent and timely local service to its short line connections and customers. UP/SP has not been able to match that service post merger.

Several parties have put forth suggestions to the Board as part of the second annual review of the merger Finance Docket No. 32760 (Sub.-No. 21) which we believe have merit here. We believe the Board should consider:

1. The position of the AF&PA [5] who encouraged the Board in the Sub.-No. 21 proceeding " to maximize routing options by increasing opportunities for short line rail carriers to participate in UP/SP's rail traffic; to remove 'paper barriers' in sales agreements and pricing policies of Class I railroads which can severely restrict the ability of a short line to provide service and interchange traffic." The A&NR supports "open interchange" --the lifting of restrictions on service to local industries and short lines by carriers with existing trackage rights over the UP/SP. However, rather than singling out the UP/SP as would be the case in this proceeding, we believe the issue of "open interchange" should be addressed in a proceeding applicable to all railroads. During the recent service crisis we believe the BNSF may have been able to provide some service to our customers if their through trains would have been able to interchange traffic with the A&NR.
2. The position of the National Industrial Transportation League[6] that the Board require the UPSP "to submit information on key terminals and routes" in a public –not private forum. We concur that more detailed and corridor-specific information is necessary for the Board to monitor and evaluate the service problems and competitive situation. The UPSP's July 1, 1998 Second Annual Report on Merger and Condition Implementation ("Second Annual Report") indicates that directional running from Missouri through Arkansas and Louisiana to Texas and vice versa is the most significant change they have made to their service.

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[4] Decision No. 77, January 2, 1998 at page 7
[5] Comments of AF&PA [AFPA-2] by : David B. Hershey dated August 14, 1998 STB Finance Docket No. 32760 (Sub. No. 21)
[6] Comments of the National Industrial Transportation League, Finance Docket NO. 32760 (Sub. No. 21) by Nicholas J. DiMichael dated August 14, 1998

Directional running is "directly responsible for the great improvement that has occurred in UP service.....as a result of directional running, transit times have improved markedly for Houston area shippers." The A&NR is located on the mainline from Louisiana to Texas. The A&NR and its customers have seen only marginal improvement in UP's service. Quite frankly, we believe the Board should require corridor specific information on this key route. While the UP is interested in supplying only system wide information, we believe the Board should also have first hand information of local service which is not easily derived from looking only at the system wide data..

3. We encourage the Board to seek comments, with particular emphasis from short line rail carriers, in the "general" oversight proceeding, Finance Docket No. 32760 (Sub. No. 21) related to the *"new facilities condition"*. We believe short line railroads should receive the same treatment as shippers in that BNSF (or any other railroad given trackage rights) should have access to short line railroads who interchange with UPSP. The A&NR has invested considerable capital in real estate along its right of way and spends a considerable amount of time and expense to attract new shippers to the Lufkin area. Unfortunately, A&NR's economic development efforts have become severely disadvantaged due to the current "new facilities condition". Any industry potentially locating in the Lufkin area now has to chose between availability of service from UP and BNSF if locating on the UP/SP mainline or being limited solely to the UP/SP access if locating on the A&NR. Without similar treatment for short line railroads as provided industry, our railroads won't be able to expand our business and attract new customers.
4. We encourage the Board to require the parties suggesting "neutral switching" or "coordinated switching" in Houston to alleviate congestion and improve coordination of trains in the east Texas corridor to provide for specific daily local service to short lines who interchange traffic with UP/SP (or BNSF) over these lines. Short line railroads and their customers should not continue to suffer service deficiencies caused by the lack of coordinated train scheduling over the mainline. We submit that "local" service reports should be required by the Board as part of its continuing oversight.

SUMMARY: The A&NR and its customers have been severely impacted by the reduction in service in east Texas and by UP/SP exercising its market monopoly power at the expense of small shippers and railroads. For these reasons, we believe suggestions put forth in the general oversight proceeding have merit here. In addition, the A&NR urges the Board to maintain continued and vigilant oversight of the UP/SP proceeding for the entire five year period.

Respectfully submitted:



David M. Perkins

Dated: September 17, 1998

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing statement has been served this 17th day of September, 1998, by first class mail, postage prepaid, upon all parties of record in the oversight proceeding.



David M. Perkins

191234

ARU-2



BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of the Secretary

SEP 21 1998

Part of
Public Record

Finance Docket No. 32760(Sub-No.26)

UNION PACIFIC CORP. et al.
--Control and Merger--
SOUTHERN PACIFIC RAIL CORP. et al.
[Houston/Gulf Coast Oversight]

D

COMMENTS OF THE ALLIED RAIL UNIONS

The Brotherhood of Railroad Signalmen; International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders Blacksmiths Forgers and Helpers; National Council of Firemen and Oilers/SEIU; and Sheet Metal Workers International Association, have intervened in these proceedings collectively as the "Allied Rail Unions" ("ARU") to protect the interests of their members and to address the problems that have developed with the Union Pacific--Southern Pacific common control and merger transaction ("Transaction") that gave rise to these proceedings. These unions take no position either for or against the various applications in this sub-docket and the embraced sub-proceedings, but they do have comments pertinent to the Board's continuing oversight of the Transaction and its consideration of remedies for Transaction

related problems. The ARU believe that it is important to address prior comments by Union Pacific ("UP") regarding the source of its problems, and to show the Board how UP's problems demonstrate the fallacies that have been the foundation for recent decisions of the ICC and the Board in merger and control cases.

1. In "Applicants Third Quarter 1997 Progress Report" (at 10), UP asserted that "Were it not for the time-consuming New York Dock negotiation process that delays actual merger implementation, the service crisis probably would never have arisen. And the benefits of the merger will ensure that it is not repeated. But all labor implementing agreements will not be in place for several additional months, and the full merger benefits are too far in the future". *See* Attachment A. UP thus placed the blame for its problems squarely, and entirely on labor and the New York Dock implementing arrangement process. This was a false and outrageous accusation.

The accusation in the October 1997 report was false because the implementing arrangement process is anything but time-consuming. It provides for expedited negotiations and arbitration of arrangements for the selection of forces and assignment of employees in connection with co-ordinations and consolidations that result from an approved transaction. The New York Dock conditions provide that once a carrier gives notice of its intentions, either party may invoke negotiations which are to

last for at least 30 days. If no agreement is reached, either party may invoke arbitration which is to be held within 30 days of the invocation of arbitration and a decision is to be rendered within 30 days of the hearing. Thus the conditions establish a 90 day period for negotiation/arbitration of an implementing arrangement. New York Dock-Control-Brooklyn Eastern District Terminal, 360 ICC 60, 85(1979). In practice, this process does take somewhat more time because of the schedules of the parties and of the arbitrators. The time for resolution has also expanded as a result of carriers placing issues in these arbitrations beyond selection of forces and assignment of employees that should not be resolved in such proceedings. Nonetheless the New York Dock implementing arrangement process is a highly expedited process for resolution of complex and often hotly contested problems. It is for that reason that the carriers have often argued for submission of disputes to New York Dock arbitration, including disputes that should not be in that forum, because it is so much faster than Railway Labor Act processes. UP's October 1997 characterization of the New York Dock process as "time consuming" is thus erroneous and at odds with the carriers' past characterizations of the process; indeed the statement in the October 1997 report would be laughable if it were not so serious.

The October 1997 statement was also false because the Board's approval of the Transaction was effective on September

11, 1996 and UP could have served New York Dock notices shortly after that date. Thus even if the implementing arrangement process took longer than 90 days, as it usually does, UP had no basis for blaming the unions for not having arrangements in place over a year after the effective date of the decision. Indeed, it seems that UP had not even moved to arbitration with some of the unions as of the time it was attempting to deflect blame for its problems to the unions. This is probably because internal evaluations of UP and negotiations with the unions revealed to UP that what it sought to do was not as simple, and free from unanticipated complications as UP represented to the Board. But the fact remains, UP did not proceed expeditiously and it has no basis for blaming the unions for any delays in concluding implementing arrangements.

The October 1997 accusation was outrageous because UP was having problems that flowed from its own misguided merger integration plans. It is clear that in its desire to cut costs as much as possible as quickly as possible, UP put itself in a difficult situation. Among other things it abolished the jobs of many employees and managers in order to save on labor costs and then had insufficient manpower and too few managers familiar with SP to implement the merger efficiently. Indeed, it is ironic that after eliminating jobs, UP had to turn around and begin hiring. *See below*. It is apparent that UP's problems were the result of

its own flawed integration plan and compulsive desire to reduce employment. It was outrageous for UP to then attempt to blame its troubles on the unions and the New York Dock process.

UP did ultimately make a weak effort to "take it back". On October 10, 1997, UP' counsel filed an "errata" letter in which it suggested that the wording of the third Quarter Report was a mistake and that it should have read as follows: "Were it not for the time-consuming process of merger implementation, the service crisis probably would never have arisen. And the benefits of the merger will ensure that it is not repeated. But completing merger implementation requires several years, and the full merger benefits are too far in the future". *See* Attachment B. However, even if a charge like the one made by UP could ever be effectively withdrawn once disseminated, this correction of the supposed error by an errata letter from counsel was hardly an effective retraction. The letter was not the equivalent of a filing, it was not an admission that the prior accusation was without basis and it was not the type of document that would receive the sort of attention that the Third Quarter Report received. Certainly it did not receive the sort of press coverage that other UP filings received. Additionally, the ARU submit that given the language of the original statement and the language of the "correction" it is clear that the errata letter was at best a weak effort to correct the record and at worst a cosmetic change

not meaningfully intended to correct the impression left by the earlier statement. ARU's concerns in that regard are fortified by the fact that several weeks after the errata letter was issued, UP's Vice President for the Western Region, Robert Starzel, echoed the original accusation in a meeting with shippers. The November 24, 1997 Journal of Commerce report on a shippers meeting addressed by Mr. Starzel reported that he had discussed the UP's problems in terms similar to those used in the 1997 Third Quarter Report, and the Journal of Commerce report of his talk attributed UP's problems to the absence of implementing arrangements.

The effects of UP's wrongful accusation and half-hearted retraction were felt not only in this proceeding but in the recent CSX/NS--Conrail proceeding where various shippers expressed concern about the implementing arrangement process, citing UP's problems as justifying their concerns.

The ARU therefore feel that it is important in this oversight proceeding to finally make sure that it is clear to the Board, and to other parties, that there was no basis for UP's attempt to deflect blame for its troubles on to the unions or the implementing arrangement process.

2. The necessity for these oversight proceedings, for consideration of the transactions in the embraced proceedings and for other remedial actions taken by the Board with respect to the

UP/SP Transaction demonstrates that recent ICC and Board decisions regarding control and merger transactions have been predicated on unfounded assumptions.

In the recent control and merger cases the ICC and Board blithely accepted bald assertions by the applicants that the transactions would be in the public interest. They claimed that centralization of functions, coordination of train movements, consolidation of shops and other facilities, and combination of maintenance of way and signal territories and work forces would lead to improved service and lower rates. Applicants have also argued that reductions of forces supposedly made possible through mergers would benefit the public through cost savings to the carriers which presumably would be passed on to shippers who would presumably pass their savings on to consumers.

Many rail unions, including the ARU, responded that even if these assumptions were true, they were not a basis for approval of the consolidations and work force reductions planned by the applicants. But the unions also argued that there were no bases for the assumptions made by the applicants and the Board. They contended that the planned actions might reduce labor costs, but they would not necessarily improve service; the applicants were merely using the Board to obtain changes in working conditions without the sort of effort and quid pro quo that would have been required had they attempted to make the changes through

legitimate bargaining. But the ICC and Board repeatedly accepted the applicants blithe assertions of efficiencies and improved service. The Board relied on those assumptions in approving the transactions that adversely affected rail workers and the applicants relied on the ICC/Board's decisions in effecting changes that caused job losses and abrogation of employee rights under negotiated agreements.

The problems with the UP/SP Transaction demonstrate that the approvals in recent merger cases were indeed predicated on blithe assertions and bald assumptions which are not necessarily correct. Simply put, it is obvious to all, and admitted by UP, that two years after the effective date of the Transaction, service has not been better than before, in fact it has been much worse. It is also clear that many of the specific actions that UP asserted would improve service have failed to improve service and have even exacerbated the service problems.

First and foremost of course is the reduction in employment. UP made much of the fact that it would operate as efficiently with fewer employees while reducing costs for shippers. However, the reduction in employees contributed greatly to the UP's service problems. In fact UP has had to hire large numbers of new, and sometimes inexperienced employees. *See* New York Times article of April 26, 1998, (Attachment D):

> Seeing how the merger went so wrong takes no M.B.A., no fancy title, only the recent experience of trying to run a Union Pacific train. Engineers and conductors say they watched the railroad's managers squeeze the deal for every possible economy and efficiency. But when a brisk economy kept freight traffic rising, there were far too few supervisors, locomotives or crews.
>
> * * * *
>
> Union Pacific has responded to complaints over safety and service by agreeing to recruit thousands of new workers, though veterans say the inexperience of the new hires will present new risks.

Review of a Railroad Retirement Board report of job vacancies from this Spring shows a disproportionate number of job openings on UP in comparison to other railroads, and that the openings are in virtually every craft. Attachment E.

Thus it is clear that the reductions in employment made by UP were directly related to its service problems and ultimately had to be reversed. A key element of the supposed merger related economies and efficiencies asserted by the applicants and assumed by the Board was therefore simply without real basis.

Another major assertion of the applicants, and assumption by the Board, with respect to merger-related so-called economies and efficiencies was that centralization of work would improve service and reduce costs. Morever, those assertions were relied upon by the applicants, including UP, in arguing that centralization of work necessitated abrogation of collective

bargaining agreements because they contended that they needed single agreements at consolidated facilities. And after approval of the Transaction, UP moved forward with centralization and consolidation of shops, dispatching offices and maintenance of way and signal territories; and it argued that single agreements of its choosing were necessary in each instance. However, UP apparently has now concluded that centralization was increasing rather than reducing its service problems, so it has begun to return to a more decentralized operation. *See* Journal of Commerce Article of August 20, 1998, (Attachment F). Additionally UP has decided to layoff 600 production gang workers (*see* Journal of Commerce article of September 10, 1998, Attachment G), this after asserting in the Board's proceedings that it needed to move workers to those gangs and to substantially expand the territories covered by those gangs. Of course while UP apparently now recognizes that centralization and consolidation do not necessarily produce more efficient operations and improved service, the damage to employees and to their agreement rights has already been done.

The foregoing all shows that the Board should not accept mere assertions that mergers will yield efficient operations and improved service, that it should not just accept at face value claims that consolidations of work and workers and agreements result in improved service. It is the applicants in merger and

control transactions who bear the burden of showing that their plans are consistent with the public interest. In view of the UP experience, it is clear that the Board should not merely assume that there will be service improvements merely because the applicants say it will be so. The Board should consider the lessons of the UP Transaction when it considers future control and merger transactions and when it considers carrier invocations of the New York Dock implementing arrangement process when that is done purportedly to effect efficiencies that are alleged to promote the public interest.

Respectfully submitted,



Richard S. Edelman
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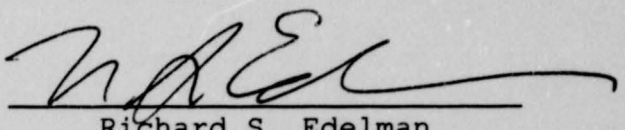
(202) 898-1824

Dated: September 18, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served one copy of the foregoing, Comments of the Allied Rail Unions by first-class mail, postage prepaid, to the offices of the parties on the official service list in this proceeding.

Dated at Washington, D.C. this 18th day of September, 1998.



Richard S. Edelman

ATTACHMENT A

UP/SP-323

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 21)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY -- OVERSIGHT

APPLICANTS' THIRD QUARTER 1997 PROGRESS REPORT

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Attorneys for Applicants

October 1, 1997

received trackage rights over I&M's line between Barr and Springfield, Illinois. A notice of exemption in regard to these trackage rights was filed on September 3 in Finance Docket No. 33454. These rights will make possible the merger-related abandonment of the UPRR line between Barr and Girard, Illinois, as authorized in Docket No. AB-33 (Sub-No. 96).

As a result of negotiations contemplated by the March 21, 1996 letter agreement between Applicants, on the one hand, and the Brownsville Navigation District and Brownsville & Rio Grande International Railroad ("BRGI"), on the other hand, see BRGI-3/BND-1, UP/SP and BRGI have agreed to BRGI's lease of UP's Port Lead in Brownsville, Texas, pursuant to which BRGI will switch traffic on the Port Lead and interchange with UP/SP at UP's Brownsville yard. A notice of exemption with respect to the lease was published in Finance Docket No. 33452 on September 23.

Applicants' compliance with environmental conditions is discussed in Exhibit B, which follows the format used in prior quarterly reports.

UP/SP's continued progress in arriving at labor implementing agreements is discussed in Part II.

II. SERVICE RECOVERY PLAN

Since UP/SP last reported to the Board, the railroad's service crisis has not abated. By some measures, service continued to decline in late August and early

September, and the first signs of improvement began to appear only in mid-September. The systemwide average velocity of cars on the railroad slowed significantly since July. Each decline in velocity causes locomotives and freight cars to be used less productively, effectively offsetting some of the measures to improve service described in the August 20 report. Major classification yards in Texas -- in Houston, Fort Worth and San Antonio -- remain so severely congested that many inbound trains cannot be processed and must be stored in sidings, causing mainline congestion that restricts movement of other trains. On September 1, UP/SP had 145 freight trains in sidings waiting for yard space, most of them in Texas but some in neighboring states. As of October 1, the number of trains in sidings stands at 96.

Actions to improve service in the Gulf Coast area have caused service deterioration in other areas. UP/SP terminals in Southern California -- especially West Colton Yard -- are congested and trains are being delayed between Los Angeles and the Arizona state line. After diverting locomotives to the Gulf Coast area, UP/SP's Central Corridor is experiencing locomotive shortages, especially at major yards in Chicago and North Platte.

UP/SP has not altered its judgments about the initial causes of these service problems, so we will not revisit that subject here. UP/SP reaffirms its conclusion

that the problems, which began in areas where the merger had not yet been implemented and its efficiencies could not be realized, were not merger-related. UP/SP continues to gain a deeper understanding of the fundamental frailty of SP prior to the merger, resulting from more than a decade of financial deprivation. Tracks, yards, locomotives, personnel, information systems and other resources were all starved. The July 1 and August 20 reports described the factors, such as a surge in chemicals and plastics traffic and the imposition by BNSF of operational restrictions on a pivotal section of SP's Sunset Route, that precipitated the service problems.

Were it not for the time-consuming New York Dock negotiation process that delays actual merger implementation, the service crisis probably would never have arisen. And the benefits of the merger will ensure that it is not repeated. But all labor implementing agreements will not be in place for several additional months, and the full merger benefits are too far into the future. UP/SP management concluded in mid-September that it must take further actions now to put the system more surely on the road toward recovery. In their August 20 filing, Applicants described a number of the steps a railroad takes to address operating problems, such as acquiring locomotives and hiring more employees. Those actions are underway and will continue, but they have not proved adequate to bring about a more immediate improvement in

ATTACHMENT B

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October 10, 1997

BY HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 711
Washington, D.C. 20423-0001

Re: Finance Docket No. 32760 (Sub-No. 21), Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp., et al. -- Oversight

Dear Secretary Williams:

We previously wrote to point out two errata to UP/SP-323, filed October 1, 1997. Please note the following additional corrections, all on page 10. The sentence at lines 12-14 should read: "Were it not for the time-consuming process of merger implementation, the service crisis probably never would have arisen." The sentence at lines 16-18 should read: "But completing merger implementation requires several years, and the full merger benefits are too far into the future." And at line 20, a new paragraph should begin with the word "In."

Sincerely,

Arvid E. Roach II

cc: All Parties of Record

ATTACHMENT C

Top UP official on service debacle: 'This is not going to happen again'

BY BILL MONGELLUZZO
JOURNAL OF COMMERCE STAFF

LONG BEACH, Calif. — A top Union Pacific Railroad executive promised shippers and shipping executives that UP's equipment and crew shortages which crippled the Los Angeles-Long Beach port complex this fall will not resurface during next year's peak shipping season.

"This is not going to happen again. We won't have these problems next year," said Robert Starzel, UP's vice president of the western region.

UP executives entered the lion's den last week to explain to the California Public Utilities Commission why their service problems got so out of hand that the nation's largest port complex went into virtual gridlock just as holiday shipments

See UP, Page 10A

11/24

Continued from Page 1A

UP

from Asia began pouring in.

'This is not pleasant'

UP in recent weeks had to confess its sins before other public bodies in Washington and in Texas. The focus of previous hearings was the railroad's systemic problems resulting from its acquisition last year of Southern Pacific Transportation Co., and its service failures in the bulk cargo sector.

Thursday's hearing in Long Beach provided the first opportunity for intermodal shippers and carriers to take their whacks at UP.

"This is not a pleasant occasion. We have a massive mess on our hands, and we are sorry about the impact it has had on our customers," Mr. Starzel said.

In attempting to dissect a complex problem, shippers and carriers agreed that UP's most grievous error was that it did not gear up sufficiently for the peak shipping season.

All of the shipping industry forecasts indicated this year's holiday shipping season was going to be busier than last year, said Art Goodwin, manager of transportation projects at the Port of Los Angeles. "The railroads ignored us."

By mismanaging its intermodal fleet, UP caused containers to back up at Southern California railyards and container terminals. Once truck chassis got to the railyards, they seemed to sit there forever.

Long Beach Container Terminal, which performs terminal work for Orient Overseas Container Line and its alliance partners, American President Lines and Mitsui O.S.K. Lines, employed 30% more labor to work in its yard than it normally would, said Dave Christianson, LBCT's intermodal manager.

Congestion suggestions

LBCT experienced an 18% increase in labor costs because of the congestion. This wiped out its profit margin.

"This month, it is red ink," Mr. Christianson said.

The ports estimate that at least 16 containerships have been rerouted or diverted from Southern California since October. Los Angeles has lost more than $5 million in wharfage and other port charges, Mr. Goodwin said.

Shippers and carriers offered several suggestions for avoiding future intermodal logjams. United Parcel Service, which has diverted $40 million to $50 million of its intermodal service to Burlington Northern Santa Fe Railway, said UP managers should consult more with the former SP employees who have extensive experience in intermodal operations.

"The tendency of the UP people is to dictate," said Victor Miller, regional intermodal manager at UPS.

UP should sharpen its intermodal forecasting and consult more with the ports, shipping lines and importers who are more attuned to what peak shipping volumes will be each year, several speakers said.

Labor contract pains

It also should better manage its locomotives, railcars and crew so containers can be moved quickly out of Southern California rather than sitting for days or weeks in railyards and marine terminals, Mr. Christianson said.

UP executives listened closely.

"This is more than a wakeup call. It's an explosion in our ears," Mr. Starzel said.

UP believes its most pressing requirement is to negotiate labor contracts in California. Since the merger more than a year ago, the former SP and UP unions have continued to operate as if they were working for separate carriers.

A major cause of the UP meltdown in Texas last summer was that the union contracts for the former UP and SP workers had not been merged, Mr. Starzel said.

For that reason, UP union members could not work on the former SP system, and vice versa. Labor agreements have since been concluded in the Gulf and Midwest, but union negotiations in California will probably not be completed until early 1998.

"It's a devilishly difficult task," Mr. Starzel said.

However, UP is taking delivery of more than 300 locomotives and is unifying its computer systems, so the railroad will be ready for next year's peak shipping season, he said.

But rather than dwell on numbers, Mr. Starzel said UP must turn its attention to its customers.

"Statistics be damned. It's the service we have to go after," he said.

ATTACHMENT D

CN-38, FD 36873
Sunday, April 26, 1998
PUBLIC VERSION

The New York Times

Money&Business

NE Section 3

Weary Hands At the Throttle

Workers Feel Strain of Merger At Union Pacific

By ALLEN R. MYERSON

LIVONIA, La.

FOR the Union Pacific Railroad workers crowded between shifts into a moldy break room here, beetles crunching under their work boots, nights and weekends never arrive. And almost everyone has stories about their schedules.

Consider the conductor who departed Houston at 9:45 P.M. on a recent Thursday. So many other trains were trying to use the same rails that his 12-hour shift, the federally allowed maximum, brought him only 60 miles, just a third of the way to Livonia, a bayou town a couple of parishes west of Baton Rouge.

With no choice but to halt, the conductor was stranded more than three hours until a van came to his rescue. It took nearly five hours more to reach the motel here.

Dispatched back to Houston late on Saturday morning, he arrived shortly before midnight. After a few waking hours with his wife, he was back on duty just before noon on Sunday. This time he made it closer to the Livonia rail yard, but not close enough. Stranded again, a van driver dumped him at the motel at 2:15 A.M. Monday.

Even in normal times, to work on the railroad is to enter a world apart. Its schedules, culture and grimy, clangorous locales, where a slip or stumble can end a career or a life, make conductors and engineers a hidden brotherhood. It is an existence that outsiders, especially families, often cannot understand.

But at the Union Pacific — the line established by Congress and Abraham Lincoln to span the continent — these are not normal times. A 1996 merger with Southern Pacific to form the nation's largest railroad caused what regulators call an unprecedented breakdown in rail traffic through the heart of America that has lasted more than 10 months.

In recent weeks, Union Pacific made enough progress in clearing out its Houston rail yards that schedules for many of this area's crews improved from impossible to merely exhausting. But then clogged traffic at the Laredo, Tex., gateway to Mexico backed up trains all the way to Kansas, forcing an embargo on many shipments and extra-long days for other crews.

Now that trains are rolling more smoothly through Laredo — the embargo ended on Tuesday — Gridlock Central has moved again. Today it's in the railroad's busiest region, around North Platte, Neb., where coal trains bound for steel mills,

Continued on Page 10

Logjam

For the conductors and engineers of the Union Pacific, schedules have varied so wildly amid the railroad's recent disarray that no week is truly typical. Patrick Murphy, right, a conductor, said one week last winter was better than others: he never had to spend an entire shift sitting on a stalled train.

SUNDAY, DEC. 21 – MONDAY, DEC. 22

6 P.M. Dispatcher calls.
9 P.M. Takes over a train in the Houston yards bound for Lafayette, La.
9 A.M. After 12 hours, Mr. Murphy must go off duty, under Federal rules. The train stops at Echo, Tex., less than halfway to its destination.
10 A.M. A company vehicle picks up the crew.
12:30 P.M. He is dropped off at a motel in Lafayette.

TUESDAY, DEC. 23

6 A.M. Dispatcher calls.
8 A.M. Driver picks him up for the trip to a train stuck between Beaumont, Tex., and Lafayette.
About 10 A.M. Arrives at train.
6 P.M. Arrives Lafayette. After a wait, a vehicle picks him up for the drive back to Houston.

WEDNESDAY, DEC. 24

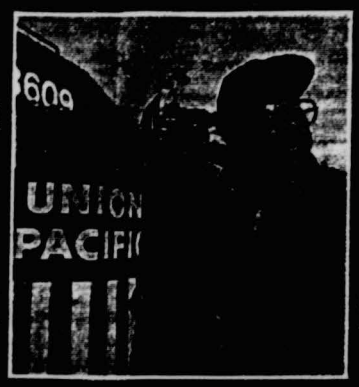
12:40 A.M. Arrives Houston.
8 A.M. Dispatcher calls.
Noon Boards train in Houston bound for Livonia, La.
8 P.M. Train stops in Kinder, La. Driver picks him up for a ride back to Houston.
11:15 P.M. Arrives Houston.

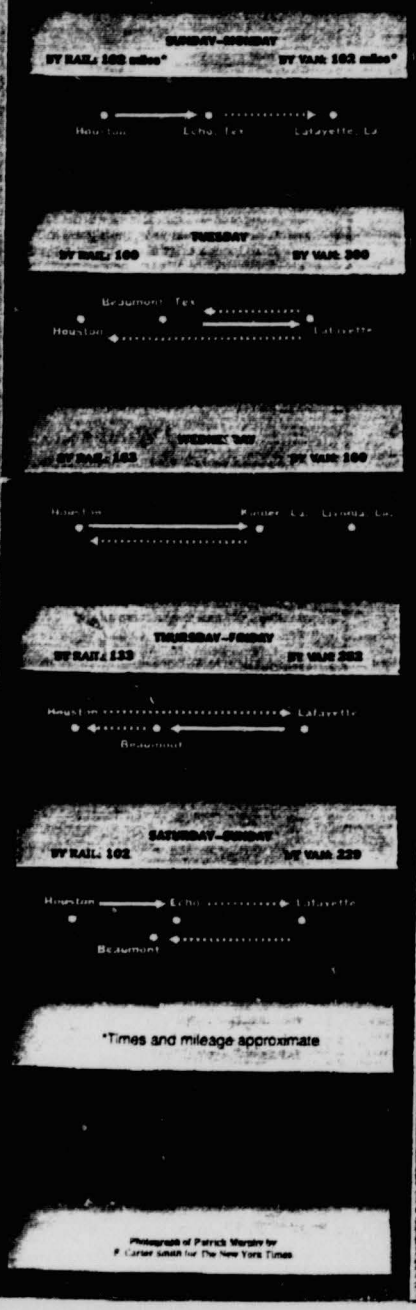
THURSDAY, DEC. 25 – FRIDAY, DEC. 26

9:45 P.M. Dispatcher calls.
8:45 P.M. Vehicle due to pick up Mr. Murphy at Houston railyard for ride to Lafayette.
10:00 P.M. Driver arrives.
2:00 A.M. Arrives Lafayette. Spends night at motel.
9:30 A.M. Dispatcher calls.
11:30 A.M. Boards train in Lafayette for Houston.
11:30 P.M. Twelve-hour shift ends with train in Beaumont. Vehicle picks him up for trip back to Houston.

SATURDAY, DEC. 27 – SUNDAY, DEC. 28

1:30 A.M. Arrives Houston.
9 A.M. Dispatcher calls.
Noon Boards train in Houston.
Midnight Shift ends in Echo.
About 2 A.M. Vehicle picks him up for trip to Lafayette.
4:10 A.M. Arrives Lafayette. Spends night in motel.
9:30 P.M. Dispatcher calls.
11:30 P.M. Vehicle takes him to Beaumont, where he will take a stranded train toward Lafayette.





Photograph of Patrick Murphy by F. Carter Smith for The New York Times

Weary Hands at the Throttle: Un

Continued From Page 1

chemical plants and power stations are jamming the tracks. Maintenance improvements are under way, but a needed set of extra rails is not even scheduled to be completed until next year.

Economists say the losses for the nation total billions of dollars, and some customers, like Dow Chemical, have sued the railroad. Richard K. Davidson, Union Pacific's chairman and chief executive, had predicted prompt recoveries so often that he no longer dares to set any date.

But for Union Pacific workers, the costs are immediate and personal. Wives and children become strangers. During brief visits home, no plans can be firm. And Federal investigators, in findings that the railroad disputes, list mismanagement and worker fatigue among the prime causes of crashes that killed nine workers last year.

Seeing how the merger went so wrong takes no M.B.A., no fancy title, only the recent experience of trying to run a Union Pacific train. Engineers and conductors say they watched the railroad's managers try to squeeze the deal for every possible economy and efficiency. But when a brisk economy kept freight traffic rising, there were far too few supervisors, locomotives or crews.

"There are too few of everybody for what they're trying to do," said an engineer at the Oak Tree Inn, the motel here. "They're trying to put 10 pounds of taters into a five-pound sack."

THE company acknowledges as much. "I am acutely embarrassed, and our company is embarrassed, at the time it has taken to recover from our congestion crisis," Mr. Davidson told the Surface Transportation Board, a regulatory agency, earlier this month. "Decades of prior experience told us that our projections were correct. But reality has been telling us something else."

Mr. Davidson took a two-thirds pay cut last year, to $981,000, as profits dropped 41 percent.

Like other railroad executives, he resists most demands from rail customers, unions and members of Congress for renewed Government oversight. Since the railroads were deregulated almost two decades ago, critics say they have won unquestioning approval for mergers that have reduced competition and increased costs.

"The figures show that 90 percent of the shippers in the United States are now captive," said Charles R. Matthews, chairman of the Texas Railroad Commission. "That's why we're pushing the Surface Transportation Board for some policies that will encourage competition."

Union Pacific has responded to complaints over safety and service by agreeing to recruit thousands of new workers, though veterans say the inexperience of the new hires will present new risks. The railroad has also begun allowing workers to take a full 24 hours of rest after at least seven consecutive days of 12-hour-plus shifts. (Though Federal rules limit them to 12 hours operating a train, they are paid "limbo time" for any extra hours they are stuck away from home or from a motel.) Another breakthrough: a company test, in the St. Louis area, of whether letting workers nap on idle trains might help them avoid nodding off when they are moving.

For Union Pacific, to bend at all is unusual. With systems modeled on the military, the company has seemingly endless rule books, infraction codes and penalties, governing everything from the appropriate choreography for jumping down from a train to how closely workers can approach a running or stopped engine before inserting their earplugs. "Insubordination," or refusing a direct order, is grounds for dismissal.

In Livonia, a glorified rail crossing with two traffic lights, workers must sign out from the motel so dispatchers can always reach them. Their listed destinations are seldom farther than the 24-hour diner that shares the parking lot — or its only competition, which operates from a kitchen at the gas station next door.

Yet Patrick Murphy, a conductor for a year and a half, swears by the need for rules. As the saying among his comrades goes, they are written in blood. He told of a fellow conductor who stepped off a moving train with the wrong foot first and paid for it with both legs.

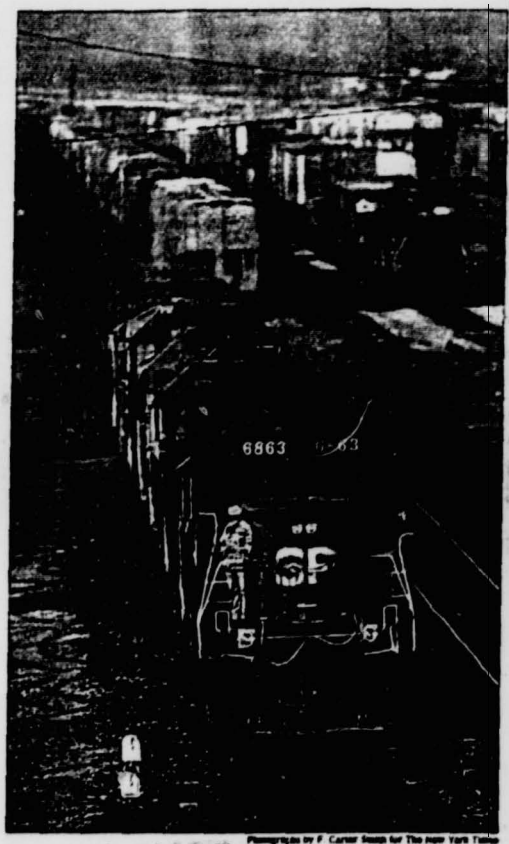
"If you have an accident, it isn't a little accident," said Mr. Murphy, 28, a Houston resident who served seven years in the Navy before joining the Union Pacific.

Those rules make the rails a demanding mistress. Mr. Murphy explains that when his pager buzzes, he has 10 minutes to check in or face discipline. Whether at a restaurant, the movies or wherever, he said, "you've got to throw your date to the side and make that phone call." Once he explains that he is due at work at, say, 1 A.M., his dates are often ready to throw him to the side.

For all these rigors, conductors and engineers get two rewards. First is membership in a fraternity of those who can guide mighty chains of steel a mile or two long. "Like my dad says, 'The railroad is not a job; it's a way of life,'" said Cory Gravoua, a conductor and the son of a railroad engineer, as he finished a Sunday shift at the Livonia rail yard.

Second is pay that is about as good as blue-collar gets: usually $55,000 to $90,000 a year, including overtime, but $70,000 to more than $100,000 last year with all the extended shifts.

"Compared to jobs outside, the pay here is astronomical," said Terry Van Epps, an engineer, as he signed out — or tied up, as railroaders say — by computer at the Livonia rail yard office. With "limbo time," Mr. Van Epps's 12¼-hour shift earned him $338.90. And he rarely



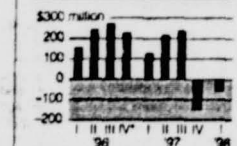
Photographs by F. Carter Smith for The New York Times

The merger of Union Pacific and Southern Pacific has left trains stacked at the Englewood switching yard and delayed shipments in Houston.

Bumpy Ride

The collapse of service on the merged Union Pacific and Southern Pacific railroads is taking a huge toll on the company and the economy.

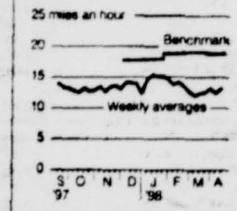
Net Income



*Consolidated results of merged company

Congestion

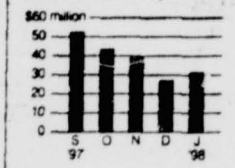
Train speeds consistently have fallen below the railroad's benchmarks.*



Affected Industries

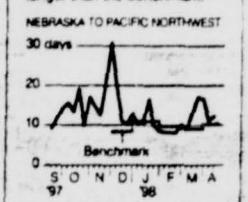
Chemicals

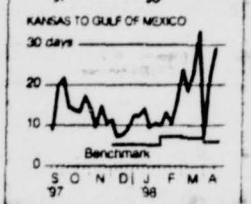
The cost of lost sales, higher freight charges and other expenses for 55 chemical manufacturers surveyed.



Agriculture

Grain shipments in key corridors are often taking much longer than the benchmark.*





*Monthly average. Not available before December 1997.

Sources: Bloomberg Financial Markets, Union Pacific, Chemical Manufacturers Association

The New York Times

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Photographs by F. Carter Smith for The New York Times

The merger of Union Pacific and Southern Pacific has left trains stacked at the Englewood switching yard and delayed shipments in Houston.

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For all the bread they put on the table, conductors and engineers are rarely there to break it, even in better times. "I lost my first wife because of the railroad," said an engineer with 27 years' service. He stepped behind the counter at the Livonia diner to pour his own coffee. "This is my home away from home," he explained. It was past 11 on a Sunday night, but with no days off this year, he often lost track.

"We see more of them than their wives," said a waitress, sliding in to one of the diner's booths for a break. The engineer poured her a cup, too. He told how he raised his daughter, 6 years old when her parents split, by hiring a niece who was just graduating from high school.

"I stayed divorced for 10 years," he continued. "I remarried, but it ain't working out either. She just doesn't understand."

Last year, workers in the Houston region, which stretches into much of Arkansas and Louisiana, reached their limits. They won their union's backing for a regional walkout, but a court ruled that safety and fatigue were not issues over which they could strike. In the railroad tradition of wearing company caps, they made up caps of their own with the red, white and blue Union Pacific crest — and this motto: "Hello Houston. We Have a Problem."

If railroad workers only recently began to feel like the endangered crew of Apollo 13, their ranks had long been notorious for featherbedding. Well into the 1980's, freight trains had five men on board. Besides the engineer, at the controls, and the conductor, a co-pilot who manages the train and the paperwork, there were brakemen and switchmen. Women were, and still are, rare.

Union Pacific led the way in using technology to direct and monitor trains, lessening the need for large crews and eliminating cabooses. By the early 1990's, labor pacts had reduced the crews on long-distance trains to just two. Nationally, railroad employment fell to 256,000 by 1996 from more than twice that in 1980, as freight increased by nearly half.

Still, wimps need not apply. From Mr. Davidson, a 6-foot-4 former brakeman, on down, railroad workers are sized like their trains. When a train breaks in two — it happens once or twice a day on the system — the conductor must be ready to lug an 80-pound joint, called a knuckle, perhaps a mile or more.

Besides muscle, the work takes attentiveness and skill. Though long hauls across the open West can turn monotonous, engineers and conductors on other routes are busy every minute. Unlike jets, trains have no auto-pilot.

On a recent run through the humid dark from Lake Charles, La., to Houston, Alfred Deloach, the engineer, kept his thick hands on the throttle, horn or brakes. Mr. Murphy, his conductor, shouted to be heard above the roar of two engines and 6,000 horsepower.

Over a crackling radio, dispatchers relayed the conditions ahead and granted permission to proceed. Computerized track-side monitors beamed in their own cautions in the monotone of synthesized speech. Mr. Deloach, who also lives in Houston, adjusted his speed through curves, grades, bridges and patches where maintenance, delayed because of the congestion, forced him to go as slowly as 10 miles an hour. At his top speed of almost 50 miles an hour, stopping a train with 2 locomotives and 96 cars, weighing a total of more than 6,200 tons, would have taken at least a mile.

UNION PACIFIC doesn't own the Oak Tree Inn, but it might as well. Most nights, it reserves at least 34 rooms for its crews and fills the other eight, too. With its spartan but tidy rooms, the Oak Tree offers some of the company's better lodgings. Elsewhere, Federal investigators found dormitories the railroad owns in dangerous neighborhoods where workers were prey to thieves and vandals. One lodging in Arizona was so infested with insects that several crew members were treated for spider bites.

In talks with the Federal Railroad Administration, which enforces safety codes, Union Pacific has agreed to shut its worst dormitories.

On an inspection tour of Fort Worth and Dallas operations last week in a Chevrolet Suburban rebuilt to ride on tracks, Mr. Davidson recalled that when he began in 1960, the life was even tougher. The railroad provided no lodging, so he stayed at a Y.M.C.A. in Kansas, where weeds poked up through the wooden slats of the shower stall, or a 50-cent-a-night hotel. Other workers simply dug pits, covered them with tarps and crawled in.

Mr. Davidson, now 56, won rapid promotions, finishing a stint as supervisor of the Fort Worth yard in 1971. Last week, he found many older but familiar faces still around, with some younger faces familiar for their resemblance to their fathers.

FOR all the dislocation suffered by his company, tradition remains a common bond. "We've got a piece of track in Omaha, Neb., built in 1902," Mr. Davidson said in the inspection car. "They still call it 'the new cutoff.'"

While acknowledging the need for more modern labor conditions and manageable schedules, Mr. Davidson says none of the employee deaths last year resulted from overwork. In one, he said, an engineer fell asleep despite having had two weeks of vacation, and in another an engineer failed an alcohol test.

But among the crews here in Livonia, exhaustion shows. At dawn one recent Monday, conductors and engineers who had finished long overnight shifts paced the sidewalk beside the motel. They calculated and recalculated the odds of having a room open up sooner than vans could arrive to take them to another motel 45 minutes away.

The drivers of the vans and sport utilities — carryalls, the vehicles are called — are themselves so exhausted at times that their passengers choose the most alert among them to take the wheel. After his van driver repeatedly swerved across a yellow line a few weeks ago, an engineer based in Houston said, passengers ordered him to pull over and nap.

Rested or not, engineers and conductors can find themselves on unfamiliar routes without the necessary training. One engineer, waiting outside the Oak Tree Inn for a room after 17 hours of work — counting 3 hours of waiting for a ride, then a 2½-hour van trip — told how he was trained on the Beaumont-Houston route by three managers who had never been there.

One was from Texas, at least; the others were from Wisconsin and Utah. They insistently enforced the rules on proper footwear and the proper timing, loudness and sequence of horn signals. "He didn't know where we were," the engineer said of the manager from Utah. "But he knew how loud to blow the horn."

The engineer, wearing a striped Casey Jones cap, recounted how he complained about the untrained trainers on a new safety hot line to the executive offices.

"Did you bring it up with your supervisor?" he was asked.

"I don't know who my supervisor is anymore," he answered. "I don't even have a phone number."

"Did you bring it up in a safety meeting?" he was asked.

"I haven't had a safety meeting since 1994," he said.

The woman who took the call promised to investigate and call back. She never did, the engineer said. Mr. Davidson said he had heard of no such lapses regarding safety complaints, which he said were followed up with local managers.

His employees, however, are fighting back with humor that, as in the old Soviet Union and now Russia, contrasts with cheery pronouncements from above. They speak of guiding trains by the calendar, not the clock. And they joke that the Ringling Brothers circus wanted to buy the company — "not for the railroad; they wanted the clowns running it."

To fix what went wrong, many workers have the same answer as their customers. "I got a solution to this merger," said one engineer, waiting on the motel sidewalk for a room or a lift. "Just go back to the way it was." □

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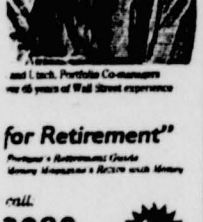

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ATTACHMENT E

The following list provides information about job vacancies reported to the Railroad Retirement Board's (RRB) field offices. The list includes orders that the receiving field office does not expect to fill locally, and which according to RRB records remained open as of the end of the month.

Individuals who are interested in a particular vacancy should request additional information and assistance from their local RRB field office. An RRB representative will find out whether the job is still open and assist in referring the applicant to the hiring official. The field office representative may also have information about other job vacancies reported to the RRB.

OCCUPATION	ORDER NO.	RAILROAD	JOB LOCATION
Executives, Professionals, and Clerks			
Assistant Manager - Car Maintenance	231-7007	Springfield Terminal Ry Co	Waterville, ME
Asst Material Manager	372-7006	Montana Rail Link, Inc	Livingston, MT
Marketing Manager	372-7007	Montana Rail Link, Inc	Missoula, MT
Dispatcher	372-7002	Montana Rail Link, Inc	Missoula, MT
Revenue Acct Technician	372-7003	I & M Rail Link	Missoula, MT
Supervisor Revenue Acct	372-7005	I & M Rail Link	Missoula, MT
Accounting Staff Asst	372-7004	Montana Rail Link, Inc	Missoula, MT
Train Dispatcher Closing Date 07-10-98	121-7216	CSX Transportation	Chicago, IL
Surveyor .	231-7012	Springfield Terminal Railway Co	N. Billerica, MA
Railroad Lever Operator Closing Date 07-10-98	121-7223	CSX Transportation Inc	Terre Haute, IN
Agent/Dispatcher Closing Date 07-17-98	241-7001	Emons Railroad Group, Inc	York, PA
Train and Engine Service			
Conductors	121-7204	CSX Transportation Inc	New Orleans, LA
Conductors	121-7205	CSX Transportation Inc	Chicago, IL
Locomotive Engineer	182-8002	Minnesota Northern Railroad, Inc	Crookston, MN
Train Service Jobs Closing Date 07-06-98	378-7005	Union Pacific RR Co	Stockton, CA; Reno, NV; North Platte, NE

Train Service Jobs Closing Date 07-13-98	378-7006	Union Pacific RR Co	Yuma, AZ & St. Louis, MO
Train Service Jobs Closing Date 07-20-98	378-7007	Union Pacific RR Co	Tucson, AZ & Salem, OR
Train Service Jobs Closing Date 09-21-98	378-7008	Union Pacific RR Co	Dexter, MO
Firemen/Oilers Closing Date 07-02-98	184-7002	Union Pacific RR Co	Kansas City, MO
Train Service Closing Date 07-06-98	373-7002	Union Pacific RR Co	Grand Junction, CO
Train & Engine Jobs Closing Date 07-20-98	380-7004	Union Pacific RR Co	Salem, OR
Train Service Closing Date 07-10-98	382-7006	Union Pacific RR Co	St Paul, MN
Train Service Closing Date 07-13-98	380-7005	Union Pacific RR Co	Hermiston, OR
Train Service Closing Date 07-27-98	373-7006	Union Pacific RR Co	Denver, CO
Train Service Closing Date 07-06-98	373-7008	Union Pacific RR Co	Grand Junction, CO
Hostlers Closing Date 07-27-98	386-7014	Union Pacific RR Co	Long Beach, CA
Train Service Closing Date 07-27-98	386-7005	Union Pacific RR Co	Yermo, CA
Train Service Closing Date 07-27-98	386-7006	Union Pacific RR Co	Los Angeles, CA
Train Service Closing Date 07-27-98	386-7007	Union Pacific RR Co	Bakersfield, CA
Skilled Trades, Journeymen and Helpers			
Locomotive Electrician	231-7006	Housatonic Railroad Co Inc	Canaan, CT
Carmen	184-6008	Amtrak	Kansas City, MO
Machinists	231-7008	Springfield Terminal Railway	East Deerfield, MA
Carman	231-9710	Springfield Terminal Railway	East Deerfield, MA
Carmen	380-0002	Peninsula Terminal Co	Portland, OR
Locomotive Electrician Closing Date 07-15-98	111-6003	Alabama & Gulf Coast Railway	Fountain, AL

Locomotive Mechanic	378-7009	Nebraska Central Railroad Co	Norfolk, NE
Electricians Closing Date 07-02-98	378-7011	Union Pacific RR Co	North Platte, NE
Machinists Closing Date 07-02-98	378-7012	Union Pacific RR Co	North Platte, NE
Electrician Closing Date 07-02-98	184-7003	Union Pacific RR Co	Kansas City, MO
Carmen Closing Date 07-02-98	374-7007	Union Pacific RR Co	Des Moines, IA
Carpenters Closing Date 07-02-98	374-7008	Union Pacific RR Co	Cedar Rapids, IA
Equipment Mechanics Closing Date 07-03-98	380-7003	Union Pacific RR Co	Oakridge & Klamath Falls, OR
Machine Helpers Closing Date 07-02-98	378-7013	Union Pacific RR Co	South Morrill, NE
Work Equipment Repairer	231-7010	Springfield Terminal Railway Co	N Billerica, MA
Electrician Closing Date 07-13-98	380-7006	Union Pacific RR Co	Hinkle, OR
Asst Signal Person Closing Date 07-27-98	373-7007	Union Pacific RR Co	Grand Junction, CO
Carmen Closing Date 07-02-98	121-7220	CSX Transportation, Inc	Atlanta, GA
Carmen Closing Date 07-02-98	121-7221	CSX Transportation, Inc	Evansville, IN
Car Repairman Closing Date 07-27-98	386-7008	Union Pacific RR Co	Oxnard, CA
Asst Signal Workers Closing Date 07-27-98	386-7009	Union Pacific RR Co	Oxnard, CA
Carmen Closing Date 07-27-98	386-7010	Union Pacific RR Co.	West Colton, CA
Machinists Closing Date 07-27-98	386-7011	Union Pacific RR Co	West Colton, CA
Electricians Closing Date 07-27-98	386-7012	Union Pacific RR Co	West Colton, CA
Machinists Closing Date 07-27-98	386-7015	Union Pacific RR Co	Los Angeles, CA
Electricians Closing Date 07-27-98	386-7016	Union Pacific RR Co	Los Angeles, CA

Laborers - Maintenance of Way, Others			
Tamper Operator	285-7002	Bloomer Shippers Connecting Railroad Co	Gibson City, IL
Tamper Operator	376-7004	Dakota Missouri Valley & Western RR Inc	Bismarck, ND
Track Laborers	376-7006	CP Rail Inc	ND & MD
Pier Technician Closing Date 07-01-98	121-7212	CSX Transportation	Baltimore, MD
Trackmen Closing Date 07-06-98	387-7004	Union Pacific RR Co	Sharon Springs, KS
Material Handlers Closing Date 07-27-98	373-7009	Union Pacific RR Co	Denver, CO
Supplyman/Laborer Closing Date 07-20-98	373-7010	Union Pacific RR Co	Rawlins, WY
Trackmen Closing Date 07-13-98	373-7011	Union Pacific RR Co	Delta, Denver, Limon, & Glenwood Springs, CO
Trackmen Closing Date 07-27-98	386-7003	Union Pacific RR Co	Palmdale, Colton, City of Industry & Anaheim, CA
Trackmen Closing Date 07-27-98	386-7004	Union Pacific RR Co	Guadalupe & Tehachapi, CA
Laborers Closing Date 07-27-98	386-7013	Union Pacific RR Co	West Colton, CA
Attendants, On-Board Services			
No Open Orders			
Miscellaneous, Including Foreman			
Track Foreman	125-8001	South Central Florida Express Inc	Belle Glade, FL
Bridgetender Closing Date 07-10-98	382-7007	Union Pacific RR Co	St Paul, MN

ATTACHMENT F

Beleaguered UP shifts managers

J/C 8/20

BY RIP WATSON
JOURNAL OF COMMERCE STAFF

GOTHENBURG, Neb. — Union Pacific Railroad will break up the management of its operations on Sept. 1 in an effort to bring day-to-day decision-making closer to the beleaguered railroad's customers, according to the company's top executive.

The decision is an apparent sign that the increasing centralization of authority after five acquisitions is not working for UP. The company's string of acquisitions began in 1982 with the Missouri Pacific and the Western Pacific railroads and ended in 1996 with the annexation of Southern Pacific Rail Corp.

The deals, which included the acquisition of Chicago & Northwestern

See UNION, Page 10A

CN 38, FD 36873
PUBLIC VERSION

Continued from Page 1A

Union

Transportation Co. in 1995, made UP the nation's largest railroad company with 36,000 miles of track in 23 states.

The move will shift dozens of managers from UP's fortress-like headquarters in Omaha to new regional offices in Houston and Roseville, Calif., a suburb of Sacramento.

Can do better

Union Pacific Corp. Chairman and Chief Executive Dick Davidson, during an inspection tour of the railroad's coal-hauling routes in Wyoming and its $400 million reconstruction project across Nebraska and Iowa this week, acknowledged a direct connection between the decentralization decision and serious operating problems that began last summer in the Houston area and that eventually engulfed UP and the rest of the U.S. rail system.

UP's most stubborn area of congestion — Southern California — should be relieved by Labor Day, Chairman Dick Davidson predicted. Story, 11A

"When we started thinking about it, we realized that no matter how good the planning was, the execution wasn't happening," Mr. Davidson said. "We asked ourselves why. We know we can run a railroad a hell of a lot better than this."

The operations management changes won't have an immediate impact on customers because their day-to-day contact with departments such as customer service and accounting will remain the same. Marketing activities will remain in Omaha.

"This is all aimed at customers and service improvements," Mr. Davidson said. "We are simplifying our processes and empowering people to do the work. The railroad is so big that you can't call all of the shots from the corner office on the 12th floor."

Shake up managers

UP plans to shake up its management by transferring people between departments. Mr. Davidson did not give any specific examples but one option would be to ship people from marketing positions to the transportation department that handles daily train operations.

The plan also calls for giving three new regional vice presidents more responsibility for all phases of operations, including engineering, mechanical and transportation functions. Mr. Davidson admitted that those departments were "silos" with too few connections between them.

Mr. Davidson said the regions will be split roughly into northern, southern and western sections. While the new regional vice presidents will be formally announced later this month, The Associated Press reported that the executives involved are:

- Mike Kelly, currently vice president of marketing, will take over in Omaha.
- Jeff Verhall, general manager of the western region, will be vice president of that region, out of Roseville, Calif.
- Steve Barkley, already stationed in Houston, will be vice president there.

The regional vice presidents will put their teams together, and the new structure should be in place by Nov. 1, Mr. Davidson said. "Each of the regions will be as big as big railroads used to be," he said.

UP and Missouri Pacific Railroad both were about 10,000 miles in length when they were merged in 1982.

UP's changes mark a different direction from other recent rail mergers that also concentrated on centralization. The most visible example was the 1995 consolidation that created Burlington Northern & Santa Fe Railway.

"Centralization was good in the 1970s, but the railroad was more manageable in the old days," Mr. Davidson said. "We want to put responsibility back in the field so that the general office supports the field instead of vice versa."

"People in the field are thirsty to have authority returned to them," he said. "They are saying, 'Give us the responsibility and authority, and we will show you we can do it.' "

One potential target for additional change is the Harriman dispatching center in Omaha, which is responsible for nearly all operations on UP's through routes.

Mr. Davidson said no major decision about dispatching changes has been made. UP already has taken one step to decentralize by shifting dozens of managers from Omaha to a joint dispatching facility in Houston that also houses BNSF.

The railroad also has set up 10 local dispatching centers in major terminal areas, such as Chicago and North Platte, Neb.

Mr. Davidson said one reason the changes are being made was the level of execution and employee enthusiasm in the Houston-area dispatch center.

Setting sights on quality

He said the restructuring also will kick off a renewed effort to focus on quality procedures that were compromised because each railroad involved in the recent mergers had a different view of what that process should be.

One step toward the quality goal was the recent company-wide ISO 9002 certification that reflects an outside evaluation of the company's commitment to quality procedures.

Before UP launched an effort a decade ago to improve the efficiency of its operations, the company believed that 31% of its revenue was diminished by failures to deliver some phase of service. That failure level was whittled down to 10% in the early 1990s but has jumped above 20% in recent years.

UP's yearlong service troubles have cost Union Pacific Corp. millions. The company last month reported a second-quarter net loss of $419 million that reflected an after-tax loss of $261 million from the planned sale of Overnite Transportation Co. and a $158 million loss from continuing operations. The first-quarter 1998 loss was $62 million on top of a $152 million loss in the last quarter of 1997.

Union Pacific Corp. stock was selling for $38 a share in midday trading Wednesday, down 25 cents.

ATTACHMENT G

CN-38, FD 36873
PUBLIC VERSION

9/10/98

In cost-cutting move, UP plans to lay off 600

BY RIP WATSON
JOURNAL OF COMMERCE STAFF

Union Pacific Railroad is laying off about 600 track workers and deferring normal maintenance projects on some routes in an apparent effort to conserve cash and boost fourth-quarter earnings.

The cost-cutting measure, which is likely to be followed by additional layoffs in the railroad's maintenance ranks is the latest setback for UP, which has suffered more than $200 million in losses from continuing operations this year.

After three consecutive quarters of losses since widespread rail service problems began last year, parent company **Union Pacific Corp.** is expected to show a modest profit when the quarter ends Sept. 30.

By laying off the 600 members of the Brotherhood of Maintenance of Way Employes and not doing dozens of planned maintenance projects, the railroad apparently stands to save tens of millions of dollars that will enhance earnings and improve cash flow.

Rail gangs that install track and replace ties can use up more than $700,000 a day in materials alone, according to knowledgeable industry insiders.

John Bromley, a UP spokesman, declined to give an estimate of the expected financial benefit from the layoffs and savings on any materials not included in the original budget that would have been required to complete the 1998 maintenance projects.

The layoffs follow a decision not to exceed the budget for maintenance work done by the railroad's engineering department, which controls track, railroad tie, bridge and other right-of-way improvement projects.

The engineering department's budget, an estimated $500 million annually, was spent faster than planned because of higher costs for materials and lower-than-expected productivity.

Questions remained about the location of the layoffs. The railroad said the 600 represented a systemwide figure, but a BMWE official said that number of workers just covered UP's Southern Region that includes tracks in Texas and surrounding states.

Layoffs in the maintenance forces will not be accompanied by job cuts in other departments and are not connected to the railroad's recent reorganization in the operations department, Mr. Bromley said.

Mr. Bromley said the maintenance cuts would not affect the railroad's capital construction projects, which are coming out of a separate budget. UP's total capital spending budget for 1998 exceeds $2.3 billion. That amount includes route capacity expansion projects and other expenditures, such as purchasing new locomotives.

The initial notices are being given to about 6% of UP's total track maintenance work force of more than 10,000 people.

The move marks the company's first substantial layoffs this year.

UP is continuing to hire hundreds of new train crew employees to operate freight service that is better than the depths of its fall 1997 service meltdown but is still below normal levels on key efficiency indicators such as train speed, freight car switching and departure delays.

Maintenance layoffs are beginning two or three months sooner than the typical seasonal furloughs. Those occur at the end of calendar years when bad weather on many portions of UP's system makes track work difficult.

The affected workers are members of roving groups called "system gangs" that work on maintenance and capital projects in a geographic area that typically covers several hundred miles.

UP earlier this year moved to boost its cash position by cutting the corporation's dividend and selling $1.5 billion in convertible securities to overseas investors.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760
(Sub-No. 26)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
--CONTROL AND MERGER—
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER
AND RIO GRANDE WESTERN RAILROAD COMPANY

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

COMMENTS OF THE NATIONAL ASSOCIATION OF RAILROAD PASSENGERS



Ross B. Capon, Executive Director
National Association of Railroad Passengers
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September 18, 1998

The National Association of Railroad Passengers' primary concern in this proceeding is seeing that Union Pacific can begin to reasonably fulfill its contractual and statutory obligations to provide reliable handling of Amtrak trains. We also want to see the rail freight business run well and prosper, both as sound public policy and because a financially-weak freight railroad is unlikely to do a good job of running passenger trains.

In the Houston/Gulf Coast area it is important to note that Amtrak has experienced worsened reliability even though the number of Amtrak movements, and thus the demands Amtrak is making on the infrastructure, declined in 1993 and declined further in 1995.

- On November 4, 1993, the frequency of the *Texas Eagle* dropped from daily to tri-weekly. The train then ran from Chicago to Dallas where it split into sections going to San Antonio via Ft. Worth and Austin and, most relevant here, to Houston via Corsicana, College Station, Navasota and Cypress (Hearne Subdivision).
- On September 10, 1995, the *Eagle's* Dallas-Houston service was completely discontinued, leaving the tri-weekly *Sunset Limited* as the only Amtrak service in or near Houston, and indeed the only Amtrak service between New Orleans and San Antonio.

Service continues to leave much to be desired, as reflected in up-to-date information available at Amtrak's website. The most recent eastbound *Sunset Limited* departed Los Angeles on Tuesday, September 15. The train arrived San Antonio one hour 55 minutes late, but arrived Houston three hours 7 minutes late and arrived New Orleans 3 hours 35 minutes late. Therefore, the public's perception is that the train lost one hour 40 minutes from time of arrival at San Antonio to time of arrival at New Orleans. However, this understates the amount of delay because there is about one hour 14 minutes of recovery time in the schedule from Schriever, Louisiana, to New Orleans, (that is, the eastbound train is given two hours 34 minutes to travel that 56-mile segment, whereas the westbound train gets one hour 20 minutes). Therefore, it would be more accurate to say that the train lost two hours 54 minutes (i.e., almost three hours).

The trip which departed Los Angeles on Sunday, September 13, departed San Antonio 1:17 late and arrived New Orleans 2:20 late. The Friday, September 11, trip departed San Antonio 3:25 minutes late and arrived New Orleans five hours late. The Wednesday, September 9 trip departed San Antonio 3:25 late and arrived New Orleans 5:10 late. The Sunday, August 23 trip departed San Antonio 50 minutes late and arrived New Orleans 3:40 late.

Nor is this a particularly tight schedule. The table below compares Amtrak's current schedules on the 573-mile San Antonio-New Orleans run with previous schedules.

	Westward time (avg. speed)	Eastward time (avg. speed)
Current timetable (5/17/98)	14:40 (39.1mph)	14:40 (39.1 mph)
April 5, 1992 timetable	12:50 (44.6 mph)	13:15 (43.2 mph)
June 11, 1972 timetable	13:15 (43.2 mph)	13:00 (44.1 mph)
Initial Amtrak tt (5/1/71)	13:20 (43.0 mph) [Note 1]	12:25 (46.1 mph)
Final SP tt (Nov. 1970)	13:19 (43.0 mph) [Note 1]	12:20 (46.5 mph)

Note 1: The timetable shows only a departure time at San Antonio. Time and speed shown here assume a 15-minute San Antonio dwell-time, the same as shown in Amtrak's 1972 timetable.

It is good to report that the most recent westbound train, which departed New Orleans on Wednesday, September 16, arrived both Houston and San Antonio on time (although it was expected to arrive today in Los Angeles over three hours late). This shows that trains can run on time. Unfortunately, for this route, on-time operation is the exception, not the rule.

However, we gain but little reassurance from a single trip operating over one portion of Union Pacific on time. BNSF, in its July 8 "Application for Additional Remedial Conditions" (pages 7 and 3 of Introduction) said: "BNSF, other carriers and Houston area shippers are now experiencing alternating cycles of several days of sporadic improvement in UP service followed by a number of days when service returns to near crisis levels....Current traffic and congestion patterns are masking the potential risks at Houston, because summer rail traffic volumes are routinely lower than autumn and winter traffic volumes." Indeed, through the summer of 1998 and for well over a year, the *Sunset Limited* seldom made its already-slow schedule between San Antonio and New Orleans. The length of delays significantly worsened after the UP/SP merger.

Actions are needed to insure that on-time performance becomes the rule, not the exception, and that extraordinary delays are virtually eliminated.

Union Pacific's own "Report on Houston & Gulf Coast Infrastructure" (hereinafter, "Report") identifies a number of infrastructure projects that have the potential to improve reliability of operations on the Sunset and *Eagle* routes. Examples include:

- Extend tracks 4 and 5 of Corbyn yard on the Austin subdivision ($1.8 million).
- Mainline capacity on Lafayette Subdivision (four projects totalling $29.4 million)
- Relocate Neches River bridge operator (KCS dispatching position) to Spring ($0.5 million) to eliminate problem that trains "must communicate with three or four controllers to pass through Beaumont."
- Relocate mainline in Lake Charles ($13.4 million) because "mainline operations conflict with yard operations."
- Connect the Eagle Lake and Ramsey sidings ($6.2 million) "creating a five-mile stretch of double track with crossovers in the center."
- Extend and upgrade Buda siding ($3.5 million) between San Marcos and Austin "to permit trains to meet there while also allowing trains to work a shipper facility without interfering with mainline operations."

Amtrak operations may benefit from some investments which are not physically on Amtrak-used lines but whose results include reducing freight train congestion on Amtrak-used lines.

The Report also states (Part I., Section C): "Forced divestiture or expanded access for other railroads would…undermine UP's ability to fund these projects by altering the pattern of service that UP provides today. Should the Board order divestiture or require UP to open its traffic base to other carriers, UP would have to reevaluate this investment program."

It follows logically that, if the Board does not grant the rights requested by others, the Board should hold UP to its investment commitments. UP states, of course, that "the precise timing and specifics of some of the projects are likely to change." That is inevitable, given the magnitude of the overall program. Therefore, the Board should require UP's bi-weekly reports to continue and to include significant changes to—and the status of—UP's investment plans as outlined in the Report. This should give the Board and the interested public assurances that UP will not back out of significant investments whose execution may have been the basis for the Board's unwillingness to grant relief to shippers and other railroads. More precisely, it would give the Board timely warning about any changes in UP's investment plans that might justify further action by the Board.

Certain investments may be so basic that they should in fact be mandated. If circumstances change in surprising ways, UP would have the opportunity to persuade the Board that mandates should be withdrawn.

Meanwhile, certain requests made of the Board by other parties may be justified in any event. For example, Tex Mex seeks to acquire and reactivate a now-abandoned UP line (Rosenberg-Victoria), an action that would take some traffic off a short piece of the "Sunset" route. Premature line abandonments—that is, abandonments subsequently seen as bad business decisions—have been all too common in much of the U.S. Here, what is arguably a premature abandonment could be reversed, without UP itself making the investment. Indeed, UP would benefit both from the cash it would realize from selling the line, and from whatever track capacity it gains after the sold line is reactivated.

We also noted with interest BNSF's request that the Board "grant BNSF overhead trackage rights to enable BNSF, should it determine to do so, to join the directional operations over any UP line or lines where UP commences directional operations and where BNSF has trackage rights over one, but not both, lines involved in the UP directional flows, including, specifically, over the Fort Worth to Dallas, TX line (via Arlington)" (Introduction, page 18).

Directional operation on single track lines obviously creates problems for trains operating against the normal flow, whether these are freight trains of a carrier that lacks access to the line operating in the other direction or Amtrak trains needing to make intermediate

stops on the directional line. Directional operation also may force circuitous handling of local freight shipments whose ultimate destinations are opposite from the "normal" direction of traffic, and cause railroads to lose some freight business completely.

We urge the Board to review UP's directional operations both as to impacts on Amtrak operations and on the value of the trackage rights the Board gave to BNSF, and take such remedial actions as the Board deems appropriate.

Respectfully submitted,

NATIONAL ASSOCIATION OF
RAILROAD PASSENGERS

Ross B. Capon, Executive Director
900 Second St., NE, Suite 308
Washington, DC 20002-3557

Date: September 18, 1998

CERTIFICATE OF SERVICE

I hereby certify that copies of this document were served this 18th day of September, 1998, by first class mail upon all parties of record.

Ross B. Capon

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BEFORE THE

SURFACE TRANSPORTATION BOARD

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STB FINANCE DOCKET NO. 32760 (SUB-No. 26)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND MISSOURI PACIFIC RAILROAD COMPANY—CONTROL AND MERGER—SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORPORATION, AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
[HOUSTON/GULF COAST OVERSIGHT]

COMMENTS OF THE

U.S. DEPARTMENT OF AGRICULTURE

Michael V. Dunn
Assistant Secretary
Marketing and Regulatory Programs
U.S. Department of Agriculture
Washington, D.C. 20250

Date: September 18, 1998

BEFORE THE

SURFACE TRANSPORTATION BOARD

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND MISSOURI PACIFIC RAILROAD COMPANY—CONTROL AND MERGER—SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORPORATION, AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
[HOUSTON/GULF COAST OVERSIGHT]

COMMENTS OF THE

U.S. DEPARTMENT OF AGRICULTURE

AUTHORITY AND INTEREST

These comments are filed on behalf of the Secretary of Agriculture. Under the Agricultural Adjustment Act of 1938 and the Agricultural Marketing Act of 1946, the Secretary is charged with the responsibility to represent the interests of agricultural shippers and producers in improving transportation services and facilities by, among other things, initiating and participating in Surface Transportation Board (STB) proceedings involving rates, charges, tariffs, practices, and services. In addition, the U.S. Department of Agriculture (USDA) is a participant in the markets for agricultural products through the operations of the Commodity Credit Corporation and foreign commodity

donation programs.

Pursuant to the oversight authority it retained upon its approval of the UP/SP merger, the Board has requested comments on additional conditions to the merger for the Houston, Texas and Gulf Coast area. As an active participant in the UP/SP merger proceeding, USDA submitted comments to the Board on March 29, April 29, and June 3, 1996. In addition, we submitted comments on August 15, 1997 in STB Finance Docket No. 32760 (Sub-No. 21), the original oversight proceeding. In those comments we pointed out that rail service is critical to the economic well-being of this nation's rural and agricultural economies. Many agricultural products are produced in areas located great distances from export and domestic markets. Moreover, agricultural shippers generally have limited access to cost-efficient, alternative providers of transportation services because many are located beyond effective trucking distances from these markets and far from available waterway transportation. We highlighted the importance of competitive rail service for agricultural producers and shippers and the entire rural economy and expressed concern over the increased concentration in the U.S. rail industry and its adverse effects on U.S. agriculture.

While USDA opposed the UP/SP merger, we were heartened by the STB's determination to mitigate any potential competitive harm to agricultural shippers caused by the merger. In preparation for last year's oversight filings,

USDA held a series of "listening sessions" in major grain-producing states. At that time, agricultural shippers were generally frustrated by the service levels provided by UP/SP and by the apparent lack of vigorous competition provided by BNSF over the 4,000 miles of trackage rights it had received in order to replace service formerly provided by SP. In retrospect, it seems likely that these concerns were early indications of the service failures that would eventually force the Board to initiate STB Ex Parte 573.

RAILROAD SERVICE TO MEXICO

In our comments in the UP/SP oversight proceeding on August 15, 1997, we urged the Board "to begin a careful and public examination of the competitive situation in rail movements from the lower plains to the Gulf and Mexico." In light of Houston's role as the epicenter of the service failures, this proceeding seems to be responsive to that call. Houston is critical to the transportation of U.S. agricultural products. Not only is Houston a port of significant importance, but Houston lies astride a key corridor linking the United States and Mexico. Indeed, USDA's interest in this proceeding stems from our desire to facilitate the export of agricultural products in general, and exports to Mexico in particular.

Mexico is an important and growing market for U.S. agricultural products, including grains and oilseeds. The volumes of U.S. grain being exported

to Mexico have increased thanks to the trade liberalization which occurred as a result of the North American Free Trade Agreement (NAFTA) and the reduction in domestic producer subsidies for basic grains in Mexico which have accompanied trade liberalization. To allow U.S. grain producers to continue to share the benefits of NAFTA by exporting U.S. grain to Mexico, overland railroad services from the U.S. to Mexico must be competitive. As the competitiveness of railroad transportation to the border declines, our ability to export into Mexico also declines. Rail service is particularly important to the many small Mexican feed grain importers because these importers typically cannot handle or afford the ship-size lots of feed grain available by maritime transportation. USDA has a special interest in the availability of low-cost, competitive railroad service to Mexico because it helps underwrite the exports of U.S. grain to Mexico through the GSM-102 credit guarantee program.

USDA COMMENTS ON THE "CONSENSUS PLAN"

USDA believes that adequate competition in the cross-border rail traffic is important for U.S. agricultural exports. After studying the various proposals offered in this proceeding, including the "consensus plan," USDA believes that when evaluating proposals aimed at improving the operations of the Houston rail complex, the Board should be guided by individuals with appropriate railroad operating experience. USDA's specific comments will focus on those

proposals that will expand rail capacity and facilitate agricultural trade with Mexico. We suggest the following provisions be adopted:

(1) The Board should require the Union Pacific Railroad (UP) to sell its rights to the former Southern Pacific line between Rosenberg and Victoria, Texas to the Texas Mexican Railway Company (Tex Mex).

(2) To ensure that the trackage rights granted Tex Mex in STB Decision No. 44 can be adequately exercised, the Board should establish a neutral dispatching authority over the Houston/Gulf Coast region. This is needed to ensure that dispatching decisions are made in a fair and equitable manner.

(3) USDA is concerned that lack of infrastructure may have contributed to the service failures of 1997 and 1998. Therefore, we believe the Board should consider any proposal that promises to create additional infrastructure in the Gulf Coast region. In particular, we believe that the Board should examine the proposal put forth in the consensus plan that would require the UP to allow the Tex Mex and Kansas City Southern Railway (KCS) to construct a new mainline linking Houston and Beaumont.

CONCLUSION

USDA appreciates the opportunity to submit comments in this proceeding. The conditions endorsed by JSDA should add capacity to the U.S. rail network and smooth the path through Houston. This would enable the KCS and Tex Mex to fulfill the promise of creating a NAFTA railroad, increasing competition in the border region and promoting U.S. agricultural exports.

Sincerely,

Michael V. Dunn
Assistant Secretary
Marketing and Regulatory Programs
U.S. Department of Agriculture

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 18, 1998, he caused a copy of the Department of Agriculture's comments to be served by first-class mail, postage prepaid, on all parties of record in STB Finance Docket No. 32760 (Sub No. 26).

Keith A. Kindworth
Program Manager
Marketing and Transportation Analysis
Agricultural Marketing Service

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PORT OF HOUSTON AUTHORITY

EXECUTIVE OFFICES: 111 EAST LOOP NORTH • HOUSTON, TEXAS 77029-4327
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September 17, 1998

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Honorable Vernon Williams
Case Control Unit
Attn: STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

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Re:

STB FINANCE DOCKET NO. 32760 (SUB-NOS. 26-32)
UNION PACIFIC CORPORATION, *et. al.*
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, *et. al.*

HOUSTON/GULF COAST OVERSIGHT

Dear Secretary Williams:

Enclosed is the statement of the Port of Houston Authority presenting its comments relating to the requests for new conditions on the UP/SP merger that were accepted for consideration by the Board.

An original and 25 copies are enclosed, together with a 3.5-inch computer disk containing a copy of the statement in WordPerfect format.

Respectfully submitted,

Richard J. Schiefelbein
817-236-6841

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 32760 (SUB-NOS. 26-32)
UNION PACIFIC CORPORATION, *et. al.*
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, *et. al.*

HOUSTON/GULF COAST OVERSIGHT

COMMENTS OF THE PORT OF HOUSTON AUTHORITY ON REQUESTS FOR ADDITIONAL CONDITIONS TO THE UNION PACIFIC/SOUTHERN PACIFIC MERGER

The purpose of this statement is to present the comments of the Port of Houston Authority (Port Authority) regarding those requests for additional conditions to the merger of the Union Pacific and Southern Pacific railroads which were accepted by the Board in Decision No. 6 in this proceeding.

The Port of Houston Authority

The Port of Houston Authority is an autonomous governmental entity which owns the public facilities along the 50-mile Houston Ship Channel and is the Channel's official sponsor. The Port of Houston Authority owns 43 general cargo wharves, owns and operates the Barbours Cut Container Terminal, the Container Terminal at Galveston, and Houston Public Grain Elevator No. 2, which are available for public use. It also owns a bulk materials handling plant,

a bagging and loading facility, a refrigerated facility, two liquid cargo wharves, and other facilities which are leased to private operators. The Port of Houston complex also includes numerous privately-owned terminals. The Port Authority also operates the Malcolm Baldridge Foreign Trade Zone.

The Port Authority's facilities handle approximately 15 percent of the approximately 150 million tons of cargo moving through the Port of Houston. The Port of Houston ranks first in the United States in total foreign water-borne commerce handled and second in total tonnage. It is the seventh busiest port in the world. Last year, the Port of Houston handled over 6,400 ships, 50,000 barges and 935,000 TEU's (twenty-foot equivalent container units).

The Port of Houston is home to a $15 billion petrochemical complex, the largest in the nation. The Port generates approximately 196,000 jobs and $5.5 billion in economic activity annually.

Summary

The Port Authority supports certain of the requests for additional conditions made in the Consensus Plan and in the Burlington Northern Santa Fe (BNSF) filing. The following listing summarizes those requests and the portions of each which the Port Authority supports. Details of the Port Authority's reasons for supporting each request are presented in the following sections of this statement:

- That the Board should make permanent the provisions of Emergency Service Order No. 1518 that: (a) temporarily suspended the restriction the Tex Mex's trackage rights could be used only for shipments having a prior or subsequent movement on Tex Mex; and (b)

temporarily granted Tex Mex trackage rights over UP's "Algoa route" between Placedo, TX and Algoa, TX and over BNSF from Algoa to Alvin, TX and to T&NO Junction, TX.

- That the Port Terminal Railroad Association (PTRA), or its successor organization if PTRA is dissolved, should provide neutral switching over the trackage formerly operated by the Houston Belt & Terminal Railroad (HB&T).
- That the neutral switching area in and around Houston be expanded to include shippers located on UP's line between the junction with PTRA immediately north of Bridge 5A to Morgan's Point on the south side of the Houston Ship Channel, including Harrisburg, Manchester, Sinco, Pasadena, Deer Park, Strang, La Porte, and Morgan's Point, with PTRA, or its successor, designated as the neutral switching operator. The Port Authority specifically does not support or endorse any change to the rail service provided to shippers located on the Bayport Loop or on UP's line at or south of Strang Yard.
- That neutral dispatching be performed by PTRA, or its successor, on the trackage formerly operated by HB&T and on the UP line between Bridge 5A and Morgan's Point described above in addition to the lines currently operated by PTRA.
- That Tex Mex be acknowledged as a full voting member of PTRA and that the Port Authority's voting status on the PTRA Board be restored.
- That a yard adequate to satisfy Tex Mex's switching needs in Houston be made available to Tex Mex at a reasonable price or lease rate.
- That the KCS/Tex Mex proposal to construct an additional track between Houston and Beaumont, increasing rail capacity in that corridor and adding an additional carrier to the Houston market be authorized by the Board.

- That the UP's Clinton Branch be controlled and operated by the PTRA, or its successor.

Emergency Service Order Provisions

Emergency Service Order No. 1518 temporarily suspended the restriction that the Tex Mex's trackage rights to Houston and Beaumont could be used only for shipments having a prior or subsequent movement on Tex Mex.

Suspending that restriction has provided an additional competitive choice to shippers located on the trackage operated by PTRA and on the trackage formerly operated by HB&T. In addition to UP and BNSF, shippers have been able to choose Tex Mex as their line-haul carrier for shipments to Beaumont and beyond. This has increased Houston-area shippers' routing choices and has made additional capacity available in the form of Kansas City Southern's lines for movements beyond Beaumont.

If the restriction on Tex Mex's trackage rights is reinstated, the additional capacity provided by KCS beyond Beaumont will not be available to shippers because neither UP nor BNSF will short-haul themselves by handing over traffic to KCS at Beaumont. Thus, both the competitive choices available to Houston-area shippers and the rail infrastructure available to handle Houston-area shipments will be reduced if the restriction on Tex Mex's trackage rights is reinstated.

The Port Authority supports making the temporary suspension of Tex Mex's trackage rights restriction permanent.

Emergency Service Order No. 1518 also granted Tex Mex temporary trackage rights over UP's "Algoa route" and over BNSF from Algoa into Houston. These rights have facilitated

directional running by UP, BNSF, and Tex Mex between Houston and Placedo, TX, improving the flow of trains into and out of the Houston terminal and contributing to the reduction in rail congestion in Houston. Operating northbound on the Algoa route and southbound on the Flatonia, TX to Placedo route has benefited shippers in Houston. The Port Authority supports making these overhead trackage rights permanent.

Neutral Switching on HB&T by PTRA

For at least 20 years, plans were developed to combine the operations of HB&T and PTRA. Both railroads performed a similar "belt railroad/neutral switching function" in geographic areas directly adjacent to one another.

For many recent years, Southern Pacific's objections kept the combination from being implemented. Southern Pacific was a member of PTRA, but was not an owner of HB&T. With the consummation of the UP/SP Merger, SP's concerns were no longer an issue because UP was both a member of PTRA and an owner of HB&T.

However, instead of finally seeing the combination become a reality, HB&T was dissolved by UP and BNSF, its owners. Today, UP and BNSF each switch a portion of the former HB&T on a reciprocal switching basis and must exchange cars routed over the other railroad. Cars must also be switched by each railroad to Tex Mex on those shipments routed over Tex Mex. This is precisely the function PTRA performs for UP, BNSF, and Tex Mex. Having UP and BNSF make interchange runs between their respective yards just a few miles from PTRA's North Yard, where PTRA assembles cuts of cars destined for each railroad seems to make little sense.

PTRA could perform the same function with no duplication in interchange deliveries to the railroads. It appears that this change alone would reduce the number of interchange movements competing to use the congested trackage along the East Belt and the West Belt lines.

The Port Authority supports having PTRA, or its successor organization should PTRA ever be dissolved, provide neutral switching services on the trackage formerly operated by HB&T.

Expansion of Neutral Switching Area

The Consensus Plan calls for an expansion of the neutral switching provided by PTRA over various lines in the Houston/Gulf Coast area. The BNSF filing calls for PTRA operation of the Clinton Branch. The Port Authority supports the expansion of PTRA's neutral switching over some, but not all of the lines requested by the Consensus Plan and supports PTRA operation of the Clinton Branch.

In particular, the Port Authority supports expansion of area in which PTRA, or its successor if PTRA is ever dissolved, would provide neutral switching to include: (1) shippers located on UP's line between the junction with PTRA immediately north of Bridge 5A to Morgan's Point on the south side of the Houston Ship Channel, including Harrisburg, Manchester, Sinco, Pasadena, Deer Park, Strang, La Porte, and Morgan's Point, and (2) UP's Clinton Branch. This expanded area of neutral switching is in addition to the trackage currently operated by PTRA and the trackage formerly operated by HB&T.

In November 1995, the Port Authority and UP and SP entered into an agreement in which the Port Authority agreed to support the then-proposed UP/SP Merger and UP and SP agreed, among other provisions, to permit the Port Authority to build its own track on SP rights-of-way

between Deer Park Junction and Barbours Cut and between Strang and the Port Authority's planned terminal at Bayport. Regarding the latter line, the Port Authority agreed:

> that any attempt by PHA [Port Authority] to establish rail service to others springing from New Track 2 [Strang to Bayport] shall void all other rights granted herein including the right to operate over the right-of-way of Primary Applicants [UP and SP] and any operating rights which may be granted to PTRA or PHA by subsequent agreements whose purpose is to implement this letter agreement.

As a result, the Port Authority does not support or endorse any change to the rail service provided to shippers located on the Bayport Loop or on UP's line at or south of Strang Yard.

The following paragraphs discuss expansion of PTRA neutral switching operations on the line from Bridge 5A to Morgan's Point; the Clinton Branch is discussed in a separate section below.

The industrial complex located along the Houston Ship Channel is one of the primary economic engines for the Houston region. The Port of Houston and the economic activity associated with the Port generate over $5.5 billion of economic activity annually and generate over 196,000 jobs.

Assuring that this economic engine runs as efficiently as possible is important to the Houston economy. The operational delays inherent in having two railroads operate over the same trackage can be reduced by having one of those railroads perform the work in the area. Reducing the delays in operations along the south side of the Houston Ship Channel will translate into better service for the area's rail shippers, making them more competitive in their

marketplaces and preserving or expanding the level of economic activity in the Houston area. Neutral switching will also offer competitive transportation choices to those shippers which do not have a choice of line-haul carrier today.

Neutral Dispatching Performed by PTRA

The Port Authority supports neutral dispatching of the trackage recommended for neutral switching.

Neutral dispatching is so important to the efficient operation of the Houston terminal area that the Port Authority supports neutral dispatching on this trackage whether or not neutral switching is implemented as recommended above.

In addition, the Port Authority strongly believes that the neutral dispatching function for this territory should be performed by PTRA, not by a joint operation of the line-haul railroads.

In the Houston terminal area, there is extensive joint trackage over which both UP and PTRA operate. All of this jointly-operated trackage is dispatched by the joint dispatching center in Spring, regardless of track ownership; the non-signalled segments (Deer Park Junction to Barbours Cut and the HL&P Lead) are under the control of the UP yardmaster at Strang Yard.

Although UP and BNSF are both members of PTRA, the dispatching that is performed by the joint dispatcher often delays PTRA movements. It was reported to the Port Authority that a PTRA train was delayed for 16 hours in a move from Manchester to North Yard, a distance of about 5 miles, while other trains in the area were given dispatching preference; this route is over Port Authority-owned tracks except for a short segment at Bridge 5A.

The Port Authority believes that joint dispatching of the Houston terminal by PTRA is the best way to assure non-preferential dispatching of trains. Despite the fact that PTRA handled

247,000 loaded cars between the plants along the Ship Channel and the line-haul railroads in 1997, PTRA is not a participant in the joint dispatching center at Spring, TX, and does not even have an observer at the joint dispatching center.

By its charter, PTRA is a neutral entity; employees of PTRA are more likely to make non-preferential dispatching decisions than are employees of one of the line haul carriers, even if the line-haul employee is supervised by a joint employee of the line-haul railroads. Having the dispatcher report to a joint employee reasonably assures that the dispatcher will not give preference to one line-haul carrier over the other, but it does not assure that the switching carrier's movements will be dispatched without disadvantage relative to the line-haul railroads' trains.

The Port Authority believes that only by having the dispatching performed by PTRA, or its successor organization in the event PTRA is ever dissolved, will dispatching in the Houston area be performed on a non-preferential basis. It is not necessary for the joint dispatching center at Spring to be controlled by PTRA, but only the dispatching territory known as STO-2, which controls the area in which PTRA operates.

Tex Mex Membership in PTRA; Port Authority Voting Status Restored

PTRA is an unincorporated association formed by a 1924 agreement between the Port Authority and the railroads operating in Houston. In that agreement, the Port Authority made its railroad property available and the railroads agreed to operate that property in a neutral, non-preferential manner to serve industries located along the Houston Ship Channel. For the first 50 years of the agreement, the Port Commissioners, who are unpaid appointees, also served as PTRA Board members. During this period, the Port Authority made all capital improvements

and the Port Authority had the same number of votes as there were railroad members of PTRA, assuring a balance between the public and private interests served by PTRA.

In 1974, the Board was split into a Board of Investment and a Board of Operation, with the Port Authority maintaining a role on the Board of Investment, but not being involved in the day-to-day railroad operating decisions of the PTRA.

In 1984, the parties reached an agreement under which the railroads would make future capital improvements on PTRA and the basis of the railroads' payment for use of the Port Authority's property was changed from an interest rental basis to a flat monthly fee; the Board of Investment was abolished and the Port Authority was made a non-voting member of the surviving Board of Operation.

Because of its non-voting status, the Port Authority has not been able to provide the needed balance between the public and private interests served by the Port Authority's railroad assets. Restoring the Port Authority's vote on the PTRA Board would assure that the public interest would be effectively served by the operations conducted on the publicly-owned rail infrastructure adjacent to the Houston Ship Channel.

The 1924 PTRA agreement also clearly states that all railroads entering the City of Houston are members of PTRA. Tex Mex gained access to Houston under the terms of Decision No. 44 in this proceeding; Tex Mex should be a member of PTRA.

Tex Mex Yard in Houston

In Decision No. 44 in this proceeding, the Board granted the rights requested by Tex Mex in the Sub-No.14 Terminal Trackage Rights filing by Tex Mex. In the Sub-No.14 application, Tex Mex had requested access to HB&T's New South Yard. With the dissolution of HB&T, it is

no longer operationally feasible for Tex Mex to have access to New South Yard, as BNSF utilizes that yard to support its switching operations in Houston related to the trackage rights lines granted to it in Decision No. 44.

The Port Authority supports Tex Mex's request that a yard be made available to it in Houston, at a reasonable price or lease rate, to facilitate its operations in Houston and on its trackage rights to Beaumont and to Robstown, TX.

Additional Track between Houston and Beaumont

The Port Authority supports the proposal to construct an additional track between Houston and Beaumont, thereby increasing rail capacity in that corridor and adding an additional competitive railroad to the Houston market. The congestion which Houston has suffered in the last year has demonstrated that additional rail capacity in the Houston area would be beneficial to those industries which depend on the railroads to handle their outbound products and their inbound production materials.

In addition, the Port Authority continues to support greater competition in the Houston rail market. The industries which comprise the economic strength of Houston depend in large measure on the railroads to move their products to market. With greater competition in rail transportation, these industries are less likely to be at a competitive disadvantage in their more distant markets. The Port Authority believes that additional rail competition would be beneficial to the Houston industrial community and to the economy of the Houston area.

For these reasons, the Port Authority supports the proposed increase in rail infrastructure and the addition of another line-haul railroad to the Houston market.

PTRA Operation of the Clinton Branch

The Port Authority has two facilities located on the Clinton Branch and served by UP. The first is Houston Public Grain Elevator No. 2 (Elevator). The Elevator, which is owned and operated by the Port Authority, has a capacity of 6 million bushels and its throughput is expected to exceed 40 million bushels in 1998. The second facility is Woodhouse Terminal (Woodhouse). Located adjacent to the Elevator, Woodhouse is owned by the Port Authority and is leased to a firm which operates the terminal, handling cargoes through the Woodhouse warehouses and loading and unloading ships.

Together, the Elevator and Woodhouse occupy 91 acres on the north side of the Houston Ship Channel. The complex has 1,200 feet of wharf on the Ship Channel and a 1,200-foot x 250-foot boat slip equipped to handle roll-on/roll-off cargoes in addition to break bulk cargoes. The combined facility also has 14 tracks for receiving railroad cars, each approximately 2,600 feet long.

The Port Authority supports the Consensus Plan's and BNSF's requests that the Clinton Branch be controlled by PTRA or its successor organization if PTRA is dissolved. The Port Authority believes that PTRA operation would be beneficial because it would resolve operating deficiencies that the Port Authority has experienced on the Clinton Branch and would do so without changing the railroads' access to shippers on the branch because the shippers' locations are open to reciprocal switching today.

No Change in Competitive Access

Changing the operating responsibility for the Clinton Branch to PTRA will not change the current competitive access to shippers on the branch. The shippers located along the Clinton

Branch, with the exception of UP's own automobile unloading facility, already are open to reciprocal switch, and thus have access to railroads other than UP. Tariff ICC SP 9500-D, issued by Southern Pacific Transportation Company on September 11, 1996 lists in Item 5090 the industries on the Clinton Branch (listed under station name Galena Park - 35070) which are open to reciprocal switch. These include American Plant Food Company, Arrow Terminal Company, Delta Steel Incorporated, Exxon Energy Chemical, GATX Terminal, Holnam Incorporated, City of Houston, Houston Public Grain Elevator No. 2, Stevedoring Service of America (at that time the lessee and operator of Woodhouse Terminal), Texaco Lubricants Company, and United States Gypsum Company.

Service to the Elevator

PTRA provides rail service to most of the industries located along the Houston Ship Channel. The exceptions are those industries located on the Clinton Branch, Exxon in Baytown, and three industries located on the HL&P Lead in La Porte.

PTRA provides effective, non-preferential service switching service to shippers along both sides of the Ship Channel, all of whom have access to BNSF, UP, or The Texas Mexican Railway for line-haul service, by virtue of PTRA's neutral switching status.

PTRA makes its operating decisions for the benefit of the Houston terminal area overall, and does not base its decisions on the operating preferences of any one line-haul railroad. This is precisely the type of service which is needed at the Elevator, but has not been provided in the past. An example occurred during UP's recent congestion problems, when UP stored cars for other customers on the Port Authority's tracks at the Elevator, which prevented the Elevator

from receiving grain shipments consigned to it, despite the Port Authority's requests that UP remove the cars from its tracks.

Service to Woodhouse Terminal

Shipments destined to the Clinton Branch are handled in UP's Englewood Yard. In January 1997, the Port Authority was made aware of extensive delays in shipments destined to Woodhouse reaching Woodhouse once they had arrived in Houston on BNSF. Reviewing car movement records confirmed that cars were taking between 4 and 8 days to be moved from BNSF's Pearland Yard (near Houston's Hobby Airport) to Woodhouse, a distance of approximately 13 miles.

To resolve these delays, the Port Authority developed with the railroads an informal routing in which the cars for Woodhouse were delivered to PTRA, which switched them and placed them at a crossover switch connecting with the Clinton Branch. The UP switch crew then pulled the cars from the PTRA and delivered them to Woodhouse. In effect, this route substituted PTRA switching and transfer to the Clinton Branch for UP switching at Englewood and UP transfer to the Clinton Branch. The results were effective, with cars placed at the crossover the day after arrival in Houston and being delivered by UP either later that day or on the next day.

This example demonstrates the efficiency of using PTRA's North Yard, which is adjacent to the Clinton Branch, to handle traffic for the Clinton Branch rather than using UP's Englewood Yard, which is more distant.

The Port of Houston Authority supports the Consensus Plan's and BNSF's request that operation of the Clinton Branch be performed by PTRA. As described above, PTRA operation

of the Clinton Branch could improve service to shippers located on the branch without changing the existing competitive access for shippers located on the branch.

CERTIFICATE OF SERVICE

I, Richard J. Schiefelbein, certify that , on this 17th day of September , 1998, I caused a copy of the attached document to be served by first-class main, postage prepaid, on all parties of record in Finance Docket No. 32760 (Sub-No. 26).

Richard J. Schiefelbein

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19193

GREATER HOUSTON PARTNERSHIP
Chamber of Commerce · Economic Development · World Trade

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Office of the Secretary

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September 17, 1998

Honorable Vernon Williams
Case Control Unit
Attn: STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Surface Transportation Board
1925 K. Street, N.W.
Washington, DC 20423-0001

Re:

STB FINANCE DOCKET NO. 32760 (SUB-NOS. 25-32)
UNION PACIFIC CORPORATION, *et. al.*
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, *et. al.*

HOUSTON/GULF COAST OVERSIGHT

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Dear Secretary Williams:

Enclosed is the statement of the Port of Houston Authority presenting its comments relating to the requests for new conditions on the UP/SP merger that were accepted for consideration by the Board.

An original and 25 copies are enclosed, together with a 3.5-inch computer disk contianing a copy of the statement in WordPerfect format.

Respectfully submitted,

Roger H. Hord

Roger H. Hord
713 844-3625

17193



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Union Pacific Corporation, et. al.
-- Control and Merger --
Southern Pacific Rail Corporation, et. al.

HOUSTON/GULF COAST OVERSIGHT

COMMENTS OF THE GREATER HOUSTON PARTNERSHIP ON REQUESTS FOR ADDITIONAL CONDITIONS TO THE MERGER

ENTERED
Office of the Secretary

SEP 18 1998

Part of
Public Record

This statement presents the comments of the Greater Houston Partnership (GHP) regarding those requests for additional conditions to the merger of the Union Pacific and Southern Pacific railroads which were accepted by the Board in Decision No. 6 in this proceeding. Because the GHP recommendations were among those accepted for consideration by the Board, the GHP intends to file rebuttal evidence and argument on October 16 in addition to the comments presented here related to requests made by other parties.

The Greater Houston Partnership

The Greater Houston Partnership is Houston's principal business organization and is dedicated to building prosperity in the Houston region. The Partnership has 2,400 members from virtually every industry sector throughout the eight-county Houston region. The Partnership's Board of Directors is composed of 112 corporate CEO's of organizations in the Houston region.

Partnership members employ almost 600,000 people, which is one out of every three employees in the region.

The GHP considers the following requests made in the Consensus Plan proposal to be largely similar to our own requests filed in this proceeding:

- That the Board should make permanent the provisions of Emergency Service Order No. 1518 that: (a) temporarily suspended the restriction the Tex Mex's trackage rights could be used only for shipments having a prior or subsequent movement on Tex Mex; and (b) temporarily granted Tex Mex trackage rights over UP's "Algoa route" between Placedo, TX and Algoa, TX and over BNSF from Algoa to Alvin, TX and to T&NO Junction, TX. The GHP supports making these rights permanent if data indicate improvement or if improvement can be expected.
- That the Port Terminal Railroad Association (PTRA), or its successor organization if the PTRA is dissolved, should provide neutral switching over the trackage formerly operated by the Houston Belt & Terminal Railroad (HB&T). The GHP supports the PTRA, or its successor organization, as the provider of neutral switching over the former HB&T and in an additional area determined to be financially feasible.
- That Tex Mex be acknowledged as a full voting member of PTRA and that the Port Authority's voting status on the PTRA Board be restored. The GHP supports for full PTRA Board membership the Port of Houston and all long haul railroads serving Houston.
- That a yard adequate to satisfy Tex Mex's switching needs in Houston be made available to Tex Mex at a reasonable price or lease rate; and that the KCS proposal to construct an additional track between Houston and Beaumont, increasing rail capacity in that corridor and adding an additional carrier to the Houston market, be authorized by the Board. The GHP supports a process mediated by the STB involving the Union Pacific and other long haul railroads which

would facilitate an agreement to sell or lease abandoned trackage and underutilized rights of way and switching yards for the purpose of adding rail system competitiveness, capacity, flexibility and geographic access.

The conditions described above, which have been requested in the Consensus Plan, are similar to the GHP Board of Directors' resolution on *Competition in Houston Freight Rail Service*. The GHP Board's resolution emphasizes that Houston's rail system performance must be "in the top tier of United States cities," which means that service and rates must be truly competitive in order for Houston's port and its local industries to compete effectively in domestic and international markets. The GHP Board prefers that the private sector rectify noncompetitive situations through equitable compensation, but it realizes that federal statutes and regulations constitute a fundamental roadblock in some cases and should be modified.

Many Houston shippers have expressed concerns related to this year's service difficulties and the growing difficulty in obtaining competitive service and rates. Their concern is for the level of rail service needed for a competitive Gulf Coast economy and the degree of rail industry competition needed to achieve that goal. Railroad consolidation in Houston has resulted in six Class 1 railroads being reduced to two, with an 80 percent market share dominance by one railroad. These issues are adversely affecting local shippers and the Houston economy. Unless some corrective action is taken, over the long term the cost of operating in a large portion of the Houston area may well become competitively disadvantageous.

September 17, 1998

CERTIFICATE OF SERVICE

I, Roger H. Hord, certify that, on this 17th day of September, 1998, I caused a copy of the attached document to be served by first-class main, postage prepaid, on all parties of record in Finance Docket No. 32760 (Sub-No. 26).

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub No. 26)

Union Pacific Corporation, Union Pacific Railroad Company, And Missouri Pacific Railroad Company

--Control and Merger--

Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver And Rio Grande Western Railroad Company

[Houston/Gulf Coast Oversight]

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COMMENTS OF NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY ON REQUESTS FOR REMEDIAL CONDITIONS

William C. Wooldridge, Vice President-Law
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Tel: 757-629-2657

Dated: September 18, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 26)

Union Pacific Corporation, Union Pacific Railroad Company, And Missouri Pacific Railroad Company

--Control and Merger--

Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver And Rio Grande Western Railroad Company

[Houston/Gulf Coast Oversight]

COMMENTS OF NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY ON REQUESTS FOR REMEDIAL CONDITIONS

Norfolk Southern Corporation and its wholly-owned subsidiary Norfolk Southern Railway Company (hereinafter jointly referred to as "NS") hereby submit these comments concerning the various requests for additional remedial conditions that have been filed in this proceeding.

Introduction

In this proceeding the Board has inquired whether it should impose additional conditions on the UP/SP merger pursuant to its oversight jurisdiction over that transaction, and has received the requests of numerous parties for additional conditions. NS does not take a formal position with respect to any of these particular requests. Nevertheless, NS is concerned about the broader implications of this proceeding and the effect that an STB decision on various requests could have on

other rail consolidations and the industry as a whole. The purpose of these comments, therefore, is to highlight the standards that, NS believes, should govern the Board's decision regarding individual requests for new remedial conditions on the Board's 1996 approval of the UP-SP merger, and to suggest that the Board undertake cautiously any decision to further condition an already-completed transaction.

NS has an interest in this proceeding and in the manner in which the various requests for conditions are resolved. First, as the Board is aware, NS has recently been involved in a major rail transaction involving the acquisition of control of Conrail by NS and CSX, a transaction which promises significant benefits to the rail industry and to the public at large. The Board's decision approving this transaction became effective on August 22, 1998. STB Finance Docket No. 33388, *CSX Corporation, et al. -- Control and Operating Leases/Agreements -- Conrail Inc., et al.*, Decision No. 89 ("*Conrail*") (served July 23, 1998). Like the UP/SP merger, the Conrail acquisition was approved subject to a 5-year limited oversight condition. A decision in this proceeding broadly expanding the Board's criteria for imposing conditions during the oversight of a previously approved and consummated consolidation could chill some aspects of NS's implementation of the Conrail transaction and erode the benefits of that transaction. Moreover, like other Class I railroads, NS is the product of many previous rail mergers, and anticipates that it could be involved in similar efficiency-enhancing transactions in the future.

In considering whether to impose additional conditions on the UP/SP merger in this proceeding, the Board must consider the consequences of this decision not only on

rail operations in the Houston/Gulf Coast area, but also on the entire rail industry and on future rail transactions. The policies that have previously been articulated and applied by the Board (and the ICC) have proven effective for this purpose and should be adhered to in this and other oversight proceedings.

More specifically, in determining whether to reopen a merger and to impose additional conditions after the transaction has already taken effect, the Board should ask five questions. These questions are as follows:

1. Is there an identifiable competitive public harm?
2. Is the competitive harm caused by the merger?
3. Will the requested condition solve the problem?
4. Will the requested condition avoid significantly reducing the merger's benefits?
5. Is the condition the least intrusive solution?

Unless each of these questions is answered in the affirmative, and the Board finds that the proposed condition would be in the overall public interest, additional conditions should not be imposed on an already-completed transaction. It is an extraordinary power of the Board's to reopen prior transactions and to impose additional conditions -- which after the transaction is consummated parties cannot realistically decline to accept -- and it is a power that should be exercised cautiously and sparingly. After the Board has found that a transaction would be in the public interest and that the conditions it originally imposes are sufficient to remedy any

adverse effects, parties seeking to reopen a transaction should bear a particularly heavy burden to prove that these findings were incorrect.

With these criteria and principles in mind for imposing additional conditions, NS turns to a more detailed explanation of their importance and application in particular contexts.

1. Is There an Identifiable Competitive Public Harm?

In determining whether to reopen a merger by imposing additional conditions, the Board must first inquire whether there is a loss of competition that is harmful to the public. Other types of problems unrelated to rail competition (such as general service failures, labor disputes and natural disasters) are not properly addressed through the imposition of additional conditions. Instead, Congress has judged that these types of problems should be addressed primarily by the private sector, and only in emergency situations by the Board through temporary emergency service orders.

The Board affirmed this principle with respect to the UP/SP merger in Decision No. 10 of the general oversight proceeding (out of which this proceeding developed), holding that "in the absence of a competitive problem, it would not be appropriate for us to reopen the merger and impose additional conditions." STB Finance Docket No. 32760 (Sub-No. 21), *Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp. et al. [Oversight]* ("*UP/SP Oversight*"), Decision No. 10 (served October 27, 1997) at 12. In that decision the Board rejected several requests for additional

conditions where the proponents had failed to establish that the UP/SP merger had caused an identifiable competitive harm. *Id* at 12-13.[1]

The Board's practice in its exercise of oversight jurisdiction over rail mergers and consolidations has been to limit its consideration of new conditions to those that would address competitive harms. This is a sound policy that should be maintained. To expand the range of issues that are addressable through new remedial conditions beyond unintended anticompetitive effects would significantly enlarge the Board's powers, and frustrate the Congressional intention that regulators should not micro-manage the rail industry except under emergency conditions.

There are any number of factors apart from competitive failures that can adversely affect a railroad's operations. Among these are a lack of capital, a lack of infrastructure, overregulation, incorrect management decisions, unanticipated traffic increases, natural disasters and problems on other railroads. Moreover, these are all problems that could affect any railroad, regardless of whether it had been involved in a recent consolidation. There is no principled reason to place one railroad under a more strict regulatory regime than others to avoid such problems simply because that

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[1] *See also UP/SP Oversight*, Decision No. 10 (served October 27, 1997), at 1 ("the oversight condition was intended to examine whether the conditions we have imposed have effectively addressed the *competitive* issues they were intended to remedy") (italics added); *id.* at 2 ("*reduction in competition* in the markets that UP serves" is "the focus of the oversight condition imposed by the Board in its approval of the merger") (italics added); STB Finance Docket No. 32760 (Sub-No. 26), *Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp. et al. ["Houston/Gulf Coast Oversight"]* ("UP/SP Houston Gulf Coast Oversight"), Decision No. 1 (served March 31, 1998), at 4; *UP/SP Houston/Gulf Coast Oversight,* Decision No. 6 (served August 4, 1998), at 4.

railroad was involved in a recent consolidation. Use of the Board's conditioning power in this way would be arbitrary and would unnecessarily punish railroads for engaging in beneficial transactions.

Congress has authorized the Board to address service-related problems that may arise in the rail industry by issuing emergency service orders, but only under narrow circumstances. 49 U.S.C. § 11123(a). To exercise such authority, the Board must specifically find: 1) that there is "a shortage of equipment, congestion of traffic, unauthorized cessation of operations, or other failure of traffic movement"; 2) that the problem has created an "emergency situation"; and 3) that the situation is of such magnitude as to have "substantial adverse effects on shippers, or on the rail service in a region of the United States," or that a rail carrier under the Board's jurisdiction "cannot transport the traffic offered to it in a manner that properly serves the public." *Id.* Moreover, an emergency service order may only be issued for an initial period of 30 days, subject to a maximum extension of 270 days. *Id.* The provisions of § 11123 make clear Congress' intent that the Board should play only a limited role with respect to the resolution and avoidance of service problems among railroads (only in emergency situations and through temporary orders), and that the primary responsibility for avoiding and resolving service difficulties lies with private railroads. The Board should not use its power to impose conditions on rail consolidations to circumvent the procedural and substantive limitations of § 11123. To expand the Board's use of post-merger conditions to accomplish indirectly what is not authorized

under § 11123 would frustrate the intent of Congress, and would be an inappropriate use of the Board's oversight power.[2]

Where a reduction in rail competition in a particular market has been identified, it is also necessary to determine whether the loss of competition would be harmful to the public interest. Although a decrease in the number of competitors can adversely affect the public interest, it does not necessarily cause public harm. *See* 49 C.F.R. § 1180.1(c)(2)(i) ("While the reduction in the number of competitors serving a market is not in itself harmful, a lessening of competition resulting from the elimination of a competitor may be contrary to the public interest"). In many situations there is no public harm caused by a reduction in competitive options. For example, where a merger would reduce the number of rail competitors in a market from three to two, generally there would be no harm to the public interest because competition between two railroads is adequate to insure competitive price and service offerings. *See UP/SP Merger*, Decision No. 44 (served August 6, 1996), at 119-121 (rejecting arguments that 3-to-2 markets would be adversely affected by the UP/SP merger). The limited volume of traffic at the point in question may make dual carrier service inefficient and

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[2] The risk that the express limitations of § 11123 would be frustrated through an expansive use of the Board's power to impose conditions on prior mergers is apparent in this proceeding. Several of the parties have requested the Board to impose conditions on the UP/SP merger that would make permanent certain provisions of the Board's prior emergency service order, which has recently expired. *See* STB Service Order No. 1518 (Sub-No. 1), *Joint Petition for a Further Service Order* (served July 31, 1998). However, unless such requests can be independently justified as necessary to remedy competitive harms caused by the merger, they should not be granted. Rather, the statute expressly provides that the Board's emergency service orders must be temporary only.

undesirable. Non-rail carriers may also provide sufficient competition to avoid public harm. "The Board recognizes that rail carriers face not only intramodal competition, but also intermodal competition from motor and water carriers." 49 C.F.R. § 1180.1(c)(2)(i). The proponent of a condition bears the burden not only to demonstrate a loss in the number of rail competitors, but that the competitive loss will enable a carrier to unduly raise rates or lower the quality of service to the public detriment.

2. Is the Competitive Harm Caused By the Merger?

Where a competitive harm has been identified, the Board must ask whether it was caused by the merger. If the competitive harm is one that predates the merger or would have arisen regardless of the transaction, it should not be addressed by imposing conditions -- especially after the merger is consummated.

It has been the continuing policy of the Board and its predecessor, the ICC, that conditions should be imposed only to address adverse effects of the transaction itself, not to solve transportation problems that preexisted the transaction or that are unrelated to it. The Board reiterated this principle when it approved the UP/SP merger, stating: "We will not impose conditions 'to ameliorate longstanding problems which were not created by the merger,' nor will we impose conditions that 'are in no way related either directly or indirectly to the involved merger.'" *UP/SP Merger*, Decision No. 44 at 145, quoting *Burlington Northern, Inc. -- Control & Merger-- St. L.*, 360 I.C.C. 788, 952 (1980) ("*BN/Frisco Merger*"); *see also Union Pacific Corporation -- Control -- Missouri Pacific*, 366 I.C.C. 462, 563 (1982) ("*UP/MP Merger*"), *aff'd sub nom. Southern*

Pacific Transportation Co. v. Interstate Commerce Commission, 736 F.2d 708 (D.C. Cir. 1984) ("Neither in *BN-Frisco* nor in any subsequent rail merger proceeding have we taken the position that a condition should be imposed solely because it would provide public benefits outweighing its detriments regardless of whether it is needed to redress a problem arising from the merger.").[3]

There are sound reasons for this policy and why the Board should adhere to it. First, use of the Board's power to impose conditions on mergers as a means of restructuring the rail industry would be inconsistent with the statutory scheme whereby Congress has intentionally reserved restructuring decisions to the private sector. The historical background of Congress's decision to establish a system whereby rail consolidations and mergers are initiated by private railroads rather than by the government is well known, but bears repeating. In 1920, Congress amended the Interstate Commerce Act in an effort to promote the consolidation of railroads throughout the nation to achieve numerous public benefits. In so doing, Congress authorized and commanded the ICC to affirmatively develop a nationwide plan "for the consolidation of the railway properties of the continental United States into a limited number of systems." Transportation Act of 1920, Pub. L. No. 66-152, 41 Stat. 456, 481

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[3] Even in the Board's recent *Conrail* decision, which in some respects stretched the policy of addressing only merger-related effects, the Board recognized this fundamental limitation on the conditioning power, stating: "A condition must address an effect of the transaction, and will generally not be imposed to ameliorate longstanding problems which were not created by the merger." *Conrail*, Decision No. 89 at 78. Nowhere in the *Conrail* decision does the Board suggest that it is appropriate to impose conditions solely to remedy problems not created by the transaction, much less to do so after the transaction is completed.

(1920). This command-and-control system of rail restructuring was a failure. Not only was the ICC unable to develop a workable plan after many years, but numerous privately initiated transactions were prohibited or deterred. After 20 years Congress realized the inefficacy of this policy and again amended the Interstate Commerce Act. In 1940, Congress removed the Commission's authority to compel rail consolidations, and "the power to initiate mergers and consolidations was left completely in the hands of the carriers." *St. Joe Paper Co. v. Atlantic Coast Line R. Co.*, 347 U.S. 298, 319 (1954). Transportation Act of 1940, Pub. L. No. 76-785, 54 Stat. 898, 905 (1940).

The ICC has recognized in prior merger decisions that to use its power to place conditions on mergers to resolve problems unrelated to the merger would contravene the underlying policy of the Interstate Commerce Act:

> [W]e should not use our conditioning powers to make consolidation proceedings vehicles for rail system restructuring. To do so would not be consistent with the Congressional intent underlying the statutory scheme governing railroad consolidations. . . . Under this statutory scheme, our role in merger proceedings is to evaluate carrier-originated proposals to determine whether they are consistent with the public interest. To the extent governmental assistance is beneficial in formulating rail restructuring plans, DOT has statutory authority to provide such assistance.

UP/MP Merger, 366 I.C.C. at 564. Government-imposed conditions reaching beyond transaction-related harms would risk the same problems of the pre-1940 regime, and would be inconsistent with Congress's deliberate rejection of command-and-control restructuring of railroads.

Second, to take advantage of the fact that private railroads have negotiated a transaction requiring Board approval to compel the resolution of preexisting or

unrelated transportation problems would be unfair to the railroads involved, and would deter railroads from engaging in such actions in the future. "[T]he imposition of conditions on a transaction creates a disincentive for the parties to consummate the transaction. Therefore, imposition of conditions not related to possible adverse impacts of a consolidation might cause carriers to forego a consolidation that would, without conditions, yield net public benefits." *UP/MP Merger*, 366 I.C.C. at 564.[4] If Congress had intended to authorize the Board to have a role in affirmatively restructuring the rail industry, it would not have done so in a manner that would discourage beneficial transactions, as a practice of imposing merger conditions for this purpose would do.

Finally, to expand the range of conditions that may be imposed in rail merger proceedings beyond those addressing problems related to the transaction itself would significantly add to the complexity of those proceedings, and open the door to all manner of requests. "This would increase the time required to decide these cases, contrary to Congressional intent that railroad consolidation proceedings be handled expeditiously." *UP/MP Merger*, 366 I.C.C. at 565. Such a policy (if applicable following consummation of a transaction) would also undermine the finality of rail consolidations,

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[4] *See also Chicago, Milwaukee , St. Paul and Pacific R.R. Co. -- Reorganization -- Acquisition by Grand Trunk Corp.*, 2 I.C.C.2d. 427, 455 (1985) ("[I]f the Commission were to follow a policy of granting trackage rights that do not address specific, merger-related competitive harms, but simply enhance competition in the short run, we would not only unduly burden the merger at hand but would also create an unreasonable chilling effect on potential future rail combinations to the detriment of shippers, carriers, and the general public").

allowing parties to file requests long after a transaction is consummated on the sole basis that a proposed condition might create additional public benefits.[5]

For all of these reasons, the Board must adhere to its policy of ensuring that any condition imposed on a transaction would address a competitive harm caused by the transaction itself.[6]

3. Will the Requested Condition Solve the Problem?

This fundamental criterion requires the least explanation. Even where it is found that a merger has produced harmful anticompetitive consequences, additional conditions may not be imposed unless the conditions would resolve the problem, or at least minimize the harmful effects of the transaction. To impose additional conditions under other circumstances would be an abuse of the Board's oversight power and undermine the stability of the rail industry. In determining whether a condition would

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[5] An analogy used by the Board in a recent rate case in which it refused to reopen previous stand-alone cost calculations (which were admittedly based on incorrect data) is appropriate: "Like the classical figure Penelope, we would be faced with constantly restarting our task anew, never able to bring to a conclusion a rate case." STB Decision No. 41185, *Arizona Public Service Co. v. The Atchison, Topeka and Santa Fe Railway Co.* (served April 17, 1998), at 5. So too with rail consolidations. Because of the need for finality, expansive requests for remedial conditions unrelated to a transaction's effects should not be considered during the oversight process.

[6] Aside from these policy constraints, the Board should recognize the ultimate administrative law and due process limits on its legal right to impose, contrary to its longstanding practice and policies, conditions unrelated to a transaction, especially when what amounts to a license has already been approved under statute. *See Wilkett v. I.C.C.*, 710 F.2d 861 (D.C. Cir. 1983) (unexplained departure from previously applied standards in licensing proceeding is arbitrary and capricious); *Reuters Ltd. v. F.C.C.*, 781 F.3d 946 (D.C. Cir. 1985) (rescinding license contrary to agency policies even to achieve laudable aims is improper).

resolve the competitive problem created by the merger, the Board must assure that it is "operationally feasible, and [will] produce net public benefits." *Conrail*, Decision No. 89 at 78. Conditions that would simply transfer competitive advantages or revenue from one railroad to another would not further the public interest and must be rejected.

4. Will the Requested Condition Avoid Significantly Reducing the Merger's Benefits?

It is indisputable that "conditions generally tend to reduce the benefits of a consolidation." *Conrail*, Decision No. 89 at 78; *UP/SP Merger*, Decision No. 44 at 144. Moreover, the more onerous the condition, the more likely it is to significantly reduce the benefits of the transaction. The Board has established numerous criteria designed to prevent the erosion of transaction benefits by the imposition of conditions. For example: "the Board will not normally impose conditions on a consolidation to protect a carrier unless essential services are affected and the condition: (i) Is shown to be related to the impact of the consolidation; (ii) is designed to enable shippers to receive adequate service; (iii) would not pose unreasonable operating or other problems for the consolidated carrier; and (iv) would not frustrate the ability of the consolidated carrier to obtain the anticipated public benefits." 49 C.F.R. § 1180.1(d)(1).

In addition to the criteria that have been employed for this purpose, it is also necessary for the Board to ask separately with respect to each condition whether (based on all the circumstances) it would unduly erode the benefits of the transaction. When a transaction has already been implemented, and the Board is considering

whether to impose new conditions, this inquiry is even more important. To impose significant restructuring conditions, such as requiring a railroad to grant trackage rights to a competitor or to divest certain property, can be highly destabilizing to the consolidated railroad, to rail employees and to the railroad industry. Moreover, the potential for undermining the benefits of a transaction are greater where operations have already commenced under the post-merger system.

The Board must consider not only direct consequences that could potentially undermine the benefits of a merger (such as the costs of rerouting traffic, loss of merger efficiencies, harm to rail employees and a decreased ability in the consolidated railroad to invest in plant improvements), but also the indirect effects. One factor that is of particular relevance with respect to post-transaction conditions is investor confidence. If the Board were to embrace a policy of imposing conditions on railroad consolidations after operations had begun, except in the most unusual circumstances, investor confidence in the railroad industry could be seriously weakened.

The ICC recognized the risk of upsetting investor expectations by imposing conditions on a merger after the fact in *Norfolk & Western Ry. Co. and New York, Chicago & St. Louis R.R. Co. -- Merger*, 363 I.C.C. 270 (1980). In that case, the New York State Commissioner of Transportation filed a petition to reopen the merger between The Norfolk & Western Railway Company and The New York, Chicago and St. Louis Railroad Company (Nickel Plate), and to require Norfolk & Western to merge directly with the financially weak Delaware and Hudson. Norfolk & Western presented evidence that such a decision would create "uncertainty as to the finality of Commission

decisions" and "undermine investor confidence in the rail industry," resulting in a higher cost of capital. *Id.* at 275. The Commission accepted this argument and declined to further condition the Nickel Plate merger, stating: "We have weighed the evidence concerning the impact of our decision on the ability of railroads to compete in capital markets and find that forced mergers here could hamper the industry's ability to finance plant improvements." *Id.* at 282. These same concerns must also be weighed in other proceedings where post-merger conditions are at issue. Only conditions that would not significantly undermine the benefits of the merger or erode investor confidence should be imposed.

5. Is the Condition the Least Intrusive Solution?

It is well accepted that a condition "must be narrowly tailored" to remedy the adverse effects of a transaction. *UP/SP Merger*, Decision No. 44 at 145. As a corollary to this principle, the Board has stated: "We will not ordinarily impose a condition that would put its proponent in a better position than it occupied before the consolidation." *Id.* If, for example, prior to a merger the only competitive alternative to a direct single-line route is a joint line whereby traffic is interchanged between two competing carriers, and the merger eliminates one of the joint line competitors, a remedial condition should attempt only to restore the joint-line competition that previously existed and not to create a second single line. Moreover, where the competitive problem is caused by temporary circumstances (such as rail congestion

over competing lines), only a condition imposing temporary measures would be justified.

The purpose of this requirement is self-evident. Unless the Board carefully ensured that any conditions imposed are narrowly tailored to the harm at issue, other limitations on the Board's exercise of its conditioning power would have little significance. Moreover, because of the potential destabilizing consequences of reopening a prior transaction and imposing additional conditions, it is imperative that the Board strictly adhere to this policy during its oversight of rail mergers.

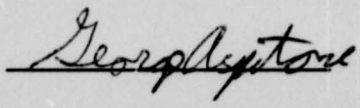
Conclusion

The Board's authority under 49 U.S.C. §11324(c) to impose conditions on privately-initiated rail transactions is significant, and should be exercised only when certain criteria are established. The criteria set forth in these comments have previously been established by the Board and ICC, are well-grounded in law and policy, and should be reaffirmed in this proceeding. Moreover, the Board should recognize that to impose conditions after a transaction is consummated is an extraordinary measure, one that has potentially far-reaching consequences. Some conditions that might be justified at the outset of a merger would not be appropriate to impose afterwards, because of concerns for the finality of Board decisions and for protecting the reasonable reliance interests of parties to a transaction.

In considering the various requests for additional remedial conditions in this proceeding, the Board should consider the criteria set forth in these comments. More

specifically, the Board should not impose any condition unless it specifically finds: (1) that there is a competitive public harm; (2) that the harm was caused by the UP/SP merger; (3) that the condition will solve the problem; (4) that the condition will not significantly reduce the merger's benefits; and (5) that the condition is the least intrusive solution possible.

Respectfully submitted,



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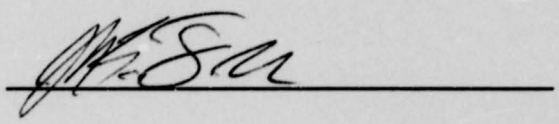
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Norfolk Southern Corporation and Norfolk Southern Railway Company on Requests for Remedial Conditions has been served this 18th day of September, 1998, by first class mail, postage prepaid, upon All Parties of Record.



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Re: *Houston/Gulf Coast Oversight*
Finance Docket No. 32760 (Sub-No, 26)

Dear Mr. Williams:

Please find enclosed the original and 25 copies of the Verified Statement of James Brunkenhoefer to be treated as United Transportation Union's Comments for filing in the above-captioned matter. In accordance with prior Board orders, we have also enclosed a diskette in Word Perfect format.

Thank you for your cooperation.

Sincerely,

Daniel R. Elliott, III
Assistant General Counsel

cc: C. J. Miller, III, General Counsel

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 32760 (Sub-No. 26)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND MISSOURI PACIFIC RAIL CORPORATION – CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORPORATION., AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

VERIFIED STATEMENT OF
JAMES BRUNKENHOEFER
UNITED TRANSPORTATION UNION

I am James Brunkenhoefer, the National Legislative Director for the United Transportation Union ("UTU").

The UTU recognizes that Union Pacific's ("UP") service crisis over the past year has been a significant problem for shippers throughout the country. But we are confident that this crisis had nothing to do with any absence of competition, or with any reduction in competition caused by the UP-SP merger. This was a failure of service, not competition.

The UTU lived through the service meltdown on SP in the late 1970's and early 1980's. Like that earlier collapse on the SP, this most recent service crisis was fundamentally the result of the inherent weaknesses of SP's operations. External stresses pushed the SP operations in Texas and elsewhere into a service crisis. This would have happened whether or not UP merged with SP. The merger is what has brought Texas back from the crisis, and is not the cause of the problem.

This is in accord with prior STB decisions which held that the primary reason for the service crisis was the overall inadequacy of the infrastructure in the region and that proposals to transfer line

ownership and to broadly permit other rail carriers access to the merged UP/SP network would likely exacerbate the crisis. In other words, the STB found that the problem was not a reduction in competition, related to any gained market power by UP/SP through the merger, but was a problem with the underlying framework of the entire rail system in this area.

The UTU is strongly opposed to the proposals to add new conditions on UP's operations around Houston and in the Gulf Coast area. The conditions are not a solution to the service issues we have seen in Texas and elsewhere. And they would badly hurt UP. Weakening UP with further losses of traffic and revenue is a bad idea and poor public policy. Rail service and competition in the West requires that UP be strong and fully able to compete against BNSF. These proposals would drain resources from UP and make it a weaker competitor. This is the wrong way to go. After suffering heavy losses over the past year, UP's ability to make necessary investments in its infrastructure throughout its system would clearly be threatened by conditions that further undermine its financial base and competitive position.

The UTU supported the UP-SP merger because we recognized that a strong UP is vital to effective rail service throughout the West. We continue to believe that allowing UP to implement the merger without further conditions is the right solution.

UP has been working hard to hire more employees, to address safety concerns, and to upgrade the quality of its infrastructure. It is making huge investments in people and capital. It should be allowed to move forward. Hobbling UP with more conditions would be a mistake and would hurt the UTU.

For these reasons, UTU opposes the proposed conditions and urges that the Board reject them.

I declare under penalty of perjury that the foregoing is true and correct and that I am

authorized to file this verified statement.

Dated September 18, 1998

James Brunkenhoefer

James Brunkenhoefer

. . . .

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Verified Statement of James Brunkenhoefer has been served this 16 day of September, 1998 via first class, postage pre-paid mail upon the following:

All parties of record.

Daniel R. Elliott, III

191187

CSX TRANSPORTATION

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Douglas R. Maxwell*
General Counsel

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The Honorable Vernon A. Williams
Office of the Secretary, Case Control Unit
ATTN: STB Finance Docket No. 32760 (Sub-No.26)
Surface Transportation Board
1925 K Street, N.W.
Washington, D. C. 20423-0001

Re: STB Finance Docket No. 32760 (Sub-No. 26)
UNION PACIFIC CORPORATION [HOUSTON/GULF OVERSIGHT]

Dear Mr. Williams:

Enclosed for filing in the above proceeding please find an original and twenty-five copies of the Comments of CSX Corporation on Requests for Remedial Conditions.

A 3.5 inch diskette is also enclosed.

Very truly yours,

Douglas R. Maxwell

PRH/sgh
Enclosure

cc: All Parties of Record
on the Service List served
September 10, 1998

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s:\staff\sgh\williams 32760 drm

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12/1/87



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 26)

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UNION PACIFIC CORPORATION, ET AL.
--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, ET AL.
[HOUSTON/GULF COAST OVERSIGHT]

COMMENTS OF CSX CORPORATION ON REQUESTS FOR REMEDIAL CONDITIONS

INTRODUCTION

CSX Corporation and its wholly-owned subsidiary CSX Transportation, Inc. (hereinafter collectively referred to as "CSX") hereby submit these comments on the requests for remedial conditions filed by various parties to the above-referenced merger oversight proceedings on July 8, 1998. CSX seeks no conditions and asks for no concessions.

With the ending of the transportation crisis in the Houston/Gulf Coast area and the lifting by the Board of its emergency service order, CSX believes the issues in this proceeding have become much clearer. The purpose of these comments is to urge the Board, as it considers the various conditions requests before it, to adhere to its long-established, well-supported and still sound principles for determining whether to impose conditions on its approval of a consolidation

transaction that it has found otherwise to be in the public interest. Stated simply, those principles are: (1) A condition will be imposed only when there is convincing evidence that the merger will result in a loss of competition or a loss of essential rail services. (2) A condition must be directed at the amelioration of an identified loss of competition of the subject transaction and not at rectifying a preexisting problem or condition. (3) A condition must be narrowly tailored so that it ameliorates the adverse effect of the merger while causing the least amount of erosion of the merger's benefits to the public and to the merging railroads.

In addition, the Board should be especially cautious in considering whether to take the extraordinary step of imposing conditions on a transaction *after* it has been consummated. As has been recognized in prior rail proceedings, the potential for harm to investor confidence and to future beneficial transactions is extremely high when previously consummated transactions are reopened, especially where additional structural conditions are at issue.

I. The Scope of This Proceeding is Limited.

As the Board's orders have made clear, the purpose of this oversight proceeding is narrow in scope. It is to address whether competitive harms have resulted from the UP/SP merger, and if so, whether to remedy these harms by imposing additional conditions. The purpose is not to address non-competitive problems that may have arisen in connection with the Houston/Gulf Coast service crisis, or even the UP/SP merger generally. *See* STB Finance Docket No. 32760 (Sub-No. 26), Decision No. 1 (served March 31, 1998), at 4 ("The Board imposed a 5-year oversight condition to examine whether the conditions imposed on the merger effectively addressed the *competitive* concerns they were intended to remedy.") (italics added).

Nor is the purpose of this proceeding to remedy competitive problems that preexisted the merger or were caused by unrelated events. As the Board reiterated in its decision approving the UP/SP merger: "We will not impose conditions 'to ameliorate long-standing problems which were not created by the merger,' nor will we impose conditions that 'are in no way related either directly or indirectly to the involved merger.'" STB Finance Docket No. 32760, *Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp.*, Decision No. 44 (served August 12, 1996), at 145, quoting *Burlington Northern, Inc.--Control & Merger--St. L.*, 360 I.C.C. 788, 952 (1980).

The Board's jurisdiction is limited by the express terms of the oversight condition imposed on the UP/SP merger (and which was accepted by the parties to that transaction). That condition states as follows:

> We impose as a condition to approval of this merger oversight for 5 years to examine whether the conditions we have imposed have effectively addressed the *competitive* issues they were intended to remedy. We retain jurisdiction to impose additional remedial conditions if, and to the extent, we determine that the conditions already imposed have not effectively addressed the *competitive harms caused by the merger*.

Decision No. 44 (served August 12, 1996), at 146 (italics added).

Indeed, given the fact that UP and SP consummated their merger in reliance on the Board's explicit statements concerning the scope of its oversight jurisdiction, serious constitutional due process issues might well be raised if the Board now were to impose additional remedial conditions not designed specifically to address adverse competitive effects of the UP/SP

merger. Nevertheless, it appears that some parties would have the Board use this proceeding as a vehicle to address more generally the numerous rail service problems that have occurred in the Houston/Gulf Coast area. This is not an appropriate use of the Board's oversight power and is contrary to the Board's stated intentions concerning the scope of this proceeding. Moreover, since the requests for additional conditions in this proceeding were filed, the Board has explicitly found that a transportation emergency no longer exists in the Houston area, finding that "the Houston area is fluid" and that transit times for major routes are "near or better than pre-emergency levels." STB Service Order No. 1518 (Sub-No. 1), *Joint Petition for a Further Service Order* (served July 31, 1998). Given this finding, conditions designed to remedy a loss of essential services caused by the recent service crisis (rather than a competitive problem) could no longer be justified, even if the Board's oversight jurisdiction were more expansive.

II. The Board Should Exercise Caution So As Not to Undermine the Long Term Public Benefits of the UP/SP Merger.

Even if it can be demonstrated that a proposed condition would remedy a loss of competition that otherwise would result from the merger, the condition must be rejected unless it also is established that the condition would be in the public interest. *See* Decision No. 44 (served August 6, 1996), at 144-145. In considering whether to impose a condition the Board must weigh not only the immediate benefits and costs of the condition, but also its potential long-term effects -- including how a condition would impact the ability of railroads to earn adequate revenues, their incentive to engage in future beneficial transactions, and how the condition would affect investor confidence.

The Board has frequently recognized that "conditions generally tend to reduce the benefits of a consolidation," *id.* at 144, and for this reason it has generally been cautious in imposing conditions. Thus, the Board has held that a condition must be "narrowly tailored" to remedy the harm at issue, and that overbroad conditions will not be imposed. *Id.* at 145. Some of the conditions proposed in this proceeding (for example the request to establish neutral switching in the Houston area) do not appear to be narrowly tailored, but apparently would introduce direct rail-to-rail competition in many areas where it did not exist prior to the merger.

The Board has also held that conditions which would "broadly restructure the competitive balance among railroads" are disfavored, and will generally not be imposed because of their unpredictable effects. *Id.* at 144. The conditioning power should not be used to rewrite the transportation landscape in the Houston/Gulf Coast area or elsewhere, for to do so would do far more damage than good. Significant restructuring conditions can not only cause immediate service-related harms, but also threaten to undermine stability and investor confidence in the rail industry as a whole.

Although these cautionary principles are critical in any proceeding, they carry even more importance where the issue is whether to impose additional conditions on a transaction that has already been consummated. After a major rail merger has been implemented, traffic has been rerouted, management and labor forces have been restructured and combined, dispatching and other operational systems have been integrated, additional shipper contracts have been negotiated, debt has been incurred, and securities have been issued. Thus the risk that additional structural conditions imposed on a merger would upset the settled expectations of numerous parties is significantly higher. Additional conditions are also more likely to upset existing operations after a

merger is consummated. For these reasons, the threshold for imposing post-transaction structural conditions must be even higher than for imposing such conditions at the outset of a merger.

The ICC recognized the danger in imposing post-merger structural conditions in *Norfolk and Western Ry. Co. and New York, Chicago & St. Louis R.R. Co. -- Merger*, 363 I.C.C. 270 (1980), where it declined to impose an additional condition on the Nickel Plate/Wabash Merger after that transaction had been consummated. The Commission's decision rested in part on its desire to avoid damaging "the ability of railroads to compete in the capital markets" or the rail industries' "ability to finance plant improvements," recognizing the railroad's argument that to disturb settled expectations would undermine investor confidence. *Id.* at 282. Moreover, to require the divestiture of property or granting of trackage rights after a transaction has been implemented is an extraordinary intrusion on the property rights of affected parties, even if compensation is granted.

To impose additional conditions could also undermine the benefits of the merger by weakening the financial position of UP and its corresponding ability to fund needed capital improvements on the declining SP system. As the Board found, one of the primary benefits of the UP/SP merger was that it would enable the financially weak SP to become part of a large, healthy rail system that could sustain efficient operations and maintain viable plant investment, noting UP's intention to spend $1.3 billion dollars over several years to upgrade SP facilities. Decision No. 44 (served August 6, 1996), at 114. To impose significant structural conditions that would shift traffic from UP to its competitors and depress its rates would reduce UP's ability to make needed investments. It could also frustrate UP's differential price structure, which the Board and the ICC have long recognized is vital to the ability of railroads to maintain adequate revenues and

recoup their substantial investment costs. To introduce rail competition over routes where UP or SP formerly were able to charge differential rates to recover their prior capital investments would cause a decrease in revenues by forcing UP to accept rates at or near variable costs. If it could not make up those losses by charging higher rates elsewhere in its system, UP's ability to maintain adequate levels of capital investment (both to maintain and upgrade existing facilities and to build new ones where needed) would clearly be compromised.

III. It Is Highly Implausible that a Causal Relationship Exists Between Any Increased Market Power Acquired by Union Pacific From the Merger and the Recent Service Crisis.

The Board has specifically invited the parties in this proceeding to address "whether there is any relationship between the market power gained by UP/SP through the merger and the failure of service that has occurred here, and if so, whether the situation should be addressed through additional remedial conditions." Decision No. 1 (served March 31, 1998) at 8. While inviting parties to address this subject, the Board itself expressed considerable doubt that there is such a relationship, stating that "no party as yet has seriously suggested that SP's inadequate infrastructure would not have produced severe service problems in the Houston/Gulf Coast area even if there had been no merger." *Id.* at 7. Nevertheless, because of the unprecedented and serious nature of the recent service emergency, the Board concluded that the issue should be open to consideration. *Id.*

No parties have presented credible evidence that the service crisis in the Houston/Gulf Coast area was caused by a decrease in rail competition resulting from the UP/SP merger, and it is

implausible that this would be so. Indeed, few commenting parties have even attempted to argue that merger-created competitive conditions were a cause of the service crisis.

At root, the recently ended service crisis in the Houston/Gulf Coast area is much more understandable as a failure of infrastructure, not a failure of competition. As James Brunkenhoefer, National Legislative Director for the United Transportation Union, observed metaphorically in a recent oral hearing before the Board, the problem of congested highways is not solved by adding more cars to already choked roads. Rather, what is needed is more infrastructure. By a parity of reasoning, what is needed in the Houston/Gulf Coast area is more rail infrastructure. However, CSX questions whether UP (or any other railroad) would have much appetite for making major capital expenditures to its rail system if the benefits of such expenditures would have to be shared with competitors under a Board-mandated fundamental restructuring.

Some parties contend that the service crisis has caused an increase in UP market power, and that for this reason the Board should impose additional conditions which would relieve the effects of the service emergency and restore competition. These parties argue that service failures have prevented UP's competitors from effectively exercising trackage rights granted by the merger, and therefore from providing competition intended by the Board. Implicit in this argument is the assumption that the service crisis would not have occurred but for the merger, which itself is questionable.[1] But even assuming that the service failures were caused by the

[1] Moreover, the Board's recent finding in STB Service Order No. 1518 (Sub-No. 1), *Joint Petition for a Further Service Order* (served July 31, 1998), that the transportation emergency has ended in the Houston/Gulf Coast area renders this line of argument moot. Because the service crisis is over, whatever its effect on preventing UP competitors from exercising competitive trackage rights is no longer at issue.

merger rather than a preexisting lack of infrastructure, it cannot credibly be argued that UP's market power has been increased as a consequence of the service emergency.

To establish that UP has gained market power it is not sufficient to show simply that service failures have hindered BNSF's or Tex-Mex's ability to use trackage rights in competition with UP; rather it must be shown that the crisis has hindered UP's competitors *more than it has hindered UP* with respect to the traffic in question. If, as might be expected, the evidence shows that UP has suffered service troubles as severe or worse than those facing its competitors, there would be no principled basis to justify imposition of additional conditions designed to rectify a competitive "problem" that had not been shown to exist.

Because there is no causal connection between the recent service failures in the Houston/Gulf Coast area and the supposed anticompetitive effects of the merger, additional conditions cannot be justified on this basis.

CONCLUSION

CSX respectfully requests the Board to consider these comments, and to adhere to the principles set forth herein in determining whether to grant the various requests for additional conditions that have been filed in this proceeding. Unless a proposed condition meets the strict standards previously established for conditioning a transaction, and the condition is found to be in the long-term public interest, it should not be imposed.

Respectfully Submitted,

CSX CORPORATION
Mark G. Aron
Peter J. Shudtz

CSX TRANSPORTATION, INC.
P. Michael Giftos
Douglas R. Maxwell

By: Douglas R. Maxwell
Douglas R. Maxwell
General Counsel
CSX Transportation, Inc.
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Speed Code J-150
Jacksonville, Florida 32202
(904) 359-3673

September 17, 1998

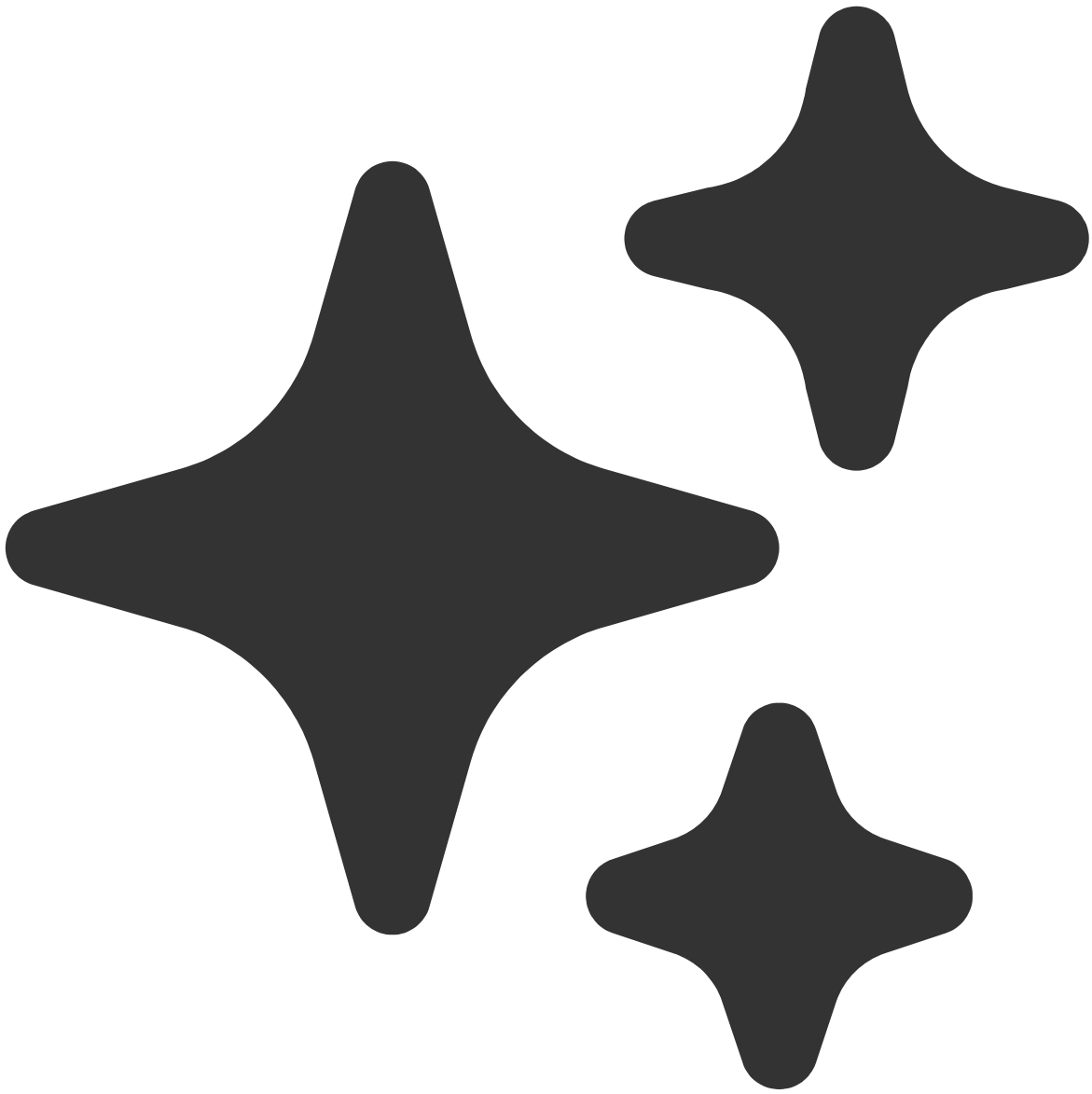
CERTIFICATE OF SERVICE

I, Douglas R. Maxwell, certify that on September 17, 1998, I have caused to be served a true and correct copy of the foregoing "Comments of CSX Corporation on Requests for Remedial Conditions" to all parties of record on the Service List in Finance Docket No. 32760 (Sub-No. 26), by first class mail, postage prepaid.

Douglas R. Maxwell

Exhibit 23

Union Pacific Corporation (UNP)



Summary

The session detailed the UP-Norfolk Southern merger's progress, emphasizing regulatory milestones, expected synergies, and broad benefits for shippers and consumers. Leadership addressed industry concerns, highlighted operational improvements, and expressed strong confidence in the merger's public interest and competitive advantages.
David Vernon
Analyst, Bernstein

All right. Good afternoon, everyone, and thank you for joining us. My name is David Vernon. I am the Bernstein analyst covering transports, railroads, airlines, all things freight and passenger related. We are thrilled to be hosting Union Pacific today for a bit of a fireside chat, a little catch up on the state of the railroad, and there is also talk about the next steps in the UP Norfolk Southern merger. CEO Jim Vena, CFO Jennifer Hamann are here joining us. They are going to kick us off with some prepared remarks. To the extent that you want to have some questions, work them into the chat.

You can do that either through the Pigeonhole link that you should have had emailed to you when you registered, or you can try to hit me on Bloomberg and I will try to keep track of where we are so that we can get as much client input into the conversation as we can. With that, thank you both for joining us. I am going to hand it over to you, and you can kick us off with some prepared remarks.
Jim Vena
CEO, Union Pacific

Well, David, thank you very much and great day here. I look outside and the weather is just perfect for September 1st, for railroading anyways. That is the way I look at it. I do not really look at it on whether it is beach weather or holiday weather. How good is it for railroading? I like it. Just about perfect through the whole network. We are looking at a big storm coming up in the Gulf that might affect us a little bit, but overall, we are ready to go. Railroads are all good. Of course, I have Jennifer Hamann here with me, Chief Financial Officer. Listen, I am going to go through slides real quick and then open up for questions. Jennifer is going to have a few comments right after me. Of course, a big, long list of boilerplate.

Got longer after the merger than it was before. We will be making some forward-looking statements. If you have any questions, please refer to the UP website and SEC filings for additional information. If we look at the first slide we have up, let's recap the past month or so since we talked at our earnings. In late July, we announced our agreements with Canadian National and provided the supplemental information the STB requested. A few weeks ago, on August 18, the STB published a procedural schedule. Certainly, we wanted the process to move faster, but we will take the win. They published the schedule, confirmed that the 12-month statutory clock started when they accepted our application on May 28, 2026. Last week, we filed our comments that our merger easily meets the prima facie standard.

We are confident our merger satisfies the STB's requirements and is overwhelmingly in the public interest. It removes 2.1 million annual truckloads off the road, reducing highway congestion and improving driver safety, delivers $3.5 billion in annual shipper savings, and improves rail safety because of the touch points that it removes. Our merger enhances rail competition by adding seamless coast-to-coast rail service, which is faster and more reliable. It provides for new intermodal and manifest service products, providing more options for our customers. Single-line shipments have generally lower prices than interline shipments. I do not have to explain it too much. Anybody who knows a little bit about business and a couple of companies with a margin, there is a big difference in one company with margin. Beyond that, we have offered additional enhancements. We have expanded the Committed Gateway Pricing and included both unit trains.

We added protection to preserve Class I rail options for three-to-two and two-to-one shippers . New service level protections in case unexpected issues arise. Stronger oversight and accountability for customers with additional access to a new rate relief process. We improved connectivity options with Canadian National, Canada to and from Mexico, and UP's access to the road around Chicago and the EJ&E. What is next? Let's move to slide four in the timeline. We are in the merits review, which is a great place to be as the conversation will be focused on data and facts, not what people think. I have never liked what people think. I like people to give me the facts, and then we will make the best decision from facts and figures.

Those who want to participate in the process must submit their notice to participate by the end of the week, and competing railroads and stakeholders will need to submit their comments. I think there is some change a little bit from the September 9 that the STB put out, but we are okay. It gives them some time to do that. If they have asked, they need to be back up with support by November 18. So some detail about what they are looking at and what the issue is. Our opponents are also still talking about what ifs of subsequent mergers. We expect the STB will evaluate our merger on its merits, and we will do the same for another application. At this point in time, there is no other merger. There is only one merger of Class Is, and we are in the middle of it.

When and if that happens, because at this point, everyone has said, the participating parties, that they are not interested in a merger. But if they became interested in a merger and we've done a good job in our application to talk about that and take people through, then the STB needs to look at the new place and time and what's happening at that point, not try to protect it at this point where they have complete control over any process that happens for any subsequent merger. With that, I'll pass it over to Jennifer.
Jennifer Hamann
EVP and CFO, Union Pacific

Yeah, just a couple things. A couple kind of, I'll say, housekeeping-ish items. So when we made our filing in late July, we did have a few tweaks to some of the things. But even with all the puts and takes as we have continued to run through the numbers a number of times, we keep coming back to basically the same place. So we're very confident in our net revenue synergy target of $1.8 billion annually and our cost synergy target of $1 billion annually. Then with that, we fully expect that we should be back in the mode of buying back shares in year two. And remember, we are counting it from the day of the close of the merger. So within two years of the merger close, we'll be back buying shares, our leverage targets will be back.

We're going to stay solidly, strongly investment grade rated. We expect to generate cash roughly $11.8, so just shy of $12 billion by year three. And when you think about deal closing, that's really looking at some time in Q3, maybe as late as Q4 of 2027 based on the schedule that you see here on the slide and what the STB has put out. We feel like having the timeline is great for all parties involved. It's able to allow us to firm up our integration planning. And as Jim mentioned, we're very anxious to get into the merits phase of this discussion because we strongly believe in the benefits of the merger. The financials are very compelling, and we're in the process of putting together a very robust integration plan. So all of those things are coming together.

Certainly, we've met all the deadlines that the STB has given us to this point. I know they did just, I think last night or today to what you were referring to, Jim, they did push back the date of people to say that they were intending to participate, which shows on there as September 4th. They did just move that back to September 30th, but no other deadlines changed. In particular, the September 9th date is still intact in terms of when participants need to make their requests of what they're going to be looking for through the merger. So we're just anxious to get going. Been into this a year, and we're ready to go. With that, David, we're ready for your questions.

David Vernon
Analyst, Bernstein

Well, thank you very much for the introduction. So, want to start maybe on process. What do you take away from the fact that this whole upfront process of getting the application approved has taken longer? I know you're back on the timeline that you would have expected, but it did take a little bit longer. There was some back and forth. What do you take away from that, and maybe what should investors take away from that? I get asked a lot, it's taken so long just to get here. Does that tell you anything of the process, or is there a message in there that we should be reading?

Jim Vena
CEO, Union Pacific

I don't think there's a message. I think it's the way the STB does things, and if you take a look at the STB, and the chair knows that the STB sometimes has taken a long time to make certain decisions on certain things. We have some things outstanding even today on other topics that we've been waiting for a long time. The nice part about this process is once the application gets accepted, which it was, there's a black and white statute that says that the STB needs to be finished with the gathering of information within one year. That's not something that can be easily changed when the statute tells you exactly what it is. So what did we learn?

We learned that we were probably right when we started this, and we did say to the STB, we said, "Listen, let's make this a two-way discussion about what you need for information." And we asked them specifically. And I'm not trying to piss off the STB or anything else, and they had their reasons for it, and maybe it's because of other parties. But at the end of it, we said, "If you need information, you ask us, and we'll give it to you." There's no big secrets other than sometimes some of the information was having to do with how we move markets and how we operate the railroad and why we are Union Pacific. But at the end of the day, what we learned was we probably should have pushed them harder to say, "Listen, open up.

Tell us what you want, and we'll give it to you." We went to the board. We went David, on the TRRA, a small railroad that is run as a nonprofit company by all of us with single votes in there. And it will give you an idea. The opposition has done everything they can to slow it down. When we called a meeting, we didn't. The TRRA management called a board meeting to handle the issue of getting over 50% for the combined merger railroad. None of them showed up. So we had the quorum to be able to vote, but that's not the way we do business, so we went through it, and we had to answer it twice for the STB. But I think we've done a good job now, and they've accepted the merger. They've told us that they have the information they need.

They'll go through the merits stage, and we'll deal with it moving forward. So that's what I learned was sometimes it takes a while. And we knew it was going to take a while. We never thought that the STB would move quick for us. But now they're on a time clock.
David Vernon
Analyst, Bernstein

And the second one on process, and we'll switch to synergies. But as you think about the approach going forward, does anything look different from here? I think one of the criticisms that I've heard in industry circles is the filings were maybe bare minimum as opposed to being more expansive and making the affirmative case. Should we be expecting you to kind of change your approach to the process, the team's approach to the process, now that we're actually in the merits discussion?
Jim Vena
CEO, Union Pacific

Well, David, I disagree with it being thin. There's thousands of pages we put in. We use data from every Class I railroad, full data that no one else ever has, to drive to our conclusions about what's happening. So we have not been thin. Whoever's asking you that, you should tell them that maybe don't use AI to summarize. Go through the 8,000 pages and see what's in there.
David Vernon
Analyst, Bernstein

Okay. I'm just thinking about whether or not there's going to be any kind of change into your approach to the Q&A process, right? As far as kind of being more expansive in your responses or being more minimal in terms of scope and specific-
Jim Vena
CEO, Union Pacific

No. I think we've been as open as possible. Even this session today is as we were open to anybody asking us questions, and we give the answers that people want. If the STB needs some more information from us, or they want us to look at something different, we've told them right from the start we'll do that, and we'll go through that process. I'm very comfortable Jennifer?
Jennifer Hamann
EVP and CFO, Union Pacific

Yeah, no, I think we've been very thorough with our filings. I think to Jim's earlier point, had we had maybe some more direct feedback from the STB at the beginning of the process, we would've been more expansive to start. That wasn't how we read what was required. They came back and asked for more, and no problem, we provided it.
Jim Vena
CEO, Union Pacific

Fundamentally, David, I know maybe I'm answering another question here, but let's think about what we're doing. This is an end-to-end merger with a small piece that we knew we had to take care of, which we have with the Canadian National Railway access between St.

Louis and Kansas City. The rest of it is actually what we're delivering is better opportunity for customers in the U.S. to receive their product in a faster, more efficient, less touch point, and much more competitive. It drives all our competitors, starting with the biggest competitor we have, trucks, and other railroads, to compete and decide how they're going to compete against that product.

We see this as truly beneficial, and that's why you get so much noise sometimes from some of the parties that, I'm not sure what else they want when I go to sleep and when I get up. I told people that even. I go to sleep at midnight and I get up at 6:00 A.M .
David Vernon
Analyst, Bernstein

Well, there's certainly going to be some of the market that you're not going to be able to present enough for to get them behind it. But so maybe turning to that benefit number, that $1.8 billion of net revenue with a billion of cost. That's all based on a 2022 baseline, right? You basically ran the numbers
Jennifer Hamann
EVP and CFO, Union Pacific

Right
David Vernon
Analyst, Bernstein

2023 baseline. But we're obviously in a very different world now. Truck rates have corrected pretty significantly from where we were. The cost bases have changed. How do we think about, or how should we think about, the value of that benefit, the value of those synergy targets when you mark them to market for the changes that have happened in the end markets?
Jim Vena
CEO, Union Pacific

Go ahead.
Jennifer Hamann
EVP and CFO, Union Pacific

Certainly, David, we had to have a base year that we started from. To your point, 2023, when you look at it either on a volume standpoint or even on some of the pricing standpoints relative to truck pricing, there's been some uplift on both sides. So that would be to the positive relative to how the numbers could roll forward. But we also don't know what the economic climate's going to be once the merger gets approved to 2027. And forecasting out in the future is always a little bit of a fool's errand. But I think the bottom line is we feel very confident in the business that's available to us to win by putting together two strong railroads, provide that single line service, and really create new markets for our customers. And so that's what gave us the $1.8 billion of net revenue synergies.

On the cost side, no one is standing still. At Union Pacific, we have committed to having the best operating ratio of all the Class Is. We are in that position here still today. The only way we

are able to do that is we are growing our top line, we are doing it productively, and we are continuing to improve on the cost front. No one is standing still, and we will not stand still once we get the green light to put the two companies together. We will go attack the synergies and the operational efficiencies that we see ahead of us.
Jim Vena
CEO, Union Pacific

The other thing is, David, the amount of share that we have on the intermodal side, and even on the closer to the Mississippi, what we call that area on both sides of the Mississippi, that does not change. That happens when the merger is finalized. The longer length of haul that allows it. We see even more opportunity. If there is more pressure on fuel and places for trucks and availability of drivers and everything else, sure, we have all seen an improvement in products. You can see our car loads, and our car loads are running substantially higher than last year. I do not think that takes away any of the synergy. The benefits are being able to give somebody in Indiana access to the Western U.S. for that cross. We cannot do that as easily today. They have to touch the rail car multiple times.

We will not have to do that. We give sand movers, and there is a lot of them in the U.S., not just one place in Arizona that is on Burlington Northern Santa Fe. We can easily give them better products to move and compete. The other thing, David, is when you are faster and cleaner, a lot of the products we move are worldwide competitive, whether it is soybeans, whether it is sand, whether it is products that come out of the Gulf area, products that are produced in the Eastern U.S., lumber. There is competitiveness from other countries and other producers, and what we are going to be able to offer them is a much more efficient. It is nice that we are all in a different place today, and it is nice to see all the railroads with car loads up.

At the end of the day, that opportunity when the merger happens is still there to just build above what we have.
David Vernon
Analyst, Bernstein

Some of the discussion, particularly among some of the competitors, is that the transactions may be not as necessary to unlock some of these benefits. In your filings, you talk about double marginalization, capital investments that wouldn't occur without the merger. As an operator, as a guy who's been around the industry for a long time, as you think about aligning the interests between two railroads when they're negotiating a Rule 11 interchange versus a through rate versus a single line, why is that alignment of interest through ownership so essential to being able to kind of make the better decisions for customers? Can you talk also about how that differs a little bit between intermodal and car load? Because intermodal, it seems like that's easier to align through partnership in some ways than car load.
Jim Vena
CEO, Union Pacific

Yeah. Listen, I think it's a basic crux of what we do as railroaders. As railroaders today we make it work as good as we can, and we get into partnership understandings and deals. But those are necessary. We interchange a lot of traffic to other railroads, short lines, and those things,

especially with the short lines, are not going to change. We see more business for them coming on as we move ahead. But partnerships have a different view of the world at certain times, and I've seen it so many times in my career that I could list them off. But why don't I give you one that's very recent? For the longest time, Norfolk Southern was able to operate 11,000-ft trains on the Meridian Speedway.

I think everybody knows the investment Norfolk Southern made on there with Kansas City Southern back a number of years to be able to get that access. All of a sudden, there's a partnership. There's not one railroad looking at it with one team on what's good for the customer and good for everybody. Canadian Pacific Kansas City decided that they were going to limit the size of the trains going through that corridor. A railroad that was one railroad would never do that. You would not affect your customers in that manner. I could go through and give you a whole bunch more.

That's the difference. When you make decisions on capital, where you spend capital, what the investment it looks like, what your customer needs, and what the competition's like, you're better off having one team that leads the entire railroad versus multiple partners that have sometimes their own view. I could go on, David, if you want. I could fill the hour. Locomotive use. Son of a gun, we fight about locomotive use. We hand off locomotives to each other, and sometimes one railroad's a little tight for locomotives, and they keep your locomotives. In fact, today I could give you some specifics. I won't. We have a buffer, and people are using our locomotives, and we want them back. Okay? Because they're tight for locomotives. So those are the kind of things that just don't work in the real business world.

People get narrow and look at themselves and not what is possible. Jennifer, anything to add?
Jennifer Hamann
EVP and CFO, Union Pacific

No, but just to David's question about is there a difference between intermodal and carload, I really do not know that there is that much of a difference. You have those friction points that Jim just enumerated in either class of freight. The carload piece is the one that we tend to talk about more in terms of that watershed market and where you have that friction. When you have it over a shorter length of haul, that is maybe the one difference I would say on the carload side is it is actually magnified in terms of how big of a difference that can make for a customer to be able to choose whether they are going to ship their freight by rail or by truck.
Jim Vena
CEO, Union Pacific

People miss this intermodal. They think, "Oh, it is easy with intermodal." You drive an intermodal train to another railroad at one of the interchanges where we do that, they pick it up right away. No, that is not quite how it happens. The average time sometimes for our intermodal trains, both ways, just because of crewing, slotting, everything else because you do not control it. Sometimes it does not come exactly when you want it, so you have something else going on, work programs, everything else. That train can get impacted. It is substantially longer, the interchange time, versus when we change crews, okay, in Tucson. If that freaking crew is not on in less than 10 minutes and pulling again to leave, we are not happy. That is the difference. 10 minutes versus a few hours.

You start adding that up through the time, makes a difference on making the spot time at 7:00 A.M. the customers want. Even with intermodal, it is not as clean. Carload you know. We do not build blocks for CSX, we sure the heck do not build blocks for Burlington Northern Santa Fe because those agreements never last. We will be building blocks that go to destination at our hump yards and our handling, we will take out 24 to 36 to 48 hours on those touch points on the rail cars. I am excited to do that.
David Vernon
Analyst, Bernstein

All right. If we-
Jim Vena
CEO, Union Pacific

That's why I'm sticking around, David, because that's the best part. The rest of it is like the operating piece is the piece I'm looking forward to. Son of a gun.
David Vernon
Analyst, Bernstein

Yeah.
Jim Vena
CEO, Union Pacific

Hopefully people realize I've done a few things at Canadian National and UP that worked pretty good for us, so I can hardly wait.
David Vernon
Analyst, Bernstein

It's a much bigger train set. When you think about, let's say we accept the premise that we're going to take a bunch of handlings out. We're going to lower cost. The trains are going to run faster. The locomotives are going to be smoother. The crews are going to show up on time. That drives a lot of efficiency for you as the railroad. How does the savings from that efficiency in this transaction get to a customer? Some of it's going to be potentially directly through maybe you have a better, more efficient routing that you can price lower than the interchange routing. Some of it could be indirectly through faster cycle times.

Just reading through a lot of the customer responses and we will talk a little bit about that later, but there is some arguments around this is all well and good, but what does it mean divided by me? How do you think about the benefits of the transaction, creating those efficiencies, and then actually getting into the shippers where it matters, whether it is their car fleet or whether it is their rates or their service level? What is that?
Jim Vena
CEO, Union Pacific

We are going to tag team on this one here because both of us love this question. Let us start with the fundamental. If you are in business like we are, we are in business. That is what it is. What is the best thing you can do is grow your business and move more products. It makes your fixed costs less percentage of your total expenditures. It makes you fill up the network.

You are able to move products, and you are able to grow the business. That is the American way. That is what it is all about is we do not want to be stagnant. We want to grow. If you do that, when you build a network that is more efficient, guess what, David? We will use price.

We will adjust to what the market. We will open up new avenues for our customers that are shipping with us today to be able to open up new markets for them. Now, we are going to have to work with them. If you have some room because you can be much more efficient, we will do that. It is pretty hard to come out right now and say, "Listen, every movement is going to be 1% less cost. We will pass it directly on." Because it is the market that drives it sometimes. Sometimes we have had to take haircuts that are bigger than that to be able to move into the market. That is what the customers need to hear clearly is, on the railroad side, we are going to open markets for them. We are going to give them every opportunity to win.

We are going to get them to win against the competitors that want to bring imports into this country, even with the tariffs, steel and lumber, and everything else that happens that moves into this country that we can move. Then for the customer themselves, Jennifer, all their asset costs, everything else.
Jennifer Hamann
EVP and CFO, Union Pacific

Oh, yeah. Asset costs obviously are a significant piece for our customers. When you think about the freight cars, the infrastructure, just getting more turns per car lets them lower that cost base. When you think about the greater usage that they will be able to have across their network in terms of access to more customers, certainly that is a benefit to them. Lets them grow their top line at the same time that we are growing our top line. Certainly one of the numbers that is in the application that you have heard us talk about is the $3.5 billion in savings, and that is just a straight calculation, David, for the people that are moving from truckload today and moving onto the rail tomorrow. That is just that cost differential from truck to rail.

Quite frankly, that number is probably understated today when you think about where fuel prices are, where truck pricing has grown to. So those are immediate savings just from that change in mode of transportation from truck to rail.
Jim Vena
CEO, Union Pacific

David, these are not small customers that we have. This is not mom and pop everywhere. I think some of our biggest customers are huge, multinational, international companies that know how to negotiate. They do a really good job with us already. I am absolutely sure some of them will say, "You are saving. I want to get to this place that I cannot do today, and let us work together to get the new pricing structure that gets me access and you get more business." That is a win-win, and we will be doing that for sure.
Jennifer Hamann
EVP and CFO, Union Pacific

Really, that is the model that we have been following ever since we have become more efficient as a railroad, and that we have gone out and won new customers, brought them

onto the railroad. What has enabled us to win in those marketplaces is what Jim just described at the start. We have become more productive. We are able to go compete for more business. It opens up that aperture.
David Vernon
Analyst, Bernstein

Okay. Since we are on the reconciliation of customer value here, I am going to just jump forward a little bit. When we think about some of the arguments that were put forward by a number of the shippers associations, these are the chemicals guys, the guys that are not really modally competitive in a lot of ways. One of the things that stood out to me in reading those filings, without AI and with AI, was the idea that there is nothing really in it for them. They are taking a lot of risk because you are going to convert a bunch of highway traffic that maybe screws up their service. If volumes are going to grow, how do you put forward some sort of compelling case that there are some actually benefits to more rail-centric shippers from your ability to convert more highway traffic?

How does this become a portfolio win for all the customers of the rail industry as opposed to a one-sided win for [UP-earners]?
Jim Vena
CEO, Union Pacific

Well, any time you make a big change in the United States of America, whether it was when Alaska was purchased, there are all these naysayers that look at things, "Oh my God, what is going to happen?" I do not think anybody would give Russia back and take today's $7 million that the U.S. paid for it, because there is some benefit there. It is the same with the Louisiana Purchase. There was a lot of people that thought that there was no way. I could go to more recent, but let us jump to the railroad. I have a problem dealing with associations. Not that I do not think they are valid and they have a point of concern, but they do not always.

Chuck Grassley wrote a pretty good article that talks about sometimes associations are not aligned completely with the people that they represent. I have always had that thought.

This is not new for me. I want to deal with the customers that pay the bill, because there is nothing like sitting down with a customer, whether it is a grain customer in Nebraska, or it is others, and they want to move product to this location or a new location, and we figure out how to price it, how to use the new network and make them more competitive to win. That is where it is, and that is why I have a hard time with it is not factual what they are saying. There are true benefits for the shippers and the consumers with a seamless railroad that goes further and longer. In fact, one of our competitors sold that hard when they went through their own merger. It was all about how it was better and seamless and it was going to work.

Now they do not agree anymore, but I do not know what happened there.
Jennifer Hamann
EVP and CFO, Union Pacific

The STB agreed when they approved that merger because they said right in the front summary that the merger will enhance rail competition through single line service.

David Vernon
Analyst, Bernstein

Yeah.
Jim Vena
CEO, Union Pacific

We will work through that. Remember, we do have 2,000 people that have written positive and 500 are customers. We think that that is a pretty good show of people that see the benefits for themselves and be able to grow and have a better availability to move into different markets and expand their business.
David Vernon
Analyst, Bernstein

Is it somehow as simple as if you are growing the network and you are developing positive contribution from an additional set of traffic that your ability to accommodate more services for the rail centric guys grows with that? I mean, I do not know. It would seem like if you guys are doing better in intermodal, then maybe you do not have to be as aggressive on chemicals. I do not know. Do you think about it from a portfolio like that or no?
Jim Vena
CEO, Union Pacific

Well, listen, we price today by what the market allows us to price. Any business should do that.

You don't price on flip a coin and decide what it is. There is a lot of protection for when it comes to pricing that's built into all the regulations for railroads. We won't have to get into that detail, David, you know about it. We're very regulated on that. But at the end of the day, what it comes down to is, there's different products with different requirements. Some products need just-in-time, and some auto parts, you can't fool around with them. So there's different pricing for different types of products, and we don't want to change that. We think that there's some people that say, "Listen, it's very important for us. It's still cheaper than truck. We'll move the product by rail." Of course, the market allows us to price at a different point of view.

The good part about the merger is we're going to be able to have more of that just-in-time capability because of the handoffs and everything else that happens. So if you're going to be moving auto parts and we move them into the facilities in the East or finished products West, we'll be able to handle them seamlessly without having the touch points and the delay that they have. So that's the way we look at it. Jennifer, anything to add?
Jennifer Hamann
EVP and CFO, Union Pacific

Well, the only thing I'd add is, it's really more on to the top line growth piece for the customer in terms of being able to open more markets for them. With us being able to offer faster single line service to a broader portfolio, just think about somebody who's in the middle of the country that today, maybe they're on the UP lines. They tend to ship to the West Coast

ports just because of interchanging to an East Coast railroad to go out through an East Coast port. Some of those markets that would maybe be available to their goods in Europe, they're not able to go after efficiently because they don't have that service available. They'll have that available to them tomorrow and vice versa. So that's the piece that I think will be developed over time as we put the merger together.

I think that is an exciting opportunity for many of our customers.
David Vernon
Analyst, Bernstein

Okay. Let us talk a little bit now about some of the steps we need to kind of go through to get there. With the Committed Gateway Pricing program, I think you guys have described that as thousands of haulage agreements that give BNSF and CSX access into the network. I am trying to kind of balance that with the read that also says from your own modeling that says 60% of eligible car loads probably do not get much of a rate benefit. How do we think about Committed Gateway Pricing and how it kind of feeds into that idea of being a price competitive alternative versus just being a rate ceiling for your future single line service?
Jim Vena
CEO, Union Pacific

Let us start with the base fundamental of where we are today and what the merger, then we will get into Committed Gateway, because it is real important to take it in two steps. First thing is, today we interchange with other carriers, and customers have the right to get through rates, or they can get Rule 11 rates to a gateway, and they can dictate the gateway. We will tell them that, "Listen, there is a better price if you go here because we can handle it in a much more efficient manner than we would if we went through a different gateway." Railroads sometimes optimize their length of haul to be able to get the most on their railroad. When you have a merged railroad, you all of a sudden have changed that paradigm.

You haul for the least amount of miles to have it go the fastest and the least cost that allows you to play in the market and return benefit to the customer on faster transit time, their asset use. Plus, talk about how we can open up more markets and use that flexibility that we have gained. So that is not going to change. We committed that every gateway is open, and whether you are a shipper from Arizona that is closed on BNSF, you can still decide whether you want to go with CSX or the new Union Pacific. It is up to you, and it is up to BNSF on how they price, and it is how CSX prices. I

f they want to come to the UP, we want that business. We are not going to say, "That is growth for us," and we would not want to lose that business.

We'll price it in the right way. Some people are worried about what it does with competitors. Competitors, they're out there today. You have to compete in this world. We are not a socialist country, communist country, where we want to maintain an inefficient system that hurts in the long run. If you have a competitor that's better than you out of Texas, they're going to take you out. That's the way the world works. I feel for them, but I know that if BNSF could figure out a way to take UP out of a lot of markets, they would do that. They're probably sitting right now in Texas figuring out how they can get another intermodal train

that runs on their railroad instead of ours. Welcome to the world, okay? That's what makes this country special.

What we've done with CGP for the products that we think are truly necessary and need that level of competition, they don't have to come and ask us. They get the rate, and they can offer it to the customer, and we understand what that rate is going to be, and we have to move it as fast as we can. That is another step above and beyond the way we've already committed to having open access of every gateway that people want to go. The reason I say this, and I'm so animated about this, is people are missing the point. If you want to close gateways, it's like going to the southeast in the U.S., the very south southeast of the U.S. from the west.

If you force yourself to go through Atlanta and back down versus going across with CSX, you're going to lose the business eventually. You might get it for a year or two, you use price for your advantage, but that's not the way to win. The way to win is say, "Let's get the best deal going with CSX. Let's grow the business. Let's price this right together, and we move it." That's what CGP does is it's an add-on of everything that we're doing today and what the new network will be like. I love it. They won't have to phone us. They want a rate, they have it.
Jennifer Hamann
EVP and CFO, Union Pacific

It can be up to a three-year rate, too.
Jim Vena
CEO, Union Pacific

Yep.
David Vernon
Analyst, Bernstein

One of the points that came up quite a bit during the commentary was that it's not a durable program. It only lasts for a couple of years. As you think about trying to get this thing over the finish line, what can you move? Where are you willing to move? How do you think about the Because you're going to get a host of asks coming your way, I'm imagining, by November 18th. You guys have said before that there was a big synergy, there was a concession holdback, then there maybe is a concession holdback. How do we think about that value of that concession holdback and what you can do to maybe limit the headroom for that?
Jim Vena
CEO, Union Pacific

Well, listen, we don't want to damage what the value of this transaction is about. We also don't want to damage ourselves and truly our customers by having things that slow down products. Right? At the end of the day, I think we were reasonable about it. At this point, what we've offered is a fairly long list of competitive options for customers. The three-to-two, two-to-one, the single line, all those things, and we'll see. We'll see if we need to move on the CGP, and we'll see going through the process. At this point, we don't see why. We really don't. We think that we have a compelling case of what the benefits are. Remember, under the key

criteria that the STB has to follow in the public interest, right, and all those things. So, we think we've done it.

If we feel that the best way at the end, and we have to move a little bit on something, then we'll move a little bit on something. But this is a negotiation. What I've found so far is, and I'll give you an example. I didn't ask anybody about guaranteeing a job for every unionized person that we have on either Norfolk Southern or Union Pacific on day one when we take over, the merger's closed, and we close it. But I walked into one of the very senior union leaders, very senior union leaders, and he said to me, "Well, you gave that one up already, so that's nothing. What else am I going to get?" David, you have to be careful sometimes when you're negotiating. They're smart people that we're competing against.
David Vernon
Analyst, Bernstein

All right. Maybe speaking about negotiations, we can switch into the CN agreements, right? Obviously, that looked like a cheaper way to buy peace than mandating concessions to the board. Is it right to read that about the trading of the routes and the terminal interests, which net out to maybe less of an overall concession? Or do those CN agreements start to eat into some of the synergy headroom that you might have when you're thinking about concessions where you might want to say, "Okay, maybe it's getting a little bit too expensive to get this deal done?
Jim Vena
CEO, Union Pacific

Well, let's start with, like I started at the very start, we knew that we had some concentration happening because of the additional line that we were going to take over from Norfolk Southern between St. Louis and Kansas City. Right from the very start, we knew we needed to fix that, and that's what we've done. We've given Canadian National access to Kansas City, and when the deal goes through, we think that was important for us to do. We also fixed the whole question on the TRRA and other things. We think that that's a reasonable deal, and it's good for both of us. It really is. It's good for Canadian National. They're able to move further west in the U.S., and they're going to be able to sell Kansas City in a different way than they did before.

For us, the benefit is that we open up and clear up that piece. It would have never happened if it wasn't for the merger. We would never have given up anything on our two, and no other railroad would. Okay?

Part of the agreement that is going to start right away is it's a win-win for both of us. Products coming out of Canada now will be able to sell as a single line into Mexico. The competition's against Canadian Pacific Kansas City coming out of Canada. We think that makes everything even more competitive. The win for us was to get that route around Chicago. Listen, I used to work at Canadian National, and that route around Chicago is a real benefit. You can move away from a whole bunch of interaction with other things that happen within the city of Chicago. So, it's a good win-win for both of us. I'm going to love to see that competition between Canadian National and Canadian Pacific coming out of Canada to get into Mexico. So, it should be real interesting to watch.

I think the consumer wins on that one there.
David Vernon
Analyst, Bernstein

When you think about that separate agreement that you have done that you are just implementing before the trackage rights in Kansas City, do you feel like you are going to get credit for that in terms of the pro-competitive impacts of the merger because it is not merger contingent? Or do you think that that is something that the board will not consider when they are trying to think about the enhanced competition arguments around the transaction?
Jim Vena
CEO, Union Pacific

I do not know. I do not know if we get credit.
Jennifer Hamann
EVP and CFO, Union Pacific

Maybe extra credit, David.
Jim Vena
CEO, Union Pacific

Sometimes I wonder who the teacher marking is. Okay? But at the end of the day, yeah, it is a benefit. And it is a benefit for both of us. So I give Tracy and Canadian National and the team that they had there when we went through that, it was great to deal with them. That came up because of the whole merger discussion and everything that we were having. Listen, at the end of the day, who knows if anybody gives us credit for it. I am absolutely sure that I will not get credit, and we will not get credit from some of our competitors, even though I am going to love watching it, to tell you the truth. I really am. Okay?
Jennifer Hamann
EVP and CFO, Union Pacific

I feel-
Jim Vena
CEO, Union Pacific

We're going to move that train from Memphis until they build it up, they can run it themselves at the Eagle Pass and so pretty quick.
Jennifer Hamann
EVP and CFO, Union Pacific

Right.
Jim Vena
CEO, Union Pacific

We use their network. It should be fun.
Jennifer Hamann
EVP and CFO, Union Pacific

And benefits FXE, where we have a 26% interest.

David Vernon
Analyst, Bernstein

All right. Has the work you did with CN set a reference point for what additional deals could look like with other railroads? Is it possible to get peace with any of the other players that are out there, even at a concept level? It seems like CP has been pretty clear that they're not interested in anything short of this thing getting blocked. When you think about negotiating some sort of bilateral agreements with some of these other parties, could that be a cheaper way to get this thing done than board imposed conditions, potentially? Or is that something you're still working to contemplate or working on or any comment there would be great.
Jim Vena
CEO, Union Pacific

We think that the STB, when they look at everything and all the benefits that we put out and what their mandate is and what their statutes are and what they're required to do, and we knew this before we started, that they're going to make the right decision, and the right decision is not going to be so impactful that we will not want to make, close this deal. We really do.

That's from the very start. This is not an overlap. If this was a huge overlap in the western U.S., we would have never tried it. It just would not pass muster if you would've had 20,000 mi of overlap that happened. It would change the whole fabric. This is not what we have. Are we open to talk to the rest of them? Absolutely. We've had some discussions with others. At the end of the day, some things come to fruition quicker than others and the Canadian National deal came to fruition quicker. Of course, we're open to have discussions with people because I think I would rather sometimes negotiate and get the parties to agree from the railroad side what a solution would look like versus have somebody that does not operate a railroad every day and how do you come to the solution.

At the end of the day, you need two parties. So far, David, I don't know of a party that really wants to sit down and talk to us. Berkshire, our western competitor, big company, lots of money, son of a gun. They could just about do whatever they want with the billions that they have, hundreds of billions of dollars. They could do a lot of things, and it's up to them. But so far, they don't want to talk to us, for sure, because they see the pressure that they're going to get on pricing. That's what their big concern is. It's not that we're limiting any access. CSX is CSX at the end of the day. Canadian Pacific, son of a gun. He's been pretty adamant that he's against it.

He thinks we don't know how to run a railroad, that we couldn't get a little more business to still operate in.
David Vernon
Analyst, Bernstein

All right. When we think about some of the operating plans, you've been very clear that this is an end-to-end merger about driving velocity and driving better utilization, all that kind of stuff. But when I read through the operating plan, it does look like part of your plan is to move some of that Meridian Speedway traffic via Kansas City and Louisville, which would,

based on my limited geography, be a little bit longer. Why lengthen the haul if this is about taking friction out of the system?
Jim Vena
CEO, Union Pacific

Well, you have to look at the whole supply chain end to end and see what is the best route. If the Meridian Speedway is the best route and that gives the customer the best optionality on price and all in an end-to-end supply chain benefit, then we'll use it. We have the capability. We would gain the capability to do that, no problem. But what we looked at, and especially for products coming out of Northern California, we have a pretty good railroad that is twinned or double track all the way across the northern part of our original overland route. We can move things over there very fast. We have a lot of big, high speed, 70 mi an hour railroad out there. When we looked at everything, and for me, I come back to the key foundation of who I am.

This is not about forcing the wrong route for the traffic. It's about how end to end from start to finish, that's why I concentrate on car velocity, that you can do it better and faster. The stuff that we've identified that we want to go through Memphis or we go through a different gateway is because that is the better option, even if it's a few extra miles for us. Listen, we look at number of locomotives it takes, the fuel burn. Sometimes that extra miles is a lot cheaper than using something else that looks like it's We could reopen the Tennessee Pass for some traffic, but you'd have to go over 11,000 ft versus going over the Moffat Tunnel. There's a big difference sometimes on mileage versus the true benefit of supply chain. Sorry for the long answer.

You get me with this operating stuff I love.
Jennifer Hamann
EVP and CFO, Union Pacific

Well, but the other thing too is with the train length restrictions and some of the other operating restrictions that CPKC's put in, that makes the Memphis gateway look a lot more favorable.
Jim Vena
CEO, Union Pacific

Yeah.
David Vernon
Analyst, Bernstein

One of the things that's been put to me around by some of the industry shippers that are a little bit more concerned about what happens after a CGP. If you come in with a more efficient single line routing and they can get a rate over that longer routing, but the other railroad on the other end isn't competitive anymore, then they lose an option on that second order. I think when I read through a lot of the filings, even like CSX was talking about being worried about getting short hauled. As you think about those arguments, how do you think about those arguments in terms of what's good for the shipper versus what's good for the

railroads? Because it seems like some of them are more railroad arguments than they are shipper arguments.

I'm just wondering if you have any thoughts on that tension between two companies trying to maximize their individual length of haul versus one company trying to maximize its asset utilization.
Jim Vena
CEO, Union Pacific

Well, bottom line, sometimes I don't understand it. When we speak to customers and shippers directly, and talk about how we move traffic and how we want to grow their business and be able to win with them, that just doesn't sound like what some people are saying actually happens. The railroad benefit is for us to have a single line haul is we don't have to hand off. It only takes one CFO to run the company. It takes only one CEO. You change the whole paradigm of what your fixed costs are and be able to drive that. It's not that we want to change how traffic flows. We want to grow and grow what our customers are able to, and we want people to relocate or locate on our railroad to be able to move their products. So that's the way I see it.

Jennifer, am I missing anything?
Jennifer Hamann
EVP and CFO, Union Pacific

No, I don't think so. I would just add to that, we have said that we're going to keep the gateways open. So by doing that kind of puts this short haul question a little bit in a gray area for me, because if you're not changing the gateway, I'm not sure what you're changing about the routing.
Jim Vena
CEO, Union Pacific

Let's talk about something that some of the other railroads are saying. They're going, "My God, you're going to have this." What they're worried about or concerned is we are going to have a much more efficient system. Not everywhere, because the railroads aren't like the highway system and road system that go everywhere. But on some things, we're going to have the advantage, and they will still have the advantage in others. BNSF will have an advantage in some areas, whether we like it or not, just because of geography. So at the end of it, if the board wants to protect a railroad that we can haul the product cheaper end to end, because that's what it comes down to. It's not just short haul, it's less expensive. We can pass on some of those savings on assets, plus price, everything to customers.

If they want to protect the railroad, then all you're doing is making the fricking system more inefficient. You're adding costs to the end consumer of those products that move. Doesn't make a particle of sense. I joke around about it, but I'm serious. We're not a socialist. The best should win. The best should not subsidize the other ones to see how they can gain something because they don't want to be as efficient. Maybe they could be as efficient as us. Maybe they can make deals that say, we're going to move trains at 70 mi an hour across the entire

network from Miami, and we'll invest some of the Berkshire billions to get it all the way to Seattle. Good for them. That's the way it should be.
David Vernon
Analyst, Bernstein

Okay. Maybe turning to the end game before we start to close it out here. You've argued before the second combination right now is unlikely, but you've also said, I think before, that a two transcon structure would be acceptable if it was conditioned. Do you think the answer on whether there is another transcon railroad, does that change how the STB should be thinking about conditioning this merger? Because there's always this conversation. It would be easier if there were two mergers instead of just one, and ba, ba, ba. How do you think about the conditions the board might be thinking about in a one merger world versus a two merger world?
Jim Vena
CEO, Union Pacific

I find it very interesting that the STB, they have a mandate of what they have to look at, and that's one of the things they have to examine, and we've put it in our application. Okay? At the end of the day, this is how business should work. You have a regulator. They have one merger. This is going to be approved. I'm very positive. Once it gets approved, something else could happen. If nothing happens, then no one goes to the STB, and we move ahead with an efficient Union Pacific new railroad competing against the other. We'll still have Burlington Northern Santa Fe in the West. We'll still have CSX in the East. We still have the Canadians coming down. We still have all those short lines through Iowa that compete against us and everything else. We still have that.

We still have ships and barges and international movements. We have all of that. If somebody else after this is done, or while we're going through it, decides that they want to merge, then the STB should be looking at that at that point under the same rules that they have today with us. If it changes because they're worried about concentration, that's where they should worry about it. They shouldn't worry about it and say, "Just in case it happens." The STB has the right to not approve any other merger. I've always said, because I've lived in Canada for a number of years, and I think that actually the consumer in Canada has an advantage by having two seamless railroads that go across and compete head to head real hard across the whole country.

They've been able to grow their business and come into the U.S., one of them going all the way to Mexico City and the other one all the way to the Gulf. New Orleans and into Mobile and into the Gulf. That I think it's a benefit. I'm not the STB, I'm just Jim Vena. I'm a simple guy from Omaha trying to lead this railroad. That's it. That's all I do. Bottom line is, I have no idea why the STB should be worried about that other than they were mandated to look at it, and they should look at it. But if they feel that after the first merger there should not be a second merger, they should just tell people right up front when they apply, "Guess what? We don't like it," and don't let it happen.

I'm not here to worry about how Berkshire ends up in the long run. They're fine. I'm not really here to worry about what CSX is going to do in the long run for their shareholders. That's up

to them, not up to Union Pacific and our team. Do you agree?
David Vernon
Analyst, Bernstein

Very clear.
Jennifer Hamann
EVP and CFO, Union Pacific

[inaudible]
Jim Vena
CEO, Union Pacific

Okay.
David Vernon
Analyst, Bernstein

All right. Your optimism on the deal and your conviction in it seems very, very clear and apparent. But I'm going to ask you to close here on two questions, same question, different way. If you had to name the single opposition argument that you take the most seriously, not the ones you view as legally weak, but the ones that would give you a pause if it actually landed with the board, what would it be? And second, maybe on the closing side, what is the single strongest argument for why this deal should happen?
Jim Vena
CEO, Union Pacific

Jennifer?
Jennifer Hamann
EVP and CFO, Union Pacific

So, in terms of your first question, David, in all honesty, we have not heard something that is posed to us that would say we think that's a real threat. Again, you've had a lot of misinformation out there. You've had a lot of opinions put out there. You've had virtually no facts put out there other than the facts that Union Pacific has put out. And we feel very comfortable with our facts and the analysis that we've done and all the work that we have done to look at this backwards, forwards, every shipper that could be impacted, how they could be impacted, look at the projections about the growth that we see. Every time we think of it as a Rubik's Cube, we keep putting it back together.

It keeps coming together the same way, and that's in a way that says this is absolutely in the public benefit when you think about taking trucks off the highway, when you think about the safety aspect, when you think about the savings for consumers, and you think about what we can do going forward in terms of the single line service and the value that we're going to create for our customers. And so we're extremely confident. That's why you heard us at the beginning talk about the fact we're glad to be through kind of, I'll say, the initial application phase as well as the supplemental information. And we're ready to go forward with the merits and the facts because we absolutely believe that they're on our side and we've got a winning argument.

Jim Vena
CEO, Union Pacific

The one thing that we never talked about but that's real important, David, is this truly is good for America. Having a disjointed, fragmented railroad system is not good. And we have sat down with people and talked about how we can make sure that the United States of America has a base foundation railroad that can move products across, not just products that people use every day, but also security and safety for the country. And we're going to be able to provide that. We're going to be able to provide the movement of anything that the United States needs to move for protection and everything else it does in a faster, more seamless manner.

That is also a real benefit that we do not really talk about it very much because we are not the experts at that, but we think that we give them a railroad and a process that is able to move anything that they have to move with us. It is pretty cool. We moved the Artemis, one of the boosters, all the way from Utah down to, with our partners, with NS and FXE, the Florida East Coast, all the way down close to where they blasted off. They are going to blast off next to go towards the Moon. That is who we are. That is what we are trying to do, make it seamless.
David Vernon
Analyst, Bernstein

Awesome. Well, this was great conversation. Great for you guys to spend some time with us. I really appreciate you guys making the time. We are at the end of the hour here, so I am going to keep you on schedule and let you get back to the rest of the day. For investors that have joined, thank you so much for joining us. Thanks for the interest. Feel free to reach out with any follow-up questions. Again, thank you so much to the team and for your time.
Jim Vena
CEO, Union Pacific

David, thank you very much. Thanks for taking the time.
Jennifer Hamann
EVP and CFO, Union Pacific

Yeah. Thank you all.
David Vernon
Analyst, Bernstein

Thanks, guys.
■

Exhibit 24

S&P Global
Market Intelligence

Union Pacific Corporation NYSE:UNP

FQ2 2026 Earnings Call Transcripts

Thursday, July 23, 2026 12:45 PM GMT

S&P Global Market Intelligence Estimates

	-FQ2 2026-			-FQ3 2026-	-FY 2026-	-FY 2027-
	CONSENSUS	ACTUAL	SURPRISE	CONSENSUS	CONSENSUS	CONSENSUS
EPS Normalized	3.23	3.41	▲5.57	3.37	12.75	13.88
Revenue (mm)	6712.80	6864.00	▲2.25	6750.55	26246.12	27415.99

Currency: USD
Consensus as of Jul-23-2026 8:14 AM GMT



	- EPS NORMALIZED -		
	CONSENSUS	ACTUAL	SURPRISE
FQ3 2025	3.00	3.08	▲2.67 %
FQ4 2025	2.87	2.86	▼(0.35 %)
FQ1 2026	2.86	2.93	▲2.45 %
FQ2 2026	3.23	3.41	▲5.57 %

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Presentation

Unknown Attendee

Thank you for accessing Union Pacific Corporation's 2026 Second Quarter Earnings Conference Call held at 8:45 a.m. Eastern Time on July 23, 2026, in Omaha, Nebraska.

This presentation and the accompanying materials include statements that contain estimates, projections or expectations regarding the company's financial results and operations and future economic conditions.

These statements are forward-looking statements as defined by the federal securities laws. Forward-looking statements are subject to risks and uncertainties that could cause actual performance or results to differ materially from those expressed in the statements. The materials accompanying this presentation include more detailed information regarding forward-looking information and these risks and uncertainties. In addition, please refer to the company's website and SEC filings for additional information about our risk factors.

Operator

Greetings, and welcome to the Union Pacific Second Quarter 2026 Earnings Call.

[Operator Instructions]

As a reminder, this conference is being recorded, and the slides for today's presentation are available on Union Pacific's website. It is now my pleasure to introduce your host, Mr. Jim Vena, Chief Executive Officer for Union Pacific. Thank you, Mr. Vena, you may begin.

Vincenzo James Vena
CEO & Director

Thank you, Rob. Really appreciate it. Listen, a pretty special day here today. Great day to be putting our results out for the second quarter. And it's my wife's birthday. So it's a double win. And she would have complained big time if this quarter wasn't good. So let me just highlight how it is moving forward. She might have been mean to me today. So why don't we get started? Here with me today in Omaha is our Chief Financial Officer, Jennifer Hamann; our Executive Vice President of Marketing and Sales, Kenny Rocker; and our Executive Vice President of Operations, Eric Gehringer. Good day railroad out there. Weather is good, little storm coming in, but nothing we can't handle, right, Eric?

Eric J. Gehringer
Executive Vice President of Operations

Yes.

Vincenzo James Vena
CEO & Director

Perfect. Now let's review the highlights on Slide 4. This morning, we reported record financial results driven by strong execution and 2% volume growth. Net income totaled $2 billion, and earnings per share after we adjust for merger costs grew to $3.41. There was a lot of ins and outs as we compare our performance against last year. Fuel was a big driver of both surcharge revenue and expense this year, and we had some one-timers we called out last year. But what's really important is when we remove all of that, we see solid core improvement in our results with growth in revenue and operating income, and we were about 10 basis points better on our operating ratio. Now the team will walk you through the quarter in more detail, and then I'll come back and wrap it up before we go to Q&A.

I'm very excited this morning on the Q&A, looking for some great smart questions from our smart analysts and owners. We'll start with Jennifer and the second quarter financials. Jennifer?

Jennifer L. Hamann

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Executive VP & CFO

All right. Thanks, Jim, and good morning, everyone. Let's begin with our second quarter income statement on Slide 6, where operating revenue of $6.9 billion increased 12% versus last year, and freight revenue also grew 12% to $6.5 billion. Breaking down the drivers of freight revenue, volume growth added 225 basis points. Fuel surcharge revenue added 750 basis points and increased roughly $460 million, reflecting the impact of higher year-over-year fuel prices and volume.

Solid core pricing, combined with business mix to drive 175 basis points of freight revenue improvement. Importantly, our quarterly pricing dollars continue to exceed inflation dollars as we compete and win business at levels that reflect the value of our rail service. I also want to call out that second quarter business mix was a slight headwind in the quarter as growth in domestic intermodal outpaced expectations and offset the mix benefit of less international intermodal traffic.

Wrapping up the top line, other revenue increased 11% to $346 million as higher volume drove increases in both subsidiary and accessorial revenue. Turning to expense. Our appendix slides provide more detail as total operating expenses increased 13% to $4.1 billion, primarily from higher diesel fuel prices. Compensation and benefits expense improved 1% against last year's reported results, which included the final brakeperson buyout agreement of $55 million. Excluding that agreement, second quarter cost per employee increased 7%, driven by higher wage and benefit costs.

A key driver to offsetting wage inflation is workforce productivity, and we have delivered 8 consecutive quarters of record results. Although we're confident we'll continue that productivity trend, we now expect full year compensation per employee to increase around 6%. Fuel expense grew 63% on a 60% increase in average fuel price and 2% higher gross ton miles.

Year-over-year, our price per gallon grew from $2.42 to $3.86 and added 120 basis points to our operating ratio. Purchased services and material expense increased 10% due to merger-related costs as well as higher intermodal and subsidiary expenses. Despite increased volume, fewer operating equipment leases and record second quarter cycle times drove a 7% reduction in equipment and other rents and other expense grew 13% on higher casualty costs.

Income tax expense increased 29%, reflecting last year's onetime $115 million deferred state tax benefit and higher pretax income this year, partially offset by some good news in 2026 from state taxes.

Put it all together, we had a record quarter with reported earnings per share of $3.36. Adjusted for merger costs, our earnings per share totaled $3.41 and operating ratio was 59.2%. Turning to cash and returns and the balance sheet on Slide 7. Our strong financial results carried forward into cash from operations of $5.5 billion, up 21% versus last year. Free cash flow totaled $1.8 billion after we reinvested in our network and returned an industry-leading dividend to our shareholders. We also paid down $1.5 billion of long-term debt in the first half of the year, resulting in an adjusted debt-to-EBITDA ratio of 2.5x.

Turning to our outlook on Slide 8. We have delivered a very strong first half 2026 as we execute on our strategy and deliver improvement in safety, service and operational excellence, leading to carload growth. From that focused approach, we have generated reported earnings per share growth of 6% year-to-date, in line with our January outlook. Looking to the remainder of the year, we are raising our 2026 outlook to reported EPS growth in the high single-digit range as we continue to efficiently move increased volume on our network. We also expect to continue delivering operating ratio improvement and maintain our position of industry leadership even against ongoing margin pressure from fuel. Fuel prices remain volatile, and our recent purchases have been over $4 a gallon.

Overall, a strong first half of 2026, coupled with an improved outlook, highlight our ability to grow volumes, deliver for customers and manage costs, a strategy that delivers value for all of our stakeholders.

With that, I'll turn it over to Kenny.

Kenny G. Rocker
Executive Vice President of Marketing & Sales

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Thank you, Jennifer, and good morning. We had a very strong second quarter as freight revenue grew 12% to $6.5 billion. And if you exclude fuel surcharge, grew 4% to $5.5 billion, both were best ever records. Let's walk through the key drivers on Slide 10. Starting with our Bulk segment, revenue was up 7% compared to last year on a 1% decline in volume. Grain & Grain products had double-digit volume growth in the second quarter, driven by strong export demand, facility expansions and growth in renewable fuels and associated feedstocks. That resulted in record second quarter volume and revenue. Meanwhile, coal volume was challenged by weaker natural gas prices, mild weather across our served locations and customer downtime. These factors adversely impacted overall demand.

Shifting to Industrial. Revenue was up 8% on a 3% increase in volume. When you exclude fuel surcharge, strong core pricing gains delivered record freight revenue and average revenue per car. Petrochemicals growth was driven by improved demand and new business. In Metals & Minerals, volumes rose to -- on higher domestic steel production and business development wins, more than offsetting the ongoing weakness in the export soda ash market. Premium revenue for the quarter increased 21% on a 4% increase in volume and a 16% increase in average revenue per car, reflecting higher fuel surcharge, core pricing and improved business mix.

Domestic Intermodal delivered its fourth consecutive record quarter in both volume and revenue. It's evident our outstanding service set the foundation to grow the business, and that's exactly what we're doing. In the second quarter, private asset, rail asset and parcel volumes were all up double digits, benefiting from constrained truck capacity and share gains. Our buffer resources allowed us to respond quickly to increased customer demand. International Intermodal volume was down 14% versus last year. However, we saw improvement as we close out the quarter, driven by stronger West Coast import volumes.

In automotive, results were positive despite market softness due to strong business development results. Looking ahead on Slide 11. Grain & Grain products is positioned for further second half growth driven by strong export demand, ongoing business development and new facility openings. I'm excited about AGP's new export facility that opens next week in Grays Harbor, Washington. We also see continued upside from growing renewable fuels and feedstock markets supported by greater policy certainty.

In Coal, elevated inventories and lower natural gas prices will make for a challenging second half. We will continue to watch this market closely, but Eric and his team have proven they can quickly flex to handle shifts in volume. Business wins are also helping to offset some of the market-driven declines.

Moving to industrial. We still see a soft housing market, but we remain firmly focused on winning new business and outperforming industrial production. We expect continued strength in metals, growth from industrial development efforts and increased petrochemicals from customer wins like the start-up of CPChem that I mentioned last quarter. And wrapping up with premium, we expect domestic intermodal to continue to perform very well, supported by over-the-road conversions and our service product. International Intermodal will fully lap last year's tariff volatility in August, and we expect volume to be positive in the second half. And for automotive, we expect new business to offset market weakness. So while we're proud of the record second quarter, the team is focused on capturing the opportunities ahead.

Our approach does not change, price for the service we provide, invest for growth and keep winning new business. And with that, I'll turn it over to Eric.

Eric J. Gehringer
Executive Vice President of Operations

Thank you, Kenny, and good morning. We delivered record second quarter operating performance, ran a fluid network and improved safety, all while handling 2% more volume. It all starts with safety, and both employee and derailment rates improved versus their respective 3-year rolling averages, highlighting the team's dedication to critical safety rule compliance and human factor prevention initiatives.

Moving to Slide 13. We provided exceptional service as freight car velocity increased 5% to 231 miles per day and set a second quarter record. Train speed increased 3% and terminal dwell improved 7% as we tied our first quarter record of 19.7 hours, our third straight quarter below 20 hours. Both the intermodal

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and manifest service performance indices finished at 95%, demonstrating our ability to execute on the fundamentals and effectively utilize our buffer of resources.

This enabled the team to support double-digit Domestic Intermodal growth at very high service levels. And remember, this bar only gets harder for us as it resets based on monthly best, which we achieved in 2025. Opportunities remain to improve, and we are committed to providing consistent reliable service while growing with our customers.

Moving to Slide 14. Our key efficiency metrics reflect our commitment to operational excellence as we delivered record workforce productivity, record train length and record fuel consumption. The team is relentlessly focused on identifying opportunities to further enhance service, productivity and efficiency across the network by first, executing on the fundamentals, then implementing new technologies and finally, investing prudently back into the railroad.

Locomotive productivity of 142, improved 1% as the average active fleet decreased 1% against 2% higher gross ton miles. We successfully onboarded incremental volume by leveraging existing train starts, demonstrating strong asset utilization and efficiency. Our fuel consumption rate improved 1% as we continue to benefit from fuel conservation initiatives and locomotive technology and modernization investments. Workforce productivity increased 5% on 2% higher volume. Our active train engine and yard workforce decreased 2%, demonstrating our discipline and remaining more than volume variable.

Finally, train length grew 2% versus last year, driven by continued optimization of the transportation plan and reduced train starts. Closing the quarter, we delivered on the fundamentals while growing volumes and effectively serving our customers. We have the capacity to grow while continuing to improve safety and service. As Kenny's outlook has improved, we've been agile and reexamined our base resources and buffer, aligning both to support growth. We are also continuing to make strategic capacity investments, including the Houston Complex, Pacific Northwest siding extensions and Sunset double-track projects. The operating team is demonstrating daily that we are ready to grow with our customers while delivering the service we sold them.

With that, I'll turn it back over to Jim.

Vincenzo James Vena
CEO & Director

Thank you, Eric, Kenny, Jennifer. Why don't we turn to Slide 16. Before we get to your questions, I'd like to quickly summarize what you've heard and provide an update on our merger with Norfolk Southern. As the team walked through, we had a very strong second quarter as volumes, pricing and operational efficiency drove record financial results. The network continues to be very fluid and our buffer of resources is supporting broad-based growth. Looking ahead, we are prepared to meet increased customer demand with best-in-class safety, service and operational excellence. For our 2026 outlook, we are raising to full year reported EPS growth in the high single-digit range.

As to the status of our merger with Norfolk Southern, first, we met a very important milestone when the Surface Transportation Board accepted our application is complete on May 28. And on Monday, we will meet another important milestone when we complete the supplemental information asked from the Board. As you see when you read it, we've carefully answered each of the Board's questions. We also -- we've also taken the opportunity to further improve the competitive nature of our merger through an expansion of committed gateway pricing among several other voluntary commitments.

This is in addition to the merger benefits of seamless single-line service, better reliability, lower costs and greater competition against trucks and other railroads. Also yesterday, we announced that we reached a merger settlement agreement with the railroad I used to work for Canadian National.

I said from day 1 that our merger will create a stronger railroad industry that delivers better service for customers. Our agreement with CN, Canadian National, reinforces those commitments. Our merger is unprecedented and deserves a careful review. We've done our homework. Now versus almost 1 year ago when we first announced our plans to merge, we have even more conviction that our transaction is in the public interest and will deliver benefits for our stakeholders, especially our customers.

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The case for our transcontinental railroad is clear, and we're ready to go. With that, Rob, we're ready to take questions.

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Question and Answer

Operator

[Operator Instructions]

And the first question is from the line of Ken Hoexter with Bank of America.

Kenneth Scott Hoexter
BofA Securities, Research Division

I guess a 2-parter. One, a little confusion on the $0.14 fuel gain. Is that just all upside from fuel and the pricing? Maybe if, Jen, you could just delve into that a little bit. And then if you can expand on the commercial agreement with CN, the access to the EJ&E, maybe talk about what that gives you and what you're giving up on the network down south.

Vincenzo James Vena
CEO & Director

Jennifer, why don't you?

Jennifer L. Hamann
Executive VP & CFO

Yes, Ken, on the fuel piece, we're just calling out the fact that it did have the 120 basis point headwind to our operating ratio mathematically. But then when you look at the difference between expense and surcharge, the benefit there was the $0.14.

Vincenzo James Vena
CEO & Director

Okay. And on the Canadian National announcement yesterday, it was in 2 parts. The one part was something that we knew that we wanted to make sure, and we said it right from the start and when we looked at with the merger that we needed to do something. And we've told the Surface Transportation Board twice that we never wanted to take control and get over 50%.

In fact, we called meetings at the TRRA and the other railroads didn't show up. But at the end of the day, the nice part about the deal is that clears that up as far as ownership of the Kansas City Terminal and TRRA. It also allows Canadian National to come over between St. Louis, just east of St. Louis to Kansas City and give optionality to the customers in those area because we would have ended up with the 2 rail lines that we use in directional, and we would have had another one.

So we thought it was prudent for us not to be too concentrated. Again, that was the only part of the company where we have a significant overlap, and that was a pretty small area when you take a look at the entire railroad. So with Canadian National, we've got an MoU that takes care of that. And then we also talked about -- and it goes with our commitment to keep every gateway open.

And Canadian National says, listen, can we figure out a way to get into Mexico to be able to move traffic and use -- we could still use Chicago if we wanted to, but we want to be clear that we could use a priority location that they find better to be able to have access into Mexico, and we worked out a deal.

And for that, we said, listen, we want better access through Chicago, east-west. And sometimes people look at things in the short term instead of long term and they don't understand. Listen, I've worked in Chicago and I worked at Canadian National, where it took us longer to get a train from the north side of Chicago to the south side of Chicago, where our terminal was than it did to run it from Prince Rupert to the northern part of Chicago.

So any time a railroad can figure out a way to be able to run much more seamless east-west to make interchange connections or run through trains, that's what we've done. It's a win-win. It's a win for Union

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Pacific, and it's also a great position for Canadian National. I think it's a deal that is going to help both of us be able to increase traffic from both of us because of what we're able to take off the roads and move more of it on the rail. So Ken, maybe you didn't want that much detail, but I just gave it to you, okay?

Operator

Our next question is from the line of Chris Wetherbee with Wells Fargo.

Christian F. Wetherbee
Wells Fargo Securities, LLC, Research Division

So maybe sticking on that topic, I guess I just wanted to kind of see if you could expand a little bit on how you think this plays out both from like a revenue synergy perspective. I think there's initially an initial thought in the initial merger agreement, there was some concessions baked in several hundred million dollars of potential concession. So maybe thinking about this agreement that you've constructed and how it may influence some of the revenue synergies and concession numbers?

And then maybe bigger picture, is this the first of what could be multiple of these types of arrangements? I guess how do you feel about the receptivity of the rest of the rail industry? This is a big move coming from potential opposition to agreement to get on board with the deal? Just want to get a sense of how you see the landscape right now.

Vincenzo James Vena
CEO & Director

Yes. Listen, Chris, I won't get into too much detail, some other discussions we've had. But I'll tell you that if people are reasonable, we are more than willing to come. And this one is a reasonable expansion for Canadian National, and it's great for Union Pacific.

As far as the impact, listen, we knew we were going to have to do that. We see this as for both of us, a growth story, not a limiting factor on business. So this will not impact what we're doing. Remember, we're still going to have to have them operate on our railroad to get to Mexico. So it's not like -- and what it does is it makes them much more competitive against the Canadian Pacific, Kansas City.

So they're able to originate out of Canada and compete head on and sell a direct link. And we see that as them being able to grow more business and not be less and then we should be able to get more revenue on trackage or whatever else that we do in how we finalize the deal. So it's a real positive, Chris.

Jennifer L. Hamann
Executive VP & CFO

Yes. And I would just say a big part of it, which is addressing the 3-to-2, 2-to-1 as well as access into Kansas City was all part of what we knew we were probably going to have to do something to address that. So all part of our thinking.

Operator

The next question is from the line of Walter Spracklin with RBC.

Walter Noel Spracklin
RBC Capital Markets, Research Division

And I know, Jim, as you mentioned, you worked a lot on the EJ&E certainly when we first met and some of the looparounds and efficiencies you get and as you translate into the transcon solution is quite compelling. Curious whether -- when you were talking to CN, does this open the avenue now for more cooperation with CN? Or is this something, okay, we've addressed this now with CN, let's move on to any of the other railroads.

Just curious whether you're seeing this as, okay, that's one player we've addressed and now we move on? Or is there avenue for further opportunities with CN that might have come up in the conversations?

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Vincenzo James Vena
CEO & Director

So listen, let's start with fundamentally, we would have never been able to get to this kind of deal with Canadian National if it wasn't because of going through the merger, okay? So that's the problem with people, anybody thinking that it's easy to make a deal with another railroad or another company is, Walter, pretty tough, okay? So it was the merger that drove this, and it was something that helped us and helped Canadian National. It truly is a win-win.

I'm not sure what the next step is, okay? I really don't. What I'd like to make -- and the problem we have is because we do not have a whole bunch of overlap. We've basically dealt with 2-to-1 and 3-to-2 customers even. There isn't a lot else that we need to give up. Like what is it that you give? You give access to somebody around Nashville. Well, we'd like access to a different part to Florida, further south in Jacksonville.

So at the end of the day, it's going to be difficult, but we're always open to have discussions. We really are. And if something happens, and I love our relationship with Canadian National, but I'll tell you, they don't give me any deference because I know their railroad. I'll be honest. They're tough negotiators. Son of a gun, okay? I was hoping I didn't have to give them that much access into Mexico.

But at the end of the day, they're tough negotiators, they're smart, but I like that. That's what you want, Walter, is to be able to move the deal forward together. And if there's other things that we can figure out how to do, we'll do that. We really will. But I don't see a whole bunch of things that are sitting on the platter.

And Walter, because I think you've met my wife, you know I would never take her out for a burger, okay? Sometimes I like having a joke, like the chance of me having a marriage for 43 years like I have or 44 years and take her out for a burger for a birthday, that would not work out good, okay?

Walter Noel Spracklin
RBC Capital Markets, Research Division

Because McDonald's is not on the menu. I got it.

Vincenzo James Vena
CEO & Director

We're in Omaha. It should be like a nice steak from Omaha. I'm telling you nice way I go from a farm out in Iowa or Nebraska, I'm looking forward to it tonight.

Operator

The next question is from the line of Jonathan Chappell with Evercore ISI.

Jonathan B. Chappell
Evercore ISI Institutional Equities, Research Division

Jennifer, shifting gears away from the merger for a second. You raised the EPS guide versus 3 months ago while also raising the outlook for your most important cost line item with the cost per employee. So can you help us kind of solve then for where the majority of the upside is coming from? Is that volumes running better than expected? Is it surcharge tailwind benefiting you more than you thought in 2H, more productivity and other line items? How do we kind of rectify those 2 changes?

Jennifer L. Hamann
Executive VP & CFO

Yes. I mean I think you kind of answered your own question there a little bit, Jonathan. It really is a number of different things. Certainly, when you hear Kenny talk and look at his outlook in terms of how the business is performing and what we see the opportunity for the second half of the year, it's stronger than what we thought it was coming into the year, which is great news, and we feel very bullish about that.

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And then you see how Eric and his team are handling that increased volume, doing it very efficiently, in a very cost-efficient manner and giving a great service product to support our customers as they're growing their business. So it's all of those things, and we feel great about it. It's a great setup for the first half and looking forward to a strong second half.

Operator

The next question is from the line of David Vernon with Bernstein.

David Scott Vernon
Bernstein Institutional Services LLC, Research Division

So I'm going to try to squeeze 2 into here because you guys are quick on the next question. The first question is really around the outlook for the second half. Kenny, you sound pretty positive about everything except coal, which sounds like a throwback to last decade.

I wanted to ask if you're seeing any sort of broadening of industrial demand outside of anything related to sort of data center construction, anything that you're seeing in the economic tea leaves that would tell you that we are starting to see some broader industrial recovery kind of building up?

And then the second question would be around the Falcon service, right? How does this agreement sort of change that? Or is CN going to be running some of its own trains? Like how does -- or is that totally separate from what you guys announced today?

Kenny G. Rocker
Executive Vice President of Marketing & Sales

Yes. So the first question, we look at car orders, and we're at 100% fulfilling those. And those are up slightly. And so yes, if you look at it broadly, if you look at the car orders, and I'm talking across the board, there is some slight uptick that's there.

You're also seeing that in the momentum that we talked about on the industrial side, that's largely a lot of our carload business where we've had record average revenue per car and candidly, record revenue that's there. So that's encouraging to us as we move and turn into the second half. And then there are some things that we're doing to make our lot -- life a lot better. So you look at Grain & Grain products, we've got a few more facilities that are coming online, some that are exports, some that are domestic.

Automotive is -- it's not a great overall macro area, but we won new business to go out and compete in that area. So a little bit of a macro bump on the industrial side, but also we're balancing that and supplementing that by winning new business. I think the second question was around the Falcon.

Our Falcon product with CN is going well. The service product is strong. Eric, you've really helped us on the CN there. So as we look at Mexico, again, and you can see the numbers in Mexico, we've done well in Mexico, and we see that occurring as we go through.

Vincenzo James Vena
CEO & Director

Kenny, sorry for interrupting or Eric, you guys should talk about -- we've talked about open gateways and the Falcon was through Chicago, but we have no problem with making sure that the other railroads come to our network and move the way the customers want it to move.

Eric J. Gehringer
Executive Vice President of Operations

So when we think about the Falcon, it is independent of this. And to Jim's point, our commitment as part of the merger, which has remained unchanged and will remain unchanged, is full access to all the active interchange points. And when some people think about that, they underestimate when I say interchange points, they think of places like Chicago and New Orleans, which are obviously incredibly important to us and all the other railroads.

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But just remember that every single day, there's 260 interchange points across the Union Pacific network as we sit here today. So we're really committing to that. 260 open interchanges just like they were yesterday, just like they were a month ago, and that's going to remain that because to Jim's point, our partnerships with all of the railroads are incredibly important when you consider 40% of our volume every day is interchanged to another railroad or received by us from another railroad.

Operator

Our next question is from the line of Stephanie Moore with Jefferies.

Stephanie Lynn Benjamin Moore
Jefferies LLC, Research Division

I guess I wanted to maybe ask a bigger picture question here for whoever on the team would like it. But I wanted to ask a little bit about just maybe the reindustrialization theme that we're seeing across the U.S. and maybe that means a bit more domestic manufacturing and maybe less imports coming on to the West Coast. So can you maybe frame how you think the network is positioned to handle what could be a pretty big medium-term theme here over the next 5, 10 years?

Vincenzo James Vena
CEO & Director

So Kenny, why don't you talk about what you see with all the construction, different products, hot markets, cooler markets real quick. And then Eric talk about the railroad and how it is.

Kenny G. Rocker
Executive Vice President of Marketing & Sales

Yes. Stephanie, you're really asking about what we call our industrial development area where we're either expanding at a plant or locating a new customer on our network, and that pipeline has remained strong. And we've seen a lot of new customers come on to our network. I talked about AGP, which is a grain customer. But then we've also seen it with Hyundai Steel that's bringing on new production here in the U.S. into the Gulf.

That pipeline is strong, and we see it show up in other areas. Someone talked a little bit earlier about the data centers, but we're seeing really good strength, really good pipeline. We're converting that at a great rate. We're seeing a robust number of RFIs, meaning our opportunity to compete in that area.

And so we're bullish and we're excited about that. We've been able to convert on that.

Eric J. Gehringer
Executive Vice President of Operations

And then, Stephanie, as far as the railroad's ability to handle it, we are and we remain poised to be able to handle that growth. You saw that a couple of examples here recently. You go back to last year with a 33% increase in International Intermodal, and we handled it. We handled it well.

Then you look at what's happened in the Domestic Intermodal market, which credit to Kenny and his team, they've done a great job bringing that growth to our railroad. And you've seen us handle that exceptionally well, especially when you see 5% increases on car velocity in a period of the year where historically, no matter how many years you go back, we actually would degrade by about 15 to 20 miles per day.

But 50 days into the summer, we haven't had any degradation, and we don't plan to have any degradation. Now that really tells you that the fundamentals of the railroad are strong. Every single metric I gave this quarter, last quarter, the quarter before that indicate that we're not only strong, but we continue to make more progress.

Now on the capacity side, to be able to handle that, and you used examples like the West Coast and Mexico, think about what we've been doing, and this is not a new thing. We've always invested in our capital, invested that into the railroad prudently. So whether you're thinking about the more than $125

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million we've invested in our Houston Complex, whether you think about our continued work to finish double tracking the Sunset Route from Yuma all the way to Tucson so that we're actually double track all the way to El Paso.

And even on the bulk side and the manifest side, when you think about our siding construction projects and siding extension projects up in the Pacific Northwest and across Iowa, we are poised. We'll continue to be poised and we'll continue to maintain a buffer so that when unexpected growth comes because of all of Kenny's team's hard work, we can bring it on to the railroad with an immediate yes to our customer.

Jennifer L. Hamann
Executive VP & CFO

Yes. And just one last thing to add there, Stephanie. So you've heard us talk about our pipeline of industrial projects where you're -- and Kenny mentioned the RFIs. We've got about 200 of those in the pipeline today. It's a very strong pipeline. So we feel very bullish about our opportunity to continue to grow there.

Operator

The next question is from the line of Tom Wadewitz with UBS.

Thomas Richard Wadewitz
UBS Investment Bank, Research Division

Congratulations on this deal with CN. That seems like a really nice step forward for you in terms of making the case with STB. I wanted to ask you just for a little more kind of understanding on how you would view that deal. So -- can you give us any kind of framing of say, 3-to-2, 2-to-1 customers when you consider the customers on St. Louis to Kansas City or in St. Louis area that CN is getting access to.

How large is that group? Is that like 5 customer facilities? Is that like 50? Is there any way to kind of frame that? And then I guess the other component would just be their access to your line on Memphis to Eagle Pass. Would you expect CN to compete with you on business to and from Mexico? Or is that like, hey, this is going to really enable them to compete with CP on business that's more like, call it, Eastern Canada to Mexico. Just want to see if you could give us a little bit more perspective on kind of the -- how meaningful that is and how you think it affects the competition?

Vincenzo James Vena
CEO & Director

Okay. The new deal is Canada to Mexico. So it's not competitive with us. It's good for both of us. It allows them to sell it. Second is as far as the number of 3-to-2, and 2-to-1, it's in the application, Tom. It's absolutely a small number. Less than -- out of the thousands of customers we have, we're talking about a couple of handfuls if that. Jennifer, what's the exact number? I don't want to put the wrong number.

Jennifer L. Hamann
Executive VP & CFO

I think the...

Vincenzo James Vena
CEO & Director

Because it's been fricking moving...

Jennifer L. Hamann
Executive VP & CFO

Yes, the 2-to-1 is 3 or 4 and 3-to-2, I think, is low 30s.

Vincenzo James Vena
CEO & Director

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Right. So that's it. So out of all our customers. And we said that we would fix the 2-to-1s, and we have a remedy even for the 3-to-2s, which truly is -- let's get serious. If somebody has 2 plus [indiscernible] they should be competitive. But we want to make sure that there's no question about leaving every optionality that people have.

Tom, I'll take exception to one thing on yours. It's pretty straightforward. This merger doesn't need a lot of help, okay? And I've been pretty adamant about this. And what people are missing is when you give customers a seamless single-point railroad that can move things a larger -- a longer distance, that is automatically makes the thing less expensive for the customer and more competitive against any other product that's out there.

So people want to make noise about whether we need to help this. I think the CN deal, the Canadian National deal, is great for both of us with EJ&E and Mexico and then within the piece, but we're talking a small number of customers.

This is a growth deal. We see taking trucks off the road to go across the U.S. faster and take things that are right now going through cities and less fuel efficient, more greenhouse gas impacting roads that, of course, everybody knows trucks do not pay their full share of the construction and capital costs on the interstate system while we pay for all ours, but we want to put them on our railroad.

So this is truly more compelling today than we looked at it than ever before. And you can see because it only touches -- think about that, less than 10 customers go 2-to-1. This is truly an end-to-end that wins. We think we have a strong case. People -- they can write stories that aren't factual, can say whatever they want. The facts are pretty clear. So you got me going a little bit this morning.

Thomas Richard Wadewitz
UBS Investment Bank, Research Division

Jim, do you think you'll get a shipper agreement as well? Are you optimistic on that?

Vincenzo James Vena
CEO & Director

Sorry, you broke up on one piece. What did he say?

Thomas Richard Wadewitz
UBS Investment Bank, Research Division

No, I'm just -- I'm saying like -- yes, you got this agreement with CN. Do you think it'll announce some kind of big shipper agreements as well or maybe not after a while?

Vincenzo James Vena
CEO & Director

Listen, we talk to our customers all day, and we have set a number of customers that -- and how do we move ahead? How do we make sure that they understand how it is and how they can win in the marketplace. So yes, we're not going to announce them because they're private deals. But at the end of the day, absolutely, we've been talking to a lot of customers.

I sent the letter to our top 50 customers saying, if you have any questions about the business that we're doing together, and I sent it to their CEOs, here's my phone number, give me a call, text me, and we'll get the teams together to go through detail so you understand what the benefits are.

I had a meeting on Monday with one of the big shippers here in the Midwest, and they're not going to come out and he told me black and white. He says, "Listen, I'm not going to come out to support it because other people have not worry about what they might say and do if I do."

But at the end of the day, he says, I see the advantage. If we're moving pulse products from the Southeast U.S. to the West, which they are, they would -- they see the seamless. So customers, absolutely. And thanks for the question. It got me to fill in all the gaps of what I haven't been able to say yet this morning. So I appreciate it.

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Operator

Next question is from the line of Brian Ossenbeck with JPMorgan.

Brian Patrick Ossenbeck
JPMorgan Chase & Co, Research Division

Maybe just one real quick for Jennifer and then a couple for Jim. Jennifer, the comp per head up 6%. I mean, typically, you have good visibility on that to start the year. It continues to move up a bit. Just wanted to see what the driver was for that.

And then, Jim, you mentioned or hinted that there'll be some, I guess, improvements expanding of the CGP and a couple of other, I guess, voluntary enhancements, if you want to call them that, that we'll see on Monday. I wanted to see if you could get a little bit more granular on that, give us a little bit of a preview of what to expect.

And then, of course, the STB had a couple of decisions out yesterday. One that was interesting, just the trackage rights, the reciprocal switching with UP going back to Lake Charles. Is that anything that you think sets the precedent as you start to work towards the merits -- the review of the transaction on the merits?

Vincenzo James Vena
CEO & Director

So real quick on the STB. Listen, I think they were very prudent when they came out with the decisions. And basically, they just said that there are certain things that were in place that just makes sense. And you can't just automatically ask for access for nothing on somebody else's property. It would be like somebody setting up a coffee shop and go into Starbucks and saying, I want to set up a coffee shop in Starbucks because I drove by the fricking place. That doesn't make a particle of sense, and that's what the STB said. So we're very happy. Now are we happy with every decision? No. They want us to put out detailed information on employees. And you think about, we're going -- we've given it to every law firm that covers every person that might want to comment on this deal.

So at the end of the day, are we happy with that one? I'm not because it impacts people's lives. And I always worry about that and how it impacts our employees. But overall, I think it's a clear win for Union Pacific that our position was correct in how things were done with the 3 cases. So on that, that's where I am with it. Jennifer?

Jennifer L. Hamann
Executive VP & CFO

Yes. On the comp per employee piece, Brian, it really is wage inflation and benefits. So really, the part that's been a little bit hotter than we were expecting coming into the year is on the health and welfare side. You're right, the wage inflation is known. Just as a reminder, we had the 4% for the first half of the year and effective July 1, we now have 3.75% increase in terms of the unionized wages. So good healthy increases there, and that's where we're just running a little bit hot.

Brian Patrick Ossenbeck
JPMorgan Chase & Co, Research Division

So per employee, we're up, but how is the productivity -- remind everybody?

Eric J. Gehringer
Executive Vice President of Operations

Yes, absolutely. So when you think about some of the numbers that I reported in my prepared comments, they start to give you some perspective, but I have the benefit to be able to peel that back and see at the ground level exactly what's happening. And so to Jennifer's point, while we are running hot on that, we've seen continued progress on the productivity side. You don't grow train length to almost 9,900 feet by chance. If you think about it, not that long ago, we were at 7,500 feet.

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So our 2% gain is on a very large gain over the last 5 years, and we don't see a stop to that. I often get asked, can you make it to 10,000 feet? We got the team here at Union Pacific that takes challenges like that very seriously and looks for safe opportunities for us to be able to do that.

Now when you look down even deeper into our terminals and you look at line of road with our wage increases, right, our challenge that we take on every year, we focus on every quarter, every week is to offset as much wage inflation as possible. And you can see how we've done that. You can see that when you're increasing car velocity and you're running at 231 miles per day, you're dropping your recrew rate to 4.5%. We did that in the quarter. That's 2 whole points better than it was last year.

And I can go on and on, terminal dwell being down 7%, run through dwell down being -- down 8%. It's all those things that our team and the operating department with the support of the rest of the company do every single day, and I could not be more proud of them, mostly because they're perpetually dissatisfied, always looking for more opportunities. And we're going to offset as much inflation as we possibly can, and our track record demonstrates we do that quite well.

Vincenzo James Vena
CEO & Director

You know what, you had a third question in there -- sorry, a subpart. What was the third subpart?

Brian Patrick Ossenbeck
JPMorgan Chase & Co, Research Division

Yes, I think just to give us all a preview of what to expect on the supplementals because it sounds like there might be a couple of additional things you went above and beyond the initial list.

Vincenzo James Vena
CEO & Director

I was hoping you forgot that piece, okay, when I asked you. But bottom line is, listen, there's a whole bunch of detail in there. What the expansion does is we actually -- we went out and talked to our customers and the feedback we received was, would you guys examine and we went in detail with a lot of them to say, listen, it will help us being able to -- just because -- and I've always talked about distances is your enemy if you try to route things the wrong way. So the bottom line is when we went through that, we see it in the application, we've expanded it because of what our customers gave us a feedback.

Again, we don't see that as a negative because the more you can open up some of those things to make sure the optionality is there, we get more business out of it. And it's about growth -- so Eric, I thought Eric was going to give you a real quick, yes, our productivity was again great, but he decided to show you the whole fricking railroad. I love it. He's starting to sound more like me, okay? Pretty soon, Eric, I don't even have to come on these calls. It'll between you and Kenny and Jennifer, you guys have got it. But -- so that's where we are. You'll have to wait until Monday, okay? I can't let the whole cat out of the bag.

Operator

The next question is from the line of Jason Seidl with TD Cowen.

Jason H. Seidl
TD Cowen, Research Division

Congrats on a good quarter here. I wanted to focus on 2 different things. One, I guess I'm going to talk to Eric a little bit about operations. Guys doing a great job out there. How much ability do you have to take on additional freight without sort of adding much in the way of headcount or other expenses, particularly on the intermodal side for both the near term and also sort of the longer term as you look at some of your forecasts that are out there for the deal? And then I guess, for Kenny, how should we think about pricing on intermodal as it flows through your network for the remainder of the year in '27?

Eric J. Gehringer
Executive Vice President of Operations

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All right. So let me start. So you asked the question in the context of the merger. When we put in our application, we said that there would be an incremental increase in our Union employees to be able to handle the revenue synergies that Kenny and the team have identified with the help of Norfolk Southern.

But don't be surprised by the fact that when we look at that, we didn't start in that place. You start from the place of we know our transportation plan and we know our network and Norfolk Southern knows their transportation plan and their network. And you look first for where do you have latent capacity within your existing train starts.

Now you've seen our history over the last 4 to 5 years, we've done an exceptional job of being able to utilize latent capacity. So you always want to look there first. From there, we then overlay the new volume that's coming on to the railroad, and we have to add some train starts. Now we've been clear with that, and it's in the application that those train starts involve trains that are going to go from L.A., generally speaking, from L.A. to Chicago, I'm afraid...

Unknown Executive

I'm not, but I want to make sure...

Vincenzo James Vena
CEO & Director

We will sort of give them a high level -- I don't want the other railroads to listen to him though.

Eric J. Gehringer
Executive Vice President of Operations

Yes, I know. I know. Jason, he's afraid I'm giving away the secret recipe. But the secret is here. That sauce is our people. And we will make sure that we have the appropriate number of people to make sure we run the railroad, but also do it in a volume variable way.

Jennifer L. Hamann
Executive VP & CFO

And that last part is important is you're not going to see people grow at the same level...

Eric J. Gehringer
Executive Vice President of Operations

Exactly.

Vincenzo James Vena
CEO & Director

Listen, Eric, I love it. But son of a gun, I thought you were -- pretty soon you were going to say how we start people and what our terminal type is and how we got that down...

Eric J. Gehringer
Executive Vice President of Operations

I'm not giving that statement.

Jason H. Seidl
TD Cowen, Research Division

Eric, you can just e-mail that all to me, that's fine.

Kenny G. Rocker
Executive Vice President of Marketing & Sales

So I'd tell you, Jason, we're coming from a position of strong momentum. You heard me talk about the fourth consecutive quarter of record volume. So we already have that momentum. And Eric just talked about it, he's given us a strong service product that we sell.

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And because we're moving boxes faster, we're talking to customers about price when you're doing that. And BCOs want to align with us because of that. So as we're able to quote these new rates, as the private asset folks are able to quote new rates, the IMCs. We are getting a little bit more price uplift as we move throughout the year. Obviously, the biggest opportunity for us will be as we enter into the next bid season, but we're pulling more containers out of the storage. Our private asset folks are doing the same thing. And on these spot moves, it's a small percentage of our business, but we are getting some of that price uplift now. But the big apple is once we get into the next bid season.

Vincenzo James Vena
CEO & Director

Thank you very much. Good question. If maybe the rest of the people are on, I want to answer everybody's question, but we're going to try to be real fast because I do not want to overlap with Norfolk Southern, who's coming on here at the top of the hour. So if we could ask a question, you might not get as long an answer. Ask me any and the team any, yes or no, we'll be quick where we go.

Operator

The next question is from the line of Ari Rosa with Citigroup.

Ariel Luis Rosa
Citigroup Inc., Research Division

I'll give you a yes or no question. Just was there any discussion with the STB prior to reaching the agreement with CN? And to the extent you can give any color around kind of how it came together, whether it was you approaching CN or the other way around, it would be appreciated.

Vincenzo James Vena
CEO & Director

The answer is no with the STB. And I don't know who made the first call, probably it was me.

Operator

The next question is from the line of Brandon Oglenski with Barclays.

Brandon Robert Oglenski
Barclays Bank PLC, Research Division

Sorry, I haven't been on the full call here. So maybe I'm being redundant with my question, too, so you can just tell me to shut up. But in the world where truck availability and spot rates are so volatile, up like 50% in the last 6 or 9 months, I mean, doesn't this just embolden the case for transcontinental rail mergers? And I mean, congratulations on the deal with CN. Do you need to do more like that as well just to win over more hearts and minds here? And maybe that's where it is. Like is this going to close, Jim?

Vincenzo James Vena
CEO & Director

This is going to -- the merger is going to close. It's just too compelling for the country. It would be a mistake for this deal not to close. We would be harming. Canada goes across the entire country, and there's a reason why they haven't applied to the Canadian equivalent to the STB to split their railroad up there, both of them because it doesn't make a particle of a sense that hurts customers, hurts the country.

So this deal will close, and it will close with limited impact just because it's an end-to-end. So -- and yes, as far as I'm concerned, it's -- if there's something else with other people, we'll move ahead. Anything else I missed?

Operator

Our next question is from the line of Jordan Alliger with Goldman Sachs.

Jordan Robert Alliger

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Goldman Sachs Group, Inc., Research Division

I know there's a lot of moving parts on the yield front between fuel and mix and core price. But is there a way you could maybe give some thoughts at least on how you're thinking about revenue per carload, whether it be the third quarter or the second half, taking into context core price mix and the fuel impact volatile as it may be?

Vincenzo James Vena
CEO & Director

So let me start and then Kenny, real quick, talk about ex fuel, the way we look at it, too, and just give an idea because we don't always split everything up particularly. Put it this way, if you remove all the noise, we actually had a 58% operating ratio, okay? So that tells you fundamentally who we are and what we're doing.

We don't -- we like to -- we absolutely report the way we're supposed to report. But if you remove the noise from those things that are -- because fuel was an impact of 120 basis points. So you take that away from our reported, we're at 58%. So the railroad is good. Kenny, second piece?

Kenny G. Rocker
Executive Vice President of Marketing & Sales

Yes. We do look at revenue ex fuel. And let me just leave with the fact that on the service end, Eric, on our carload business is the SPI is oscillated between 95 and 100 depending on where it is, and we price according to that.

Most times, it shows up in average revenue per car. I talked a little bit about that depending on the mix. But we're going to -- with the service that we're providing, the investments that we're making with the market where it is and the truck prices where they are, we're going to make sure that we're pricing to that value proposition.

Jennifer L. Hamann
Executive VP & CFO

Yes. Just one quick comment on mix, though, Jordan. So as you heard me say, it was a little bit of a headwind for us in the second quarter. That surprised us a little bit just because of how strong domestic intermodal came on in the back half of the quarter. As we look then to the second half, with domestic intermodal likely staying very strong and maybe some upside on the international side, we'll probably see a little bit more pressure on that mix side, but it's a great business. We're handling it well, and we look forward to the contribution that provides us.

Vincenzo James Vena
CEO & Director

Listen, thank you very much, and we love the way July is running so far, and you guys can all see the carloads.

Operator

The next question is from the line of Bascome Majors with Stephens.

Bascome Majors
Stephens Inc., Research Division

As you look forward and get to the point on Monday where you release the next set of things the STB has asked for, where do you think we land on in the procedural schedule where we get to the point where you see the more formalized list of demands for some of the competitors that oppose the merger and ultimately, those -- the hearings where we discuss that live with the regulator. And just does the agreement that you've reached with the CN change the tone of that in any way that you think is meaningful or impactful for those of us watching?

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Vincenzo James Vena
CEO & Director

Well, I think the deal with CN clears up some of those things that we said that we needed to clear up. So that's real helpful. And it expands competitiveness coming out of Canada to Mexico, and then it expands our capability to go through Chicago faster. So I love it, not a problem there at all. As far as -- what was the other part of the question?

Eric J. Gehringer
Executive Vice President of Operations

Timing on hearings.

Vincenzo James Vena
CEO & Director

The timing. My Chief Legal Officer and everybody that we've hired, some of the best law firms say the statute is pretty black and white when you accept the application, they have a year.

So I just follow the law, right? Like if I get caught speeding out there, when I get pulled over, the police officer says to me, you know why I pulled you over, I go, yes, I was going 70 in a 55 zone. And he goes, son of a gun, you're telling me the truth. Yes, usually gets me off of the ticket. So I like to be honest and upfront. The statute is pretty black and white. It's clear. So we would expect the clock to have started when they accepted the application. The next step is people get the comment.

So we're looking forward to that. Looking forward to finally people putting their facts in and telling us factually what it is, not some high level, whether Union Pacific has the capability to operate the system across the country and worried about this and that. So I'm looking forward to it to tell you the truth, and let's hurry up and get this thing done. We're not going to get it done for my birthday on August 17, but I love it. Let's move ahead. Good question. Thank you very much.

Operator

The next question is from the line of Ravi Shanker with Morgan Stanley.

Madison Jade Pasterchick
Morgan Stanley, Research Division

This is Madison on for Ravi.

Vincenzo James Vena
CEO & Director

Madison, I like having you on, Okay? I can't remember the last time I talked to Ravi, I knew you were going to be on.

Madison Jade Pasterchick
Morgan Stanley, Research Division

I like talking to you guys, too. I think we're just wondering how does fuel impact seasonality on numbers in third quarter and fourth quarter and how we should be thinking about kind of like the opportunity on OR?

Jennifer L. Hamann
Executive VP & CFO

Yes. So in terms of fuel, I mean, it likely will continue to pressure OR. As I mentioned, we're paying a little bit north of $4 a gallon right now. Even with that, though, we're still very confident that we're going to make margin improvement. We feel like when we look at what we see ahead for ourselves in terms of volume opportunity, in terms of our continued gains from productivity and efficiency, we should be able to overcome the headwinds from the fuel.

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Who knows exactly how it's going to play out. So that's why we just need to be nimble, need to try to become more fuel efficient to the extent that we can. Obviously, we're already more fuel efficient than truck, and that's a benefit to us, more fuel efficient, more emissions friendly. But we'll wait and see how that plays out overall.

Vincenzo James Vena
CEO & Director

We always worry about is what happens with our customers.

Jennifer L. Hamann
Executive VP & CFO

Yes, no, true. That's a good point, Jim. I should mention that. The issue with fuel can be what that does to overall price inflation and the consumer. And if that stays high enough long enough that it starts to reduce demand overall.

Vincenzo James Vena
CEO & Director

No, we haven't seen it so far.

Jennifer L. Hamann
Executive VP & CFO

No, we have not.

Vincenzo James Vena
CEO & Director

But that's always a worry, and that's why I'd rather have fuel prices come down and not gather that extra revenue from fuel because we're better off having the consumer strong. So Kenny, they've been pretty strong right now?

Kenny G. Rocker
Executive Vice President of Marketing & Sales

They have.

Vincenzo James Vena
CEO & Director

That's a yes or no.

Kenny G. Rocker
Executive Vice President of Marketing & Sales

That's strong yes.

Vincenzo James Vena
CEO & Director

I love it. Good question, thank you very much.

Operator

Our next question is from the line of Jeff Kauffman with Citizens Bank.

Jeffrey Asher Kauffman
Citizens Bank

Congratulations. Just terrific news. I have a question for Kenny. Kenny, the volume environment feels pretty good. Some of this, as you mentioned, is customers can't find truck capacity because of the

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driver shortage. I think some of this is customers may be diverting because of the pricing and the fuel surcharge situation. One of these is a little stickier with longer-term potential. One of these is a little more temporary. Can you talk about what you feel is just shorter-term customers scrambling to the rails? And then beyond intermodal, which is kind of the obvious conversion, what other rail commodities do you think are seeing a benefit from whatever is going on in the trucking industry that's creating the shortage of capacity?

Kenny G. Rocker
Executive Vice President of Marketing & Sales

Yes. So one part that you did not mention is the fact that we are winning business, and we are winning over-the-road business, and that's not necessarily tied to one or the other. That's just the strong service product that we have. But yes, as you look at the overall domestic intermodal network, what's helping us out is the fact that we have different levers and optionality for our customers. We've got our rail box, which we've deployed for a couple of years now, I've been talking about the number of private asset folks that we have that give our BCOs optionality.

So with that strong service product, that's how we're going out and winning the business and setting aside where fuel is. And yes, to your point, there are other markets that are very strong for us. You look at what's happening in our petrochemicals market, that's been a strong uptick for us. We talked about some wins there, but that market is also strong, and we're moving a lot export. And we've invested in the Gulf for storage and transit network to support that.

Same thing with our grain network. We've invested and put in new facilities on the grain network. And Eric and his team has shown us that we can flex to different markets. Last year, it was Mexico. This year, it's been the Gulf, whether it's the PNW, the Gulf of Mexico, we're able to flex in those markets, wins in automotive. So as you look at the overall landscape, coal is still the wildcard, and I got out of the business of trying to figure out how to forecast coal a while ago. But I'm very bullish on where we sit from a demand and our ability to win new business.

Operator

The next question is from the line of Harrison Bauer with Susquehanna.

Harrison Ty Bauer
Susquehanna Financial Group, LLLP, Research Division

Jumping off Kenny's point on some of the rail assets that you're deploying. Can you walk through maybe the thought process decision and the opportunity that you have in some of your assets? Are private assets constrained right now? And then maybe how does this allow you to accrue more economics, whether through peak season surcharges or into next bid season?

Vincenzo James Vena
CEO & Director

I love the way you asked that. I think you always need to price on what the market provides that you could still move the product and win. So that's the way we look at it. If we can price higher because of it, which we have, then we're going to do that. As far as the assets, sure, we went from having a whole bunch of our container stored to just about all of them out. But what we're doing is we're trying to drive more productivity by being able to get the turns on them quicker so we can get more turns on there, and we see some of that.

So that's what it's all about. And we've always liked to have a buffer. Now we chewed up a big piece of the buffer, and we're sitting in a place where I think there's still more growth, and we're not going to limit it. But of course, we're going to price and be smart about how we price so we can continue to move. Kenny, anything you want to add or?

Kenny G. Rocker
Executive Vice President of Marketing & Sales

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No. And I said this a little bit earlier. The private asset folks, they have ample capacity [indiscernible] new business. That's a positive for us. And you've seen some of the surcharges that we put in place for a small amount of customers, we'll do that if we have to.

Vincenzo James Vena
CEO & Director

Yes, people on our railroad have capacity, right? They have extra assets. Good question. Thank you very much. Last one. We're going to do it and get it done.

Operator

And last one is from Richa Harnain with Deutsche Bank.

Richa Harnain
Deutsche Bank AG, Research Division

Honored to be the last question. So I just wanted to clarify, maybe piggybacking off that last point and maybe like drilling down more into the intermodal commercial strategy. I'm curious how you're partnering with other IMCs.

And I know you just said your private assets have capacity, but are other IMCs you work with private assets struggling with drayage drivers where that's a concern that's been popping up over the last couple of months? And how the strategy has changed and is influencing your ability to address the strong demand. We've also been hearing transcon intermodal trends are pretty competitive. It sounds like you're doing a good job, getting price. Just curious if you can square all of that.

Vincenzo James Vena
CEO & Director

Okay. So listen, I think it's a 2-parter. One thing about this team here is operations and marketing work close every day to figure out exactly the question that you're asking. How do we do this and how do we make things more efficient so we can get the asset turns quicker so that we can use less assets and use that 20-plus percent capacity buffer we have on our railroad to be able to run it faster.

And don't kid yourself, Jennifer is in there like a dirty shirt, pushing these guys around to make sure that they're spending money the right way and the capital. So I'm going to let the team talk about this. It's the last question, but you guys don't go on for 10 fricking minutes because we need to let NS on, okay? So where you go whatever you want...

Kenny G. Rocker
Executive Vice President of Marketing & Sales

Let me make this clear because that's a great question. We're very judicious about how we supplement our capital and our containers out to the IMCs. We're crystal clear on the ones that have higher dwell versus the ones that have lower dwell, and we're not afraid to have difficult conversations with them about it. So if you're sitting on our box a long time, that's a problem, and we're going to address it with you.

Vincenzo James Vena
CEO & Director

You don't want to say anything, Eric?

Eric J. Gehringer
Executive Vice President of Operations

I think Kenny did a great job explaining that how we think about it...

Vincenzo James Vena
CEO & Director

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Bottom line is who we are, and this is culturally, and it's not just Eric and I, okay? Eric is a real smart guy, okay? He's well educated, but I'm telling you he's a railroader. Probably 5 or 6 years ago, I would have said he was an engineer or an engineering department. Now he's a railroader. And what we do and what he's led the team and the people, the culture that we've developed from the frontline people, they're not afraid to make a mistake. We want them to push.

We want them to look at what's possible, and we want to make sure we move ahead. That's who we are. And when we do that, because you can't operate a railroad that's spread out across the entire country and think you're going to make every decision from Omaha, you have to make it locally. So I love where we are. We're clear on what we have to do. If we need to speed up something, we react quick. We decide how we're going to do that. We measure the heck out of it and we move ahead. So listen, that's where we are. Jennifer, anything before we tie it up?

Jennifer L. Hamann
Executive VP & CFO

Yes. The only thing I'll say is I think you slipped something in there at the end of your question about transcontinental pricing, transcontinental margins. Again, we have surcharges out earlier than normal on our private -- on our assets. We see very strong demand, and we're providing a great service product. So we are competing in a market that is strengthening, and we're not putting discounts into that marketplace.

Vincenzo James Vena
CEO & Director

Well, listen, that was the last question. So why don't we just tie it up real quick. We're going to look forward to having another discussion here in a few months. And we don't look backwards, okay? It's done. So we're delivering for this next quarter and seeing what we can do to get this merger approved quicker than slower because we think it's a benefit.

We want to move ahead and return for our shareholders a high return like we talked about where the EPS is going to be high single digit. So I'm excited about what -- where we are, what we're doing and blessed to have a team that makes my life easy. I get up in the morning and sometimes I wonder what I'm going to do. Everyone, have a great day. Thank you very much.

Operator
Thank you. This concludes today's conference. You may disconnect your lines at this time. Thank you for your participation. Have a wonderful day.

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Exhibit 25

CEOs of UP, NS, say latest additions to merger application further enhance competitive aspects

Speaking at TrainsPRO Future of Rail Symposium, Vena and George argue proposed deal has already helped competition

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Norfolk Southern CEO Mark George (left) and Union Pacific CEO Jim Vena (center) talk with Trains Editor Bill Stephens during the Future of Rail Symposium on July 28, 2026. Screenshot from Firecrown video

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CHATTANOOGA, Tenn. — If questions of competition are at the heart of the regulatory future of the Union Pacific-Norfolk Southern merger, the CEOs of the two railroads are firmly convinced they have checked all the boxes to make a compelling argument for the deal's approval.

And for UP CEO Jim Vena, it's the matter of competition that should make approval by the Surface Transportation Board so clear-cut, as he explained during an appearance with his NS counterpart, Mark George, during the TrainsPro Future of Rail Symposium today (July 28).

"If the STB is concerned about the customer," Vena said, "if you limit faster service end to end, if you think that it's not good to have an end-to-end move across the country that is normally less expensive … and you rule that other railroads should be kept whole, you're actually increasing the price to consumers.

"That's why this is going to go through. … Let (the other railroads) go compete. They can drop their price. They can provide a higher level of service to compete against us," he said.

Noted George: "There's no denying competition has already been enhanced just by the announcement of it. That won't be enough to satisfy the STB, I'm sure. But the other features that we've added in the application clearly pass a threshold of enhancement."

The latest features in that application came in a 412-page supplemental filing on Monday [see "UP, NS offer more protections for shippers …," Trains.com, July 27, 2026]. The filing was the second of two this month addressing questions the STB had raised when it accepted the railroads' revised merger application in May [see "STB accepts …," May 28, 2026].

One significant addition in the latest filing is an expansion of the Committed Gateway Pricing concept included in the original merger application. The revised version doubles the number of eligible shippers and includes bulk unit train moves, which were not part of the original concept.

Vena said the change reflected discussions with customers.

"They truly thought it was going to be helpful in their negotiations with the other railroads, to be able to get their products moving in a manner that was better than what we had offered up with just the products that were included," Vena said. "And we looked at it and we said, 'Listen, we're okay with competing.'"

George said the change "really is a significant increase to the enhanced competition arguments of this deal.

"We've gone beyond what any Class I merger in the past has done in terms of offering up new competition. I think when you couple that with what we did with CN and having that agreement with CN, we're really in uncharted waters here in terms of changing the competitive landscape for the better."

That deal, announced last week, includes CN access to Kansas City, Mo., and the UP gateway to Mexico at Eagle Pass, Texas, while UP will be able to move some trains around Chicago via CN's former Elgin, Joliet & Eastern route [see "CN and UP reach settlement …," July 22, 2026]. Some aspects are not contingent on approval of the UP-NS merger; others are contingent on the merger and will require STB approval.

"It resolves Kansas City for us," George said, referring to the fact the merger will give UP parallel routes across Missouri. "It also gives CN access to Kansas City, so now you've created more competition in that market. … I think the enhanced competition features dealing with St. Louis and Kansas City are a big plus."

While BNSF argued this week that the UP-CN deal shows that a merger is not necessary to offer improved service, Vena, without mentioning UP's western rival by name, said it would not have come about if not for the merger. To that point, *Trains* Editor Bill Stephens, moderating the session with the two CEOs, asked what the reaction would have been absent a merger if he had gone to CN headquarters and asked about a deal to use the EJ&E.

"I think I wouldn't have gotten through the turnstiles at the front," Vena said. "They would have kicked me out of the building. They would have said hi first because a lot of people remember me there. [Vena was at CN from 1977 until 2016, when he retired as chief operating officer.] But yes, that would have been a nonstarter."

Vena also addressed another aspect of Monday's filing, which would create a mechanism for customers to ask the STB for relief in the form of reciprocal switching if UP service deteriorates during the integration of the two railroads.

"I think we can handle it two ways," Vena said. "One is we'll make deals with customers. Let's say during the integration, if you feel some pain, we'll open up a spot for you. We have no problem doing that. So it's not just putting it in for the STB to handle. I would rather handle it with customers directly."

Said George: "It's really an augmentation to what the STB's remedies are. We're providing another avenue."

George also offered additional thoughts on why the merger will aid customers.

"We're creating 88,000 single-line lanes as opposed to interline today," he said. "And we know when single line is offered, shippers are two to three times more likely to select rail versus truck as opposed to an interline move via rail. So we have just created an enormous public benefit when we come together by offering all these new single-line options. … [Shippers] know they're going to get cost savings because it's proven that single-line is 27% less costly than interline."

Exhibit 26

WITHHELD FROM PUBLIC VERSION

Exhibit 27

CN-38, FD 36873
PUBLIC VERSION

OEEAA - R1
OMB Clearance No. 2140-0009
Expiration Date 7-31-2026

Class I Railroad Annual Report

Norfolk Southern Combined Railroad Subsidiaries
650 West Peachtree Street NW
Atlanta, GA 30308



To the Surface Transportation Board

For the Year Ending December 31, 2025

OEEAA - R1
OMB Clearance No. 2140-0009
Expiration Date 7-31-2026

Class I Railroad Annual Report

	Norfolk Southern Combined Railroad Subsidiaries **650 West Peachtree Street NW** **Atlanta, GA 30308**
Correct name and address if different than shown	Full name and address of reporting carrier (Use mailing label on original, copy in full on duplicate)

To The

Surface Transportation Board

For the Year Ending December 31, 2025

ANNUAL REPORT

OF

NORFOLK SOUTHERN COMBINED RAILROAD SUBSIDIARIES ("NS RAIL")

TO THE

SURFACE TRANSPORTATION BOARD

FOR THE

YEAR ENDED DECEMBER 31, 2025

Name, official title, telephone number, and office address of officer in charge of correspondence with the Board regarding this report.

(Name) Claiborne L. Moore (Title) Vice President and Controller

(Telephone number) (855) 677-3655
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(Street and number, city, state, and ZIP code)

NOTICE

1. This report is required for every class I railroad operating within the United States. Three copies of this Annual Report should be completed. Two of the copies must be filed with the Surface Transportation Board, Office of Economics, Environmental Analysis, and Administration, 395 E Street, S.W. Suite 1100, Washington, DC 20423, by March 31 of the year following that for which the report is made. One copy should be retained by the carrier.

2. Every inquiry must be definitely answered. Where the word "none" truly and completely states the fact, it should be given as the answer. If any inquiry is inapplicable, the words "not applicable" should be used.

3. Wherever the space provided in the schedules in insufficient to permit a full and complete statement of the requested information, inserts should be prepared and appropriately identified by the number of the schedule.

4. All entries should be made in a permanent black ink or typed. Those of a contrary character must be indicated in parenthesis. Items of an unusual character must be indicated by appropriate symbols and explained in footnotes.

5. Money items, except averages, throughout the annual report form should be shown in thousands of dollars adjusted to accord with footings. Totals for amounts reported in subsidiary accounts included in supporting schedules must be in agreement with related primary accounts. For purposes of rounding, amounts of $500 but less than $1,000 should be raised to the nearest thousand dollars, and amounts of less than $500 should be lowered.

6. Except where the context clearly indicates some other meaning, the following terms when used in this Form have the following meanings:

(a) Board means Surface Transportation Board.

(b) Respondent means the person or corporation in whose behalf the report is made.

(c) Year means the year ended December 31 for which the report is being made.

(d) Close of the Year means the close of business on December 31 for the year in which the report is being made. If the report is made for a shorter period than one year, it means the close of the period covered by the report.

(e) Beginning of the Year means the beginning of business on January 1 of the year for which the report is being made. If the report is made for a shorter period than one year, it means the beginning of that period.

(f) Preceding Year means the year ended December 31 of the year preceding the year for which the report is made.

(g) The Uniform System of Accounts for Railroad Companies means the system of accounts in Part 1201 of Title 49, Code of Federal Regulations, as amended.

7. The ICC Termination Act of 1995 abolished the Interstate Commerce Commission and replaced it with the Surface Transportation Board. Any references to the Interstate Commerce Commission or Commission contained in this report refer to the Surface Transportation Board.

8. Any references to the Bureau of Accounts or the Office of Economics contained in this report refer to the Office of Economics, Environmental Analysis, and Administration of the Surface Transportation Board.

For Index, See Back of Form

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SPECIAL NOTICE

Docket No. 38559, Railroad Classification Index, (ICC served January 20, 1983), modified the reporting requirements for Class II, Class III, and Switching and Terminal Companies. These carriers will notify the Board only if the calculation results in a different revenue level than its current classification.

The dark borders on the schedules represent data that are captured by the Board.

Supplemental Information about the Annual Report (R-1)

The following information is provided in Compliance with OMB requirements and pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3519 (PRA):

This information collection is mandatory pursuant to 49 U.S.C. § 11145. The estimated hour burden for filing this report is estimated at no more than 800 hours. Information in the Annual Reports is used to monitor and assess railroad industry growth, financial stability, traffic, and operations and to identify industry changes that may affect national transportation policy. In addition, the Board uses data from these reports to more effectively carry out its regulatory responsibilities, such as acting on railroad requests for authority to engage in Board regulated financial transactions (for example, mergers, acquisitions of control, consolidations and abandonments); developing the Uniform Rail Costing System (URCS); conducting rail revenue adequacy proceedings; developing rail cost adjustment factors; and conducting investigations and rulemakings. The information in this report is ordinarily maintained by the agency in hard copy for 10 years, after which it is transferred to the National Archives, where it is maintained as a permanent record. In addition, some of this information is posted on the Board's website, where it may remain indefinitely. All information collected through this report is available to the public. Under the PRA, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information unless it displays a currently valid OMB control number. Comments and questions about this collection (2140-0009) should be directed to Paperwork Reduction Officer, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A. SCHEDULES OMITTED BY RESPONDENT

1 The respondent, at its option, may omit pages from this report provided there is nothing to report or the schedules are not applicable.

2 Show the pages excluded, as well as the schedule number and title, in the space provided below.

3 If no schedules were omitted indicate "NONE."

Page	Schedule No.	Title
		All Positive Train Control (PTC) Supplement schedules have been excluded in accordance with the Decision issued by the STB in Docket No. 706 (Sub-No. 1), 2025 Reporting Requirements for Positive Train Control Expenses and Investments, decided on January 29, 2026.

B. IDENTITY OF RESPONDENT

Answers to the questions asked should be made in full, without reference to data returned on the corresponding page of previous reports. In case any changes of the nature referred to under Inquiry 4 on this page have taken place during the year covered by this report, they should be explained in full detail.

1 Give the exact name of the respondent in full. Use the words "The" and "Company" only when they are parts of the corporate name. Be careful to distinguish between railroad and railway. The corporate name should be given uniformly throughout the report, notably on the cover, on the title page, and in the "Verification." If the report is made by receivers, trustees, a committee of bondholders, or individuals otherwise in possession of the property, state names and facts with precision. If the report is for a consolidated group, pursuant to Special Permission from the Board, indicate such fact on line 1 below and list the consolidated group on page 4.

2 If incorporated under a special charter, give date of passage of the act; if under a general law, give date of filing certificate of organization; if a reorganization has been effected, give date of reorganization. If a receivership or other trust, also give date when such receivership or other possession began. If a partnership, give date of formation and also names in full of present partners.

3 State the occasion for the reorganization, whether by reason of foreclosure of mortgage or otherwise, according to the fact. Give date of organization of original corporation and refer to laws under which organized.

1 Exact Name of common carrier making this report: Norfolk Southern Combined Railroad Subsidiaries* (NS Rail) is comprised principally of Norfolk Southern Railway Company.

2 Date of incorporation: Norfolk Southern Railway Company was incorporated June 18, 1894, under the name Southern Railway Company.

3 Under laws of what Government, State, or Territory organized? If more than one, name all. If in bankruptcy, give court of jurisdiction and dates of beginning of receivership and of appointment of receivers or trustees:
Norfolk Southern Railway Company - Organized under and by virtue of an act of Assembly of the Commonwealth of Virginia, approved February 20, 1894.

4 If the respondent was reorganized during the year, involved in a consolidation or merger, or conducted its business under a different name full particulars:
N/A

*** See note on page 4 "Principles of Combined Reporting."**

STOCKHOLDERS' REPORTS

5 The respondent is required to send the Office of Economic and Environmental Analysis, immediately upon preparation, two copies of its latest annual report to stockholders.

Check appropriate box:

[ ] Two copies are attached to this report.

[ ] Two copies will be submitted on:

[X] No annual report to stockholders is prepared. Not applicable for "Norfolk Southern Combined Railroad Subsidiaries."

C. VOTING POWERS AND ELECTIONS

1 State the par value of each share of stock: Common **$ No par** per share; first preferred $_____ per share; second preferred $_____ per share; debenture stock $_____ per share.

2 State whether or not each share of stock has the right to one vote; if not, give particulars in a footnote. **[X] Yes** [ ] No

3 Are voting rights proportional to holdings? **[X] Yes** [ ] No. If no, state in a footnote the relationship between holdings and corresponding voting rights.

4 Are voting rights attached to any securities other than stock? [ ] Yes **[X] No**. If yes, name in a footnote each security, other than stock, to which voting rights are attached (as of the close of the year), and state in detail the relationship between holdings and corresponding voting rights, indicating whether voting rights are actual or contingent and, if contingent, showing the contingency.

5 Has any class or issue of securities any special privileges in the election of directors, trustees, or managers, or in the determination of corporate action by any method? [ ] Yes **[X] No**. If yes, describe fully in a footnote each such class or issue and give a succinct statement showing clearly the character and extent of such privileges.

6 Give the date of the latest closing of the stock book prior to the actual filing of this report, and state the purpose of such closing.
Stock Books Do Not Close

7 State the total voting power of all security holders of the respondent at the date of such closing, if within one year of the date of such filing; if not, state as of the close of the year. **NSR 16,668,997** votes, as of **December 31, 2025** (date).

8 State the total number of stockholders of record, as of the date shown in answer to Inquiry 7. **One** stockholders.

9 Give the names of 30 security holders of the respondent who, at the date of the latest closing of the stock book or compilation of the list of stockholders of the respondent (if within one year prior to the actual filing of this report), had the highest voting powers in the respondent, showing for each, his or her address, the number of votes he or she would have had a right to cast on that date had a meeting then been in order, and the classification of the number of votes to which he or she was entitled, with respect to securities held by him or her, such securities being classified as common stock, second preferred stock, first preferred stock, and other securities (stating in a footnote the names of such other securities, if any). If any such holder held in trust, give (in a footnote) the particulars of the trust. In the case of voting trust agreements, give as supplemental information the names and addresses of the 30 largest holders of the voting trust certificates and the amount of their individual holdings. If the stock book was not closed or the list of stockholders compiled within such year, show such 30 security holders at the close of the year.

Line No.	Name of Security Holder (a)	Address of Security Holder (b)	Number of Votes to Which Security Holder Was Entitled (c)	Number of Votes, Classified With Respect to Securities on Which Based			Line No.
				Stock			
					Preferred		
				Common (d)	Second (e)	First (f)	
1	**Norfolk Southern Railway:**						1
2	Norfolk Southern Corp.	Atlanta, GA	16,668,997	16,668,997			2
3							3
4							4
5							5
6							6
7							7
8							8
9							9
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11							11
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27							27
28							28
29							29
30							30

C. VOTING POWERS AND ELECTIONS - Continued

10 State the total number of votes cast at the latest general meeting for the election of the respondent: **16,668,997** votes cast.
11 Give the date of such meeting: **August 12, 2025**
12 Give the place of such meeting: **Atlanta, GA**

NOTES AND REMARKS

Principles of Combined Reporting
Norfolk Southern Combined Railroad Subsidiaries (NS Rail) includes the affiliated railroads under the COMMON CONTROL of Norfolk Southern Corporation (NS). The major subsidiary is Norfolk Southern Railway Company and consolidated subsidiaries (NSR). See listing of companies included in combined rail reporting below. Nonrailroad subsidiaries whose assets and operations are not deemed to be an integral part of rail operations are included in this combined report in the following classifications:

Balance Sheet - Fixed Capital Assets - "Property Used in Other Than Carrier Operations"
Results of Operations - "Other Income" and "Miscellaneous Deductions From Income"

All significant intercompany balances and transactions have been eliminated in combination.

This form of Combined reporting was approved by the ICC Accounting and Valuation Board on March 23, 1987, as indicated in Chairman William F. Moss, III's letter.

The following companies are included in the combined rail reporting to the Surface Transportation Board:

Class I

Norfolk Southern Railway Company

Class II

Alabama Great Southern Railroad Company, The
Central of Georgia Railroad Company
Georgia Southern and Florida Railway Company

Class III

Camp Lejeune Railroad Company
Chesapeake Western Railway
Interstate Railroad Company
Norfolk and Portsmouth Belt Line Railroad Company
State University Railroad Company

Lessors and Other

Airforce Pipeline, Inc.
Alabama Great Southern LLC
Cincinnati, New Orleans and Texas Pacific Rwy, LLC
Citico Realty Company
High Point, Randleman, Asheboro and Southern Railroad Company
Lamberts Point Barge Company, Inc.
Mobile and Birmingham Railroad Company
Norfolk Southern-Mexico, LLC
NorfolkSouthernMexicana, S. de R.L. de C.V.
North Carolina Midland Railroad Company, The
NS Spectrum Corporation
Rail Investment Company
Reading Company, LLC [Virginia]
South Western Rail Road Company, The
Southern Rail Terminals, Inc.
Southern Rail Terminals of North Carolina, Inc.
Southern Region Materials Supply, Inc.
T-Cubed of North America, LLC
Thoroughbred Emissions Research, LLC
Thoroughbred Funding, Inc.
Thoroughbred Technology & Telecommunications LLC
Triple Crown Services, Inc.
Virginia and Southwestern Railway Company
Wheelersburg Terminal LLC
Yadkin Railroad Company

Road Initials: NS Rail Year: 2025

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - ASSETS
(Dollars in Thousands)

Line No.	Cross Check	Account	Title (a)	Balance at close of year (b)	Balance at beginning of year (c)	Line No.
			Current Assets			
1		701	Cash	1,450,927	1,602,591	1
2		702	Temporary cash investments			2
3		703	Special deposits			3
			Accounts receivable			
4		704	- Loan and notes	341	350	4
5		705	- Interline and other balances	16,339	14,242	5
6		706	- Customers	567,749	611,541	6
7		707	- Other	179,227	172,632	7
8		709, 708	- Accrued accounts receivables	231,957	279,585	8
9		708.5	- Receivables from affiliated companies	41,857,613	37,784,812	9
10		709.5	- Less: Allowance for uncollectible accounts	(6,702)	(7,988)	10
11		710, 711, 714	Working funds, prepayments, deferred income tax debits	222,072	196,246	11
12		712	Materials and supplies	269,749	276,158	12
13		713, 713.5, 713.6	Other current assets	88,281	2,055	13
14			TOTAL CURRENT ASSETS	44,877,553	40,932,224	14
			Other Assets			
15		715, 716, 717	Special funds	949,279	786,116	15
16		721, 721.5	Investments and advances affiliated companies (Schs. 310 and 310A)	1,545,073	1,495,662	16
17		722, 723	Other investments and advances	6,062	4,099	17
18		737, 738	Property used in other than carrier operation (Less depreciation) $58,273 and $56,849, respectively	73,918	76,026	18
19		739, 741	Other assets	465,884	453,703	19
20		743	Other deferred debits	54,835	52,838	20
21		744	Accumulated deferred income tax debits			21
22			TOTAL OTHER ASSETS	3,095,051	2,868,444	22
			Road and Equipment			
23		731, 732	Road (Sch. 330), L-30 Col h & b	38,366,819	37,191,019	23
24		731, 732	Equipment (Sch 330), L-39 Col h & b	11,479,575	11,428,043	24
25		731, 732	Unallocated items	1,018,362	935,803	25
26		733, 735	Accumulated depreciation and amortization (Schs. 335, 342)	(15,258,404)	(14,564,244)	26
27			Net Road and Equipment	35,606,352	34,990,621	27
28	*		TOTAL ASSETS	83,578,956	78,791,289	28

NOTES AND REMARKS

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - LIABILITIES AND SHAREHOLDERS' EQUITY
(Dollars in Thousands)

Line No.	Cross Check	Account	Title (a)	Balance at close of year (b)	Balance at beginning of year (c)	Line No.
			Current Liabilities			
29		751	Loans and notes payable			29
30		752	Accounts payable: interline and other balances	1,713	1,836	30
31		753	Audited accounts and wages	1,805	1,726	31
32		754	Other accounts payable	623	1,184	32
33		755, 756	Interest and dividends payable	238	366	33
34		757	Payables to affiliated companies	2,790,189	2,646,791	34
35		759	Accrued accounts payable	1,856,543	1,696,941	35
36		760, 761, 761.5, 762	Taxes accrued	308,383	306,867	36
37		763, 763.5, 763.6	Other current liabilities	765,132	745,009	37
38		764	Equipment obligations and other long-term debt due within one year	606,788	304,040	38
39			TOTAL CURRENT LIABILITIES	6,331,414	5,704,760	39
			Non-Current Liabilities			
40		765, 767	Funded debt unmatured	138,085	138,085	40
41		766	Equipment obligations			41
42		766.5	Capitalized lease obligations	11,116	8,416	42
43		768	Debt in default			43
44		769	Accounts payable: affiliated companies	14,050,105	14,250,105	44
45		770.1, 770.2	Unamortized debt premium	22,001	22,673	45
46		781	Interest in default			46
47		783	Deferred revenues - transfers from govt. authorities			47
48		786	Accumulated deferred income tax credits	7,384,469	7,072,944	48
49		771, 772, 774, 775, 782, 784	Other long-term liabilities and deferred credits	4,566,863	4,456,241	49
50			TOTAL NON-CURRENT LIABILITIES	26,172,639	25,948,464	50
			Shareholders' Equity			
51		791, 792	Total capital stock	166,690	166,690	51
52			Common stock	166,690	166,690	52
53			Preferred stock			53
54		793	Discount on capital stock			54
55		794, 795	Additional capital	8,345,170	8,198,671	55
			Retained earnings:			
56		797	Appropriated			56
57		798	Unappropriated	42,743,200	39,001,743	57
58		798.5	Less treasury stock			58
59		799	Accumulated other comprehensive income or (loss)	(180,157)	(229,039)	59
60			Total shareholders' equity	51,074,903	47,138,065	60
61			Noncontrolling interest			61
62			Total equity (Lines 60 + 61)	51,074,903	47,138,065	62
63			TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	83,578,956	78,791,289	63

NOTES AND REMARKS

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - EXPLANATORY NOTES

(Dollars in Thousands)

The notes listed below are provided to disclose supplementary information on matters which have an important effect on the financial condition of the carrier. The carrier shall give the particulars called for herein and where there is nothing to report, insert the word "none"; and in addition thereto shall enter in separate notes with suitable particulars other matters involving material amounts of the character commonly disclosed in financial statements under generally accepted accounting principles, except as shown in other schedules. This includes statements explaining (1) service interruption insurance policies and indicating the amount of indemnity to which respondent will be entitled for work stoppage losses and the maximum amount of additional premium respondent may be obligated to pay in the event such losses are sustained by other railroads; (2) particulars concerning obligations for stock purchase options granted to officers and employees; and (3) what entries have been made for net income or retained income restricted under provisions of mortgages and other arrangements.

1. Amount (estimated, if necessary) of net income or retained income which has to be provided for capital expenditures, and for sinking funds, pursuant to provisions of reorganization plans, mortgages, deeds of trust, or other contracts. NONE

2. Estimated amount of future earnings which can be realized before paying Federal income taxes because of unused and available net operating loss carryover on January 1 of the year following that for which the report is made. NONE

3. (a) Explain the procedure in accounting for pension funds and recording in the accounts the current and past service pension costs, indicating whether or not consistent with the prior year. SEE NOTE 17, PAGE 14

   (b) State amount, if any, representing the excess of the actuarially computed value of vested benefits over the total of the pension fund. SEE NOTE 17, PAGE 14

   (c) Is any part of the pension plan funded? Specify. Yes X No

   If funding is by insurance, give name of insuring company NOT APPLICABLE

   If funding is by trust agreement, list trustee(s) THE BOARD OF MANAGERS OF THE RETIREMENT PLAN OF NORFOLK SOUTHERN CORPORATION AND PARTICIPATING SUBSIDIARY COMPANIES. AS OF DECEMBER 31, 2025, THE MEMBERS OF THE BOARD OF MANAGERS ARE P.C. BRYANT, CHAIRPERSON; JASON A. ZAMPI, MEMBER; CLAIBORNE L. MOORE, MEMBER

   Date of trust agreement or latest amendment DECEMBER 14, 2023
   If respondent is affiliated in any way with the trustee(s), explain affiliation.

   (d) List affiliated companies which are included in the pension plan funding agreement and describe basis for allocating charges under the agreement. SEE NOTE 17, PAGE 14

   (e) Is any part of the pension plan fund invested in stock or other securities of the respondent or its affiliates? Specify Yes ___ No X
   If yes, give number of the shares for each class of stock or other security.
   Are voting rights attached to any securities held by the pension plan? Specify Yes X No ___
   If yes, who determines how stock is voted? THE BENEFITS INVESTMENT COMMITTEE IS AUTHORIZED TO GIVE INSTRUCTIONS TO THE BENEFITS INVESTMENT COMMITTEE'S NOMINEE REGARDING THE EXECUTION OF GENERAL PROXIES.

4. State whether a segregated political fund has been established as provided by the Federal Election Campaign Act of 1971 (18 U.S.C. 610). Yes X No

5. (a) The amount of employer's contribution to employee stock ownership plans for the current year was NONE

   (b) The amount of investment tax credit used to reduce current income tax expense resulting from contributions to qualified employee stock ownership plans for the current year was NONE

6. In reference to Docket 37465, specify the total amount of business entertainment expenditures charged to the non-operating expense account. NONE

7. Give particulars with respect to contingent assets and liabilities at the close of the year, in accordance with instruction 5-6 in the Uniform System of Accounts for Railroad Companies, that are not reflected in the amounts of the respondent.

   Disclose the nature and amount of contingency that is material.

   Examples of contingent liabilities are items which may become obligations as a result of pending or threatened litigation, assessments or possible assessments of additional taxes, and agreements or obligations to repurchase securities or property. Additional pages may be added if more space is needed. (Explain and/or reference to the following pages.)

See Note 18 beginning on page 15E.

Continued on following page

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - EXPLANATORY NOTES - Continued

NOTES TO FINANCIAL STATEMENTS

(a) Changes in valuation accounts.

8. Marketable equity securities.

		Cost	Market	Dr. (Cr.) to Income	Dr. (Cr.) to Stockholder's Equity
(Current Yr.) as of / /	Current Portfolio				N/A
	Noncurrent Portfolio			N/A	
(Previous Yr.) as of / /	Current Portfolio			N/A	N/A
	Noncurrent Portfolio			N/A	N/A

At / / , gross unrealized gains and losses pertaining to marketable equity securities were as follows:

	Gains	Losses
Current		
Noncurrent		

A net unrealized gain (loss) of $_____ on the sale of marketable securities was included in net income for _____ (year)

The cost of securities was based on the _____ (method) cost of all the shares of each security held at time of sale.

NOTE: / / (date) Balance sheet date of reported year unless specified as previous year.

NOTES TO FINANCIAL STATEMENTS

9. New Accounting Pronouncements

In December 2023, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2023-09, "Income Taxes (Topic 740) - Improvements to Income Tax Disclosures." This update requires additional disclosures including greater disaggregation of information in the reconciliation of the statutory rate to the effective rate and income taxes paid disaggregated by jurisdiction. The ASU is effective for fiscal years beginning after December 15, 2024. We adopted the ASU on January 1, 2025, but it does not impact our R-1 disclosures.

In November 2024, the FASB issued ASU 2024-03, "Income Statement: Reporting Comprehensive Income: Expense Disaggregation Disclosures (Subtopic 220-40)." This update requires an entity to disclose specific information about certain costs and expenses in the notes to its financial statements for interim and annual reporting periods. Entities are required to provide disaggregated information about expenses to help investors better understand performance, better assess prospects for future cash flows, and compare performance over time and with that of other entities. The ASU is effective for fiscal years beginning after December 15, 2026 and interim periods within fiscal years beginning after December 15, 2027. We will not early adopt the standard and are currently evaluating the impact of this amendment on our disclosures.

In September 2025, the FASB issued ASU 2025-06, "Intangibles-Goodwill and Other-Internal-Use Software (Subtopic 350-40): Targeted Improvements to the Accounting for Internal-Use Software." This update revises the recognition guidance for internal-use software by eliminating the previous model based on software development stages and introducing a principles-based approach. Under the new guidance, capitalization begins when management has authorized and committed to funding the project, and it is probable that the software will be completed and used for its intended purpose. The ASU is effective for interim periods and fiscal years beginning after December 15, 2027. We will not early adopt the standard and are currently evaluating the impact.

10. Merger Agreement

On July 28, 2025, NS entered into an Agreement and Plan of Merger (the "Merger Agreement") with Union Pacific Corporation, a Utah corporation ("Union Pacific"), Ruby Merger Sub 1 Corporation, a Virginia corporation and a direct wholly owned subsidiary of Union Pacific ("Merger Sub 1"), and Ruby Merger Sub 2 LLC, a Virginia limited liability company and a direct wholly owned subsidiary of Union Pacific ("Merger Sub 2").

The Merger Agreement provides that Union Pacific will acquire NS in a stock-and-cash transaction whereby (a) Merger Sub 1 will be merged with and into NS (the "First Merger"), with NS surviving the First Merger as a direct wholly owned subsidiary of Union Pacific, and (b) immediately following the First Merger, NS will be merged with and into Merger Sub 2 (the "Second Merger" and together with the First Merger, the "Mergers"), with Merger Sub 2 surviving the Second Merger as a direct, wholly owned subsidiary of Union Pacific.

At the effective time of the First Merger, each share of Common Stock, par value $1.00 per share, of NS, issued and outstanding immediately prior to the effective time of the First Merger, subject to certain exclusions set forth in the Merger Agreement, will be converted into the right to receive one share of common stock, par value $2.50 per share, of Union Pacific, and $88.82 in cash without interest.

The consummation of the Mergers is subject to certain conditions, including approval by the U.S. Surface Transportation Board (STB). Additionally, if the Merger Agreement is terminated under specific circumstances, either NS or Union Pacific are required to pay a termination fee of $2.5 billion.

The full text of the Merger Agreement can be found as Exhibit 2.1 in NS's Current Report on Form 8-K filed with the U.S. Securities and Exchange Commission (SEC) on July 29, 2025.

During 2025, we incurred $80 million in expenses related to or resulting from the proposed transaction. These costs, which include costs associated with employee retention agreements, fees to third-party advisors, and expenses for legal services, are recorded in general and administration expenses on schedule 410.

11. Railway Operating Revenues

The following table disaggregates our revenue by major commodity group:

	2025	2024
	($ in millions)	
Merchandise:		
Agriculture, forest and consumer products	$ 2,538	$ 2,521
Chemicals	2,206	2,123
Metals and construction	1,724	1,682
Automotive	1,216	1,144
Merchandise	7,684	7,470
Intermodal	3,009	3,042
Coal	1,487	1,611
Total	$ 12,180	$ 12,123

NOTES TO FINANCIAL STATEMENTS

We recognize the amount of revenues to which we expect to be entitled for the transfer of promised goods or services to customers. A performance obligation is created when a customer under a transportation contract or public tariff submits a bill of lading to us for the transport of goods. These performance obligations are satisfied as the shipments move from origin to destination. As such, transportation revenues are recognized proportionally as a shipment moves, and related expenses are recognized as incurred. These performance obligations are generally short-term in nature with transit days averaging approximately one week or less for each commodity group. The customer has an unconditional obligation to pay for the service once the service has been completed. Estimated revenues associated with in-process shipments at period-end are recorded based on the estimated percentage of service completed. We had no material remaining performance obligations at December 31, 2025 and 2024.

We may provide customers ancillary services, such as switching, demurrage and other incidental activities, under their transportation contracts. The revenues associated with these distinct performance obligations are recognized when the services are performed or as contractual obligations are met. These revenues are included in accounts 104, 106, and 110 on the Results of Operations and represents approximately 4% of "Total Railway Operating Revenues" on the Results of Operations for both the years ended December 31, 2025 and 2024.

Revenue related to interline transportation services that involve another railroad is reported on a net basis. Therefore, the portion of the amount that relates to another party is not reflected in revenues.

Under the typical payment terms of our freight contracts, payment for services is due within fifteen days of billing the customer, thus there are no significant financing components. "Accounts receivable" on the Comparative Statement of Financial Position includes both customer and non-customer receivables as follows:

	2025	2024
	($ in millions)	
Customer	$ 568	$ 611
All other accounts receivable	42,279	38,244
Accounts receivable	$ 42,847	$ 38,855

Non-customer receivables include non-revenue-related amounts due from affiliated companies, other railroads, governmental entities, insurers, and others. There were no non-current customer receivables at December 31, 2025 and 2024. We do not have any material contract assets or liabilities at December 31, 2025 and 2024.

12. Restructuring and Other Charges

"Railway operating expenses" in 2025 includes expenses associated with the restructuring of certain technology functions, including severance costs for impacted employees, and the rationalization of certain software development projects that had not been placed into service. "Railway operating expenses" in 2024 includes expenses associated with NS's voluntary and involuntary separation programs that reduced its management workforce, expenses associated with the rationalization of certain software development projects that had not been placed into service, costs associated with the appointment of the Vice President of NSR and the Executive Vice President and Chief Operating Officer of NS, and the disposition of an asset class. We incurred expenses of $22 million and $183 million in 2025 and 2024, respectively, which are included in general and administration expenses on schedule 410.

13. Related Parties

General

NS is our parent holding company. Rail operations are coordinated at the holding company level by the Chief Operating Officer. NS charges us a fee for management services it performs for us (which totaled $1.0 billion in 2025 and $864 million in 2024, including a $81 million markup in 2025 and a $69 million markup in 2024). In addition, NS charges us a revenue-based licensing fee (which totaled $181 million and $180 million in 2025 and 2024, respectively) for the use of certain intangible assets owned by NS.

Operations Over Conrail's Lines

Through a limited liability company, NS and CSX Corporation (CSX) jointly own Conrail Inc. (Conrail), whose primary subsidiary is Consolidated Rail Corporation (CRC). NS has a 58% economic and 50% voting interest in the jointly owned entity, and CSX has the remainder of the economic and voting interests.

CRC owns and operates certain properties (the Shared Assets Areas) for the joint and exclusive benefit of NSR and CSX Transportation, Inc. (CSXT). The costs of operating the Shared Assets Areas are borne by NSR and CSXT based on usage. In addition, NSR and CSXT pay CRC a fee for access to the Shared Assets Areas. "Railway operating expenses" include expenses payable to CRC for operation of the Shared Assets Areas totaling $189 million in 2025 and $198 million in 2024. Future payments for access fees due to CRC under the Shared Assets Areas agreements are as follows: $54 million in each of 2026 through 2028 and $23 million in 2029. NS provides certain general and administrative support functions to Conrail, the fees for which are billed in accordance with several service-provider arrangements and approximate $7 million annually.

"Accrued accounts payable" includes $297 million and $243 million at December 31, 2025 and 2024, respectively, due to Conrail for the operation of the Shared Assets Areas. "Other Long-Term Liabilities and Deferred Credits" includes $534 million at both December 31, 2025 and 2024 for long-term advances from Conrail.

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - EXPLANATORY NOTES - Continued

NOTES TO FINANCIAL STATEMENTS

Investment in TTX

NSR and six other North American railroads jointly own TTX Company (TTX), a railcar pooling company that provides its owner-railroads with standardized fleets of intermodal, automotive, and general use rail cars at stated rates. We have a 19.78% ownership interest in TTX.

Amounts paid to TTX for use of equipment are included in "Railway operating expenses." This amounted to $316 million and $295 million of expense, respectively, for the years ended December 31, 2025 and 2024. Equity in the earnings of TTX, which partially offsets the costs and also included in "Railway operating expenses," totaled $43 million and $48 million for 2025 and 2024, respectively.

Intercompany Accounts

	2025	2024
	($ in millions)	
Current:		
Receivables from Affiliated Companies	$ 41,858	$ 37,785
Payables to Affiliated Companies	(2,790)	(2,647)
Long-term:		
Accounts Payable; Affiliated Companies	$ (14,050)	$ (14,250)

Interest is applied to certain advances at the average NS yield on short-term investments and to the notes at specified rates. Interest rates on these notes range from 1.31% to 6.0% with maturity dates ranging from 2026 to 2121. NSR's results include interest income on amounts due from NS of $1.5 billion in 2025 and $1.6 billion in 2024, and interest expense of $627 million in 2025 and $615 million in 2024 related to these intercompany accounts.

Intercompany Federal Income Tax Accounts

Intercompany federal income tax accounts are recorded between companies in the NS consolidated group in accordance with the NS tax sharing agreement and are settled no later than the expiration of associated net operating loss carry forwards.

Cash Required for NS Debt

NS has outstanding approximately $17.2 billion of unsecured notes. A significant portion of the funding for the interest and repayments on this and other NS debt is expected to be provided by us.

NS is subject to various financial covenants with respect to its debt and under its credit agreement, including a maximum leverage ratio restriction and certain restrictions on issuance of further debt. As a major NS subsidiary, we are subject to certain of those covenants.

14. Acquisition of Assets of Cincinnati Southern Railway and Sales of Railway Lines

On March 15, 2024, we completed the acquisition of a 337 mile railway line that extends from Cincinnati, Ohio to Chattanooga, Tennessee from the Cincinnati Southern Railway (CSR) for $1.7 billion. We previously operated this line subject to an operating lease agreement, which was terminated upon the close of the transaction. Lease expense associated with the prior operating lease agreement totaled $5 million in 2024. The purchase price was allocated to the assets acquired in the transaction. The asset purchase is reflected in "Road" on the Comparative Statement of Financial Position and "Capital Expenditures" on the Statement of Cash Flows.

On September 5, 2024, we consummated a transaction with the Virginia Passenger Rail Authority (VPRA) to sell a railway line ("Manassas Line") to support the expansion of passenger rail service in the Commonwealth of Virginia. The total purchase price to be paid by the VPRA is $357 million and we received $315 million in cash proceeds at closing. The remainder of the proceeds are expected to be received by the end of 2027. The total gain recognized as a result of the transaction was $323 million. Additionally, the VPRA also agreed to exchange a railway line ("V-Line") in consideration for the land and above ground assets described as the "Seminary Passage." This transaction closed in November 2024 and the gain recognized as a result of the transaction was $53 million.

On September 6, 2024, we consummated an agreement with the City of Charlotte to sell a railway line between Charlotte and Mecklenburg County, NC in exchange for $74 million. The cash proceeds from the transaction were received at closing and the transaction resulted in a gain of $57 million.

The gains from these sales are reflected in "Miscellaneous Income" on the Results of Operations, and "Loss (Gain) on Sale or Disposal of Tangible Property and Investments" on the Statement of Cash Flows, and cash proceeds are included in "Proceeds from Sale of Property" on the Statement of Cash Flows.

NOTES TO FINANCIAL STATEMENTS

15. Leases

We are committed under long-term lease agreements for equipment, lines of road, and other property. We combine lease and non-lease components for new and reassessed leases. Some of these agreements are variable lease agreements that include usage-based payments. These agreements contain payment provisions that depend on an index or rate at the lease commencement date. Our long-term lease agreements do not contain any material restrictive covenants.

Our equipment leases have remaining terms of less than 1 year to 7 years and our lines of road and land leases have remaining terms of less than 1 year to 132 years. Some of these leases include options to extend the leases for up to 99 years and some include options to terminate the leases within 30 days. In instances when we are not reasonably certain to exercise these renewal options, the options are not considered in determining the lease term, and associated payments are excluded from future minimum lease payments.

Leases with an initial term of twelve months or less are not recorded on the balance sheet. We recognize lease expense for these leases on a straight-line basis over the lease term.

Operating lease amounts included on the Comparative Statement of Financial Position were as follows:

		December 31,	
		2025	2024
	Classification	*($ in millions)*	
Assets			
Right-of-use (ROU) assets	Other assets	$ 218	$ 271
Liabilities			
Current lease liabilities	Other current liabilities	$ 70	$ 81
Non-current lease liabilities	Other long-term liabilities and deferred credits	148	191
Total lease liabilities		$ 218	$ 272

The components of total lease expense, primarily included in “Railway operating expenses,” were as follows:

	2025	2024
	($ in millions)	
Operating lease expense	$ 92	$ 102
Variable lease expense	65	84
Short-term lease expense	8	10
Total lease expense	$ 165	$ 196

In March 2019, we entered into a non-cancellable lease for an office building. In 2021, the construction of the office building was completed, and the lease commenced. The initial lease term is five years with options to renew, purchase, or sell the office building at the end of the lease term. The lease contains a residual value guarantee of up to eighty-three percent of the total construction cost of $499 million.

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - EXPLANATORY NOTES - Continued

NOTES TO FINANCIAL STATEMENTS

Other information related to operating leases was as follows:

	December 31, 2025	2024
Weighted-average remaining lease term (years) on operating leases	6.83	6.64
Weighted-average discount rates on operating leases	4.05%	3.96%

As the rates implicit in most of our leases are not readily determinable, we use a collateralized incremental borrowing rate based on the information available at the lease commencement date in determining the present value of future payments. We use the portfolio approach and group leases into short-, medium-, and long-term categories, applying the corresponding incremental borrowing rates to these categories.

During 2025 and 2024, respectively, ROU assets obtained in exchange for new operating lease liabilities were $22 million and $21 million, respectively. Cash paid for amounts included in the measurement of lease liabilities was $92 million and $102 million in 2025 and 2024, respectively, and is included in operating cash flows.

Future minimum lease payments under non-cancellable operating leases were as follows:

	December 31, 2025 ($ in millions)
2026	$ 77
2027	55
2028	39
2029	30
2030	9
2031 and subsequent years	43
Total lease payments	253
Less: Interest	35
Present value of lease liabilities	$ 218

	December 31, 2024 ($ in millions)
2025	$ 89
2026	69
2027	47
2028	35
2029	27
2030 and subsequent years	47
Total lease payments	314
Less: Interest	42
Present value of lease liabilities	$ 272

NOTES TO FINANCIAL STATEMENTS

16. Fair Value

Fair Value Measurements

FASB Accounting Standards Codification (ASC) 820-10, “Fair Value Measurements,” established a framework for measuring fair value and a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three broad levels, as follows:

Level 1 Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that we have the ability to access.

Level 2 Inputs to the valuation methodology include:
· quoted prices for similar assets or liabilities in active markets,
· quoted prices for identical or similar assets or liabilities in inactive markets,
· inputs other than quoted prices that are observable for the asset or liability, and
· inputs that are derived principally from or corroborated by observable market data by correlation or other means.

If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

Level 3 Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset or liability's fair value measurement level within the hierarchy is based on the lowest level of any input that is significant to the fair value measurement.

17. Pensions and Other Postretirement Benefits

NS and certain subsidiaries have both funded and unfunded defined benefit pension plans covering eligible employees. NS and certain subsidiaries also provide specified health care benefits to eligible retired employees; these plans can be amended or terminated at NS’ option. Under NS’ self-insured retiree health care plan, for those participants who are not Medicare-eligible, certain health care expenses are covered for retired employees and their dependents, reduced by any deductibles, coinsurance, and, in some cases, coverage provided under other group insurance policies. Those participants who are Medicare-eligible are not covered under the self-insured retiree health care plan, but instead are provided with an employer-funded health reimbursement account which can be used for reimbursement of health insurance premiums or eligible out-of-pocket medical expenses.

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - EXPLANATORY NOTES - Continued

NOTES TO FINANCIAL STATEMENTS

Pension and Other Postretirement Benefit Obligations and Plan Assets

	Pension Benefits		Other Postretirement Benefits	
	2025	2024	2025	2024
		($ in millions)		
Change in benefit obligations:				
Benefit obligation at beginning of year	$ 2,038	$ 2,151	$ 278	$ 310
Service cost	24	26	3	4
Interest cost	107	107	14	15
Actuarial (gains) losses	80	(91)	17	(21)
Benefits paid	(155)	(155)	(31)	(32)
Curtailment	-	-	-	2
Benefit obligation at end of year	2,094	2,038	281	278
Change in plan assets:				
Fair value of plan assets at beginning of year	2,551	2,503	145	138
Actual return on plan assets	347	181	19	21
Employer contributions	23	22	23	18
Benefits paid	(155)	(155)	(31)	(32)
Fair value of plan assets at end of year	2,766	2,551	156	145
Funded status at end of year	$ 672	$ 513	$ (125)	$ (133)
Amounts recognized in the Comparative Statement of Financial Position:				
Special funds	$ 949	$ 786	$ -	$ -
Other current liabilities	(22)	(21)	-	-
Other long-term liabilities and deferred credits	(255)	(252)	(125)	(133)
Net amount recognized	$ 672	$ 513	$ (125)	$ (133)
Amounts included in accumulated other comprehensive loss (before tax):				
Net (gain) loss	$ 395	$ 488	$ (47)	$ (56)
Prior service benefit	(4)	(4)	(91)	(113)

NS' accumulated benefit obligation for its defined benefit pension plans is $1.9 billion at both December 31, 2025 and 2024. NS' unfunded pension plans, included above, which in all cases have no assets, had projected benefit obligations of $277 million and $273 million at December 31, 2025 and 2024, respectively, and had accumulated benefit obligations of $265 million and $256 million at December 31, 2025 and 2024, respectively.

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - EXPLANATORY NOTES - Continued

NOTES TO FINANCIAL STATEMENTS

Pension and Other Postretirement Benefit Cost Components

	2025	2024
	($ in millions)	
Pension benefits:		
Service cost	$ 24	$ 26
Interest cost	107	107
Expected return on plan assets	(196)	(203)
Amortization of net losses	22	17
Amortization of prior service benefit	-	(1)
Net benefit	$ (43)	$ (54)
Other postretirement benefits:		
Service cost	$ 3	$ 4
Interest cost	14	15
Expected return on plan assets	(9)	(11)
Amortization of net gains	(2)	(1)
Amortization of prior service benefit	(22)	(23)
Curtailment gain	-	(20)
Net benefit	$ (16)	$ (36)

During 2024, NS commenced voluntary and involuntary separation programs to reduce NS' nonagreement workforce. Through these programs, approximately 350 employees were separated from service by May 2024. In accordance with FASB ASC Topic 715, “Compensation-Retirement Benefits,” NS evaluated whether a curtailment of pension and other postretirement benefit plans had occurred. While the reduction in the workforce did not result in a curtailment to NS' pension benefit plans, a curtailment to NS' other postretirement benefit plan did occur as the future years of service of plan participants were reduced in excess of 10%. As a result, NS recognized a curtailment gain of $20 million in 2024 for the impacted portion of the prior service benefit previously recorded within “Accumulated other comprehensive loss.”

Other Changes in Plan Assets and Benefit Obligations Recognized in Other Comprehensive Income

	2025	
	Pension Benefits	Other Postretirement Benefits
	($ in millions)	
Net (gains) losses arising during the year	$ (71)	$ 7
Amortization of net gains (losses)	(22)	2
Amortization of prior service benefit	-	22
Total recognized in other comprehensive income	$ (93)	$ 31
Total recognized in net periodic cost and other comprehensive income	$ (136)	$ 15

Net gains arising during the year for pension benefits were due primarily to higher actual returns on plan assets offset partially by a decrease in discount rates. Net losses arising during the year for other postretirement benefits were due primarily to a decrease in discount rates.

The estimated net losses and prior service credits for the pension plans that will be amortized from accumulated other comprehensive loss into net periodic cost over the next year are $17 million. The estimated prior service benefit and net gains for the other postretirement benefit plans that will be amortized from accumulated other comprehensive loss into net periodic benefit over the next year is $23 million.

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - EXPLANATORY NOTES - Continued

NOTES TO FINANCIAL STATEMENTS

Pension and Other Postretirement Benefits Assumptions

Costs for pension and other postretirement benefits are determined based on actuarial valuations that reflect appropriate assumptions as of the measurement date, ordinarily the beginning of each year. The funded status of the plans is determined using appropriate assumptions as of each year end. A summary of the major assumptions follows:

Pension funded status:	**2025**	**2024**
Discount rate	5.51%	5.73%
Future salary increases	4.44%	4.44%
Other postretirement benefits funded status:		
Discount rate	5.10%	5.52%
Pension cost:		
Discount rate – service cost	5.99%	5.41%
Discount rate – interest cost	5.40%	5.10%
Return on assets in plans	8.00%	8.00%
Future salary increases	4.44%	4.44%
Other postretirement benefits cost:		
Discount rate – service cost	5.69%	5.81%
Discount rate – interest cost	5.25%	5.58%
Return on assets in plans	7.75%	7.75%
Health care trend rate	6.50%	6.50%

To determine the discount rates used to measure NS' benefit obligations, NS utilizes analyses in which the projected annual cash flows from the pension and other postretirement benefit plans were matched with yield curves based on an appropriate universe of high-quality corporate bonds. NS uses the results of the yield curve analyses to select the discount rates that match the payment streams of the benefits in these plans.

NS uses a spot rate approach to estimate the service cost and interest cost components of net periodic benefit cost for NS' pension and other postretirement benefit plans.

Health Care Cost Trend Assumptions

For measurement purposes at December 31, 2025, increases in the per capita cost of pre-Medicare covered health care benefits were assumed to be 6.5% for 2026. We assume the rate will ratably decrease to an ultimate rate of 5.0% for 2034 and remain at that level thereafter.

Asset Management

Eight investment firms manage NS' defined benefit pension plan's assets under investment guidelines approved by NS' Benefits Investment Committee that is composed of members of NS' management. Investments are restricted to domestic and international equity securities, domestic and international fixed income securities, and unleveraged exchange-traded options and financial futures. Limitations restrict investment concentration and use of certain derivative investments. The target asset allocation for equity is 75% of the pension plan's assets. Fixed income investments must consist predominantly of securities rated investment grade or higher. Equity investments must be in liquid securities listed on national exchanges. No investment is permitted in NS' securities (except through commingled pension trust funds).

NOTES TO FINANCIAL STATEMENTS

NS' pension plan's weighted-average asset allocations, by asset category, were as follows:

	Percentage of plan assets at December 31, 2025	2024
Domestic equity securities	51%	52%
Debt securities	25%	25%
International equity securities	23%	22%
Cash and cash equivalents	1%	1%
Total	100%	100%

The other postretirement benefit plan assets consist primarily of trust-owned variable life insurance policies with an asset allocation at December 31, 2025 and at December 31, 2024 of 65% in equity securities and 35% in debt securities. The target asset allocation for equity is between 50% and 65% of the plan's assets.

The plans' assumed future returns are based principally on the asset allocations and historical returns for the plans' asset classes determined from both actual plan returns and, over longer time periods, expected market returns for those asset classes. For 2026, NS assumes an 8.00% return on pension plan assets.

Fair Value of Plan Assets

The following is a description of the valuation methodologies used for pension plan assets measured at fair value.

Common stock: Shares held by the plan at year end are valued at the official closing price as defined by the exchange or at the most recent trade price of the security at the close of the active market.

Common collective trusts: The readily determinable fair value is based on the published fair value per unit of the trusts. The common collective trusts hold equity securities, fixed income securities and cash and cash equivalents.

Fixed income securities: Valued based on quotes received from independent pricing services or at an estimated price at which a dealer would pay for the security at year end using observable market-based inputs.

Commingled funds: The readily determinable fair value is based on the published fair value per unit of the funds. The commingled funds hold equity securities.

Cash and cash equivalents: Short-term Treasury bills or notes are valued at an estimated price at which a dealer would pay for the security at year end using observable market-based inputs; money market funds are valued at the closing price reported on the active market on which the funds are traded.

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - EXPLANATORY NOTES - Continued

NOTES TO FINANCIAL STATEMENTS

The following table sets forth the pension plan's assets by valuation technique level, within the fair value hierarchy. There were no level 3 valued assets at December 31, 2025 or 2024.

	December 31, 2025		
	Level 1	Level 2	Total
		($ in millions)	
Common stock	$ 1,107	$ -	$ 1,107
Common collective trusts:			
Debt securities	-	675	675
Domestic equity securities	-	380	380
International equity securities	-	294	294
Commingled funds	-	280	280
Fixed income securities:			
Government and agencies securities	-	4	4
Cash and cash equivalents	26	-	26
Total investments	$ 1,133	$ 1,633	$ 2,766

	December 31, 2024		
	Level 1	Level 2	Total
		($ in millions)	
Common stock	$ 1,054	$ -	$ 1,054
Common collective trusts:			
Debt securities	-	637	637
International equity securities	-	362	362
Domestic equity securities	-	346	346
Commingled funds	-	123	123
Fixed income securities:			
Government and agencies securities	-	4	4
Cash and cash equivalents	25	-	25
Total investments	$ 1,079	$ 1,472	$ 2,551

Following is a description of the valuation methodologies used for other postretirement benefit plan assets measured at fair value.

Trust-owned life insurance: Valued at NS' interest in trust-owned life insurance issued by a major insurance company. The underlying investments owned by the insurance company consist of a U.S. stock account and a U.S. bond account but may retain cash at times as well. The U.S. stock account and U.S. bond account are valued based on readily determinable fair values.

The other postretirement benefit plan assets consisted of trust-owned life insurance with fair values of $156 million and $145 million at December 31, 2025 and 2024, respectively, and are valued under level 2 of the fair value hierarchy. There were no level 1 or level 3 valued assets.

Contributions and Estimated Future Benefit Payments

In 2026, NS expects to contribute approximately $23 million to its unfunded pension plans for payments to pensioners and approximately $34 million to its other postretirement benefit plans for retiree health and death benefits. NS does not expect to contribute to its funded pension plan in 2026.

Benefit payments, which reflect expected future service, as appropriate, are expected to be paid as follows:

	Pension Benefits	Other Postretirement Benefits
	($ in millions)	
2026	$ 153	$ 34
2027	150	28
2028	148	27
2029	147	26
2030	147	25
Years 2031 – 2035	737	118

NOTES TO FINANCIAL STATEMENTS

Other Postretirement Coverage

Under collective bargaining agreements, NS and certain subsidiaries participate in a multi-employer benefit plan, which provides certain postretirement health care and life insurance benefits to eligible craft employees. Premiums under this plan are expensed as incurred and totaled $6 million in 2025 and $9 million in 2024.

Section 401(k) Plans

NS and certain subsidiaries provide Section 401(k) savings plans for employees. Under the plans, NS matches a portion of employee contributions, subject to applicable limitations. NS' matching contributions, recorded as an expense, under these plans were $26 million in 2025 and $25 million in 2024.

18. Commitments and Contingencies

We and/or certain subsidiaries are subject to numerous lawsuits, inquiries, investigations and other claims and proceedings relating principally to railroad operations. In accordance with FASB ASC 450, "Contingencies," when we conclude that it is probable that a liability has been incurred and the amount of the liability can be reasonably estimated, it is accrued through a charge to earnings and, if material, disclosed below. While the ultimate amount of liability incurred in any of these matters is dependent on future developments, in our opinion, the recorded liability is adequate to cover the future payment of such liabilities and claims. However, the final outcome of any of these matters cannot be predicted with certainty, and developments related to the progress of such matters or other unfavorable or unexpected developments or outcomes could result in additional costs or new or additionally accrued amounts that could be significant to financial position, results of operations, or liquidity in a particular year or quarter. Any adjustments to the recorded liability will be reflected in earnings in the periods in which such adjustments become known. If it is reasonably possible that we will incur losses in excess of the amounts currently recorded as a loss contingency, we disclose the potential range of loss, if reasonably estimable, or we disclose that we cannot reasonably estimate such an amount at this time. For loss contingency matters where a loss may be reasonably possible, but not probable, or is probable but not reasonably estimable, no accrual is established but the matter, if potentially material, is disclosed below.

We routinely review relevant information with respect to our lawsuits, inquiries, investigations and other claims and proceedings and update our accruals, disclosures and estimates of reasonably possible loss based on such reviews. Our estimates of probable losses and reasonably possible losses are based upon currently available information and involve significant judgment and a variety of assumptions, given that (1) certain legal and regulatory proceedings are in early stages; (2) discovery may not be completed; (3) damages sought in these legal and regulatory proceedings can be unsubstantiated or indeterminate; (4) there are often significant facts in dispute; and/or (5) there is a wide range of possible outcomes. Accordingly, our estimated range of loss with respect to these matters may change from time to time, and actual losses may exceed current estimates.

Litigation Related to the Mergers

Shareholders have and may continue to file lawsuits challenging the Mergers, which may name NS, Union Pacific, members of the NS Board, members of the Union Pacific board, or others as defendants. No assurance can be made as to the outcome of such lawsuits, including the amount of costs associated with defending claims or any other liabilities that may be incurred in connection with the litigation of any claims. If plaintiffs are successful in obtaining an injunction prohibiting the parties from completing the Mergers on the agreed-upon terms, such an injunction may delay the completion of the Mergers or may prevent the Mergers from being completed altogether.

NS and Union Pacific have each received demand letters from certain purported shareholders of Norfolk Southern and Union Pacific, as applicable, that allege deficiencies and/or omissions in the registration statement on Form S-4 filed by Union Pacific with the SEC relating to the Mergers. In response to shareholder demand letters alleging deficiencies in the registration statement on Form S-4, NS provided additional disclosure via Form 8-K filed on November 6, 2025, which clarified financial projections, board deliberations, and risk factors related to the Mergers. NS believes that the allegations in these letters are without merit. There can be no assurances that complaints or additional demands will not be filed or made with respect to the Mergers. If additional similar demands are made, absent new or different allegations that are material, neither NS nor Union Pacific will necessarily announce them.

Eastern Ohio Incident

Numerous legal actions have commenced with respect to the February 3, 2023 derailment of a train operated by us in East Palestine, Ohio, the associated fire, and the resulting vent and burn of the tank cars containing vinyl chloride on February 6, 2023 (the Incident), including those more specifically set forth below:

- A consolidated putative class action is pending in the Northern District of Ohio (Eastern Division) (the Ohio Class Action) in which plaintiffs allege various claims, including negligence, gross negligence, strict liability, and nuisance, and seeking as relief compensatory and punitive damages, medical monitoring and business losses. On April 26, 2024, we entered into a class action settlement with the plaintiffs to resolve the Ohio Class Action for $600 million, and we made a partial payment of the settlement in 2024, in the amount of $315 million. On November 5, 2025, the U.S. Court of Appeals for the Sixth Circuit dismissed objectors' appeals of the class action settlement. Under the class action settlement terms, payment of the remaining balance, including timing, is dependent upon resolution of any further appeals to the settlement.

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - EXPLANATORY NOTES - Continued

NOTES TO FINANCIAL STATEMENTS

- On August 22, 2023, six Pennsylvania school districts and students filed a putative class action lawsuit in the Western District of Pennsylvania (the Pennsylvania Class Action) alleging negligence, strict liability, nuisance, and trespass, and seeking damages and health monitoring. On December 8, 2023, the school districts amended their complaint to add additional companies as defendants. On February 23, 2024, we and the other defendants filed motions to dismiss and those motions are fully briefed and currently pending before the court.

- We are also named as a defendant in various other Incident-related lawsuits involving other potentially affected third parties, a number of which were filed in early 2025. We are continuing to assess the claims and their potential impact on NSR.

- We have received securities and derivative lawsuits and multiple shareholder document and litigation demand letters:
  - A securities class action lawsuit under the Securities Exchange Act of 1934 (Exchange Act) was initially filed in the Southern District of Ohio alleging multiple securities law violations, but has since been transferred to the Northern District of Georgia. The plaintiffs filed an amended complaint on April 25, 2024 and the defendants filed a motion to dismiss on June 24, 2024. On March 24, 2025, the district court presiding over the Exchange Act lawsuit denied defendants' motion to dismiss and the Exchange Act lawsuit is now in discovery.

  - A securities class action lawsuit under the Securities Act of 1933 (Securities Act) was filed in the Southern District of New York alleging misstatements in association with our debt offerings. On February 27, 2025, the district judge granted defendants' motion to dismiss the Securities Act lawsuit in its entirety, and close the case, which plaintiffs appealed on March 28, 2025 to the U.S. Court of Appeals for the Second Circuit. The appeal was fully briefed as of October 31, 2025 and oral argument is scheduled for February 12, 2026.

  - Six shareholder derivative complaints were filed in Virginia state court asserting claims for breach of fiduciary duties, waste of corporate assets, and unjust enrichment in connection with safety of the Company's operations, among other claims (collectively, the Shareholder Derivative Matters). The Shareholder Derivative Matters were consolidated on July 10, 2025, by agreement of the parties. No responsive pleadings have been filed yet in the Shareholder Derivative Matters.

Incident accruals principally related to ongoing legal proceedings totaled $474 million and $444 million at December 31, 2025 and 2024, respectively, which includes the remaining payment of $285 million related to the Ohio Class Action.

In regards to the Incident, the U.S. Department of Justice (DOJ) filed a civil complaint on behalf of the U.S. EPA (the DOJ Complaint) in the Northern District of Ohio (Eastern Division) seeking injunctive relief and civil penalties for alleged violations of the Clean Water Act (CWA) and cost recovery under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The Ohio AG also filed a lawsuit (the Ohio Complaint) in the Northern District of Ohio (Eastern Division) seeking damages for a variety of common law and environmental statutory claims under CERCLA and various state laws. The DOJ and Ohio AG cases were consolidated for discovery purposes. On May 23, 2024, the DOJ and the Company reached a settlement to resolve all of the government's civil claims against the Company. The DOJ filed a motion on October 10, 2024 seeking entry of the Consent Decree, which motion remains pending before the Court. If approved, the Consent Decree will require the Company to pay a civil penalty of $15 million for alleged violations of the CWA, plus $57 million for the federal government's oversight costs through November 30, 2023 as well as additional oversight costs from December 1, 2023 until the remediation is complete. Other provisions of the proposed Consent Decree relate to injunctive relief for safety, community support including medical and mental health programs, and environmental support, which provisions, if approved by the court, will be in effect between five years to twenty years. The Ohio AG did not join this settlement; we have filed an answer, and the litigation remains ongoing, in the Ohio AG case. Total Incident-related environmental liabilities related to ongoing environmental monitoring activities and regulatory oversight are $191 million and $244 million at December 31, 2025 and 2024, respectively.

With respect to the Incident, we have recognized approximately $1.1 billion in insurance recoveries (including $338 million and $650 million in 2025 and 2024, respectively), principally from excess liability (re)insurers. At December 31, 2025, no amounts were outstanding, while $18 million was outstanding at December 31, 2024 and is included in "Accounts receivable" on the Comparative Statement of Financial Position. In 2025, we exhausted coverage under our liability insurance policies with respect to the Incident. With the exception of amounts that have been recognized, potential future recoveries under our property and other insurance coverage have not yet been recorded (given the insurers ongoing evaluation of our claims).

We are also subject to inquiries and investigations by numerous federal, state, and local government authorities and regulatory agencies regarding the Incident, including but not limited to, the Federal Railroad Administration (FRA), the Occupational Safety and Health Administration, the Ohio Attorney General (AG), and the Pennsylvania AG. We are cooperating with all pending inquiries and investigations, including responding to civil and criminal subpoenas and other requests for information (the aforementioned inquiries and investigations, as well as the civil and criminal subpoenas are collectively referred to herein as the Incident Inquiries and Investigations).

The FRA examined railroad equipment, track conditions, hazardous materials train placement and routing, and emergency response (the FRA Incident Investigation), similar in scope to an investigation by the National Transportation Safety Board (NTSB). The FRA Incident Investigation will likely result in the assessment of civil penalties, though the amount and materiality of these penalties cannot be reasonably estimated at this time.

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - EXPLANATORY NOTES - Continued

NOTES TO FINANCIAL STATEMENTS

Lawsuits

In 2007, various antitrust class actions filed against us and other Class I railroads in various federal district courts regarding fuel surcharges were consolidated in the District of Columbia by the Judicial Panel on Multidistrict Litigation. In 2012, the court certified the case as a class action. The defendant railroads appealed this certification, and the Court of Appeals for the D.C. Circuit vacated the District Court's decision and remanded the case for further consideration. On October 10, 2017, the District Court denied class certification. The decision was upheld by the Court of Appeals on August 16, 2019. Since that decision, various individual cases have been filed in multiple jurisdictions and also consolidated in the District of Columbia. On June 24, 2025, the District Court granted summary judgment dismissing the consolidated cases in full. On July 24, 2025, a majority of plaintiffs appealed this ruling to the Court of Appeals for the D.C. Circuit. We intend to vigorously defend the cases through appeal and believe that we will prevail. However, given that litigation is inherently unpredictable and subject to uncertainties, there can be no assurances that the final resolution of the litigation will not be material. At this time, we cannot reasonably estimate the potential loss or range of loss associated with this matter.

Casualty Claims

Casualty claims include employee personal injury and occupational claims as well as third-party claims, all exclusive of legal costs. To aid in valuing our personal injury liability and determining the amount to accrue with respect to such claims during the year, we utilize studies prepared by an independent consulting actuarial firm. Job-related personal injury and occupational claims are subject to the Federal Employers Liability Act (FELA), which is applicable only to railroads. The variability inherent in FELA's fault-based tort system could result in actual costs being different from the liability recorded. While the ultimate amount of claims incurred is dependent on future developments, in our opinion, the recorded liability is adequate to cover the future payments of claims and is supported by the most recent actuarial study. In all cases, we record a liability when the expected loss for the claim is both probable and reasonably estimable.

Employee personal injury claims – The largest component of casualty claims expense not pertaining to the Incident is employee personal injury costs. We engage an independent actuarial firm to provide quarterly studies to aid in valuing our employee personal injury liability and estimating personal injury expense. The actuarial firm studies our historical patterns of reserving for claims and subsequent settlements, taking into account relevant outside influences. The actuarial firm provides the results of these analyses to aid in our estimate of the ultimate amount of liability. We adjust the liability quarterly based upon our assessment and the results of the study. The accuracy of our estimate of the liability is subject to inherent limitation given the difficulty of predicting future events such as jury decisions, court interpretations, or legislative changes. As a result, actual claim settlements may vary from the estimated liability recorded.

Occupational claims – Occupational claims include injuries and illnesses alleged to be caused by exposures which occur over time as opposed to injuries or illnesses caused by a specific accident or event. Types of occupational claims commonly seen allege exposure to asbestos and other claimed toxic substances resulting in respiratory diseases or cancer. Many such claims are being asserted by former or retired employees, some of whom have not been employed in the rail industry for decades. The independent actuarial firm provides an estimate of the occupational claims liability based upon our history of claim filings, severity, payments, and other pertinent facts. The liability is dependent upon judgments we make as to the specific case reserves as well as judgments of the actuarial firm in the quarterly studies. Our estimate of ultimate loss includes a provision for those claims that have been incurred but not reported. This provision is derived by analyzing industry data and projecting our experience. We adjust the liability quarterly based upon our assessment and the results of the study. However, it is possible that the recorded liability may not be adequate to cover the future payment of claims. Adjustments to the recorded liability are reflected in operating expenses in the periods in which such adjustments become known.

Third-party claims – We record a liability for third-party claims including those for highway crossing accidents, trespasser and other injuries, property damage, and lading damage. The actuarial firm assists us with the calculation of potential liability for third-party claims, except lading damage, based upon our experience including the number and timing of incidents, amount of payments, settlement rates, number of open claims, and legal defenses. We adjust the liability quarterly based upon our assessment and the results of the study. Given the inherent uncertainty in regard to the ultimate outcome of third-party claims, it is possible that the actual loss may differ from the estimated liability recorded.

Environmental Matters

We are subject to various jurisdictions' environmental laws and regulations. In accordance with FASB ASC 410-30 "Environmental Liabilities," we record a liability for environmental matters where such liability or loss is probable and reasonably estimable. Environmental specialists regularly participate in ongoing evaluations of all known sites and in determining any necessary adjustments to liability estimates.

In addition to environmental claims associated with the Incident, our Comparative Statement of Financial Position includes liabilities for other environmental exposures of $63 million at December 31, 2025, and $65 million at December 31, 2024, of which $15 million is classified as a current liability at the end of both periods. At December 31, 2025, the liability represents our estimates of the probable cleanup, investigation, and remediation costs based on available information at 69 known locations and projects compared with 74 locations and projects at December 31, 2024. At December 31, 2025, eighteen sites accounted for $55 million of the liability, and no individual site was considered to be material. We anticipate that most of this liability will be paid out over five years; however, some costs will be paid out over a longer period.

At eight locations, one or more of our subsidiaries in conjunction with a number of other parties have been identified as potentially responsible parties under CERCLA or comparable state statutes that impose joint and several liability for cleanup costs. We calculate our estimated liability for these sites based on facts and legal defenses applicable to each site and not solely on the basis of the potential for joint liability.

NOTES TO FINANCIAL STATEMENTS

As set forth above, with respect to known environmental sites (whether identified by us or by the U.S. EPA or comparable state authorities), estimates of our ultimate potential financial exposure for a given site or in the aggregate for all such sites can change over time because of the widely varying costs of currently available cleanup techniques, unpredictable contaminant recovery and reduction rates associated with available cleanup technologies, the likely development of new cleanup technologies, the difficulty of determining in advance the nature and full extent of contamination and each potential participant's share of any estimated loss (and that participant's ability to bear it), and evolving statutory and regulatory standards governing liability.

The risk of incurring environmental liability for acts and omissions, past, present, and future, is inherent in the railroad business. Some of the commodities we transport, particularly those classified as hazardous materials, pose special risks that we work diligently to reduce. In addition, several of our subsidiaries own, or have owned, land used as operating property, or which is leased and operated by others, or held for sale. Because environmental problems that are latent or undisclosed may exist on these properties, there can be no assurance that we will not incur environmental liabilities or costs with respect to one or more of them, the amount and materiality of which cannot be estimated reliably at this time. Moreover, lawsuits and claims involving these and potentially other unidentified environmental sites and matters are likely to arise from time to time. The resulting liabilities could have a significant effect on financial position, results of operations, or liquidity in a particular year or quarter.

Based on our assessment of the facts and circumstances now known, we believe we have recorded the probable and reasonably estimable costs for dealing with those environmental matters of which we are aware. Further, we believe that it is unlikely that any known matters, either individually or in the aggregate, will have a material adverse effect on our financial position, results of operations, or liquidity.

Labor Agreements

Approximately 80% of our railroad employees are covered by collective bargaining agreements with various labor unions. Pursuant to the Railway Labor Act (RLA), these agreements remain in effect until new agreements are reached, or until the bargaining procedures mandated by the RLA are completed. Moratorium provisions in the labor agreements govern when the railroads and unions may propose changes to the agreements. We largely bargain nationally in concert with other major railroads, represented by the National Carriers' Conference Committee (NCCC).

Under moratorium provisions from the last round of negotiations, neither party was permitted to serve notice to compel a new round of mandatory collective bargaining until November 1, 2024. Since that date, Norfolk Southern, or the NCCC acting on behalf of Norfolk Southern, has engaged in discussions and reached ratified agreements with all of our labor unions.

Moratorium clauses in these new ratified agreements foreclose the parties from serving further notices to compel mandatory bargaining until November 1, 2029. During this period, self-help against Norfolk Southern (e.g., a strike or other work stoppage) related to the mandatory collective-bargaining process is prohibited by law.

Insurance

We purchase insurance covering legal liabilities for bodily injury and property damage to third parties. Our current liability insurance provides limits for approximately 83% of covered losses above $75 million and below $734 million per occurrence and/or policy year. Above $800 million per occurrence and/or policy year, we maintain approximately $57 million additional liability insurance limits for certain types of pollution releases. We also purchase insurance for property damage to property owned by us or in our care, custody, or control. Our current property insurance provides limits for approximately 77% of covered losses above $75 million and below $275 million per occurrence and/or policy year.

Purchase Commitments

At December 31, 2025, we had outstanding purchase commitments totaling $2.0 billion through 2053 for locomotive modernizations, long-term technology support and development contracts, track material, and vehicles.

Change-In-Control and Retention Arrangements

We have compensation agreements with certain officers and key employees that become operative only upon a change in control of Norfolk Southern, as defined in those agreements. The agreements provide generally for payments based on compensation at the time of a covered individual's involuntary or other specified termination and for certain other benefits. We have also entered into retention agreements with certain key employees to promote stability, maintain continuity of leadership and incentivize individuals to remain focused on our business and the successful completion of the Merger with Union Pacific.

Indemnifications

In a number of instances, we have agreed to indemnify lenders for additional costs they may bear as a result of certain changes in laws or regulations applicable to their loans. Such changes may include impositions or modifications with respect to taxes, duties, reserves, liquidity, capital adequacy, special deposits, and similar requirements relating to extensions of credit by, deposits with, or the assets or liabilities of such lenders. The nature and timing of changes in laws or regulations applicable to our financings are inherently unpredictable, and therefore our exposure in connection with the foregoing indemnifications cannot be quantified. No liability has been recorded related to these indemnifications.

19. Freight Rates

In 2025, we continued our reliance on private contracts and exempt price quotes as the predominant pricing mechanism. Thus, a major portion of our freight business is not currently economically regulated by the government. In general, market forces have been substituted for government regulation and now are the primary determinant of rail service prices.

210. RESULTS OF OPERATIONS

(Dollars in Thousands)

1. Disclose requested information for respondent pertaining to results of operations for the year.

2. Report total operating expenses from Sched. 410. Any differences between this schedule and Sched. 410 must be explained on page 18.

3. List dividends from investments accounted for under the cost method on line 19, and list dividends accounted for under the equity method on line 25.

4. All contra entries should be shown in parenthesis.

Cross-Checks

Schedule 210	Schedule 210
Line 15, col b	= Line 66, col b
Lines 47,48,49 col b	= Line 67, col b
Line 50, col b	= Line 68, col b
	Schedule 410
Line 14, col b	= Line 620, col h
Line 14, col d	= Line 620, col f
Line 14, col e	= Line 620, col g

Line No.	Cross Check	Item (a)	Amount for current year (b)	Amount for preceding year (c)	Freight-related revenue & expenses (d)	Passenger-related revenue & expenses (e)	Line No.
		ORDINARY ITEMS					
		OPERATING INCOME					
		Railway Operating Income					
1		(101) Freight	11,641,119	11,655,543	11,641,119		1
2		(102) Passenger					2
3		(103) Passenger-related					3
4		(104) Switching	66,293	61,174	66,293		4
5		(105) Water transfers					5
6		(106) Demurrage	379,015	320,895	379,015		6
7		(110) Incidental	93,883	84,855	93,883		7
8		(121) Joint facility - credit					8
9		(122) Joint facility - debit					9
10		(501) Railway operating revenues (Exclusive of transfers from government authorities-lines 1-9)	12,180,310	12,122,467	12,180,310		10
11		(502) Railway operating revenues - transfers from government authorities					11
12		(503) Railway operating revenues - amortization of deferred transfers from government authorities					12
13		TOTAL RAILWAY OPERATING REVENUES (lines 10-12)	12,180,310	12,122,467	12,180,310		13
14	*	(531) Railway operating expenses	8,609,219	9,041,715	8,609,219		14
15	*	Net revenue from railway operations	3,571,091	3,080,752	3,571,091		15
		OTHER INCOME					
16		(506) Revenue from property used in other than carrier operations	12,189	10,529			16
17		(510) Miscellaneous rent income	131,961	118,617			17
18		(512) Separately operated properties - profit					18
19		(513) Dividend income (cost method)					19
20		(514) Interest income	1,568,487	1,660,244			20
21		(516) Income from sinking and other funds					21
22		(517) Release of premiums on funded debt					22
23		(518) Reimbursements received under contracts and agreements					23
24		(519) Miscellaneous income	171,211	475,325			24
		Income from affiliated companies: 519					
25		a. Dividends (equity method)					25
26		b. Equity in undistributed earnings (losses)	6	6			26
27		TOTAL OTHER INCOME (lines 16-26)	1,883,854	2,264,721			27
28		TOTAL INCOME (lines 15, 27)	5,454,945	5,345,473			28
		MISCELLANEOUS DEDUCTIONS FROM INCOME					
29		(534) Expenses of property used in other than carrier operations	20,711	20,163			29
30		(544) Miscellaneous taxes					30
31		(545) Separately operated properties-Loss					31
32		(549) Maintenance of investment organization					32
33		(550) Income transferred under contracts and agreements					33
34		(551) Miscellaneous income charges	(26,068)	(2,385)			34
35		(553) Uncollectible accounts					35
36		TOTAL MISCELLANEOUS DEDUCTIONS	(5,357)	17,778			36
37		Income available for fixed charges	5,460,302	5,327,695			37

Road Initials: NS Rail Year: 2025

210. RESULTS OF OPERATIONS - Continued

(Dollars in Thousands)

Line No.	Cross Check	Item (a)	Amount for current year (b)	Amount for preceding year (c)	Line No.
		FIXED CHARGES			
		(546) Interest on funded debt:			
38		(a) Fixed interest not in default	606,518	607,277	38
39		(b) Interest in default			39
40		(547) Interest on unfunded debt	17,489	29,391	40
41		(548) Amortization of discount on funded debt			41
42		TOTAL FIXED CHARGES (lines 38 through 41)	624,007	636,668	42
43		Income after fixed charges (line 37 minus line 42)	4,836,295	4,691,027	43
		OTHER DEDUCTIONS			
		(546) Interest on funded debt:			
44		(c) Contingent interest			44
		UNUSUAL OR INFREQUENT ITEMS			
45		(555) Unusual or infrequent items (debit) credit			45
46		Income (Loss) from continuing operations (before inc. taxes)	4,836,295	4,691,027	46
		PROVISIONS FOR INCOME TAXES			
		(556) Income taxes on ordinary income:			
47	*	(a) Federal income taxes	687,045	767,971	47
48	*	(b) State income taxes	104,677	85,806	48
49	*	(c) Other income taxes			49
50	*	(557) Provision for deferred taxes	296,894	165,314	50
51		TOTAL PROVISION FOR INCOME TAXES (lines 47 through 52)	1,088,616	1,019,091	51
52		Income from continuing operations (line 46 minus line 51)	3,747,679	3,671,936	52
		DISCONTINUED OPERATIONS			
		(560) Income or loss from operations of discontinued segments (less applicable income			
53		taxes of $)			53
		(562) Gain or loss on disposal of discontinued segments (less applicable income taxes			
54		of $)			54
55		Income before extraordinary items (lines 52 through 54)	3,747,679	3,671,936	55
		DISCONTINUED OPERATIONS			
56		(570) Extraordinary items (Net)			56
57		(590) Income taxes on extraordinary items			57
58		(591) Provision for deferred taxes - Extraordinary items			58
59		TOTAL EXTRAORDINARY ITEMS (lines 56 through 58)			59
60		(592) Cumulative effect of changes in accounting principles (less applicable income taxes of $)			60
61	*	Net income (Loss) (lines 55 + 59 + 60)	3,747,679	3,671,936	61
62		Less: Net Income attributable to non-controlling interest			62
63		Net Income attributable to reporting railroad	3,747,679	3,671,936	63
64		Basic Earnings Per Share	224.83	220.29	64
65		Diluted Earnings Per Share	224.83	220.29	65
		RECONCILIATION OF NET RAILWAY OPERATING INCOME (NROI)			
66	*	Net revenues from railway operations	3,571,091	3,080,752	66
67	*	(556) Income taxes on ordinary income (-)	(791,722)	(853,777)	67
68	*	(557) Provision for deferred income taxes (-)	(296,894)	(165,314)	68
69		Income from lease of road and equipment (-)	(1,715)	(1,750)	69
70		Rent for leased roads and equipment (+)	1,205	6,623	70
71		Net railway operating income (loss)	2,481,965	2,066,534	71

Notes and Remarks For Schedules 210 and 220

Road Initials: NS Rail **Year: 2025**

210 A. CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME

(Dollars in Thousands)

1. This schedule applies only to entities with items of Other Comprehensive Income (OCI)

2. Entities must present comprehensive income in two separate but consecutive financial statements.

3. Entities must present reclassification adjustments and the effects of those adjustments on net income and OCI on the face of the financial statements.

4. All contra entries should be shown in parenthesis.

Cross-Checks

Schedule 210 Line 61, col b = Schedule 210 A Line 1, col b

Line No.	Cross Check	Item (a)	Amount for current year (b)	Amount for preceding year (c)	Line No.
1		Net Income	3,747,679	3,671,936	1
2		Other Comprehensive Income, net of tax: Foreign currency translation adjustments			2
3		Unrealized gains on securities: Unrealized holding gains arising during period	605	877	3
4		Less: reclassification adjustment for gains included in net income			4
5		Defined benefit pension plans: Prior service cost arising during period			5
6		Net loss arising during period	49,330	59,111	6
7		Less: amortization of prior service cost included in net periodic pension cost	1,053	7,189	7
8		Other Comprehensive Income (Loss)			8
9		Comprehensive Income (Loss)	3,796,561	3,724,735	9
10		Less: comprehensive income attributable to noncontrolling interest			10
11		Comprehensive Income attributable to reporting railroad (Loss)	3,796,561	3,724,735	11

Notes:

220. RETAINED EARNINGS

(Dollars in Thousands)

1 Show below the items of retained earnings accounts of the respondent for the year, classified in accordance with the Uniform System of Accounts for Railroad Companies,

2 All contra entries should be shown in parentheses.

3 Show in lines 22 and 23 the amount of assigned Federal income tax consequences for accounts 606 and 616.

4 Segregate in column (c) all amounts applicable to the equity in undistributed earnings (losses) of affiliated companies based on the equity method of accounting.

5 Line 3 (line 7 if a debit balance), column (c), should agree with line 26, column (b), in Schedule 210. The total of columns (b) and (c), lines 3 and 7, should agree with line 61, column (b) in Schedule 210.

6 Include in column (b) only amounts applicable to retained earnings exclusive of any amounts included in column (c).

Line No.	Cross Check	Item (a)	Retained Earnings - Unappropriated (b)	Equity in Undistributed Earnings (Losses) of Affiliated Companies (c)	Line No.
1		Balances at beginning of year	39,001,743		1
2		(601.5) Prior period adjustments to beginning retained earnings			2
		CREDITS			
3		(602) Credit balance transferred from income	3,747,679		3
4		(603) Appropriations released			4
5		(606) Other credits to retained earnings			5
6		TOTAL CREDITS	3,747,679		6
		DEBITS			
7		(612) Debit balance transferred from income			7
8		(616) Other debits to retained earnings	6,212		8
9		(620) Appropriations for sinking and other funds			9
10		(621) Appropriations for other purposes			10
11		(623) Dividends: Common stock	10		11
12		Preferred stock (1)			12
13		TOTAL DEBITS	6,222		13
14		Net increase (decrease) during year (Line 6 minus line 13)	3,741,457		14
15		Balances at close of year (lines 1, 2, and 14)	42,743,200		15
16		Balances from line 15 (c)		N/A *	16
17		(798) Total unappropriated retained earnings and equity in undistributed earnings (losses) of affiliated companies at end of year	42,743,200		17
18		(797) Total appropriated retained earnings:			18
19		Credits during year $		N/A	19
20		Debits during year $			20
21		Balance at close of year $ 0			21
		Amount of assigned Federal income tax consequences			
22		Account 606 $ None			22
23		Account 616 $ None			23

1. If any dividends have not been declared on cumulative preferred stock, give cumulative undeclared dividends at beginning of year and end of year.

NOTES AND REMARKS

Amounts on line 8 represent distributions of earnings associated with a limited liability company. Board approval for use of Account 616 was provided by letter dated January 6, 2026.

* Respondent maintains equity accounting for affiliates by recording transactions into the books of accounts. Therefore, a separate retained earnings memorandum account for the financial reporting of the equity portion is not maintained.

Road Initials: NS Rail Year: 2025

240. STATEMENT OF CASH FLOWS
(Dollars in Thousands)

Give the information as requested concerning the cash flows during the year. Either the direct or indirect method can be used. The direct method shows as its principal components operating cash receipts and payments, such as cash received from customers and cash paid to suppliers and employees, the sum of which is net cash flow from operating activities. The indirect method starts with net income and adjusts it for revenues and expense items that were not the result of operating cash transactions in the current period to reconcile it to net cash flow from operating activities If the direct method is used, complete lines 1 through 41. If the indirect method is used complete lines 10 through 41. Cash, for the purpose of this schedule, shall include cash and cash equivalents which are short-term, highly liquid investments readily convertible to known amounts of cash and so near their maturity that they present insignificant risk of changes in value because of changes in interest rates. Information about all investing and finance activities which do not directly affect cash shall be separately disclosed in footnotes to this schedule. They shall clearly relate the cash (if any) and noncash aspects of transactions. Examples of noncash investing and transactions include converting debt to equity, acquiring assets by assuming directly related liabilities, such as purchasing a building by incurring a mortgage to the seller; obtaining an asset by entering into a capital lease; and exchanging noncash assets or liabilities for other noncash assets or liabilities. Some transactions are part cash and part noncash; only the cash portion shall be reported directly in the statement of cash flows. Refer to FAS Statement No. 95, Statement of Cash Flows, for further details.

CASH FLOWS FROM OPERATING ACTIVITIES

Line No.	Cross Check	Description (a)	Current Year (b)	Previous Year (c)	Line No.
1		Cash received from operating revenues			1
2		Dividends received from affiliates			2
3		Interest received			3
4		Other income			4
5		Cash paid for operating expenses			5
6		Interest paid (net of amounts capitalized)			6
7		Income taxes paid			7
8		Other - net			8
9		NET CASH PROVIDED BY OPERATING ACTIVITIES (lines 1 through 8)			9

RECONCILIATION OF NET INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES

Line No.	Cross Check	Description (a)	Current Year (b)	Previous Year (c)	Line No.
10		Income from continuing operations	3,747,679	3,671,936	10

ADJUSTMENTS TO RECONCILE INCOME FROM CONTINUING OPERATIONS TO NET CASH PROVIDED BY OPERATING ACTIVITIES

Line No.	Cross Check	Description (a)	Current Year	Previous Year (c)	Line No.
11		Loss (gain) on sale or disposal of tangible property and investments	(149,458)	(467,506)	11
12		Depreciation and amortization expenses	1,464,659	1,421,869	12
13		Net increase (decrease) in provision for Deferred Income Taxes	296,894	165,314	13
14		Net decrease (increase) in undistributed earnings (losses) of affiliates	(40,420)	(32,761)	14
15		Decrease (increase) in accounts receivable	59,880	84,278	15
16		Decrease (increase) in material and supplies and other current assets	(19,922)	(10,215)	16
17		Increase (decrease) in current liabilities other than debt	263,397	526,065	17
18		Increase (decrease) in other - net	145,743	336,184	18
19		Net cash provided from continuing operations (lines 10 through 18)	5,768,452	5,695,164	19
20		Add (Subtract) cash generated (paid) by reason of discontinued operations and extraordinary items			20
21		NET CASH PROVIDED FROM OPERATING ACTIVITIES (lines 19 and 20)	5,768,452	5,695,164	21

CASH FLOWS FROM INVESTING ACTIVITIES

Line No.	Cross Check	Description (a)	Current Year (b)	Previous Year (c)	Line No.
22		Proceeds from sale of property	91,945	497,419	22
23		Capital expenditures	(2,173,301)	(4,023,259)	23
24		Net change in temporary cash investments not qualifying as cash equivalents			24
25		Proceeds from sale/repayment of investment and advances	8,107	(7,785)	25
26		Purchase price of long-term investment and advances	(16,101)	(11,612)	26
27		Net decrease (increase) in sinking and other special funds			27
28		Other - net			28
29		NET CASH USED IN INVESTING ACTIVITIES (lines 22 through 28)	(2,089,350)	(3,545,237)	29

(Continued on next page)

240. STATEMENT OF CASH FLOWS (Concluded)

(Dollars in Thousands)

CASH FLOWS FROM FINANCING ACTIVITIES

Line No.	Cross Check	Description (a)	Current Year (b)	Previous Year (c)	Line No.
30		Proceeds from issuance of long-term debt			30
31		Principal payments of long-term debt	(8,422)	(4,122)	31
32		Proceeds from issuance of capital stock			32
33		Purchase price of acquiring treasury stock			33
34		Cash dividends paid			34
35		Other - net	(3,822,344)	(2,081,610)	35
36		NET CASH FROM FINANCING ACTIVITIES (lines 30 through 35)	(3,830,766)	(2,085,732)	36
37		NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS (lines 21, 29, and 36)	(151,664)	64,195	37
38		Cash and cash equivalents at beginning of the year	1,602,591	1,538,396	38
39		CASH AND CASH EQUIVALENTS AT END OF THE YEAR (lines 37 & 38)	1,450,927	1,602,591	39
		Footnotes to Schedule Cash paid during the year for:			
40		Interest (net of amount capitalized) *	16,233	6,760	40
41		Income taxes (net) *	489,257	304,596	41

* Only applies if indirect method is adopted

NOTES AND REMARKS

Road Initials: NS Rail Year: 2025

245. WORKING CAPITAL
(Dollars in Thousands)

1 This schedule should include only data pertaining to railway transportation services.

2 Carry out calculations of lines 9, 10, 20, and 21 to the nearest whole number.

Line No.	Item (a)	Source	Amount (b)	Line No.
	CURRENT OPERATING ASSETS			
1	Interline and other balances (705)	Sched. 200, line 5, col. b	16,339	1
2	Customers (706)	Sched. 200, line 6, col. b	567,749	2
3	Other (707)	Note A	179,227	3
4	TOTAL CURRENT OPERATING ASSETS	Lines 1 + 2 + 3	763,315	4
	OPERATING REVENUE			
5	Railway operating revenue	Sched. 210, line 13, col. b	12,180,310	5
6	Rent income	Note B	215,704	6
7	TOTAL OPERATING REVENUES	Lines 5 + 6	12,396,014	7
8	Average daily operating revenues	Line 7 ÷ 360 days	34,433	8
9	Days of operating revenue in current operating assets	Line 4 ÷ line 8	22	9
10	Revenue delay days plus buffer	Line 9 + 15 days	37	10
	CURRENT OPERATING LIABILITIES			
11	Interline and other balances (752)	Sched. 200, line 30, col. b	1,713	11
12	Audited accounts and wages payable (753)	Note A	1,805	12
13	Accounts payable - other (754)	Note A	623	13
14	Other taxes accrued (761.5)	Note A	163,229	14
15	TOTAL CURRENT OPERATING LIABILITIES	Sum of lines 11 through 14	167,370	15
	OPERATING EXPENSES			
16	Railway operating expenses	Sched. 210, line 14, col. b	8,609,219	16
17	Depreciation	Sched 410, lines 136, 137, 138, 213, 232, 317 col h	1,462,493	17
18	Cash related operating expenses	Line 16 + line 6 - line 17	7,362,430	18
19	Average daily expenditures	Line 18 ÷ 360 days	20,451	19
20	Days of operating expenses in current operating liabilities	Line 15 ÷ line 19	8	20
21	Days of working capital required	Line 10 - line 20 (Note C)	29	21
22	Cash working capital required	Line 21 x line 19	593,079	22
23	Cash and temporary cash balance	Sched. 200, line 1 + line 2, col. b	1,450,927	23
24	Cash working capital allowed	Lesser of line 22 or line 23	593,079	24
	MATERIALS AND SUPPLIES			
25	Total materials and supplies (712)	Note A	269,749	25
26	Scrap and obsolete material included in account 712	Note A		26
27	Materials and supplies held for common carrier purposes	Line 25 - line 26	269,749	27
28	TOTAL WORKING CAPITAL	Line 24 + line 27	862,828	28

NOTES:

(A) Use common carrier portion only. Common carrier refers to railway transportation service

(B) Rent income is the sum of Schedule 410, column h, lines 121, 122, 123, 127, 128, 129, 133, 134, 135, 208, 210, 212, 227, 229, 231, 312, 314, and 316. Rent income is added to railway operating revenues to produce total revenues. Rent income is also added to total operating expenses to exclude the rent revenue items from operating expense.

(C) If result is negative, use zero.

NOTES AND REMARKS

GENERAL INSTRUCTIONS CONCERNING RETURNS IN SCHEDULES 310 AND 310A

1 Schedule 310 should give particulars of stocks, bonds, and other secured obligations, unsecured notes, and investment advances of affiliated companies held by respondent at the close of the year. Also, disclose the investments made, disposed of, and written down during the year and the applicable dividends and interest credited to income as a result of those investments. They should exclude securities issued or assumed by respondent. For definition of affiliated companies, see the rules governing Account No. 721 "Investments and Advances; Affiliated Companies", in the Uniform System of Accounts for Railroad Companies.

2 List the investments in the following order and show a total for each group and each class of investment by accounts in numerical order.

(A) Stocks
  (1) Carriers-active
  (2) Carriers-inactive
  (3) Noncarriers-active
  (4) Noncarriers-inactive
(B) Bonds (including US government bonds)
(C) Other secured obligations
(D) Unsecured notes
(E) Investment advances

3 The subclassification of classes (B), (C), (D), and (E) should be the same as those provided for class (A).

4 The kinds of industry represented by respondent's investments in the securities of other companies should be shown by symbol opposite the names of the issuing corporations. The symbols and industrial classifications are as follows:

Symbol	Kind of Industry
I	Agriculture, forestry, and fisheries
II	Mining
III	Construction
IV	Manufacturing
V	Wholesale and retail trade
VI	Finance, insurance, and real estate
VII	Transportation, communications, and other public utilities
VIII	Services
IX	Government
X	All other

5 By carriers, as the term is used here, is meant companies owning or operating railroads, facilities auxiliary thereto such as bridges, ferries, union depots, and other terminal facilities, sleeping cars, parlor cars, dining cars, freight cars, express services and facilities, electric railways, highway motor vehicles, steamboats and other marine transportation equipment, pipe lines (other than those for transportation of water), and other instrumentalities devoted to the transportation of persons or property for hire. Telegraph and telephone companies are not meant to be included.

6 Noncarrier companies should, for the purposes of these schedules, include telephone companies, telegraph companies, mining companies, manufacturing companies, hotel companies, etc. Purely holding companies are to be classified as noncarrier companies, even though the securities held by such companies are largely or entirely issued or assumed by carriers.

7 By an active corporation is meant one which maintains an organization for operating property or administering its financial affairs. An inactive corporation is one which has been practically absorbed in a controlling corporation and which neither operates property nor administers its financial affairs. If it maintains an organization it does so only for the purpose of complying with legal requirements and maintaining title to property or franchises.

8 Combine in one account investments in which the original cost or present equity in total assets is less than $10,000.

9 Include investments in unincorporated entities such as lessee organizations. Exclude amounts normally settled on a current basis.

10 Do not include the value of securities issued or assumed by respondent.

11 For affiliates which do not report to the Surface Transportation Board and are jointly owned, disclose in footnotes the name and extent of control of the other controlling entities.

310. INVESTMENTS AND ADVANCES AFFILIATED COMPANIES

(Dollars in Thousands)

1 Give particulars of investments in stocks, bonds, other secured obligations, unsecured notes, and investment advances of companies affiliated with respondent, from accounts 715 (sinking funds), 716 (capital funds), 721 (investments and advances affiliated companies), and 717 (other funds).

2 Entries in this schedule should be made in accordance with the definitions and general instructions given on page 25, classifying the investments by means of letters, figures, and symbols in columns (a), (b) and (c).

3 Indicate by means of an arbitrary mark in column (d) the obligation in support of which any security is pledged, mortgaged, or otherwise encumbered. Give names and other important particulars of such obligations in footnotes.

4 Give totals for each class and for each subclass and a grand total for each account.

5 Entries in column (d) should show date of maturity of bonds and other evidence of indebtedness. In case obligations of the same designation mature serially, the date in column (d) may be reported as "Serially _____ to _____." Abbreviations in common use in standard financial publications may be used to conserve space.

Line No.	Account No. (a)	Class No. (b)	Kind of Industry (c)	Name of Issuing Company and also lien reference, if any (include rate for preferred stocks and bonds) (d)		Extent of Control (e)	Line No.
1	721	A-1	VII	Augusta & Summerville RR Co.	(1)	50.00	1
2				Beaver Street Tower Co.	(2)	25.00	2
3				The Belt Railway Company of Chicago	(3)	25.00	3
4				Central Transfer Rwy. and Storage Co.	(4)	50.00	4
5				Chatham Terminal Co.	(5)	50.00	5
6				Kansas City Terminal Rwy. Co.	(6)	8.33	6
7				Meridian Speedway, LLC	(7)	30.00	7
8				North Charleston Terminal Co.	(8)	33.33	8
9				Pan Am Southern, LLC	(9)	50.00	9
10				Peoria and Pekin Union Rwy. Co.	(10)	40.64	10
11				Terminal Railroad Association of St. Louis	(11)	14.29	11
12				TTX Company	(12)	19.78	12
13				Winston-Salem Southbound Rwy. Co.	(13)	50.00	13
14				Woodstock and Blocton Rwy. Co.	(14)	50.00	14
15							15
16				Total A-1			16
17							17
18							18
19							19
20							20
21		A-3	X	DrayNow, Inc.	(15)	13.50	21
22				MeteorComm, LLC	(16)	25.00	22
23				ModalView, LLC	(17)	44.50	23
24				PTC 220, LLC	(18)	14.29	24
25				RailPulse, LLC	(19)	9.52	25
26				The Roanoke Valley Development Co.	(20)	45.44	26
27							27
28				Total A-3			28
29							29
30							30
31							31
32							32
33							33
34							34
35							35
36							36
37							37
38							38
39							39
40							40

NOTES AND REMARKS

(1) CSX Transp., Inc. owns 50%
(2) CSX Transp., Inc. owns 50% and FEC owns 25%
(3) Controlled jointly - Other RRs own 75%
(4) CSX Transp., Inc. owns 50%
(5) CSX Transp., Inc. owns 50%
(6) Controlled jointly - Other RRs own 91.67%
(7) CPKC owns 70%
(8) CSX Transp., Inc. owns 66.67%
(9) CSX Transp., Inc owns 50%
(10) Controlled jointly - Other RRs own 59.36%

310. INVESTMENTS AND ADVANCES AFFILIATED COMPANIES - (Continued)

(Dollars in Thousands)

6 If any of the companies included in this schedule are controlled by respondent, the percent of control should be shown in column (e), In case any company listed is controlled other than through actual ownership of securities, give particulars in a footnote. In case of joint control, give names of other parties and particulars of other parties and particulars of control.

7 If any advances reported are pledged, give particulars in a footnote.

8 Investments in companies in which neither the original cost or present equity in total assets are less than $10,000 may be combined in 1 figure.

9 Also include investments in unincorporated entities such as lessee organizations (exclusive of amounts nominally settled on a current basis).

10 This schedule should not include securities issued or assumed by respondent.

11 For affiliates which do not report to the Surface Transportation Board and are jointly owned, give names and extent of control by other entities by footnotes.

Line No.	Investments and Advances				Disposed of profit (loss)	Adjustments Account 721.5	Dividends or interest credited to income	Line No.
	Opening Balance (f)	Additions (g)	Deductions (if other than sale, explain) (h)	Closing Balance (i)	(j)	(k)	(l)	
1	28			28				1
2								2
3	173			173		20		3
4	19			19				4
5	19			19				5
6								6
7	311,458	1,500		312,958				7
8	35			35				8
9	52,294			52,294				9
10	157			157				10
11	330			330				11
12	309			309				12
13	1,323			1,323				13
14	120			120				14
15								15
16	366,265	1,500		367,765		20		16
17								17
18								18
19								19
20								20
21	5,000			5,000				21
22	141,650	9,000		150,650				22
23	3,000	2,000		5,000				23
24	26,115	591		26,706				24
25	350			350				25
26	200			200				26
27								27
28	176,315	11,591		187,906				28
29								29
30								30
31								31
32								32
33								33
34								34
35								35
36								36
37								37
38								38
39								39
40								40

NOTES AND REMARKS

(11) Controlled jointly - Other RRs own 85.71%
(12) Controlled jointly - Other RRs own 80.22%
(13) CSX Transp., Inc. owns 50%
(14) CSX Transp., Inc. owns 50%
(15) Controlled jointly - Others own 86.50%
(16) Controlled jointly - Other RRs own 75%
(17) Controlled jointly - Others own 55.50%
(18) Controlled jointly - Other RRs own 85.71%
(19) Controlled jointly - Others own 90.48%
(20) Controlled jointly - Others own 54.56%

310. INVESTMENTS AND ADVANCES AFFILIATED COMPANIES - (Continued)

(Dollars in Thousands)

Line No.	Account No. (a)	Class No. (b)	Kind of Industry (c)	Name of Issuing Company and also lien reference, if any (include rate for preferred stocks and bonds) (d)		Extent of Control (e)	Line No.
1	721	E-1	VII	Beaver Street Tower Co.			1
2				Central Transfer Rwy. and Storage Co.			2
3				Chatham Terminal Co.			3
4				DrayNow, Inc.	(21)		4
5				Kansas City Terminal Rwy. Co.			5
6				Norfolk and Portsmouth Belt Line Railroad Co.	(22)		6
7				North Charleston Terminal Co.			7
8				Pan Am Southern, LLC	(23)		8
9				Terminal Railroad Association of St. Louis			9
10				Woodstock and Blocton Rwy. Co.			10
11				Total E-1			11
12							12
13		E-3	X	Norfolk Southern Corporation			13
14			VI	Southern Region Industrial Realty, Inc.			14
15							15
16				Total E-3			16
17							17
18							18
19							19
20							20
21							21
22							22
23							23
24				Total 721			24
25							25
26							26
27							27
28							28
29							29
30							30
31							31
32							32
33							33
34							34
35							35
36							36
37							37
38							38
39							39
40							40

NOTES AND REMARKS

(21) In 2025, NSR entered into an agreement with DrayNow, Inc. for a five-year note with annual principal and interest payments.

(22) In 2025, NSR entered into an agreement with Norfolk and Portsmouth Belt Line Railroad Co. for a three-year note with annual principal and interest payments.

(23) In 2020, NSR entered into an agreement with Pan Am Southern for a ten-year note with annual principal and interest payments. The note was fully paid off in 2025. In 2024, NSR entered into another agreement with Pan Am Southern for a six-year note with annual principal and interest payments.

310. INVESTMENTS AND ADVANCES AFFILIATED COMPANIES - (Concluded)

(Dollars in Thousands)

Line No.	Investments and Advances				Disposed of profit (loss)	Adjustments Account 721.5	Dividends or interest credited to income	Line No.
	Opening Balance	Additions	Deductions (if other than sale, explain)	Closing Balance				
	(f)	(g)	(h)	(i)	(j)	(k)	(l)	
1	5			5				1
2	25			25				2
3	5			5				3
4		1,554		1,554				4
5	3,133			3,133				5
6		2,345		2,345				6
7	224			224				7
8	16,531		(8,615)	7,916				8
9	170			170				9
10	10			10				10
11	20,103	3,899	(8,615)	15,387				11
12								12
13	39,731			39,731				13
14	383			383				14
15								15
16	40,114			40,114				16
17								17
18								18
19								19
20	602,797	16,990	(8,615)	611,172		20		20
21								21
22				(20)	721.5 Total			22
23				933,921	Sch. 310A Total			23
24				1,545,073				24
25								25
26								26
27								27
28								28
29								29
30								30
31								31
32								32
33								33
34								34
35								35
36								36
37								37
38								38
39								39
40								40

NOTES AND REMARKS

310A. INVESTMENTS IN COMMON STOCK OF AFFILIATED COMPANIES

(Dollars in Thousands)

Undistributed Earnings From Certain Investments in Affiliated Companies

1 Report below the details of all investments in common stock included in Account 721, Investments and Advances Affiliated Companies.
2 Enter in column (c) the amount necessary to retroactively adjust those investments. (See instruction 5-2, Uniform System of Accounts).
3 Enter in column (d) the share of undistributed earnings (i.e., dividends) or losses.
4 Enter in column (e) the amortization for the year of the excess of cost over equity in net assets (equity over cost) at date of acquisition.
5 For definitions of carrier and noncarrier, see general instructions.

Line No.	Name of issuing company and description of security held (a)	Balance at beginning of year (b)	Adjustments for investments equity method (c)	Equity in undistributed earnings (losses) during year (d)	Amortization during year (e)	Adjustment for investments disposed of or written down during year (f)	Balance at close of year (g)	Line No.
1	Carriers: (List specifics for each company)							1
2	Augusta & Summerville RR Co.	56					56	2
3	The Belt Railway Company of Chicago	38,580		2,718			41,298	3
4	Central Transfer Rwy. and Storage Co.	16					16	4
5	Meridian Speedway, LLC	(49,725)		(2,829)			(52,554)	5
6	Pan Am Southern, LLC	4,297		8,775			13,072	6
7	Peoria and Pekin Union Rwy. Co.	(1,021)		809			(212)	7
8	TTX Company	1,012,703		43,202			1,055,905	8
9	Winston-Salem Southbound Rwy. Co.	9,966		(252)			9,714	9
10	Woodstock and Blocton Rwy. Co.	2	(6)	6			2	10
11								11
12	Total Carriers	1,014,874	(6)	52,429			1,067,297	12
13								13
14	Noncarriers: (List specifics for each company)							14
15	DrayNow, Inc.	97		(201)			(104)	15
16	Meteorcomm, LLC	(113,389)		(9,768)			(123,157)	16
17	ModalView, LLC	(326)		(472)			(798)	17
18	PTC 220, LLC	(8,275)		(521)			(8,796)	18
19	RailPulse, LLC	(1,277)		(425)			(1,702)	19
20	The Roanoke Valley Development Co.	1,181					1,181	20
21								21
22	Total Noncarriers	(121,989)		(11,387)			(133,376)	22
23								23
24	Total Equity*	892,885	(6)	41,042			933,921	24
25								25

NOTES AND REMARKS

Respondent maintains equity accounting for affiliates by recording transactions into the books of accounts. Therefore, a separate retained earnings memorandum account for the financial reporting of the equity portion is not maintained.

Dividends received are accounted (in column (c)) as a reduction in the investment carrying value.

* Actual equity earnings, as reported on Schedule 210, Line 26 Column (b) is $6. The difference between the Schedule 210 and the equity in undistributed earnings listed above is due to a portion of the amounts credited to operating expenses. These earnings equal $40,431 and adjustments to Other Comprehensive Income equals $605.

INSTRUCTIONS CONCERNING RETURNS TO BE MADE IN SCHEDULE 330

1 Give particulars of balances at the beginning and close of the year and of all changes during the year in Account No. 731, Road and Equipment Property" and Account No. 732, "Improvements on Leased Property" classified by primary accounts in accordance with the Uniform System of Accounts for Railroad Companies. The balances, by primary accounts, should, insofar as known, be stated in column (b) and all changes made during the year should be analyzed in columns (c) to (f), inclusive. Column (g) should be the net of the amounts in columns (c) through (f). Column (h) is the aggregate of columns (b) through (f), inclusive. Grand totals of columns (b) and (h) should equal the sum of Accounts 731 and 732 for the respective periods; if not, a full explanation should be made in a footnote.
2 In column (c), show disbursements made for the specific purpose of purchasing, constructing, and equipping new lines, and for the extension of old lines, as provided for in Instruction 2-1, :Items to be charged" in the Uniform System of Accounts for Railroad Companies for such items.
3 In column (d), show the cost of a railway or portion thereof, acquired as an operating entity or system by purchase, merger, consolidation, reorganization, receivership sale or transfer, or otherwise.
4 Columns (c) and (e) should include all entries covering expenditures for additions and betterments, as defined, whether or not replacing other property.
5 All credits representing property sold, abandoned, or otherwise retired should be shown in column (f).
6 Both the debit and credit involved in each transfer, adjustment, or clearance, between road and equipment accounts, should be included in the column in which the item was initially included. Also, the transfer of prior years' debits or credits from investment in road and equipment to operating expenses or other accounts, or vice versa, should be included in the column applicable to current items of like nature. Each such transfer, adjustment, or clearance should be fully explained when in excess of $100,000.
7 If during the year an individual charge of $100,000 or more was made to Account No. 2, "Land for Transportation Purposes," state the cost, location, area, and other details which will identify the property in a footnote.
8 Report on line 29, amounts not included in the primary road accounts. The items reported should be briefly identified and explained under Notes and Remarks," below. Amounts should be reported on this line only under special circumstances, usually after permission is obtained from the Board for exceptions to prescribed accounting. Reference to such authority should be made when explaining the amounts reported. Respondents must not make arbitrary changes to the printed stub or column headings without specific authority from the Board.
9 If during the year a segment of transportation property was acquired, state in a footnote the name of the vendor, the mileage acquired, and the date of acquisition, giving location and cost of the property to the respondent. Also furnish a statement of the amount included in each primary account representing such property acquired, referring to the column or columns in which the entries appear.
10 If an amount of less than $5,000 is used as the minimum for additions and betterments to property investment accounts as provided for in Instruction 2-2 of the Uniform System of Accounts for Railroad Companies, state the amount used in a footnote.

NOTES AND REMARKS

(Dollars in Thousands)

Reconciliation of Depreciation Expense to Schedule 410

Road (Column (c))

1,009,203	Schedule 410, Lines 136 - 138, Column (h)
6,264	Shop Machinery Schedule 335, Line 26, Column (c)
20,543	Depreciation capitalized
1,036,010	Total

1,012,620	Schedule 335, Line 30, Column (c)
23,390	Schedule 342, Line 39, Column (c)
1,036,010	Total

Equipment (Column (c))

453,290	Schedule 410, Sum of lines 213,232,317, Column (h)
(6,264)	Shop Machinery
	Other
447,026	Total

447,026	Schedule 335, Line 40, Column (c)
	Schedule 342, Line 38, Column (c)
447,026	

Schedule 342 (Column (c))

23,390	Road
	Equipment
23,390	Schedule 342, Line 39, Column (c)

Reconciliation of Accumulated Depreciation and Amortization to Schedule 200

15,008,667	Schedule 335, Line 41, Column (g)
249,737	Schedule 342, Line 39, Column (g)
15,258,404	

15,258,404	Schedule 200, Line 26, Column (b)

330. ROAD PROPERTY AND EQUIPMENT AND IMPROVEMENTS TO LEASED PROPERTY AND EQUIPMENT

(Dollars in Thousands)

Line No.	Cross No.	Account (a)	Balance at Beginning of year (b)	Expenditures during the year for original road & equipment & road extensions (c)	Expenditures during the year for purchase of existing lines, reorganizations, etc. (d)	Line No.
1		(2) Land for transportation purposes	4,007,582			1
2		(3) Grading	3,304,596			2
3		(4) Other right-of-way expenditures	22,293			3
4		(5) Tunnels and subways	409,574			4
5		(6) Bridges, trestles and culverts	3,402,328			5
6		(7) Elevated structures	42,583			6
7		(8) Ties	6,404,706			7
8		(9) Rail and other track material	8,401,830			8
9		(11) Ballast	3,339,232			9
10		(13) Fences, snowsheds and signs	20,540			10
11		(16) Station and office buildings	783,802			11
12		(17) Roadway buildings	52,479			12
13		(18) Water stations				13
14		(19) Fuel stations	152,159			14
15		(20) Shops and enginehouses	647,101			15
16		(22) Storage warehouses	871			16
17		(23) Wharves and docks	5,898			17
18		(24) Coal and ore wharves	297,273			18
19		(25) TOFC/COFC terminals	1,254,732			19
20		(26) Communications systems	636,359			20
21		(27) Signals and interlockers	2,396,959			21
22		(29) Power plants	2,701			22
23		(31) Power transmission systems	49,586			23
24		(35) Miscellaneous structures	14,507			24
25		(37) Roadway machines	875,579			25
26		(39) Public improvements - construction	434,533			26
27		(44) Shop machinery	216,243			27
28		(45) Power plant machinery	14,973			28
29		Other lease/rentals				29
30		TOTAL EXPENDITURES FOR ROAD	37,191,019			30
31		(52) Locomotives	6,241,493			31
32		(53) Freight train cars	2,733,236			32
33		(54) Passenger train cars				33
34		(55) Highway revenue equipment	738,517			34
35		(56) Floating equipment				35
36		(57) Work equipment	300,202			36
37		(58) Miscellaneous equipment	265,440			37
38		(59) Computer systems & word processing equipment	1,149,155			38
39		TOTAL EXPENDITURES FOR EQUIPMENT	11,428,043			39
40		(76) Interest during construction				40
41		(80) Other elements of investment				41
42		(90) Construction work in progress	935,803			42
43		GRAND TOTAL	49,554,865			43

Road Initials: NS Rail Year: 2025

330. ROAD PROPERTY AND EQUIPMENT AND IMPROVEMENTS TO LEASED PROPERTY AND EQUIPMENT - (Continued)

(Dollars in Thousands)

Line No.	Cross No.	Expenditures for additions during the year (e)	Credits for property retired during the year (f)	Net changes during the year (g)	Balance at close of year (h)	Line No.
1		39,292	8,255	31,037	4,038,619	1
2		110,534	15,322	95,212	3,399,808	2
3		10	1,774	(1,764)	20,529	3
4					409,574	4
5		163,731	16,482	147,249	3,549,577	5
6					42,583	6
7		355,121	112,017	243,104	6,647,810	7
8		475,338	174,819	300,519	8,702,349	8
9		137,876	25,075	112,801	3,452,033	9
10		1,640	58	1,582	22,122	10
11		19,224	3,863	15,361	799,163	11
12		512	(902)	1,414	53,893	12
13						13
14		9,679	126	9,553	161,712	14
15		16,544	3,573	12,971	660,072	15
16					871	16
17					5,898	17
18		10,570	3,817	6,753	304,026	18
19		75,201	577	74,624	1,329,356	19
20		40,418	8,376	32,042	668,401	20
21		55,375	26,960	28,415	2,425,374	21
22					2,701	22
23		37	(650)	687	50,273	23
24		818	9	809	15,316	24
25		65,394	25,290	40,104	915,683	25
26		28,669	12,916	15,753	450,286	26
27		9,495	1,921	7,574	223,817	27
28					14,973	28
29						29
30		1,615,478	439,678	1,175,800	38,366,819	30
31		221,236	54,566	166,670	6,408,163	31
32		57,806	67,199	(9,393)	2,723,843	32
33						33
34		925	36,094	(35,169)	703,348	34
35						35
36		5,322	21,680	(16,358)	283,844	36
37		24,639	14,985	9,654	275,094	37
38		138,601	202,473	(63,872)	1,085,283	38
39		448,529	396,997	51,532	11,479,575	39
40						40
41						41
42		88,094	5,535	82,559	1,018,362	42
43		2,152,101	842,210	1,309,891	50,864,756	43

332. DEPRECIATION BASE AND RATES - ROAD AND EQUIPMENT OWNED AND LEASED FROM OTHERS

(Dollars in Thousands)

1 Show in columns (b) and (e), for each primary account, the depreciation base used to compute depreciation charges for the month of January, and in columns (c) and (f), the depreciation charges for the month of December. In columns (d) and (g) show the composite rates used in computing depreciation charges for December, and on lines 30 and 39 of these columns show the composite percentage for all road and equipment accounts, respectively, ascertained by applying the primary account composite rates to the depreciation base used in computing the charges for December, and dividing that total by the total depreciation base for the same month. The depreciation base should not include cost of equipment used, but not owned, when the rents are included in rent for equipment and account nos. 31-22-00, 31-23-00, 31-25-00, 31-21-00, 35-21-00, 35-23-00, 35-22-00, and 35-25-00. It should include cost of equipment owned and leased to others when the rents therefrom are included in the rent for equipment, accounts nos. 32-21-00, 32-22-00, 32-23-00, 32-25-00, 36-21-00, 36-22-00, 36-23-00, and 36-25-00., inclusive. Composite rates used should be those prescribed or authorized by the Board, except that where the use of component rates has been authorized, the composite rates to be shown for the respective primary accounts should be recomputed from the December charges developed by the use of the authorized rates. If any changes in rates were effective during the year, give particulars in a footnote.

2 All leased property may be combined and one composite rate computed for each primary account, or a separate schedule may be included for each such property.

3 Show in columns (e), (f), and (g) data applicable to lessor property, when the rent therefore is included in accounts nos. 31-11-00, 31-12-00, 31-13-00, 31-21-00, 31-22-00, and 31-23-00, inclusive.

4 If depreciation accruals have been discontinued for any account, the depreciation base should be reported, nevertheless, in support of depreciation reserves. Authority for discontinuance of accruals should be shown in a footnote, indicating the effected account(s).

5 Disclosures in the respective sections of this schedule may be omitted if either total road leased from others or total equipment leased from others represents less than 5% of total road owned or total equipment owned, respectively.

Line No.	Account	OWNED AND USED Depreciation Base 1/1 At beginning of year	OWNED AND USED Depreciation Base 12/1 At close of year	OWNED AND USED Annual composite rate %	LEASED FROM OTHERS Depreciation Base At beginning of year	LEASED FROM OTHERS Depreciation Base At close of year	LEASED FROM OTHERS Annual composite rate %	Line No.
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	
	ROAD							
1	(3) Grading	3,299,398	3,329,161	1.65%				1
2	(4) Other right-of-way expenditures	22,268	20,505	1.00%				2
3	(5) Tunnels and subways	409,574	409,574	1.11%				3
4	(6) Bridges, trestles and culverts	3,384,847	3,504,709	1.52%				4
5	(7) Elevated structures	42,583	42,583	7.92%				5
6	(8) Ties	6,267,631	6,471,439	4.50%				6
7	(9) Rail and other track material	8,159,467	8,438,726	2.53%				7
8	(11) Ballast	3,279,153	3,377,651	2.67%				8
9	(13) Fences, snowsheds and signs	20,501	20,492	1.13%				9
10	(16) Station and office buildings	746,922	756,718	2.44%				10
11	(17) Roadway buildings	52,422	53,836	2.11%				11
12	(18) Water stations							12
13	(19) Fuel stations	151,731	159,860	3.10%				13
14	(20) Shops and enginehouses	646,952	648,590	2.02%	NOT APPLICABLE - 5 % RULE			14
15	(22) Storage warehouses	871	871	2.50%				15
16	(23) Wharves and docks	5,898	5,898	3.33%				16
17	(24) Coal and ore wharves	297,273	302,158	2.72%				17
18	(25) TOFC/COFC terminals	1,253,785	1,325,912	3.12%				18
19	(26) Communications systems	633,648	648,327	4.22%				19
20	(27) Signals and interlockers	2,374,841	2,400,694	4.04%				20
21	(29) Power plants	2,701	2,701	2.88%				21
22	(31) Power transmission systems	49,539	50,225	2.03%				22
23	(35) Miscellaneous structures	14,372	15,182	2.26%				23
24	(37) Roadway machines	875,579	912,725	5.32%				24
25	(39) Public improvements - construction	427,929	440,587	8.30%				25
26	(44) Shop machinery	216,243	223,675	3.27%				26
27	(45) Power plant machinery	14,973	14,973	2.11%				27
28	All other road accounts	2,304	2,958	4.78%				28
29	Amortization (other than def. projects)							29
30	TOTAL ROAD	32,653,405	33,580,730	3.02%				30
	EQUIPMENT							
31	(52) Locomotives	6,241,492	6,397,451	3.68%				31
32	(53) Freight train cars	2,733,236	2,739,694	2.34%				32
33	(54) Passenger train cars							33
34	(55) Highway revenue equipment	738,517	713,094	4.82%				34
35	(56) Floating equipment							35
36	(57) Work equipment	300,202	291,585	1.84%				36
37	(58) Miscellaneous equipment	265,440	284,275	7.87%				37
38	(59) Computer systems & WP equipment	1,149,155	1,081,920	10.45%				38
39	TOTAL EQUIPMENT	11,428,042	11,508,019	4.14%				39
40	GRAND TOTAL	44,081,447	45,088,749	3.30%			NA	40

Road Initials: NS Rail **Year: 2025**

335. ACCUMULATED DEPRECIATION - ROAD AND EQUIPMENT OWNED AND USED

(Dollars in Thousands)

1 Disclose the required information regarding credits and debits to Account No. 735, "Accumulated Depreciation: Road and Equipment Property." during the year relating to owned and used road and equipment. Include entries for depreciation of equipment owned but not used when the resulting rents are included in the "Lease Rentals - Credit - Equipment" accounts and "Other Rents - Credit - Equipment" accounts. Exclude any entries for depreciation of equipment that is used but not owned when the resulting rents are included in "Lease Rental - Debit - Equipment" accounts and "Other Rents - Debit - Equipment" accounts.

2 If any data are included in columns (d) or (f), explain the entries in detail.

3 A debit balance in columns (b) or (g) for any primary account should be designated "Dr."

4 If there is any inconsistency between credits to reserves as shown in column (c) and charges to operating expenses, a full explanation should be given.

5 Enter amounts representing amortization under an authorized amortization program other than for defense projects on lines 29 and 39.

Line No.	Cross Check	Account (a)	Balance at beginning of year (b)	CREDITS TO RESERVE During the year: Charges to operating expenses (c)	CREDITS TO RESERVE During the year: Other credits (d)	DEBITS TO RESERVE During the year: Retirements (e)	DEBITS TO RESERVE During the year: Other debits (f)	Balance at close of year (g)	Line No.
		ROAD							
1		(3) Grading	1,253,899	44,094		1,369		1,296,624	1
2		(4) Other right-of-way expenditures	4,219	200		9		4,410	2
3		(5) Tunnels and subways	94,550	4,356				98,906	3
4		(6) Bridges, trestles and culverts	790,503	47,824		14,851		823,476	4
5		(7) Elevated structures	40,092	(160)				39,932	5
6		(8) Ties	2,469,942	274,062		147,084		2,596,920	6
7		(9) Rail and other track material	2,027,351	212,841		146,060		2,094,132	7
8		(11) Ballast	961,328	85,379		24,466		1,022,241	8
9		(13) Fences, snowsheds and signs	4,033	207		6		4,234	9
10		(16) Station and office buildings	219,901	19,702		9,148		230,455	10
11		(17) Roadway buildings	37,679	717		17		38,379	11
12		(18) Water stations							12
13		(19) Fuel stations	53,692	4,834		162		58,364	13
14		(20) Shops and enginehouses	202,181	12,796		1,712		213,265	14
15		(22) Storage warehouses	872					872	15
16		(23) Wharves and docks	2,582	127				2,709	16
17		(24) Coal and ore wharves	136,999	7,558		4,174		140,383	17
18		(25) TOFC/COFC terminals	334,252	41,010		5,925		369,337	18
19		(26) Communications systems	344,582	22,753		8,697		358,638	19
20		(27) Signals and interlockers	480,113	126,670		25,463		581,320	20
21		(29) Power plants	2,643	14				2,657	21
22		(31) Power transmission systems	24,037	814		31		24,820	22
23		(35) Miscellaneous structures	10,788	169		9		10,948	23
24		(37) Roadway machines	255,955	50,229		21,656		284,528	24
25		(39) Public improvements - const.	148,992	49,823		12,724		186,091	25
26		(44) Shop machinery	98,352	6,264		3,107		101,509	26
27		(45) Power plant machinery	12,526	192				12,718	27
28		All other road accounts	254	145				399	28
29		Amortization (adjustments)							29
30		TOTAL ROAD	10,012,317	1,012,620		426,670		10,598,267	30
		EQUIPMENT							
31		(52) Locomotives	2,180,287	235,353		68,046		2,347,594	31
32		(53) Freight train cars	1,020,605	52,625		55,254		1,017,976	32
33		(54) Passenger train cars							33
34		(55) Highway revenue equipment	325,512	31,521		32,062		324,971	34
35		(56) Floating equipment							35
36		(57) Work equipment	113,702	3,919		16,991		100,630	36
37		(58) Miscellaneous equipment	118,441	20,684		10,377		128,748	37
38		(59) Computer systems & WP equip.	570,383	102,924		182,826		490,481	38
39		Amortization (adjustments)							39
40		TOTAL EQUIPMENT	4,328,930	447,026		365,556		4,410,400	40
41		GRAND TOTAL	14,341,247	1,459,646		792,226		15,008,667	41

342. ACCUMULATED DEPRECIATION - IMPROVEMENTS TO ROAD AND EQUIPMENT LEASED FROM OTHERS

(Dollars in Thousands)

1 Enter the required information concerning debits and credits to Account 733, "Accumulated Depreciation - Improvements on Leased Property," during the year relating to improvements made to road and equipment property leased from others, the depreciation charges for which are included in operating expenses of the respondent.

2 If any entries are made for column (d) "Other credits" or column (f) "Other debits," state the facts occasioning such entries in the notes and remarks section. A debit balance in columns (b) or (g) for any primary account should be shown in parenthesis or designated "Dr."

3 Any inconsistency between credits to the reserve as shown in column (c) and charges to operating expenses should be fully explained in the notes and remarks section for Schedule 342.

4 Show in column (e) the debits to the reserve arising from retirements. These debits should not exceed investment, etc.

5 Disclosures in the respective sections of this schedule may be omitted if either total road leased from others or total equipment leased from others represents less than 5% of total road owned or total equipment owned, respectively. However, line 39, Grand Total, should be completed.

Line No.	Cross Check	Account (a)		Balance at beginning of year (b)	CREDITS TO RESERVE During the year: Charges to operating expenses (c)	CREDITS TO RESERVE During the year: Other credits (d)	DEBITS TO RESERVE During the year: Retirements (e)	DEBITS TO RESERVE During the year: Other debits (f)	Balance at close of year (g)	Line No.
			ROAD							
1		(3)	Grading							1
2		(4)	Other right-of-way expenditures							2
3		(5)	Tunnels and subways							3
4		(6)	Bridges, trestles and culverts							4
5		(7)	Elevated structures							5
6		(8)	Ties							6
7		(9)	Rail and other track material							7
8		(11)	Ballast							8
9		(13)	Fences, snowsheds and signs							9
10		(16)	Station and office buildings							10
11		(17)	Roadway buildings							11
12		(18)	Water stations							12
13		(19)	Fuel stations	NOT APPLICABLE - 5% RULE						13
14		(20)	Shops and enginehouses							14
15		(22)	Storage warehouses							15
16		(23)	Wharves and docks							16
17		(24)	Coal and ore wharves							17
18		(25)	TOFC/COFC terminals							18
19		(26)	Communications systems							19
20		(27)	Signals and interlockers							20
21		(29)	Power plants							21
22		(31)	Power transmission systems							22
23		(35)	Miscellaneous structures							23
24		(37)	Roadway machines							24
25		(39)	Public improvements - const.							25
26		(44)	Shop machinery *							26
27		(45)	Power plant machinery							27
28			All other road accounts							28
29			TOTAL ROAD							29
			EQUIPMENT							
30		(52)	Locomotives							30
31		(53)	Freight train cars							31
32		(54)	Passenger train cars							32
33		(55)	Highway revenue equipment							33
34		(56)	Floating equipment							34
35		(57)	Work equipment							35
36		(58)	Miscellaneous equipment							36
37		(59)	Computer systems & WP equip.							37
38			TOTAL EQUIPMENT							38
39			GRAND TOTAL	222,997	23,390		(3,350)		249,737	39

* To be reported with equipment expenses rather than W&S expenses.

Road Initials: NS Rail Year: 2025 37

NOTES AND REMARKS FOR SCHEDULE 342

352A. INVESTMENT IN RAILROAD PROPERTY USED IN TRANSPORTATION SERVICE (By Company)
(Dollars in Thousands)

1 Disclose the investment in railway property used in transportation service at the close of the year. This investment represents the aggregate of property owned or leased by respondent and used in respondent's transportation service. Such property includes (a) investment reported in Accounts 731, "Road and Equipment Property" and 732, "Improvements on Leased Property" of respondent, less any 731 or 732 property leased to others for their exclusive use of road, track, or bridges (including equipment or other railway property covered by the contract). Equipment leased to others under separate distinct contracts shall not be deducted from respondent's 731 or 732 property, and (b) the investment of other companies' 731 or 732 property (including operating and lessor railroads) used by respondent when the lease is for exclusive use or control of roads, tracks, or bridges (including equipment or other railway property covered by the contract). This excludes leased equipment from operating railroads under separate distinct contracts and the investment of other carriers in property jointly used by respondent.

2 In column (a), classify each company in this schedule as: "R" for respondent, "L" for lessor railroad, "P" for inactive or proprietary company or "O" for other leased properties.

3 In columns (a) to (e), inclusive, first show the data requested for respondent (R); next show data for companies whose entire properties are used in transportation service of the respondent, divided between lessor (L) and proprietary (P) companies; followed by data for carriers and others (O), portions of whose property are used in transportation service of respondent. Show a total for each class of company in columns (d) and (e). Then show, as deductions. data for transportation property leased to carriers and others.

4 In column (c), line-haul carriers report the miles of road used in line-haul service. Report miles in whole numbers.

5 In column (d), show the amount applicable to Accounts 731 and 732 on the books of companies whose names appear in column (b). Values of property of other carriers segregated by estimate or otherwise should correspond in amount to deductions made by the owners in their reports. If separate value is not available, an explanation should be provided. Differences between amounts shown in column (d) of this schedule and column (c), line 24, on the asset side of the general balance sheet of each individual railway should be explained in a footnote. Book values included in Accounts 731 and 732 of the owner should be reported in column (d) in reference to the investment of respondent in securities of the owner unless a good reason can be given for the contrary. Methods of estimating (by capitalizing rentals at 6% or otherwise) value of property of private owners, or portions of property of other carriers, should be explained.

6 In column (e), show the amount of depreciation and amortization accrued as of the close of the year in Accounts 733, 734, 735, 736, and 772, that is applicable to the property of the carriers whose names are listed in column (b), regardless of where reserves therefore are recorded.

Line No.	Class (See (Ins. 2) (a)	Name of company (b)	Miles of road used (See Ins. 4) (whole number) (c)	Investments in property (See Ins. 5) (d)	Depreciation & amortization of defense projects (See Ins. 6) (e)	Line No.
1	R	Norfolk Southern Combined Railroad Subsidiaries	16,219	50,864,756	15,258,404	1
2						2
3	L	C & EI Railroad Company	2			3
4	L	Pittsburgh & West Virginia Railroad	121	49,540	33,110	4
5	L	P & WV Subleased to Wheeling & Lake Erie	(121)	(49,540)	(33,110)	5
6						6
7		SUB-TOTAL	2			7
8						8
9		**Less Lines Leased to or Operated by Others**				9
10	R	Aiken Railway Company	19	3,265	1,606	10
11	R	Ann Arbor Railroad Inc.	4	3,857	1,607	11
12	R	Autauga Northern Railway	44	17,850	8,104	12
13	R	B&H Rail Corp.	17	8,896	5,053	13
14	R	Buckingham Branch	4	1,126	592	14
15	R	Buffalo & Pittsburgh Railroad	36	6,204	3,841	15
16	R	Carolina Coastal Railway	157	30,137	18,868	16
17	R	CaterParrott Railnet	51	10,501	8,219	17
18	R	Central Railroad Company of Indianapolis	16	5,428	2,398	18
19	R	Cincinnati East Terminal Railway	16	7,315	3,848	19
20	R	Cleveland Commercial Railroad	12	21,109	5,131	20
21	R	Columbus & Ohio River Railroad	1	799	170	21
22	R	Columbus & Chattahoochee Railroad	26	9,787	4,545	22
23	R	Delmarva Central Railroad	162	84,391	27,897	23
24	R	Dover & Delaware River Railroad	28	46,785	9,615	24
25	R	East Chattanooga Belt Railway	4	2,526	812	25
26	R	East Ohio Valley Railway	18	14,965	5,241	26
27	R	East Penn Railroad LLC	5	5,338	2,547	27
28	R	Elkhart & Western Railroad	23	7,348	3,577	28
29	R	Georgia Southern Railway	57	17,385	10,208	29
30	R	Grand Elk Railroad LLC	123	61,801	24,962	30
31	R	Hilton & Albany Railroad	55	18,392	8,759	31
32	R	Iowa Interstate	13	14,368	10,851	32
33	R	Ithaca Central Railroad	49	35,272	11,785	33
34	R	Jackson & Lansing Railroad	44	18,582	9,406	34
35	R	KNWA	309	239,298	87,529	35
36	R	Lehigh Railway	56	63,055	24,164	36
37	R	Middletown & New Jersey Railroad LLC	38	22,655	7,752	37
38	R	New Castle Southern Railroad	21	7,286	3,329	38
39	R	North Carolina & Virginia Railroad	77	12,416	9,632	39
40	R	Raleigh and Fayetteville Railroad	20	7,242	3,789	40
41	R	RSL Railroad LLC	1	1,666	527	41
42	R	R J Corman Co.	17	5,595	2,324	42
43	R	Yadkin Valley Railroad	102	25,047	14,293	43
44		SUB-TOTAL	1,625	837,687	342,981	44
46						46
47		TOTAL	14,596	50,027,069	14,915,423	47

352B. INVESTMENT IN RAILROAD PROPERTY USED IN TRANSPORTATION SERVICE (By Property Account)

(Dollars in Thousands)

1 In columns (b) through (e) give, by primary accounts, the amount of investment at the close of the year in property of respondent and each group or class of companies and properties.

2 The amounts for respondent and for each group or class of companies and properties on line 44 should correspond with the amounts for each class of company and property shown in Schedule 352A. Continuing records shall be maintained by respondent of the primary property accounts separately for each company or property included in this schedule.

3 Report on line 29 amounts representing capitalization of rentals for leased property based on 6% per year where property is not classified by accounts by noncarrier owners, or where the cost of property leased from other carriers is not ascertainable. Identify noncarrier owners, and briefly explain on page 39 the methods of estimating value of property on noncarriers or property of other carriers.

4 Report on line 30 amounts not included in the accounts shown, or on line 29. The items reported should be briefly identified and explained. Also include here those items after permission is obtained from the Board for exceptions to prescribed accounting. Reference to such authority should be made when explaining amounts reported. Respondents must not make arbitrary changes to the printed stub or column headings without specific authority from the Board.

Line No.	Cross Check	Account (a)	Respondent (b)	Lessor Railroads (c)	Inactive (proprietary companies) (d)	Other leased properties (e)	Line No.
1		(2) Land for transportation purposes	3,953,662				1
2		(3) Grading	3,313,232				2
3		(4) Other right-of-way expenditures	20,523				3
4		(5) Tunnels and subways	403,186				4
5		(6) Bridges, trestles and culverts	3,410,601				5
6		(7) Elevated structures	42,583				6
7		(8) Ties	6,450,556				7
8		(9) Rail and other track material	8,506,164				8
9		(11) Ballast	3,357,123				9
10		(13) Fences, snowsheds and signs	22,110				10
11		(16) Station and office buildings	798,271				11
12		(17) Roadway buildings	53,857				12
13		(18) Water stations					13
14		(19) Fuel stations	161,712				14
15		(20) Shops and enginehouses	660,061				15
16		(22) Storage warehouses	871				16
17		(23) Wharves and docks	5,898				17
18		(24) Coal and ore wharves	304,026				18
19		(25) TOFC/COFC terminals	1,329,356				19
20		(26) Communications systems	665,907				20
21		(27) Signals and interlockers	2,417,736				21
22		(29) Power plants	2,701				22
23		(31) Power transmission systems	50,230				23
24		(35) Miscellaneous structures	15,316				24
25		(37) Roadway machines	915,683				25
26		(39) Public improvements - construction	429,019				26
27		(44) Shop machinery	223,775				27
28		(45) Power plant machinery	14,973				28
29		Leased property (capitalized rentals)					29
30		Other (specify and explain)					30
31		TOTAL ROAD	37,529,132				31
32		(52) Locomotives	6,408,163				32
33		(53) Freight train cars	2,723,843				33
34		(54) Passenger train cars					34
35		(55) Highway revenue equipment	703,348				35
36		(56) Floating equipment					36
37		(57) Work equipment	283,844				37
38		(58) Miscellaneous equipment	275,094				38
39		(59) Computer systems & WP equipment	1,085,283				39
40		TOTAL EQUIPMENT	11,479,575				40
41		(76) Interest during construction					41
42		(80) Other elements of investment					42
43		(90) Construction work in progress	1,018,362				43
44		GRAND TOTAL	50,027,069				44

INSTRUCTIONS CONCERNING RETURNS TO BE MADE IN SCHEDULE 410

Cross Checks

Schedule 410		Schedule 210
Line 620, column (h)	=	Line 14, column (b)
Line 620, column (f)	=	Line 14, column (d)
Line 620, column (g)	=	Line 14, column (e)
		Schedule 414
Line 231, column (f)	=	Line 19, columns (b) through (d)
Line 230, column (f)	=	Line 19, columns (e) through (g)
		Schedule 417
Line 507, column (f)	=	Line 1, column (j)
Line 508, column (f)	=	Line 2, column (j)
Line 509, column (f)	=	Line 3, column (j)
Line 510, column (f)	=	Line 4, column (j)
Line 511, column (f)	=	Line 5, column (j)
Line 512, column (f)	=	Line 6, column (j)
Line 513, column (f)	=	Line 7, column (j)
Line 514, column (f)	=	Line 8, column (j)
Line 515, column (f)	=	Line 9, column (j)
Line 516, column (f)	=	Line 10, column (j)
Line 517, column (f)	=	Line 11, column (j)
Schedule 450		**Schedule 210**
Line 4, column (b)	=	Line 47, column (b)

Schedule 410		Schedule 412
Lines 136 through 138, column (f)	=	Line 29. column (b)
Lines 118 through 123, and 130 through 135, column (f)	=	Line 29. column (c)
		Schedule 415
Lines 207, 208, 211, 212, column (f)	=	Lines 5, 38, column (f)
Lines 226, 227, column (f)	=	Lines 24, 39, column (f)
Lines 311, 312, 315, 316, column (f)	=	Lines 32, 35, 36, 37, 40, 41, column (f)
		And
		Schedule 414
		Minus line 24, columns (b) through (d) plus line 24, columns (e) through (g)
		Schedule 415
Line 213, column (f)	=	Lines 5, 38, columns (c) and (d)
Line 232, column (f)	=	Lines 24, 39, columns (c) and (d)
Line 317, column (f)	=	Lines 32, 35, 36, 37, 40, 41, columns (c) and (d)
Line 202, 203, 216, column (f) , equal to or greater than, but variance cannot exceed line 216, column (f)		Lines 5, 38, column (b)
Lines 221, 222, 235, column (f), equal to or greater than, but variance cannot exceed line 235, column (f)		Lines 24, 39, column (b)
Lines 302 through 307 and 320, column (f) equal to or greater than, but variance cannot exceed line 320, column (f)		Lines 32, 35, 36, 37, 40, 41, column (b)

410. RAILWAY OPERATING EXPENSES

(Dollars in Thousands)

State the railway operating expenses on respondent's road for the year, classifying them in accordance with the Uniform System of Accounts for Railroad Companies, and allocate the common operating expenses in accordance with the Board's rules governing the separation of such expenses between freight and passenger services.

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		WAYS & STRUCTURES ADMINISTRATION								
1		Track	631	1,753	12,447	1,911	16,742		16,742	1
2		Bridge & building	11	145	9,507	807	10,470		10,470	2
3		Signal	28	825	7,008	284	8,145		8,145	3
4		Communication	1	2	2,281	84	2,368		2,368	4
5		Other	1,621				1,621		1,621	5
		REPAIRS AND MAINTENANCE								
6		Roadway - running	14,334	913	9,198		24,445		24,445	6
7		Roadway - switching	1,143	3	534		1,680		1,680	7
8		Tunnels & subways - running			1		1		1	8
9		Tunnels & subways - switching								9
10		Bridges & culverts - running	19,220	2,051	24,558	3,530	49,359		49,359	10
11		Bridges & culverts - switching	687	160	1,877	88	2,812		2,812	11
12		Ties - running	15,515	778	2,324	1,391	20,008		20,008	12
13		Ties - switching	113	21			134		134	13
14		Rail & other track material - running	76,703	9,298	52,714	14,912	153,627		153,627	14
15		Rail & other track material - switching	3,387	955	2,047	318	6,707		6,707	15
16		Ballast - running	4,176	749	446	(33)	5,338		5,338	16
17		Ballast - switching	248	53	26		327		327	17
18		Road property damaged - running	4,669	4,728	4,874	2	14,273		14,273	18
19		Road property damaged - switching								19
20		Road property damaged - other	4	2	5		11		11	20
21		Signals & interlockers - running	39,624	16,216	10,831	2,126	68,797		68,797	21
22		Signals & interlockers - switching	6,137	60	151	9	6,357		6,357	22
23		Communications systems	1,291	1,833	2,553	9	5,686		5,686	23
24		Power systems	723	153			876		876	24
25		Highway grade crossings - running	747	2,392	6,778	5,265	15,182		15,182	25
26		Highway grade crossings - switching		79	191		270		270	26
27		Station & office buildings	970	627	18,481	(31,076)	(10,998)		(10,998)	27
28		Shop buildings - locomotives	1,825	1,142	3,140	(23)	6,084		6,084	28
29		Shop buildings - freight cars	69	(111)	3,079		3,037	N/A	3,037	29
30		Shop buildings - other equipment	29	(1)			28		28	30

410. RAILWAY OPERATING EXPENSES - (Continued)

(Dollars in Thousands)

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		REPAIRS AND MAINTENANCE - (Continued)								
101		Locomotive servicing facilities	7				7		7	101
102		Miscellaneous buildings & structures	852	729	4,230		5,811		5,811	102
103		Coal terminals	4,692	4,815	5,521	11	15,039	N/A	15,039	103
104		Ore terminals						N/A		104
105		Other marine terminals						N/A		105
106		TOFC/COFC terminals	106	19,803	31,153	72	51,134	N/A	51,134	106
107		Motor vehicle loading & distribution facilities			496		496	N/A	496	107
108		Facilities for other specialized service operations		907	1,146	58	2,111	N/A	2,111	108
109		Roadway machines	10,482	21,700	1,954	1,375	35,511		35,511	109
110		Small tools & supplies		13,171	2,660		15,831		15,831	110
111		Snow removal	3,635	67	10,904		14,606		14,606	111
112		Fringe benefits - running				63,677	63,677		63,677	112
113		Fringe benefits - switching				4,205	4,205		4,205	113
114		Fringe benefits - other				9,812	9,812		9,812	114
115		Casualties & insurance - running				56,800	56,800		56,800	115
116		Casualties & insurance - switching				5,081	5,081		5,081	116
117		Casualties & insurance - other				(381,325)	(381,325)		(381,325)	117
118	*	Lease rentals - debit -running			23,215		23,215		23,215	118
119	*	Lease rentals - debit -switching			185,381		185,381		185,381	119
120	*	Lease rentals - debit -other			33,085		33,085		33,085	120
121	*	Lease rentals - (credit) - running			(1,715)		(1,715)		(1,715)	121
122	*	Lease rentals - (credit) - switching								122
123	*	Lease rentals - (credit) - other								123
124		Joint facility rent - debit - running			69		69		69	124
125		Joint facility rent - debit - switching			11		11		11	125
126		Joint facility rent - debit - other			1		1		1	126
127		Joint facility rent - (credit) - running			(133)		(133)		(133)	127
128		Joint facility rent - (credit) - switching			(16)		(16)		(16)	128
129		Joint facility rent - (credit) - other			(1)		(1)		(1)	129
130	*	Other rents - debit - running			3,423		3,423		3,423	130
131	*	Other rents - debit - switching								131
132	*	Other rents - debit - other			1,728		1,728		1,728	132
133	*	Other rents - (credit) - running								133

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		REPAIRS AND MAINTENANCE - (Continued)								
134	*	Other rents - (credit) - switching								134
135	*	Other rents - (credit) - other			(2,123)		(2,123)		(2,123)	135
136	*	Depreciation - running				537,961	537,961		537,961	136
137	*	Depreciation - switching				51,322	51,322		51,322	137
138	*	Depreciation - other				419,920	419,920		419,920	138
139		Joint facility - debit - running			55,916		55,916		55,916	139
140		Joint facility - debit - switching			8,888		8,888		8,888	140
141		Joint facility - debit - other			24,651		24,651		24,651	141
142		Joint facility - (credit) - running			(65,210)		(65,210)		(65,210)	142
143		Joint facility - (credit) - switching			(1,926)		(1,926)		(1,926)	143
144		Joint facility - (credit) - other			(15,300)		(15,300)		(15,300)	144
145		Dismantling retired road property - running								145
146		Dismantling retired road property - switching								146
147		Dismantling retired road property - other								147
148		Other - running	3,299			2,374	5,673		5,673	148
149		Other - switching			18		18		18	149
150		Other - other								150
151		TOTAL WAY AND STRUCTURES	216,979	106,018	483,077	770,947	1,577,021		1,577,021	151
		EQUIPMENT								
		LOCOMOTIVES								
201		Administration	4,963	861	2,676	663	9,163		9,163	201
202	*	Repair & maintenance	79,439	178,814	19,298	62	277,613		277,613	202
203	*	Machinery repair	2,718	1,276	1,997		5,991		5,991	203
204		Equipment damaged	53	46			99		99	204
205		Fringe benefits				34,537	34,537		34,537	205
206		Other casualties & insurance				11,175	11,175		11,175	206
207	*	Lease rentals - debit			391		391		391	207
208	*	Lease rentals - (credit)			(8,377)		(8,377)		(8,377)	208
209		Joint facility rent - debit								209
210		Joint facility rent - (credit)								210
211	*	Other rents - debit			190		190		190	211
212	*	Other rents - (credit)								212
213	*	Depreciation				237,106	237,106		237,106	213
214		Joint facility - debit								214
215		Joint facility - (credit)								215
216	*	Repairs billed to others - (credit)			(177)		(177)		(177)	216

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
217		LOCOMOTIVES - (Continued) Dismantling retired property								217
218		Other	5,898	32		1	5,931		5,931	218
219		TOTAL LOCOMOTIVES	93,071	181,029	15,998	283,544	573,642		573,642	219
220		FREIGHT CARS Administration	3,454	475	8,136	762	12,827	N/A	12,827	220
221	*	Repair & maintenance	27,247	66,614	86,127	87	180,075	N/A	180,075	221
222	*	Machinery repair	392	173	8,905		9,470	N/A	9,470	222
223		Equipment damaged	2,388	4,798			7,186	N/A	7,186	223
224		Fringe benefits				13,956	13,956	N/A	13,956	224
225		Other casualties & insurance				16,446	16,446	N/A	16,446	225
226	*	Lease rentals - debit			53,093		53,093	N/A	53,093	226
227	*	Lease rentals - (credit)			(30)		(30)	N/A	(30)	227
228		Joint facility rent - debit						N/A		228
229		Joint facility rent - (credit)						N/A		229
230	*	Other rents - debit			548,374		548,374	N/A	548,374	230
231	*	Other rents - (credit)			(174,436)		(174,436)	N/A	(174,436)	231
232	*	Depreciation				56,694	56,694	N/A	56,694	232
233		Joint facility - debit						N/A		233
234		Joint facility - (credit)						N/A		234
235	*	Repairs billed to others - (credit)			(82,984)		(82,984)	N/A	(82,984)	235
236		Dismantling retired property						N/A		236
237		Other	5,471	37,069		31	42,571	N/A	42,571	237
238		TOTAL FREIGHT CARS	38,952	109,129	447,185	87,976	683,242	N/A	683,242	238
301		OTHER EQUIPMENT Administration	11	33		333	377		377	301
302	*	Repair & maintenance: Trucks, trailers, & containers - revenue service		344	69,018	5	69,367	N/A	69,367	302
303	*	Floating equipment - revenue service						N/A		303
304	*	Passenger & other revenue equipment								304
305	*	Computers and data processing equipment		687	203,778	42	204,507		204,507	305
306	*	Machinery	120	(42)	111		189		189	306
307	*	Work & other non-revenue equipment	1,195	3,758	24,082	5	29,040		29,040	307
308		Equipment damaged								308
309		Fringe benefits				1,626	1,626		1,626	309
310		Other casualties & insurance				11,239	11,239		11,239	310
311	*	Lease rentals - debit			580		580		580	311
312	*	Lease rentals - (credit)								312

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		OTHER EQUIPMENT (Continued)								
313		Joint facility rent - debit			1		1		1	313
314		Joint facility rent - (credit)								314
315		Other rents - debit			29,046		29,046		29,046	315
316		Other rents - (credit)			(28,873)		(28,873)		(28,873)	316
317		Depreciation				159,490	159,490		159,490	317
318		Joint facility - debit								318
319		Joint facility - (credit)								319
320		Repairs billed to others - (credit)			(17,340)		(17,340)		(17,340)	320
321		Dismantling retired property								321
322		Other								322
323		TOTAL OTHER EQUIPMENT	1,326	4,780	280,403	172,740	459,249		459,249	323
324		TOTAL EQUIPMENT	133,349	294,938	743,586	544,260	1,716,133		1,716,133	324
		TRANSPORTATION								
		TRAIN OPERATIONS								
401		Administration	9,927	6,306	5,345	1,851	23,429		23,429	401
402		Engine crews	448,927	361	26,266	30,681	506,235		506,235	402
403		Train crews	292,672	1,374	21,212	25,586	340,844		340,844	403
404		Dispatching trains	45,221	4		3	45,228		45,228	404
405		Operating signals & interlockers	49,084	47	35	172	49,338		49,338	405
406		Operating drawbridges	2,026				2,026		2,026	406
407		Highway crossing protection	31	97	(1,528)	225	(1,175)		(1,175)	407
408		Train inspection & lubrication	32,816	27			32,843		32,843	408
409		Locomotive fuel		814,930	1		814,931		814,931	409
410		Electric power purchased or produced for motive power								410
411		Servicing locomotives	20,181	4,317	24,731	10	49,239		49,239	411
412		Freight lost or damaged - solely related								412
413		Clearing wrecks	143	8	19,545		19,696		19,696	413
414		Fringe benefits				336,308	336,308		336,308	414
415		Other casualties & insurance				77,142	77,142		77,142	415
416		Joint facility - debit			2		2		2	416
417		Joint facility - (credit)								417
418		Other	3,506	3	71,523	3	75,035		75,035	418
419		TOTAL TRAIN OPERATIONS	904,534	827,474	167,132	471,981	2,371,121		2,371,121	419
		YARD OPERATIONS								
420		Administration	953	392	1,577	384	3,306		3,306	420
421		Switch crews	180,123	774	32,931	618	214,446		214,446	421

410. RAILWAY OPERATING EXPENSES - (Continued)

(Dollars in Thousands)

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		YARD OPERATIONS (Continued)								
422		Controlling operations	36,469	10	171	12	36,662		36,662	422
423		Yard and terminal clerical	1,206	3,347	2,979	449	7,981		7,981	423
424		Operating switches, signals, retarders, & humps		740	23		763		763	424
425		Locomotive fuel		55,757			55,757		55,757	425
426		Electric power purchased or produced for motive power								426
427		Servicing locomotives								427
428		Freight lost or damaged - solely related								428
429		Clearing wrecks	77				77		77	429
430		Fringe benefits				83,430	83,430		83,430	430
431		Other casualties & insurance				10,759	10,759		10,759	431
432		Joint facility - debit			20		20		20	432
433		Joint facility - (credit)								433
434		Other			10		10		10	434
435		TOTAL YARD OPERATIONS	218,828	61,020	37,711	95,652	413,211		413,211	435
		TRAIN & YARD OPERATIONS COMMON:								
501		Cleaning car interiors	383	1	3,317		3,701		3,701	501
502		Adjusting & transferring loads	42	1	2,866		2,909	N/A	2,909	502
503		Car loading devices & grain docks	1				1	N/A	1	503
504		Freight lost or damaged - all other				38,785	38,785		38,785	504
505		Fringe benefits				168	168		168	505
506		TOTAL TRAIN & YARD OPERATIONS COMMON:	426	2	6,183	38,953	45,564		45,564	506
		SPECIALIZED SERVICE OPERATIONS								
507	*	Administration	6,333	1,984	15,078	294	23,689	N/A	23,689	507
508	*	Pickup & delivery and marine line haul	217	14,637	91,429	220	106,503	N/A	106,503	508
509	*	Loading & unloading and local marine	8,504	17,059	397,436	6	423,005	N/A	423,005	509
510	*	Protective services		884	(929)		(45)	N/A	(45)	510
511	*	Freight lost or damaged - solely related						N/A		511
512	*	Fringe benefits				5,997	5,997	N/A	5,997	512
513	*	Casualties & insurance				13,097	13,097	N/A	13,097	513
514	*	Joint facility - debit			1		1	N/A	1	514
515	*	Joint facility - (credit)						N/A		515
516	*	Other						N/A		516
517	*	TOTAL SPECIALIZED SERVICE OPERATIONS	15,054	34,564	503,015	19,614	572,247	N/A	572,247	517

410. RAILWAY OPERATING EXPENSES - (Continued)

(Dollars in Thousands)

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		ADMINISTRATIVE SUPPORT OPERATIONS:								
518		Administration		4,468	1,030	(1,561)	3,937		3,937	518
519		Employees performing clerical & accounting functions	2,404	912	2,146	490	5,952		5,952	519
520		Communication systems operations	792			8	800		800	520
521		Loss & damage claims processing		10	7,374	18	7,402		7,402	521
522		Fringe benefits				1,169	1,169		1,169	522
523		Casualties & insurance				680	680		680	523
524		Joint facility - debit								524
525		Joint facility - (credit)								525
526		Other								526
527		TOTAL ADMINISTRATIVE SUPPORT OPERATIONS	3,196	5,390	10,550	804	19,940		19,940	527
528		TOTAL TRANSPORTATION	1,142,038	928,450	724,591	627,004	3,422,083		3,422,083	528
		GENERAL AND ADMINISTRATIVE								
601		Officers - general administration	594	1,199	936	9,861	12,590		12,590	601
602		Accounting, auditing, & finance	2,647	(201)	11,576	1,430	15,452		15,452	602
603		Management services & data processing	3,992	372	111,204	777	116,345		116,345	603
604		Marketing	25	38	11,348	4,541	15,952		15,952	604
605		Sales		3	32	54	89		89	605
606		Industrial development	86	29	447	515	1,077	N/A	1,077	606
607		Personnel & labor relations	246	3,802	13,268	18,774	36,090		36,090	607
608		Legal & secretarial		74	182,049	2,127	184,250		184,250	608
609		Public relations & advertising		158	9,847	990	10,995		10,995	609
610		Research & development								610
611		Fringe benefits				5,543	5,543		5,543	611
612		Casualties & insurance				10,192	10,192		10,192	612
613		Writedown of uncollectible accounts				24,501	24,501		24,501	613
614		Property taxes				162,724	162,724		162,724	614
615		Other taxes except on corporate income or payroll				25,106	25,106		25,106	615
616		Joint facility - debit								616
617		Joint facility - (credit)								617
618		Other	5,210	4,550	959,612	303,704	1,273,076		1,273,076	618
619		TOTAL GENERAL AND ADMINISTRATIVE	12,800	10,024	1,300,319	570,839	1,893,982		1,893,982	619
620	*	TOTAL CARRIER OPERATING EXPENSE	1,505,166	1,339,430	3,251,573	2,513,050	8,609,219		8,609,219	620

412. WAY AND STRUCTURES

(Dollars in Thousands)

1 Report freight expenses only.

2 The total depreciation expense reported in column (b), line 29, should balance to the sum of the depreciation expense reported in Schedule 410, column (f), lines 136, 137, and 138.

3 Report in column (c) the lease/rentals for the various property categories of way and structures. The total lease/rentals reported in line 29, should balance the net amount reported in Schedule 410, column (f), lines 118 through 123, plus lines 130 through 135. If an entire road or column (c), segment of track is leased and if the actual breakdown of lease/rentals by property category is not known, apportion the lease/rentals based on the percentage of the categories' depreciation bases for all categories of depreciable leased property. Use Schedule 352B of this report to obtain the depreciation bases of the categories of leased property.

4 Amortization adjustment of each road property type which is included in column (b) shall be repeated in column (d) as a debit or credit to the appropriate line item. The net adjustment on line 29, shall equal the adjustment reported on line 29 of Schedule 335, excluding Account 44, Shop Machinery.

5 Report on line 28, all other lease rentals not apportioned in any category listed on lines 1 through 27.

6 Line 11, Account 16, should not include computer and data processing equipment reported on line 37 of Schedule 415.

Line No.	Cross Check	Property Account	Category (a)	Depreciation (b)	Lease/rentals (net) (c)	Amortization adjustment during year (d)	Line No.
1		2	Land for transportation purposes	145	35		1
2		3	Grading	44,463	10,706	(10,297)	2
3		4	Other right-of-way expenditures	200	48	(7)	3
4		5	Tunnels and subways	4,356	1,049	(190)	4
5		6	Bridges, trestles and culverts	49,230	11,853	(4,592)	5
6		7	Elevated structures	(160)	(39)	(351)	6
7		8	Ties	283,490	68,258	(13,391)	7
8		9	Rail and other track material	217,379	52,340	5,266	8
9		11	Ballast	88,708	21,359	(3,019)	9
10		13	Fences, snowsheds and signs	207	50	(24)	10
11		16	Station and office buildings	21,188	5,102	1,646	11
12		17	Roadway buildings	718	173	(398)	12
13		18	Water stations				13
14		19	Fuel stations	4,850	1,168	(2)	14
15		20	Shops and enginehouses	12,797	3,081	(234)	15
16		22	Storage warehouses				16
17		23	Wharves and docks	127	30	(69)	17
18		24	Coal and ore wharves	7,558	1,820	(606)	18
19		25	TOFC/COFC terminals	41,013	9,875	489	19
20		26	Communications systems	22,955	5,527	(123)	20
21		27	Signals and interlockers	128,542	30,950	30,246	21
22		29	Power plants	14	3	(63)	22
23		31	Power transmission systems	812	196	(196)	23
24		35	Miscellaneous structures	173	42	(151)	24
25		37	Roadway machines	29,686	7,148	2,864	25
26		39	Public improvements - construction	50,560	12,174	14,208	26
27		45	Power plant machinery	192	46	(123)	27
28			Other lease/rentals				28
29			TOTAL	1,009,203	242,994	20,883	29

414. RENTS FOR INTERCHANGED FREIGHT TRAIN CARS AND OTHER FREIGHT CARRYING EQUIPMENT

(Dollars in Thousands)

1 Report freight expenses only.
2 Report in this supporting schedule rental information by car type and other freight-carrying equipment relating to the interchange of railroad owned or leased equipment and privately owned equipment. (Reporting for leased equipment covers equipment with the carrier's own railroad markings.)
3 The gross amounts receivable and payable for freight-train cars (line 19, columns (b) through (d), and line 19, columns (e) through (g), respectively) should balance with Schedule 410, column (f) lines 231 (credits) and 230 (debits). Trailer and container rentals in this schedule are included in Schedule 410, column (f) lines 315 and 316. However, the trailer and container rentals in this schedule will not balance to lines 315 and 316 of Schedule 410 because those lines include rents for "Other Equipment" which is reported in Schedule 415, column (e). The balancing of Schedules 410, 414, and 415 "Other Equipment" is outlined in note 6 to Schedule 415.
4 Report in columns (b) and (e) rentals for private-line cars (whether under railroad control or not) and shipper owned cars.
5 Report in columns (c), (d), (f), and (g) rentals for railroad owned cars prescribed by the Board in Ex Parte No. 334, for which rentals are settled on a combination mileage and time basis (basic per diem). Include railroad owned per diem tank cars on line 17.
NOTE: Mechanical designations for each car type are shown in Schedule 710.

Line No.	Cross Check	Type of Equipment (a)	GROSS AMOUNTS RECEIVABLE Per Diem Basis: Private Line Cars (b)	Mileage (c)	Time (d)	GROSS AMOUNTS PAYABLE Per Diem Basis: Private Line Cars (e)	Mileage (f)	Time (g)	Line No.
1		CAR TYPES Box - Plain 40 Foot							1
2		Box - Plain 50 Foot and Longer				48,277	1,221	4,576	2
3		Box - Equipped		774	3,663	82	8,388	34,982	3
4		Gondola - Plain		1,030	4,630	942	805	1,714	4
5		Gondola - Equipped		3,061	8,354	10	1,607	4,178	5
6		Hopper - Covered		577	3,859	5,743	2,049	6,130	6
7		Hopper - Open Top - General Service		157	1,104	1	96	274	7
8		Hopper - Open Top - Special Service		61	320	1	53	273	8
9		Refrigerator - Mechanical				4	445	1,667	9
10		Refrigerator - Nonmechanical					31	59	10
11		Flat - TOFC/COFC			19,353	121,278	9,360	35,753	11
12		Flat - Multi-Level		70	42,113	80,569	2,173	39,688	12
13		Flat - General Service				121	11	44	13
14		Flat - Other		217	997	15,719	1,643	5,641	14
15		Tank - Under 22,000 Gallons				3,596			15
16		Tank - 22,000 Gallons and Over				5,989			16
17		All Other Freight Cars			9,041		12	43	17
18		Auto Racks			75,055			103,126	18
19		TOTAL FREIGHT TRAIN CARS		5,947	168,489	282,332	27,894	238,148	19
20		OTHER FREIGHT CARRYING EQUIPMENT Refrigerated Trailers							20
21		Other Trailers							21
22		Refrigerated Containers							22
23		Other Containers			28,873	2,632		26,321	23
24	*	TOTAL TRAILERS AND CONTAINERS			28,873	2,632		26,321	24
25		GRAND TOTAL (Lines 19 and 24)		5,947	197,362	284,964	27,894	264,469	25

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NOTES AND REMARKS FOR SCHEDULE 414

GENERAL INSTRUCTIONS CONCERNING RETURNS TO BE MADE TO SCHEDULE 415

1 Report freight expenses only.

2 Report by type of equipment all natural expenses relating to equipment functions (salaries and wages, materials, tools, supplies, fuels and lubricants, purchased services, and general).

3 Report in column (b) net repair expense, excluding the cost to repair damaged equipment.
Schedule 415, column (b) will balance to Schedule 410, column (f) as follows:
(a) Locomotives, line 5 plus line 38, compared to the sum of Schedule 410, lines 202, 203, and 216 (excluding wreck repairs). Do not report in Schedule 415, Equipment Damaged from Schedule 410, line 204.
(b) Freight cars, line 24 plus line 39, compared to the sum of Schedule 410, lines 221, 222, and 235 (excluding wreck repairs). Do not report in Schedule 415, Equipment Damaged from Schedule 410, line 223.
(c) Sum of highway equipment (line 32), floating equipment (line 35), passenger and other revenue equipment (line 36), computer and data processing equipment (line 37), machinery-other equipment (line 40), and work and other non-revenue equipment (line 41), compared to Schedule 410, the sum of lines 302 through 307, plus line 320 (excluding wreck repairs). Do not report in Schedule 415, equipment damaged from Schedule 410, line 308.
Note: Lines 216, 235, and 320 of Schedule 410 are credit amounts.
The allocation of freight car repair expenses reportable on Schedule 415 by car types shall be in accordance with Instruction 2-21, Freight train repair costing, 49 CFR 1201.

4 Depreciation expense for each class of equipment by car type shall be reported in columns (c) and (d). For improvements on leased property, Accounts 732 and 733, use a supplementary Schedule 415, which will relate to Schedules 342.
Depreciation charges reported in columns (c) and (d) will balance to Schedule 410, column (f) as follows:
(a) Locomotives, lines 5 and 38, compared to Schedule 410, line 213.
(b) Freight cars, lines 24 and 39, compared to Schedule 410, line 232.
(c) Sum of highway equipment (line 32), floating equipment (line 35), passenger and other revenue equipment (line 36), computer and data processing equipment (line 37), machinery-other equipment (line 40), and work and other non-revenue equipment (line 41), compared to Schedule 410, line 317.

5 Amortization adjustment of each equipment type which is included in column (c) shall be reported in column (e) as a debit or credit to the appropriate line item. The net adjustment on line 43 shall equal the equipment amortization adjustment applicable to equipment used in freight service included in line 39, column (c), of Schedule 335.

6 Lease/rentals reported in column (f) should balance to column (f) of Schedule 410 as follows:
(a) Locomotives, lines 5 and 38, compared to Schedule 410, lines 207, 208, 211, and 212.
(b) Freight cars, lines 24 and 39, compared to Schedule 410, lines 226 and 227 (note that Schedule 410, lines 230 and 231, are reported in Schedule 415, and are not included in Schedule 415).
(c) Sum of lease/rentals for all other equipment, lines 32, 35, 36, 37, 40, and 41, will balance to Schedule 410, lines 311, 312, 315, and 316, except for the interchange rental on trailers and containers which is reported in Schedule 414. Therefore, both Schedules 414 and 415 should be used when balancing lease/rentals other equipment to Schedule 410. Do not report in Schedule 415, the trailer and container rentals reported in Schedule 414.

7 Investment base by types of equipment shall be reported in columns (g) and (h) and should not include the cost of equipment used but not owned when rents therefore are included in the rent for equipment and Account Nos. 31-21-00, 31-22-00, 31-23-00, 35-21-00, 35-22-00, and 35-23-00. It should include the cost of equipment owned and leased to others when the rents are included in the rent for Equipment Account Nos. 32-21-00, 32-22-00, 32-23-00, 36-21-00, 36-22-00, and 36-23-00.
Property used but not owned should also be included when the rent is included in Account Nos. 31-12-00, 31-13-00, 31-21-00, 31-22-00, and 31-23-00, inclusive.
The grand total of each equipment account in column (h) of Schedule 330 should equal the totals of line items constituting the equipment account totals of columns (g) and (h) of Schedule 415.

8 Accumulated depreciation for each class of equipment shall be reported in columns (i) and (j). The grand total of each equipment reserve account in column (g), Schedule 335, shall equal the combined aggregate total accumulated depreciation for line items constituting the corresponding equipment accounts reported in columns (i) and (j), on Schedule 415.

415. SUPPORTING SCHEDULE - EQUIPMENT

(Dollars in Thousands)

Line No.	Cross Check	Types of equipment (a)	Repairs (net expense) (b)	Depreciation Owned (c)	Depreciation Capitalized lease (d)	Amortization Adjustment net during year (e)	Line No.
1		LOCOMOTIVES Diesel Locomotives - Yard	19,967	3,851		(277)	1
2		Diesel Locomotives - Road	257,469	231,502		3,648	2
3		Other Locomotives - Yard					3
4		Other Locomotives - Road					4
5	*	TOTAL LOCOMOTIVES	277,436	235,353		3,371	5
6		FREIGHT TRAIN CARS Box - Plain 40 foot					6
7		Box - Plain 50 foot and longer	717	6		6	7
8		Box - Equipped	9,459	814		(670)	8
9		Gondola - Plain	15,498	16,070		(231)	9
10		Gondola - Equipped	10,475	7,039		(1,174)	10
11		Hopper - Covered	19,493	4,457		(844)	11
12		Hopper - Open Top - General Service	3,694	10,637		2,126	12
13		Hopper - Open Top - Special Service	1,660	1,789		(1,025)	13
14		Refrigerator - Mechanical	433				14
15		Refrigerator - Nonmechanical	13				15
16		Flat - TOFC/COFC	5,816				16
17		Flat - Multi-level	6,823	153		(453)	17
18		Flat - General Service	14	3		3	18
19		Flat - Other	4,438	188		(389)	19
20		All Other Freight Cars	13,688	(212)		(212)	20
21		Cabooses	13	2		(134)	21
22		Auto Racks	4,857	10,337		(7,763)	22
23		Miscellaneous Accessories		1,342		317	23
24	*	TOTAL FREIGHT TRAIN CARS	97,091	52,625		(10,443)	24
25		OTHER EQUIPMENT - REVENUE FREIGHT HIGHWAY EQUIPMENT Refrigerated Trailers					25
26		Other Trailers	135				26
27		Refrigerated Containers					27
28		Other Containers	5,213	7,852		(1,920)	28
29		Bogies					29
30		Chassis	46,679	23,669		(449)	30
31		Other Highway Equipment (Freight)					31
32	*	TOTAL HIGHWAY EQUIPMENT	52,027	31,521		(2,369)	32
33		FLOATING EQUIPMENT - REVENUE SERVICE Marine Line-Haul					33
34		Local Marine					34
35	*	TOTAL FLOATING EQUIPMENT					35
36	*	OTHER EQUIPMENT Passenger & Other Revenue Equipment (Freight Portion)					36
37	*	Computer Systems & Word Processing Equip.	204,507	101,193	1,731	(7,601)	37
38	*	Machinery - Locomotives (1)	5,991	1,753		(245)	38
39	*	Machinery - Freight Cars (2)	9,470	4,069		(570)	39
40	*	Machinery - Other Equipment (3)	189	442		(62)	40
41	*	Work and Other Nonrevenue Equipment	29,040	24,603		(1,827)	41
42		TOTAL OTHER EQUIPMENT	249,197	132,060	1,731	(10,305)	42
43		TOTAL ALL EQUIPMENT (FREIGHT PORTION)	675,751	451,559	1,731	(19,746)	43

(1) Data reported on line 38, column (b) is the amount reported in Sched. 410, column (f), line 203, reduced by the allocable portion of line 216.
(2) Data reported on line 39, column (b) is the amount reported in Sched. 410, column (f), line 222, reduced by the allocable portion of line 235.
(3) Data reported on line 40, column (b) is the amount reported in Sched. 410, column (f), lines 302 through 306, reduced by the allocable portion of line 320.

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415. SUPPORTING SCHEDULE - EQUIPMENT - (Continued)

Line No.	Cross Check	Lease & rentals (net) (f)	Investment base as of 12/31 Owned (g)	Investment base as of 12/31 Capitalized lease (h)	Accumulated depreciation as of 12/31 Owned (i)	Accumulated depreciation as of 12/31 Capitalized lease (j)	Line No.
1			88,816		44,218		1
2		(7,986)	6,319,347		2,303,376		2
3							3
4							4
5	*	(7,986)	6,408,163		2,347,594		5
6							6
7					(20)		7
8		2,642	98,403		49,796		8
9		15,050	799,896		226,861		9
10		14,997	495,134		131,779		10
11		2,785	287,913		107,686		11
12		2,664	358,592		114,511		12
13			131,571		67,873		13
14							14
15							15
16		(188)					16
17		4,668	16,479		10,702		17
18					(10)		18
19			32,152		19,733		19
20		3			279		20
21			3,934		3,291		21
22		10,442	494,127		282,410		22
23			5,642		3,085		23
24	*	53,063	2,723,843		1,017,976		24
25							25
26							26
27							27
28		580	195,574		116,251		28
29							29
30			507,774		208,720		30
31							31
32	*	580	703,348		324,971		32
33							33
34							34
35	*						35
36	*						36
37	*		1,072,146	13,137	488,712	1,769	37
38	*	190	62,636		28,408		38
39	*		145,388		65,939		39
40	*		15,793		7,162		40
41	*	93	545,411	13,527	220,445	8,933	41
42		283	1,841,374	26,664	810,666	10,702	42
43		45,940	11,676,728	26,664	4,501,207	10,702	43

(1) Data reported on lines 38, 39, and 40 in columns (g) and (h) are investment recorded in property account 44, allocated to locomotives, freight cars, and other equipment.

(2) Depreciation reported on lines 38, 39, and 40 in column (c) is calculated by multiplying the investment in each element by the effective composite rate for property account 44, and then adding or subtracting the adjustment reported in column (e). This calculation should equal the amount shown in column (c), Schedule 335.

415. SUPPORTING SCHEDULE -- IMPROVEMENTS TO EQUIPMENT LEASED FROM OTHERS

(Dollars in Thousands)

SUPPLEMENT

Line No.	Cross Check	Types of equipment (a)	Repairs (net expense) (b)	Depreciation Owned** (c)	Depreciation Capitalized lease (d)	Amortization Adjustment net during year (e)	Line No.
1		LOCOMOTIVES Diesel Locomotive - Yard					1
2		Diesel Locomotive - Road					2
3		Other Locomotive - Yard					3
4		Other Locomotive - Road					4
5	*	TOTAL					5
6		FREIGHT TRAIN CARS Box - Plain 40 Foot					6
7		Box - Plain 50 Foot and Longer					7
8		Box - Equipped					8
9		Gondola - Plain					9
10		Gondola - Equipped					10
11		Hopper - Covered					11
12		Hopper - Open Top - General Service					12
13		Hopper - Open Top - Special Service					13
14		Refrigerator - Mechanical					14
15		Refrigerator - Nonmechanical					15
16		Flat TOFC/COFC					16
17		Flat Multi - level					17
18		Flat - General Service					18
19		Flat - Other					19
20		All Other Freight Cars					20
21		Cabooses					21
22		Auto Racks					22
23		Miscellaneous Accessories (see note 4)					23
24	*	TOTAL FREIGHT TRAIN CARS					24
25		OTHER EQUIPMENT - REVENUE FREIGHT HIGHWAY EQUIPMENT Refrigerated Trailers					25
26		Other Trailers					26
27		Refrigerated Containers					27
28		Other Containers					28
29		Bogies					29
30		Chassis					30
31		Other Highway Equipment (Freight)					31
32	*	TOTAL HIGHWAY EQUIPMENT					32
33		FLOATING EQUIPMENT - REVENUE SERVICE Marine Line - Haul					33
34		Local Marine					34
35	*	TOTAL FLOATING EQUIPMENT					35
36	*	OTHER EQUIPMENT Passenger & Other Revenue Equipment (Freight Portion)					36
37	*	Computer systems & word processing equip.					37
38	*	Machinery - Locomotives (see note 1)					38
39	*	Machinery - Freight Cars (see note 2)					39
40	*	Machinery - Other Equipment (see note 3)					40
41	*	Work & Other Non - revenue Equipment					41
42		TOTAL OTHER EQUIPMENT					42
43		TOTAL ALL EQUIPMENT (FREIGHT PORTION)					43

Note 1 Data to be reported on line 38, column (b) is the amount reported in Schedule 410, column (f), line 203, reduced by the allocable portion of line 216.

Note 2 Data to be reported on line 39, column (b) is the amount reported in Schedule 410, column (f), line 222, reduced by the allocable portion of line 235.

Note 3 Data to be reported on line 40 in column (b) is the amount reported in Schedule 410, column (f), lines 302 through 306, reduced by the allocable portion of line 320

415. SUPPORTING SCHEDULE -- IMPROVEMENTS TO EQUIPMENT LEASED FROM OTHERS

(Dollars in Thousands)

SUPPLEMENT

Line No.	Cross Check	Lease and rentals (net) (f)	Investment base as of 12/31		Accumulated depreciation as of 12/31		Line No.
			Owned** (g)	Capitalized lease (h)	Owned** (i)	Capitalized lease (j)	
1							1
2							2
3							3
4							4
5							5
6							6
7							7
8							8
9							9
10							10
11							11
12							12
13							13
14							14
15							15
16							16
17							17
18							18
19							19
20							20
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28							28
29							29
30							30
31							31
32							32
33							33
34							34
35							35
36							36
37							37
38							38
39							39
40							40
41							41
42							42
43							43

Note 1 Data reported on lines 38, 39 and 40 in columns (g) and (h) are the investment recorded in property account 44, allocated to locomotives, freight cars, and other equipment.

Note 2 Depreciation reported on lines 38, 39 and 40 in column (c) is calculated by multiplying the investment in each element by the effective composite rate for property account 44, and then adding or subtracting the adjustment reported in column (e). This calculation should equal the amount shown in column (c), Schedule 335.

417. SPECIALIZED SERVICE SUBSCHEDULE - TRANSPORTATION

(Dollars in Thousands)

1 Report freight expenses only.

2 Report in lines 1, 2, 3, 4, and 10 the total of those natural expenses (salaries and wages, material, tools, supplies, fuels and lubricants, purchased services, and general) incurred in the operation of each type of specialized service facility. This schedule does not include switching services performed by train and yard crews in connection with or within specialized service facilities.

3 When it is necessary to apportion expenses, such as administrative expenses to two or more services, they shall be apportioned on the most equitable basis available to the respondent and only to the services they support. The total expenses in column (j) should balance with the respective line items in Schedule 410, Railway Operating Expenses.

4 Report in column (b), line 2, the expenses incurred in highway movements of trailers and containers performed at the expense of the reporting railroad within a terminal area for the purpose of pick-up, delivery, or highway interchange service. Report in column (b), line 3, the expenses incurred in operating facilities for handling trailers and/or containers, including storage expenses. See Schedule 755, note R.

5 The operation of floating equipment in line-haul service (between distinct terminals) should be reported in column (c) on line 2.. Floating operations conducted within a general terminal or harbor area should be reported in column (c), line 3.

6 Report in column (g), line 3, the expenses incurred by the railroad in loading and unloading automobiles, trucks, etc., to and from bi-level and tri-level auto rack cars. Report on line 2, column (g), the expense incurred by the railroad in moving automobiles, etc., between bi-level and tri-level loading and unloading facilities over the highway to shippers, receivers, or connecting carriers. Report in column (f) operating expenses for land facilities in support of floating operations, including the operation of docks and wharves.

7 Report on line 4, column (b), the expenses relating to heating and refrigeration of TOFC/COFC trailers and containers (total debits and credits). The expenses on line 4, column (h) relate to refrigerator cars only.

8 Report in column (i) total expenses incurred in performing rail substitute service, other highway revenue service, LCL terminal operations, warehouse operations, freight car transloading, grain elevator terminal operations, and livestock feeding operations only.

Line No.	Cross Check	Items (a)	TOFC/COFC terminal (b)	Floating equipment (c)	Coal marine terminal (d)	Ore marine terminal (e)	Other marine terminal (f)	Motor vehicle load & distribution (g)	Protective services refrigerator car (h)	Other special services (i)	Total columns (b) - (i) (j)	Line No.
1	*	Administration	19,624		871			815		2,379	23,689	1
2	*	Pick up and delivery, marine line haul	55,940		5,084			5,008	N/A	40,471	106,503	2
3	*	Loading and unloading and local marine	351,008		7,315			63,091	N/A	1,591	423,005	3
4	*	Protective services - total debits and credits							(45)		(45)	4
5	*	Freight lost or damaged - solely related										5
6	*	Fringe benefits	5,120		877						5,997	6
7	*	Casualty and insurance	13,097								13,097	7
8	*	Joint facility - debit	1								1	8
9	*	Joint facility - credit	)	)	)	)	)	)	( )	)		9
10	*	Other										10
11	*	TOTAL	444,790		14,147			68,914	(45)	44,441	572,247	11

450. ANALYSIS OF TAXES

(Dollars in Thousands)

A. Railway Taxes

Line No.	Cross Check	Kind of Tax	Amount	Line No.
1		Other than U.S. Government Taxes	301,051	1
		U.S. Government Taxes		
		Income Taxes		
2		Normal Tax and Surtax	687,045	2
3		Excess Profits		3
4	*	Total - Income Taxes (Lines 2 and 3)	687,045	4
5		Railroad Retirement	394,236	5
6		Hospital Insurance	32,579	6
7		Supplemental Annuities		7
8		Unemployment Insurance	3,221	8
9		All Other United States Taxes		9
10		Total - U.S. Government Taxes	1,117,081	10
11		Total - Railway Taxes	1,418,132	11

B. Adjustments to Federal Income Taxes

1 In column (a) are listed the particulars which most often cause a differential between taxable income and pretax accounting income. Other particulars which cause such a differential should be listed under the caption "Other (Specify)," including state and other taxes deferred if computed separately. Minor items, each less than $100,000, may be combined in a single entry under "Other (Specify)."
2 Indicate in column (b) the beginning of year totals of Accounts 714, 744, 762, and 786 applicable to each particular item in column (a).
3 Indicate in column (c) the net changes in Accounts 714, 744, 762, and 786 for the net tax effect of timing differences originating and reversing in the current accounting period.
4 Indicate in column (d) any adjustments, as appropriate, including adjustments to eliminate or reinstate deferred tax effects (credits or debits) due to applying or recognizing a loss carry-forward or a loss carry-back.
5 The total of line 19 in columns (c) and (d) should agree with the total of the contra charges (credits) to Account 557, Provision for Deferred Taxes, and Account 591, Provision for Deferred Taxes - Extraordinary Items, for the current year.
6 Indicate in column (e) the cumulative total of columns (b), (c), and (d). The total of column (e) must agree with the total of Accounts 714, 744, 762, and 786.

Line No.	Particulars (a)	Beginning of year balance (b)	Net credits (charges) for current year (c)	Adjustments (d)	End of year balance (e)	Line No.
1	Accelerated depreciation, Sec. 167 IRC: Guideline lives pursuant to Rev, Proc. 62-21.					1
2	Accelerated amortization of facilities, Sec. 168 IRC					2
3	Accelerated amortization of rolling stock, Sec. 184 IRC					3
4	Amortization of rights of way, Sec 185 IRC					4
5	Other:					5
6	Property	7,205,800	222,277		7,428,077	6
7	Tax Benefit Transfer Leases					7
8	Reserves, Including Casualty & Other Claims	(292,898)	97,930		(194,968)	8
9	Compensation Benefits	94,017	8,433	14,657	117,107	9
10	Miscellaneous	66,025	(31,746)	(26)	34,253	10
11						11
12						12
13						13
14						14
15						15
16						16
17						17
18						18
19	TOTALS	7,072,944	296,894	14,631	7,384,469	19

NOTES AND REMARKS

Adjustments in column (d) represent primarily AOCI adjustments in accordance with "Compensation-Retirement Benefits" (ASC 715).

450. ANALYSIS OF TAXES

(Dollars in Thousands)

* Footnotes:

1	If the flow-through method was elected, indicate the net decrease (or increase) in tax accrual because of investment tax credit.	
	If the deferral method for investment tax credit was elected:	
	(1) Indicate amount of credit utilized as a reduction of tax liability for current year	N/A
	(2) Deduct the amount of the current year's credit applied to reduction of tax liability but deferred for accounting purposes	N/A
	(3) Balance of current year's credit used to reduce current year's tax accrual	N/A
	(4) Add amount of prior year's deferred credits being amortized to reduce current year's tax accrual	N/A
	(5) Total decrease in current year's tax accrual resulting from use of investment tax credits	N/A
2	Estimated amount of future earnings which can be realized before paying Federal income taxes because of unused and available net operating loss carryover on January 1 of the year following that for which the report is made	None

501. GUARANTIES AND SURETYSHIPS

(Dollars in Thousands)

1 If the respondent was under obligation as guarantor or surety for the performance by any other corporation or association of any agreement or obligation, show the particulars of each contract of guarantee or suretyship in effect at the close of the year or entered into and expired during the year. This inquiry does not cover the case of ordinary commercial paper maturing on demand or not later than two years after the date of issue. Items of less than $50,000 may be shown as one total.

Line No.	Names of all parties principally and primarily liable (a)	Description (b)	Amount of contingent liability (c)	Sole or joint contingent liability (d)	Line No.
1	None				
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
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25					
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36					
37					
38					

2 If any corporation or other association was under obligation as guarantor or surety for the performance by the respondent of any agreement or obligation, show the particulars called for hereunder for each such contract of guaranty or suretyship in effect at the close of the year or entered into and expired during the year. This inquiry does not cover the case of ordinary commercial paper maturing on demand or not later than two years after the date of issue, nor does it include ordinary surety bonds or undertakings on appeals in court proceedings.

Line No.	Finance docket number, title maturity date and concise description of agreement or obligation (a)	Names of all guarantors and sureties (b)	Amount of contingent liability of guarantors (c)	Sole or joint contingent liability (d)	Line No.
1	None				
2					
3					
4					
5					
6					
7					
8					
9					

502. COMPENSATING BALANCES AND SHORT-TERM BORROWING AGREEMENTS

(Dollars in Thousands)

Using the following notes as a guideline, show the requirements of compensating balances and short-term borrowing agreements. Footnote disclosure is required even though the arrangement is not reduced to writing.

1 Disclose compensating balances not legally restricted, lines of credit used and unused, average interest rate of short-term borrowings that are outstanding at balance sheet date, maximum amount of outstanding borrowings during the period and the weighted average rate of those borrowings.
2 Time deposits and certificates of deposit constituting compensating balances not legally restricted should be disclosed.
3 Compensating balance arrangements need only be disclosed for the latest fiscal year.
4 Compensating balances included in Account 703, Special Deposits, and in Account 717, Other Funds, should also be separately disclosed below.
5 Compensating balance arrangements are sufficiently material to require disclosure in footnotes when the aggregate of written and oral agreement balances amount to 15% or more of liquid assets (current cash balances, restricted and unrestricted, plus marketable securities).
6 When a carrier is not in compliance with a compensating balance requirement, that fact should be disclosed, along with stated and possible sanctions, whenever such possible sanctions may be immediate (not vague or unpredictable) and material.

We have outstanding letters of credit in the amount of $5.0 million, with various banks, under which no borrowings were outstanding as of December 31, 2025.

In May 2025, we renewed our accounts receivable securitization program with a maximum borrowing capacity of $400 million. Amounts under our accounts receivable securitization program are borrowed and repaid from time to time in the ordinary course for general corporate and cash management purposes. The term of our accounts receivable securitization program expires in May 2026. Amounts received under this facility are accounted for as borrowings. We had no amounts outstanding under this program and our available borrowing capacity was approximately $397 million and $400 million at December 31, 2025 and December 31, 2024, respectively. Our accounts receivable securitization program was supported by $735 million and $790 million in receivables at December 31, 2025 and December 31, 2024, respectively, which are included in “Accounts receivable.”

510. SEPARATION OF DEBTHOLDINGS BETWEEN ROAD PROPERTY AND EQUIPMENT

(Dollars in Thousands)

The principal use of this schedule is to determine the average rate of debt capital.

I. Debt Outstanding at End of Year

Line No.	Account No. (a)	Title (b)	Source (c)	Balance Close of Year (d)
1	751	Loans and notes payable	Sch 200, Line 29	
2	764	Equipment obligations and other long-term debt due within one year	Sch 200, Line 38	606,788
3	765/767	Funded debt unmatured	Sch 200, Line 40	138,085
4	766	Equipment obligations	Sch 200, Line 41	
5	766.5	Capitalized lease obligations	Sch 200, Line 42	11,116
6	768	Debt in default	Sch 200, Line 43	
7	769	Accounts payable - affiliated companies	Sch 200, Line 44	14,050,105
8	770.1/770.2	Unamortized debt premium	Sch 200, Line 45	22,001
9		Total debt	Sum of Lines 1 through 8	14,828,095
10		Debt directly related to road property	Note 1	18,010
11		Debt directly related to equipment	Note 1	
12		Total debt related to road and equipment	Lines 10 and 11	18,010
13		Percent directly related to road	Line 10 /Line 12 Whole % + 2 decimals	100.00 %
14		Percent directly related to equipment	Line 11 /Line 12 Whole % + 2 decimals	0.00 %
15		Debt not directly related to road and equipment	Line 9 - Line 12	14,810,085
16		Road property debt (Note 2)	(Line 13 x Line 15) + Line 10	14,828,095
17		Equipment debt (Note 2)	(Line 14 x Line 15) + Line 11	

II. Interest Accrued During the Year

Line No.	Account No. (a)	Title (b)	Source (c)	Balance Close of Year (d)
18	546-548	Total interest and amortization (fixed charges)	Sch. 210, Line 42	624,007*
19	546	Contingent interest on funded debt	Sch. 210, Line 44	
20	517	Release of premium on funded debt	Sch. 210, Line 22	
21		Total interest (Note 3)	(Line 18 + Line 19) - Line 20	624,007
22		Interest directly related to road property debt	Note 4	375
23		Interest directly related to equipment debt	Note 4	
24		Interest not directly related to road or equipment property debt	Line 21 - (Lines 22 + 23)	623,632
25		Interest on road property debt (Note 5)	Line 22 + (Line 24 x Line 13)	624,007
26		Interest on equipment debt (Note 5)	Line 23 + (Line 24 x Line 14)	
27		Embedded rate of debt capital - road property	Line 25 / Line 16	4.21 %
28		Embedded rate of debt capital - equipment	Line 26 / Line 17	

Note 1: Directly related means the purpose which the funds were used for when the debt was issued.
Note 2: Line 16 plus Line 17 must equal Line 9.
Note 3: Line 21 includes interest on debt in Account 769 - Accounts Payable; Affiliated Companies.
Note 4: This interest relates to debt reported on Lines 10 and 11, respectively.
Note 5: Line 25 plus Line 26 must equal Line 21.

NOTES AND REMARKS

*Net of capitalized interest of $28,773.

INSTRUCTIONS CONCERNING RETURNS TO BE MADE IN SCHEDULE 512

1 Furnish the information called for below between the respondent and the affiliated companies or persons affiliated with the respondent, including officers, directors, stockholders, owners, partners, or their wives and other close relatives, or their agents. Examples of transactions are, but are not restricted to, management, legal, accounting, purchasing, or other types of service including the furnishing of materials, supplies, purchase of equipment, leasing of structures, land and equipment, and agreements relating to allocation of officers' salaries and other common costs between affiliated companies.

To be excluded are payments for the following types of services:

(a) Lawful tariff charges for transportation services.

(b) Payments to or from other carriers for interline services and interchange of equipment.

(c) Payment to or from other carriers which may reasonably be regarded as ordinarily connected with routine operation or maintenance, but any special or unusual transactions should be reported.

(d) Payments to public utility companies for rates or charges fixed in conformity with government authority.

2 In column (a) enter the name of the affiliated company, person, or agent with which respondent received or provided services aggregating $50,000 or more during the year. If an affiliated company provides services to more than one affiliate, and the aggregate compensation amounts to $50,000 or more for the year, list all the affiliates included in the agreement and describe the allocation of charges. If the respondent provides services to more than one affiliate, and the aggregate compensation amounts to $50,000 or more for the year, reference to this fact should be made and the detail as to the allocation of charges should be stated. For those affiliates providing services to the respondent, also enter in column (a) the percent of affiliate's gross income derived from transactions with respondent.

The respondent may be required to furnish as an attachment to Schedule 512 a balance sheet and income statement for each affiliate with which respondent carrier had reportable transactions during the year, or alternatively, attach a "Pro Forma" balance sheet and income statement for that portion or entity of each affiliate which furnished the agreed to services, equipment, or other reportable transaction. The statements, if required, should be prepared on a calendar year basis in conformity with the prescribed schedules for the balance sheet and income statement in this Annual Report Form R-1, and should be noted (1) to indicate the method used for depreciating equipment or other property furnished to the carrier, and (2) whether the affiliate's Federal income tax return for the year was filed on a consolidated basis with the respondent carrier.

3 In column (b) indicate the nature of the relationship or control between the respondent and the company or person identified in column (a) as follows:

(a) If respondent directly controls the affiliate, insert the word "direct."

(b) If respondent controls through another company, insert the word "indirect."

(c) If respondent is under common control with affiliate, insert the word "common."

(d) If respondent is controlled directly or indirectly by the company listed in column (a), insert the word "controlled."

(e) If control is exercised by other means, such as a management contract or other arrangement of whatever kind, insert the word "other" and provide a footnote to describe such arrangements.

4 In column (c), fully describe the transactions involved such as management fees, lease of building, purchase of material, etc. When the affiliate listed in column (a) provides more than one type of service in column (c), list each type of service separately and show the total for the affiliate. When services are both provided and received between respondent and an affiliate they should be listed separately and the amounts shown separately in column (e).

5 In column (d), report the dollar amounts of transactions shown and the effect of any change in the method of establishing the terms from that used in the preceding period.

6 In column (e), report the dollar amounts due from or to related parties and, if not otherwise apparent, the terms and manner of settlement. Insert (P) for paid or (R) for received by the amount in column (e).

512. TRANSACTIONS BETWEEN RESPONDENT AND COMPANIES OR PERSONS AFFILIATED WITH RESPONDENT FOR SERVICES RECEIVED OR PROVIDED

(Dollars in Thousands)

Line No.	Name of company or related party with percent of gross income (a)	%	Nature of relationship (b)	Description of transactions (c)	Dollar amounts of transactions (d)	Amount due from or to related parties (e)	
1							1
2	If NS Rail provides rail transportation services to any of these entities, it does so in the normal course of business at applicable tariff or contract rates,						2
3	both of which are subject to STB jurisdiction and review.						3
4							4
5	Conrail Inc. and CRC		Other	(See Note 1)			5
6	Norfolk Southern Corporation		Controlled	(See Note 1)			6
7							7
8							8
9							9
10							10
11							11
12							12
13							13
14							14
15							15
16							16
17							17
18							18
19							19
20							20
21							21
22							22
23							23
24							24
25							25

Note 1 - See Note 13 to Schedule 200 on page 10.

INSTRUCTIONS CONCERNING RETURNS TO BE MADE IN SCHEDULE 700

State particulars of all tracks operated by the respondent at the close of the year, according to the following classifications:

(1) Line owned by respondent.

(2) Line owned by proprietary companies.

(3) Line operated under lease for a specified sum, lessor being (A) an affiliated corporation, or (B) independent or not affiliated with the respondent.

(4) Line operated under contract or agreement for contingent rent, owner being (A) an affiliated corporation, or (B) independent or not affiliated with the respondent.

(5) Line operated under trackage rights.

Give subtotals for each of the several numbered classes, in the order listed above, as well as the total for all classes.

Lengths of track should be reported to the nearest WHOLE mile adjusted to accord with footings; i.e., counting one-half mile or over as a whole mile and disregarding any fraction less than one-half mile.

In Column (a) insert the figure (and letter, if any) indicating its class in accordance with the above list of classifications.

In Column (b) give the various proportions of each class owned or leased by respondent, listing each proportion once in any grouping. Canadian mileage should be segregated and identified on separate lines in the various groupings. For each listing, in Column (d) give its entire length (the distances between terminals of single or first main track), and in the following columns the lengths of second main track, all other main tracks, passing tracks, cross-overs and turn-outs, way switching tracks, and yard switching tracks. These classes of tracks are defined as follows:

RUNNING TRACKS - Running tracks, passing tracks, cross-overs, etc., including turn-outs from those tracks to clearance points.

WAY SWITCHING TRACKS - Station, team, industry, and other switching tracks for which no separate service is maintained.

YARD SWITCHING TRACKS - Yard where separate switching services are maintained, including classification, house, team, industry, and other tracks switched by yard locomotives.

The returns in Columns (h) and (i) should include tracks serving industries, such as mines, mills, smelters, factories, etc. Tracks belonging to an industry for which no rent is payable should not be included.

Tracks leading to and in gravel and sand pits and quarries, the cost of which is chargeable to a clearing account and which are used in getting out material for the respondent's use, should not be included,

Class (1) includes all lines operated by the respondent at the close of the year to which it has title in perpetuity.

Class (2) includes each line, full title to which is in an inactive proprietary corporation of the respondent (i.e., one all of whose outstanding stocks or obligations are held by or for the respondent, and which is operated by the respondent or an affiliated system corporation without any accounting to the said proprietary corporation). It may also include such line when the actual title to all of the outstanding stocks or obligations rests in a corporation controlled by or controlling the respondent. But in the case of any such inclusion, the facts of the relationship to the respondent of the corporation holding the securities should be fully set forth in a footnote. An inactive corporation is one which has been practically absorbed in a controlling corporation, and which neither operates property nor administers its financial affairs. If it maintains an organization, it does so only for the purpose of complying with legal requirements and maintaining title to property or franchises.

Class (3) includes all tracks operated under a lease or formal conveyance of less than the grantor's interest in the property, with a specific and unconditional rent reserved. The fact that the lessor does or does not maintain an independent organization for financial purposes is immaterial in this connection.

Class (4) is the same as Class (3), except that the rent reserved is conditional upon earnings or some other fact.

Class (5) includes all tracks operated and maintained by others, but over which the respondent has the right to operate some or all of its trains. In the road of this class, the respondent has no proprietary rights, but only the rights of a licensee. Include in this class, also, on main tracks, industrial tracks and sidings owned by noncarrier companies and individuals when the respondent operates over them but does not have exclusive possession of them.

Road held by respondent as a joint or common owner or a joint lessee or under any joint arrangement should be shown in its appropriate class and the entry of length should be the entire length of the portion jointly held. The class symbol should have the letter (J) attached.

Road operated by the respondent as an agent for another carrier should not be included in this schedule.

Road Initials: NS Rail **Year: 2025**

700. MILEAGE OPERATED AT CLOSE OF YEAR

Line No.		Class (a)	Proportion owned or leased by respondent (b)	Running tracks, passing tracks, cross-overs, etc.				Miles of way switching tracks (g)	Miles of yard switching tracks (h)	TOTAL (i)	Line No.
				Miles of road (c)	Miles of second main track (d)	Miles of all other main tracks (e)	Miles of passing tracks, cross-overs, and turnouts (f)				
1		1	100%	14,584	2,727	91	1,965	2,397	5,730	27,494	1
2		1	50%	7	5		5	15	13	45	2
3		1	33%	3	3		4		5	15	3
4		1J	75%						7	7	4
5		1J	67%						4	4	5
6		1J	50%				1	12	24	37	6
7		1J	33%					3	2	5	7
8											8
9			Total Class 1	14,594	2,735	91	1,975	2,427	5,785	27,607	9
10											10
11											11
12											12
13		3	100%	41	9			7		57	13
14		3A	100%						2	2	14
15		3B	100%	2	1		1		1	5	15
16		3BJ	50%				1		5	6	16
17											17
18			Total Class 3	43	10		2	7	8	70	18
19											19
20											20
21		4	100%	6				1	33	40	21
22											22
23			Total Class 4	6				1	33	40	23
24											24
25											25
26											26
27											27
28		5	100%	4,476	1,174	551	371	134	536	7,242	28
29											29
30			Total Class 5	4,476	1,174	551	371	134	536	7,242	30
31											31
32											32
33											33
34											34
35											35
36											36
37											37
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49											49
50											50
51											51
52											52
53											53
54											54
55											55
56											56
57		TOTAL		19,119	3,919	642	2,348	2,569	6,362	34,959	57
58		Miles of electrified road or track included in the preceding grand total									58

702. MILES OF ROAD AT CLOSE OF YEAR - BY STATES AND TERRITORIES (SINGLE TRACK)

Give particulars, as of the close of the year, of all road operated and of all road owned but not operated. The respondent's proportion of operated road held by it as a joint or common owner, or under a joint lease, or under any joint arrangement, should be shown in columns (b), (c), (d), or (e), as may be appropriate. The remainder of jointly operated mileage should be shown in column (f). Respondent's proportion of road jointly owned but not operated should be shown in column (h), as appropriate. Mileage which has been permanently abandoned should not be included in column (h).

Mileage should be reported to the nearest WHOLE mile adjusted in accord with footings; i.e., counting one-half mile and over as a whole mile and disregarding any fraction less than one-half mile,

Line No.	Cross Check	State or territory (a)	MILES OF ROAD OPERATED BY RESPONDENT								Line No.
			Line owned (b)	Line of proprietary companies (c)	Line operated under lease (d)	Line operated under contract, etc. (e)	Line operated under trackage rights (f)	Total mileage operated (g)	Line owned, not operated by respondent (h)	New line constructed during year (i)	
1		Alabama	1,212				92	1,304	89		1
2		Canada					2	2			2
3		Delaware	36				46	82	94		3
4		District of Columbia					19	19			4
5		Florida	95				53	148			5
6		Georgia	1,697				9	1,706	381		6
7		Illinois	847				414	1,261	63		7
8		Indiana	1,172		2		265	1,439	36		8
9		Iowa	5			1	37	43	41		9
10		Kansas					2	2			10
11		Kentucky	352		14		63	429			11
12		Louisiana	72				4	76			12
13		Maryland	59				200	259	37		13
14		Michigan	116				373	489	157		14
15		Mississippi	209				2	211			15
16		Missouri	344				65	409			16
17		New Jersey	87				807	894	28		17
18		New York	561				294	855	227		18
19		North Carolina	720				386	1,106	333		19
20		Ohio	1,487		27		389	1,903	354		20
21		Pennsylvania	1,765			5	641	2,411	193		21
22		South Carolina	643				104	747	37		22
23		Tennessee	673				46	719	144		23
24		Virginia	1,859				131	1,990	155		24
25		West Virginia	583				32	615	233		25
26											26
27											27
28											28
29											29
30											30
31											31
32		Total Mileage (Single Track)	14,594		43	6	4,476	19,119	2,602		32

INSTRUCTIONS CONCERNING RETURNS TO BE MADE IN SCHEDULE 710

Instructions for reporting locomotive and passenger-train car data.

1 Give particulars of each of the various classes of equipment which respondent owned or leased during the year.

2 In column (c), give the number of units purchased new or built in company shops. In column (d), give the number of new units leased from others. The term "new" means a unit placed in service for the first time on any railroad.

3 Units leased to others for a period of one year or more are reportable in column (l). Units temporarily out of respondent's service and rented to others for less than one year are to be included in column (h). Units rented from others for a period less than one year should not be included in column (i).

4 For reporting purposes, a "locomotive unit" is a self-propelled vehicle generating or converting energy into motion, and designed solely for moving other equipment. An "A" unit is the least number of wheel bases with superstructure designed for use singly or as a lead locomotive unit in combination with other locomotive units. A "B" unit is similar to an "A" unit but it is not equipped for use singly or as a lead locomotive unit. A "B" unit may be equipped with hostler controls for independent operation at terminals.

5 A "self-propelled" car is a rail motor car propelled by electric motors receiving power from a third rail or overhead, or internal combustion engines located on the car itself. Trailers equipped for use only in trains of cars that are self-propelled are to be included as self-propelled equipment.

6 A "diesel" unit includes all units propelled by diesel internal combustion engines regardless of final drive or whether power may at times be supplied from an external conductor. Units other than diesel-electric, e.g., diesel-hydraulic, should be identified in a footnote, giving the number and a brief description.. An "electric" unit includes all units which receive electric power from a third rail or overhead contact wire, and use the power to drive one or more electric motors that propel the vehicle. An "other self-powered unit" includes all units other than diesel or electric, e.g., gas turbine, steam. Show the type of unit, service, and number, as appropriate, in a brief description sufficient for positive identification. An "Auxiliary unit" includes all units used in conjunction with locomotives, but which draw their power from the "mother" unit, e.g., boosters, slugs, etc. For reporting purposes, indicate radio-controlled self-powered diesel units on lines 1 through 8, as appropriate. Radio-controlled units that are not self-propelled, i.e., those without a diesel, should be reported on line 13 under "auxiliary units."

7 Column (k) should show aggregate capacity for all units reported in column (j), as follows: For locomotive units, report the manufacturer's rated horsepower (the maximum continuous power output from the diesel engines or engines delivered to the main generator or generators for tractive purposes). Exclude capacity data for steam locomotives. For passenger-train cars, report the number of passenger seats available for revenue service, counting one passenger to each berth in sleeping cars.

8 Passenger-train car types and service equipment car types correspond to AAR Mechanical Division designations. Descriptions of car codes and designations are published in The Official Railway Equipment Register.

9 Cross-checks

Schedule 710		Schedule 710
Line 5, column (j)	=	Line 11, column (l)
Line 6, column (j)	=	Line 12, column (l)
Line 7, column (j)	=	Line 13, column (l)
Line 8, column (j)	=	Line 14, column (l)
Line 9, column (j)	=	Line 15, column (l)
Line 10, column (j)	=	Line 16, column (l)

When data appear in column (j), lines 1 through 8, column (k) should have data on the same lines.

When data appear in columns (k) or (l), lines 36 through 53, and 55, column (m) should have data on the same lines.

710. INVENTORY OF EQUIPMENT
UNITS OWNED, INCLUDED IN INVESTMENT ACCOUNT, AND LEASED FROM OTHERS

Line No.	Cross Check	Type or design of units (a)	Units in service of respondent at beginning of year (b)	Changes During the Year: Units Installed: New units purchased or built (c)	Changes During the Year: Units Installed: New units leased from others (d)	Changes During the Year: Units Installed: Rebuilt units acquired and rebuilt units rewritten into property accounts (e)	Changes During the Year: Units Installed: All other units including reclassification and second hand units purchased or leased from others (f)	Units retired from service of respondent whether owned or leased, including reclassification (g)	Units at Close of Year: Owned and used (h)	Units at Close of Year: Leased from others (i)	Units at Close of Year: Total in service of respondent [col (h) & (i)] (j)	Units at Close of Year: Aggregate capacity of units reported in col (j) (See Ins. 7) (k)	Units at Close of Year: Leased to others (l)	Line No.
		Locomotive Units										(HP)		
1		Diesel-freight units	2,095			78	40	105	2,108		2,108	9,203,300		1
2		Diesel-passenger units												2
3		Diesel-multiple purpose units	956			11	10	19	958		958	2,795,400	48	3
4		Diesel-switching units	4						4		4	4,400		4
5	*	TOTAL (lines 1 to 4) units	3,055			89	50	124	3,070		3,070	12,003,100	48	5
6	*	Electric locomotives												6
7	*	Other self-powered units												7
8	*	TOTAL (lines 5, 6, and 7)	3,055			89	50	124	3,070		3,070	12,003,100	48	8
9	*	Auxiliary units	140						140		140	N/A		9
10	*	TOTAL LOCOMOTIVE UNITS (lines 8 and 9)	3,195			89	50	124	3,210		3,210	12,003,100	48	10

DISTRIBUTION OF LOCOMOTIVE UNITS IN SERVICE OF RESPONDENT AT CLOSE OF YEAR BUILT, DISREGARDING YEAR OF REBUILDING

Line No.	Cross Check	Type or design of units (a)	Before 1/1/2005 (b)	Between 1/1/2005 and 12/31/2009 (c)	Between 1/1/2010 and 12/31/2014 (d)	Between 1/1/2015 and 12/31/2019 (e)	Between 1/1/2020 and 12/31/2024 (f)	During Calendar Year: 2025 (g)	2026 (h)	2027 (i)	2028 (j)	2029 (k)	TOTAL (l)	Line No.
11	*	Diesel	2,269	326	317	148	10						3,070	11
12	*	Electric												12
13	*	Other self-powered units												13
14	*	TOTAL (lines 11 to 13)	2,269	326	317	148	10						3,070	14
15	*	Auxiliary units	101		8	30	1						140	15
16	*	TOTAL LOCOMOTIVE UNITS (lines 14 and 15)	2,370	326	325	178	11					N/A	3,210	16

710. INVENTORY OF EQUIPMENT (Continued)
UNITS OWNED, INCLUDED IN INVESTMENT ACCOUNT, AND LEASED FROM OTHERS

Line No.	Cross Check	Type or design of units (a)	Units in service of respondent at beginning of year (b)	Changes During the Year: Units Installed: New units purchased or built (c)	Changes During the Year: Units Installed: New units leased from others (d)	Changes During the Year: Units Installed: Rebuilt units acquired and rebuilt units rewritten into property accounts (e)	Changes During the Year: Units Installed: All other units including reclassification and second hand units purchased or leased from others (f)	Units retired from service of respondent whether owned or leased, including reclassification (g)	Units at Close of Year: Owned and used (h)	Units at Close of Year: Leased from others (i)	Units at Close of Year: Total in service of respondent [col (h) & (i)] (j)	Units at Close of Year: Aggregate capacity of units reported in col (j) (See Ins. 7) (k)	Units at Close of Year: Leased to others (l)	Line No.
17		Passenger-Train Cars Non-Self-Propelled Coaches (PA, PB, PBO)												17
18		Combined cars (All class C, except CSB)												18
19		Parlor cars (PBC, PC, PL, PO)												19
20		Sleeping cars (PS, PT, PAS, PDS)												20
21		Dining, grill, & tavern cars (All class D, PD)										N/A		21
22		Nonpassenger carrying cars (All class B, CSB, M, PSA, IA)										N/A		22
23		TOTAL (Lines 17 to 22)												23
24		Self-Propelled Electric passenger cars (EP, ET)												24
25		Electric combined cars (EC)												25
26		Internal combustion rail motorcars (ED, EG)												26
27		Other self-propelled cars (Specify types)												27
28		TOTAL (Lines 24 to 27)												28
29		TOTAL (Lines 23 and 28)												29
30		Company Service Cars Business cars (PV)	29						29		29	N/A		30
31		Board outfit cars (MWX)	291					77	214		214	N/A		31
32		Derrick & snow removal cars (MWU, MWV, MWW, MWK)	104					2	102		102	N/A		32
33		Dump and ballast cars (MWB, MWD)	505			37	358	15	705	180	885	N/A		33
34		Other maintenance and service equipment cars	5,355			5	65	712	4,713		4,713	N/A		34
35		TOTAL (Lines 30 to 34)	6,284			42	423	806	5,763	180	5,943	N/A		35

710. INVENTORY OF EQUIPMENT - Continued

Instructions for reporting freight-train car data.

1 Give particulars of each of the various classes of equipment which respondent owned or leased during the year.

2 In Column (d) give the number of units purchased or built in company shops. In Column (e) give the number of new units leased from others. The term "new" means a unit placed in service for the first time on any railroad.

3 Units leased to others for a period of one year or more are reportable in Column (n). Units temporarily out of respondent's service and rented to others for less than one year are to be included in Column (i). Units rented from others for a period less than one year should not be included in Column (j).

		UNITS OWNED, INCLUDED IN INVESTMENT ACCOUNT, AND LEASED FROM OTHERS							
			Units in service of respondent at beginning of year		Changes during the year				
					Units installed				
Line No.	Cross Check	Class of equipment and car designations (a)	Time-mileage cars (b)	All Others (c)	New units purchased or built (d)	New or rebuilt units leased from others (e)	Rebuilt units acquired and rebuilt units rewritten into property accounts (f)	All other units, including reclassification and second hand units purchased or leased from others (g)	Line No.
36		FREIGHT TRAIN CARS Plain box cars - 40' (B1__, B2__)							36
37		Plain box cars - 50' and longer (B3_0-7, B4_0-7, B5__, B6__ B7__, B8__)							
38		Equipped box cars (All Code A, Except A_5_)	2,256						38
39		Plain gondola cars (All Codes G & J, J__1, J__2, J__3, J__4)	11,745		418			33	39
40		Equipped gondola cars (All Code E)	9,001					68	40
41		Covered hopper cars (C__1, C__2, C__3, C__4)	5,417						41
42		Open top hopper cars - general service (All Code H)	4,675						42
43		Open top hopper cars - special service (J__O), and All Code K)	2,200					687	43
44		Refrigerator cars - mechanical (R_5,_, R_6_, R_7_, R_8_, R_9_)							44
45		Refrigerator cars - nonmechanical (R_0_, R_1_, R_2_)							45
46		Flat cars - TOFC/COFC (All Code P, Q, & S, Except Q8_)							46
47		Flat cars - multilevel (All Code V)	953						47
48		Flat cars - general service (F10_, F20_, F30_)							48
49		Flat cars - other (F_1_, F_2_, F_3_, F_4_, F_5_, F_6_, F_8_, F40_)	755					1	49
50		Tank cars - under 22,000 gal. (T__0, T__1, T__2, T__3, T__4, T__5)							50
51		Tank cars - 22,000 gal. and over (T__6, T__7, T__8, T__9)							51
52		All other freight cars (A_5_, F_7_, All Code L & Q8__)							52
53		TOTAL (Lines 36 to 52)	37,002		418			789	53
54		Caboose (All Code M-930)	N/A	121					54
55		TOTAL (Lines 53 and 54)	37,002	121	418			789	55

710. INVENTORY OF EQUIPMENT - Continued

4 Column (m) should show aggregate capacity for all units reported in Columns (k) and (l), as follows. For freight-train cars, report the nominal capacity (in tons of 2,000 lbs) as provided for in Rule 86 of the AAR Code of Rules Governing Cars in Interchange. Convert the capacity of tank cars to capacity in tons of the commodity which the car is intended to customarily carry.

5 Time-mileage cars refers to freight cars, other than cabooses, owned or held under lease arrangement, whose interline rental is settled on a per diem and line haul mileage basis under "Code of Car Hire Rules" or would be so settled if used by another railroad.

UNITS OWNED, INCLUDED IN INVESTMENT ACCOUNT, AND LEASED FROM OTHERS

Line No.	Cross Check	Changes during year (concluded)	Units at close of year						Line No.
		Units retired from service of respondent whether owned or leased including reclassification (h)	Owned and used (i)	Leased from others (j)	Total in service of respondent (col. (i) & (j)) Time-mileage cars (k)	Total in service of respondent (col. (i) & (j)) All Others (l)	Aggregate capacity of units reported in col (k) & (l) (see ins. 4) (m)	Leased to Others (n)	
36									36
									37
38		383	1,542	331	1,873		175,753		38
39		245	10,247	1,704	11,951		1,387,067		39
40		500	6,832	1,737	8,569		929,293		40
41		151	4,956	310	5,266		585,876		41
42		256	4,419		4,419		505,520		42
43		174	2,026	687	2,713		315,190		43
44									44
45									45
46									46
47		42	244	667	911		43,720		47
48									48
49		14	742		742		75,655		49
50									50
51									51
52									52
53		1,765	31,008	5,436	36,444		4,018,074		53
54		1	120		N/A	120	N/A		54
55		1,766	31,128	5,436	36,444	120	4,018,074		55

710. INVENTORY OF EQUIPMENT - Continued

Line No.	Cross Check	Class of equipment and car designations (a)	UNITS OWNED, INCLUDED IN INVESTMENT ACCOUNT, AND LEASED FROM OTHERS: Units in service of respondent at beginning of year: Per diem (b)	Units in service of respondent at beginning of year: All Others (c)	Changes during the year: Units installed: New units purchased or built (d)	Changes during the year: Units installed: New units leased from others (e)	Changes during the year: Units installed: Rebuilt units acquired and rebuilt units rewritten into property accounts (f)	Changes during the year: Units installed: All other units, including reclassification and second hand units purchased or leased from others (g)	Line No.
56		FLOATING EQUIPMENT Self-propelled vessels (tugboats, car ferries, etc.)	N/A						56
57		Non-self-propelled vessels (car floats, lighters, etc.)	N/A						57
58		TOTAL (Lines 56 and 57)	N/A						58
59		HIGHWAY REVENUE EQUIPMENT Chassis (Z1_, Z67_, Z68_, Z_69_)		39,037				9	59
60		Dry van (U2_, Z_, Z6_, I-6)		17,305				2	60
61		Flat bed (U3__, Z3__)		138					61
62		Open bed (U4__, Z4__)							62
63		Mechanical refrigerator (U5_, Z5_)							63
64		Bulk hopper (U0__, Z0__)							64
65		Insulated (U7__, Z7__)							65
66		Tank (Z0__, U6__) (See note)							66
67		Other trailer and container (Special equipped dry van U9__, Z8__, Z9__)							67
68		Tractor							68
69		Truck							69
70		TOTAL (Lines 59 to 69)		56,480				11	70

NOTES AND REMARKS

710. INVENTORY OF EQUIPMENT - Concluded

UNITS OWNED, INCLUDED IN INVESTMENT ACCOUNT, AND LEASED FROM OTHERS

Line No.	Cross Check	Changes during year (concluded)	Units at close of year						Line No.
		Units retired from service of respondent whether owned or leased including reclassification (h)	Owned and used (i)	Leased from others (j)	Total in service of respondent (col. (i) & (j)) Per diem (k)	Total in service of respondent (col. (i) & (j)) All Others (l)	Aggregate capacity of units reported in col (k) & (l) (see ins. 4) (m)	Leased to Others (n)	
56					N/A				56
57					N/A				57
58					N/A				58
59		59	38,987			38,987	N/A		59
60		40	17,267			17,267	492,110		60
61		1	137			137	1,913		61
62									62
63									63
64									64
65									65
66									66
67									67
68									68
69									69
70		100	56,391			56,391	494,023		70

NOTES AND REMARKS

710S. UNIT COST OF EQUIPMENT INSTALLED DURING THE YEAR

(Dollars in Thousands)

1 Give particulars, as requested, separately, for the various classes of new units and rebuilt units of equipment installed by respondent during the year. If information regarding the cost of any units installed is not complete at the time of filing of this report, the units should be omitted, but reference to the number of units omitted should be given in a footnote, the details as to cost to be given in the report of the following year. The cost of units under construction at the close of the year should not be reflected in this schedule even though part of the cost appears in the property account for the year. Indicate in column (e) whether an installation represents equipment purchased (P), built or rebuilt by contract in outside railroad shops (C), or built or rebuilt in company or system shops (S), including units acquired through capitalized leases (L).

2 In column (a) list each class or type of locomotive unit, car, or TOFC/COFC equipment on a separate line. By class is meant the standard classification used to distinguish types of locomotive units, freight cars, or other equipment adopted by the Association of American Railroads, and should include physical characteristics requested by Schedule 710. Locomotive units should be identified as to power source, wheel arrangement, and horsepower per unit, such as multiple-purpose diesel locomotive A units (B-B), 2500 HP. Cars should be identified as to special construction or service characteristics, such as aluminum-covered hopper car (LO) or steel boxcars-special service (XAP). For TOFC/COFC, show the type of equipment as enumerated in Schedule 710.

3 In column (c) show the total weight in tons of 2,000 pounds. The weight of equipment acquired should be the weight empty.

4 The cost should be the complete cost as entered on the ledger, including foreign line freight charges and handling charges.

5 Data for this schedule should be confined to the units reported in Schedule 710, columns (c) and (e) for locomotive units, passenger-train cars, and company service cars, and columns (d) and (f) for freight train cars, floating equipment, and highway revenue equipment. Disclose new units in the upper section of this schedule. Disclose rebuilt units acquired or rewritten into the respondent's accounts in the lower section. The term "new" as used herein shall mean a unit or units placed in service for the first time on any railroad.

6 All unequipped boxcars acquired in whole or in part with incentive per diem funds should be reported on separate lines and be appropriately identified by footnote or sub-heading.

NEW UNITS

Line No.	Class of equipment	Number of Units	Total Weight (Tons)	Total Cost	Method of Acquisition (see instructions)	Line No.
1	Standard Steel 2,791 CU FT Plain Gondolas (GB)	291	9,850	31,730	P	1
2	High Strength Steel 2,791 CU FT Plain Gondolas (GB)	127	3,426	16,948	P	2
3						3
4						4
5						5
6						6
7						7
8						8
9						9
10						10
11						11
12						12
13						13
14						14
15						15
16						16
17						17
18						18
19						19
20						20
21						21
22						22
23						23
24						24
25	**TOTAL**	418	13,276	48,678	N/A	25
	REBUILT UNITS					
26	Diesel - Freight Units 6 - Axle 4400 HP	60	12,344	142,968	C	26
27	Diesel - Freight Units 6 - Axle 4400 HP	18	3,866	42,870	S	27
28	Diesel - Multipurpose Units 6 - Axle 3000 HP	11	2,171	17,994	S	28
29	Dump and Ballast Car	37	1,064	2,941	S	29
30	Other Maintenance and Service Car	5	189	476	C	30
31						31
32						32
33						33
34						34
35						35
36						36
37						37
38	**TOTAL**	131	19,634	207,249	N/A	38
39	**GRAND TOTAL**	549	32,910	255,927	N/A	39

GENERAL INSTRUCTIONS CONCERNING RETURNS TO BE MADE IN SCHEDULES 720

1 For purposes of these schedules, the track categories are defined as follows:

A. Freight density of 20 million or more gross ton-miles per track-mile per year (including passing tracks, turnouts, and crossovers).

B. Freight density of less than 20 million gross ton-miles per track-mile per year, but at least 5 million (including passing tracks, turnouts, and crossovers).

C. Freight density of less than 5 million gross ton-miles per track-mile per year, but at least 1 million (including passing tracks, turnouts, and crossovers).

D. Freight density of less than 1 million gross ton-miles per track-mile per year (including passing tracks, turnouts, and crossovers).

E. Way and yard switching tracks (passing tracks, turnouts, and crossovers shall be included in categories A, B, C, D, F, or potential abandonments, as appropriate).

F. Track over which any passenger service is provided (other than potential abandonments). Mileage should be included within track categories A through E unless it is dedicated entirely to passenger service, category F.

Potential abandonments - Route segments identified by railroads as potentially subject to abandonment as required by Section 10903 of the ICC Termination Act of 1995.

2 This schedule should include all class 1, 2, 3, or 4 track from Schedule 700, that is maintained by the respondent. (Class 5 track is assumed to be maintained by others)

3 If, for two consecutive years, a line segment classified in one track category maintains a traffic density which would place it in another, it shall be reclassified into that category as of the beginning of the second year.

4 Traffic density related to passenger service shall not be included in the determination of the track category of a line segment.

720. TRACK AND TRAFFIC CONDITIONS

Disclose the requested information pertaining to track and traffic conditions.

Line No.	Track category (a)	Mileage of tracks at end of period (whole numbers) (b)	Average annual traffic density in millions of gross ton-miles per track-mile* (use two decimal places) (c)	Average running speed limit (use two decimal places) (d)	Track miles under slow orders at end of period (e)	Line No.
1	A	8,599	40.10	53.33	8	1
2	B	5,493	12.02	45.84	5	2
3	C	2,350	2.70	31.10	41	3
4	D	3,014	0.21	18.00	41	4
5	E	8,261	XXXXXXXXXX	XXXXXXXX	N/A	5
6	TOTAL	27,717	21.48	43.05	95	6
7	F	3,433	XXXXXXXXXX	XXXXXXXX	N/A	7
8	Potential abandonments	13				8

* To determine average density, total track-miles (route-miles times number of tracks), rather than route-miles, shall be used.

750. CONSUMPTION OF DIESEL FUEL
(Dollars in Thousands)

Line No.	LOCOMOTIVES		Line No.
	Kind of locomotive service (a)	Diesel oil (gallons) (b)	
1	Freight	342,243,258	1
2	Passenger		2
3	Yard Switching	23,416,041	3
4	TOTAL	365,659,299	4
5	COST OF FUEL $(000)	$ 870,688	5
6	Work Train	1,945,088	6

INSTRUCTIONS CONCERNING RETURNS TO BE MADE IN SCHEDULE 755

Unit Train, Way Train, and Through Train data under items 2, 3, 4, 6, and 12 shall be obtained from conductor's wheel reports (freight) or similar reports. Unit train service is a specialized scheduled shuttle type service in equipment (railroad or privately owned) dedicated to such service, moving between origin and destination. The applicable tariffs and/or contracts generally require that a specific minimum tonnage or quantity of carloads be tendered as a unit for shipment on one bill of lading or other shipping document in a solid train for movement between origin and destination. Such tariffs and/or contracts generally contain restricted detention provisions and are subject to time-volume requirements which reflect the approximate capacity of the unit trains for the stated period. Way trains are defined as trains operated primarily to gather and distribute cars in road service and move them between way stations or way points. Through trains are those trains operated between two or more major concentration or distribution points. Do not include unit train statistics in way or through train statistics. A work train is a train operated solely or preponderantly for the purpose of transporting company freight, work equipment, or company employees. Statistics for work trains should be reported under Item 11, only. Statistics related to company equipment, company employees, and company freight moving in transportation trains are not to be reported in Item 11, but are to be reported in Items 4-17, 6-04, 7-02, 8-04, and 8-05, as instructed in notes I, K, and L.

(A) Report miles of road operated at close of year, excluding industrial tracks, yard tracks, and sidings.

(B) A train-mile is a movement of a train a distance of one mile. In computing train-miles, fractions representing less that one-half mile shall be disregarded and other fractions shall be considered as one mile. Train Miles-Running shall be based on the actual distance run between terminals and/or stations and shall be computed from the official time tables or distance tables. Train-Miles shall not be increased to cover the running of locomotives from shops to terminals, doubling hills, switching, or other work at way stations, or for the service of helper or pusher locomotives or of extra locomotives on double-head or triple-head trains. When the carrier's trains are detoured over foreign roads, the miles shall be computed on the basis of the miles actually run and in accordance with the service performed. Train-miles shall be kept separately for trains hauled by locomotives and trains moved by motorcars.

(C) A motorcar is a self-propelled unit of equipment designed to carry freight or passengers, and is not considered a locomotive.

(D) A locomotive is a self-propelled unit of equipment designed solely for moving other equipment. A locomotive unit-mile is a movement of a locomotive unit a distance of one mile under its own power. Include miles made by all locomotive units. Exclude miles made by motorcars. Miles of locomotives in helper service shall be computed on the basis of actual distance run in such service.

(E) All locomotive unit-miles in road service shall be based on the actual distance run between terminals and/or stations. Follow instruction (B) regarding fractions and official time tables for computing locomotive miles.

(F) Train switching locomotive-miles shall be computed at the rate of six miles per hour for the time actually engaged in such service. Include miles allowed for train locomotives for performing switching service at terminals and way stations.

(G) Yard switching locomotive-miles shall be computed at the rate of six miles per hour for the time actually engaged in yard switching service. Include miles allowed for yard locomotives for switching service in yards where regular switching service is maintained and in terminal switching and transfer service.

(H) A car-mile is a movement of a unit of car equipment a distance of one mile. Use car designations shown in Schedule 710. Under Railroad Owned and Leased Cars, Items 4-01 and 4-11, report both foreign cars and respondent's own cars while on the line of the respondent railroad. In Items 4-13 and 4-15, report private-line cars and shipper owned cars. Loaded and empty miles should be reported whether or not the railroad reimbursed the owner on a loaded and/or empty mile basis. Report miles made by flatcars carrying empty highway trailers that are not moving under revenue billings as empty freight car-miles. Do not report miles made by motorcars or business cars.

(I) Exclude from Items 4-01, 4-11, 4-13, and 4-5, car-miles of work equipment, cars carrying company freight, and non-revenue private line cars moving in transportation trains. Include such car-miles in Items 4-17, 4-18, and 4-19. If private line cars move in revenue service, the loaded and empty miles should not be considered no-payment or non-revenue car-miles.

(J) Report miles actually run by passenger-train cars in transportation service. Passenger-train car-miles include miles run by coaches and cars in which passengers are carried at regular tariff fares without extra charge for space occupied; miles run by combination passenger and baggage, passenger and mail, passenger and express; miles run by sleeping, parlor, and other cars for which an extra fare is charged; miles run by dining, cafe, and other cars devoted exclusively to the serving of meals and other refreshments and by club, lounge, and observation cars; and miles run by other passenger-train cars where services are combined, such as baggage, express, and mail.

(K) From conductor's or dispatcher's train reports or other appropriate sources, compute weight in tons (2,000 pounds). Item 6-01 includes weight of all locomotive units moved one mile in transportation trains. Ton-miles of motorcars should be excluded. Items 6-02 and 6-03 represent tons behind locomotive units (cars and contents, cabooses) moved one mile in transportation trains (excluding non-revenue gross ton-miles). Nonrevenue gross ton-miles in transportation trains include work equipment and cars carrying company freight and their contents. Use 150 pounds as the average weight per passenger and four tons as the average weight of contents of each head-end car.

INSTRUCTIONS CONCERNING RETURNS TO BE MADE IN SCHEDULE 755 - (Concluded)

(L) From conductor's train reports or other appropriate sources, compute ton-miles of freight. Ton-miles represent the number of tons of revenue and nonrevenue freight moved one mile in a transportation train. Include net ton-miles in motorcar trains. Exclude l.c.l. shipment of freight handled in mixed baggage express cars. Total ton-miles of revenue freight should correspond to the ton-miles reported on Form CBS.

(M) Road service represents elapse time of transportation trains (both ordinary and light) between the time of leaving the initial terminals and the time at final terminals, including trains switching at way stations and delays on road as shown by conductor's or dispatcher's train reports. Include time of motorcar service performed by train locomotives at terminals and way stations. Report in Item 9-02, train switching hours included in Item 9-01. Train switching is the time spent by the train while performing switching service at terminals and way stations where no regular yard service is maintained. A train hour is independent of the number of locomotives in the train.

(N) Yard switching hours are hours expended in switching service performed by yard crews in yards where regular switching service is maintained, including switching and transfer service in connection with the transportation of revenue and incidentally of company freight. Hours in yard switching are independent of the number of locomotives used.

(O) Work-train miles include the miles run by trains engaged in company service such as official inspection; inspection trains for railway commissioners for which no revenue is received; trains running special with fire apparatus to save carrier's property from destruction: trains run for transporting the carrier's employees to and from work when no transportation charge is made; wrecking trains run solely for the purpose of transporting company material; trains run for distributing material and supplies for use in connection with operations; and all other trains used in work-train services. Exclude miles run by locomotives while engaged incidentally in switching company materials in company shops or material yards in connection with regular yard switching service or in switching equipment for repairs between yards and shops.

(P) The number of loaded freight cars shall be obtained from the conductors' wheel report and shall be the sum of all loaded cars handled by each train. For example, if a car moves loaded (1) in a way train from the origination points, (2) in two through trains, and (3) in a way-train to the destination point, the total count of loaded cars would be four: two counts for the movements in the way trains and two counts for the movements in through trains. Therefore, each car originated or received from a connecting carrier receives an initial count, plus one count for each subsequent physical transfer between trains on respondent's lines. No additional count is given because of crew change or changes in track identification number unless there is a physical transfer of the car between trains. Each car moving under revenue billing shall be considered as a loaded car.

(Q) Report vehicles (TOFC trailers/containers, automobiles and trucks) loaded and unloaded to and from TOFC and multiple level freight cars when the work is performed at the railroad's expense.

(R) Report the number of loaded revenue trailers/containers picked up, plus revenue trailers/containers delivered in TOFC/COFC and in highway interchange service, when the work is performed at the railroad's expense. (Performed at railroad's expense means that railroad employees perform the service or that the railroad hires a subsidiary or outside contractor to perform the service.) Do not include those trailers/containers which are picked up or delivered by a shipper or motor carrier, etc. when a tariff provision requires that the shipper or motor carrier, etc., and not the railroad, perform that service. Note: The count should reflect the trailers/containers for which expenses are reported in Schedule 417, line 2, column (b).

(S) Report under Marine Terminals, Item 16, the tons loaded onto and unloaded from marine vessels at the expense of the reporting railroad.

(T) Report the total number of foreign railroad cars on line at the end of the year (except surplus cars, see below). Foreign railroad cars refers to freight cars owned by other railroads whose interline rental is settled on time (by hour) and actual line-haul mileage charges under the Code of Car Hire Rules.

Carriers will be governed by local conditions in determining whether a car at an interchange point should be considered "on-line." Unserviceable cars include cars on repair tracks undergoing or awaiting repairs. They include cars on repair tracks repaired and awaiting switching, cars on repair tracks undergoing or awaiting repairs switching, cars awaiting movement to repair tracks held in train yards (excluding cars which are to be repaired in the train yard without loss of time), cars moving empty in trains en route to shop, and cars stored awaiting disposition.

Surplus cars are cars which are in serviceable condition for loading on the last day of the year, but have not been placed for loading within 48 hours. This count can be an annual average based on weekly count of cars that have not been placed for loading within 48 hours.

(U) Flat-TOFC/COFC Car-miles reported in lines 25 (4-020), 41 (4-120), 57 (4-140), and 75 (4-160) will be computed using cars rather than constructed container platforms. For example, an articulated car consisting of five platforms moved one mile will be counted as one car-mile, not five car-miles.

(V) The intermodal Load Factor reported on Line 134 will be calculated for the average number of intermodal (TOFC/COFC) units loaded on the average intermodal car. Units are to be calculated in the same manner as Line 123 (13 TOFC/COFC - No. of Revenue Trailers & Containers Loaded and Unloaded (Q)). Intermodal cars will be calculated in accordance with instruction U for reporting Flat-TOFC/COFC Car-miles. Both intermodal (TOFC/COFC) units and intermodal cars are to be calculated using actual units and not constructed intermodal (TOFC/COFC) units or cars.

Road Initials: NS Rail Year: 2025

755. RAILROAD OPERATING STATISTICS

Line No.	Cross Check	Item Description (a)	Freight Train (b)	Passenger Train (c)	Line No.
1		1 Miles of Road Operated (A)	19,119		1
		2 Train Miles - Running (B)			
2		2-01 Unit Trains	8,498,620	XXXXXX	2
3		2-02 Way Trains	9,720,719	XXXXXX	3
4		2-03 Through Trains	37,161,305		4
5		2-04 TOTAL TRAIN MILES (Lines 2-4)	55,380,644		5
6		2-05 Motorcars (C)			6
7		2-07 TOTAL ALL TRAINS (Lines 5 and 6)	55,380,644		7
		3 Locomotive Unit Miles (D)			
		Road Service (E)			
8		3-01 Unit Trains	19,847,138	XXXXXX	8
9		3-02 Way Trains	15,502,440	XXXXXX	9
10		3-03 Through Trains	85,858,353		10
11		3-04 TOTAL (Lines 8-10)	121,207,931		11
12		3-11 Train Switching (F)	5,494,992	XXXXXX	12
13		3-21 Yard Switching (G)	9,399,702		13
14		3-31 TOTAL ALL SERVICES (Lines 11-13)	136,102,625		14
		4 Freight Car-Miles (thousands) (H)			
		4-01 RR Owned and Leased Cars - Loaded			
15		4-010 Box-Plain 40-Foot		XXXXXX	15
16		4-011 Box-Plain 50-Foot and Longer	11,767	XXXXXX	16
17		4-012 Box-Equipped	40,770	XXXXXX	17
18		4-013 Gondola-Plain	159,074	XXXXXX	18
19		4-014 Gondola-Equipped	60,637	XXXXXX	19
20		4-015 Hopper-Covered	92,717	XXXXXX	20
21		4-016 Hopper-Open Top-General Service	43,655	XXXXXX	21
22		4-017 Hopper-Open Top-Special Service	17,445	XXXXXX	22
23		4-018 Refrigerator-Mechanical	2,489	XXXXXX	23
24		4-019 Refrigerator-Non-Mechanical	361	XXXXXX	24
25		4-020 Flat-TOFC/COFC	152,622	XXXXXX	25
26		4-021 Flat-Multi-Level	37,014	XXXXXX	26
27		4-022 Flat-General Service	64	XXXXXX	27
28		4-023 Flat-All Other	22,728	XXXXXX	28
29		4-024 All Other Car Types-Total	105	XXXXXX	29
30		4-025 TOTAL (Lines 15-29)	641,448	XXXXXX	30

755. RAILROAD OPERATING STATISTICS - (Continued)

Line No.	Cross Check	Item Description (a)		Freight Train (b)	Passenger Train (c)	Line No.
		4-11	RR Owned and Leased Cars - Empty			
31		4-110	Box-Plain 40-Foot		XXXXXX	31
32		4-111	Box-Plain 50-Foot and Longer	10,291	XXXXXX	32
33		4-112	Box-Equipped	40,512	XXXXXX	33
34		4-113	Gondola-Plain	149,743	XXXXXX	34
35		4-114	Gondola-Equipped	55,490	XXXXXX	35
36		4-115	Hopper-Covered	94,690	XXXXXX	36
37		4-116	Hopper-Open Top-General Service	41,321	XXXXXX	37
38		4-117	Hopper-Open Top-Special Service	17,272	XXXXXX	38
39		4-118	Refrigerator-Mechanical	2,730	XXXXXX	39
40		4-119	Refrigerator-Non-Mechanical	350	XXXXXX	40
41		4-120	Flat-TOFC/COFC	17,124	XXXXXX	41
42		4-121	Flat-Multi-Level	25,883	XXXXXX	42
43		4-122	Flat-General Service	81	XXXXXX	43
44		4-123	Flat-All Other	23,224	XXXXXX	44
45		4-124	All Other Car Types-Total	108	XXXXXX	45
46		4-125	TOTAL (Lines 31-45)	478,819	XXXXXX	46
		4-13	Private Line Cars - Loaded (H)			
47		4-130	Box-Plain 40-Foot		XXXXXX	47
48		4-131	Box-Plain 50-Foot and Longer	3,687	XXXXXX	48
49		4-132	Box-Equipped	64,298	XXXXXX	49
50		4-133	Gondola-Plain	60,361	XXXXXX	50
51		4-134	Gondola-Equipped	16,342	XXXXXX	51
52		4-135	Hopper-Covered	344,177	XXXXXX	52
53		4-136	Hopper-Open Top-General Service	19,548	XXXXXX	53
54		4-137	Hopper-Open Top-Special Service	66,833	XXXXXX	54
55		4-138	Refrigerator-Mechanical	2,976	XXXXXX	55
56		4-139	Refrigerator-Non-Mechanical	14	XXXXXX	56
57		4-140	Flat-TOFC/COFC	478,240	XXXXXX	57
58		4-141	Flat-Multi-Level	183,231	XXXXXX	58
59		4-142	Flat-General Service		XXXXXX	59
60		4-143	Flat-All Other	30,783	XXXXXX	60
61		4-144	Tank Under 22,000 Gallons	78,399	XXXXXX	61
62		4-145	Tank - 22,000 Gallons and Over	248,697	XXXXXX	62
63		4-146	All Other Car Types-Total	16,045	XXXXXX	63
64		4-147	TOTAL (Lines 47-63)	1,613,631	XXXXXX	64

755. RAILROAD OPERATING STATISTICS - (Continued)

Line No.	Cross Check	Item Description (a)		Freight Train (b)	Passenger Train (c)	Line No.
		4-15	Private Line Cars - Empty (H)			
65		4-150	Box-Plain 40-Foot		XXXXXX	65
66		4-151	Box-Plain 50-Foot and Longer	3,462	XXXXXX	66
67		4-152	Box-Equipped	46,183	XXXXXX	67
68		4-153	Gondola-Plain	59,502	XXXXXX	68
69		4-154	Gondola-Equipped	16,503	XXXXXX	69
70		4-155	Hopper-Covered	345,512	XXXXXX	70
71		4-156	Hopper-Open Top-General Service	20,352	XXXXXX	71
72		4-157	Hopper-Open Top-Special Service	67,215	XXXXXX	72
73		4-158	Refrigerator-Mechanical	3,054	XXXXXX	73
74		4-159	Refrigerator-Non-Mechanical	14	XXXXXX	74
75		4-160	Flat-TOFC/COFC	59,297	XXXXXX	75
76		4-161	Flat-Multi-Level	121,701	XXXXXX	76
77		4-162	Flat-General Service	9	XXXXXX	77
78		4-163	Flat-All Other	33,847	XXXXXX	78
79		4-164	Tank Under 22,000 Gallons	83,567	XXXXXX	79
80		4-165	Tank - 22,000 Gallons and Over	260,034	XXXXXX	80
81		4-166	All Other Car Types-Total	16,152	XXXXXX	81
82		4-167	TOTAL (Lines 65-81)	1,136,404	XXXXXX	82
83		4-17	Work Equipment and Company Freight Car-Miles	26,525	XXXXXX	83
84		4-18	No Payment Car-Miles (I) <1>		XXXXXX	84
		4-19	Total Car-Miles by Train Type (Note)			
85		4-191	Unit Trains	896,082	XXXXXX	85
86		4-192	Way Trains	249,058	XXXXXX	86
87		4-193	Through Trains	2,751,687	XXXXXX	87
88		4-194	TOTAL (Lines 85-87)	3,896,827	XXXXXX	88
89		4-20	Caboose Miles	18	XXXXXX	89

<1> Total number of loaded miles - and empty miles - by roadrailer included above on lines 29 and 45, respectively, rather than line 84.

Note: Line 88, total car miles, is equal to the sum of lines 30, 46, 64, 82, 83, and 84. Accordingly, the car miles reported on lines 83 and 84 are to be allocated to lines 85, 86, and 87, and included in the total shown on line 88.

755. RAILROAD OPERATING STATISTICS - (Continued)

Line No.	Cross Check	Item Description (a)	Freight Train (b)	Passenger Train (c)	Line No.
		6 Gross Ton-Miles (thousands) (K)			
98		6-01 Road Locomotives	24,932,532		98
		6-02 Freight Trains, Crs., Cnts, & Caboose			
99		6-020 Unit Trains	76,116,573	XXXXXX	99
100		6-021 Way Trains	20,590,766	XXXXXX	100
101		6-022 Through Trains	256,855,878	XXXXXX	101
102		6-03 Passenger Trains, Crs, & Cnts.			102
103		6-04 Non-Revenue	1,647,245	XXXXXX	103
104		6-05 TOTAL (Lines 98 - 103)	380,142,994		104
		7 Tons of Freight (thousands)			
105		7-01 Revenue	322,451	XXXXXX	105
106		7-02 Non-Revenue	748	XXXXXX	106
107		7-03 TOTAL (Lines 105 and 106)	323,199	XXXXXX	107
		8 Ton-Miles of Freight (thousands) (L)			
108		8-01 Revenue - Road Service	183,619,792	XXXXXX	108
109		8-02 Revenue - Lake Transfer Service		XXXXXX	109
110		8-03 TOTAL (Lines 108 and 109)	183,619,792	XXXXXX	110
111		8-04 Non-Revenue - Road Service	168,166	XXXXXX	111
112		8-05 Non-Revenue - Lake Transfer Service		XXXXXX	112
113		8-06 TOTAL (Lines 111 and 112)	168,166	XXXXXX	113
114		8-07 TOTAL - REVENUE & NON-REVENUE (Lines 110 and 113)	183,787,958	XXXXXX	114
		9 Train Hours (M)			
115		9-01 Road Service	3,599,744	XXXXXX	115
116		9-02 Train Switching	593,584	XXXXXX	116
117		10 TOTAL YARD-SWITCHING HOURS (N)	1,448,165		117
		11 Train-Miles Work Trains (O)			
118		11-01 Locomotives	394,475	XXXXXX	118
119		11-02 Motorcars		XXXXXX	119
		12 Number of Loaded Freight Cars (P)			
120		12-01 Unit Trains	1,468,510	XXXXXX	120
121		12-02 Way Trains	4,411,832	XXXXXX	121
122		12-03 Through Trains	5,004,789	XXXXXX	122
123		13 TOFC/COFC- No. of Revenue Trailers & Containers Loaded and Unloaded (Q)	7,045,761	XXXXXX	123
124		14 Multi-Level Cars - No. of Motor Vehicles Loaded & Unloaded (Q)	2,268,676	XXXXXX	124
125		15 TOFC/COFC - No. of Revenue Trailers Picked Up & Delivered (R)	509,268	XXXXXX	125
		16 Revenue-Tons Marine Terminal (S)			
126		16-01 Marine Terminals - Coal	18,676,975	XXXXXX	126
127		16-02 Marine Terminals - Ore		XXXXXX	127
128		16-03 Marine Terminals - Other		XXXXXX	128
129		16-04 TOTAL (Lines 126 - 128)	18,676,975	XXXXXX	129
		17 Number of Foreign Per-Diem Cars on Line (T)			
130		17-01 Serviceable	24,386	XXXXXX	130
131		17-02 Unserviceable	406	XXXXXX	131
132		17-03 Surplus		XXXXXX	132
133		17-04 TOTAL (Lines 130 - 132)	24,792	XXXXXX	133
134		TOFC/COFC - Average No. of Units Loaded Per Car	4.87	XXXXXX	134

VERIFICATION

The foregoing report shall be verified by the oath of the officer having control of the accounting of the respondent. This report shall also be verified by the oath of the president or other chief officer of the respondent, unless the respondent states that such officer has no control over the respondent's accounting and reporting.

OATH

(To be made by the officer having control over the accounting of the respondent)

State of Georgia
County of Fulton

Claiborne L. Moore makes oath and states that he is Vice President and Controller of Norfolk Southern Combined Railroad Subsidiaries (see page 4 of STB Annual Report R-1); that it is his duty to have supervision over the books of accounts of the respondent and to control the manner in which such books are kept; that he knows that such books have been kept in good faith during the period covered by this report; that he knows that the entries contained in this report relate to accounting matters that have been prepared in accordance with the provisions of the Uniform System of Accounts for Railroad Companies and other accounting and reporting directives of the Surface Transportation Board; that he believes that all other statements of fact contained in this report are true, and that this report is a correct and complete statement, accurately taken from the books and records, of the business and affairs of the above-named respondent during the period of time from and including January 1, 2025, to and including December 31, 2025.

(Signature of affiant)

Subscribed and sworn to before me, a Notary Public in and for the State and county above named, this 31 day of March, 20 26.

My commission expires April 19, 2026

SHANNON EPPERS
NOTARY PUBLIC
STATE OF GEORGIA - FULTON COUNTY
MY COMMISSION EXPIRES APRIL 19, 2026

Use an LS impression seal

Shannon Eppers
(Signature of officer authorized to administer oaths)

SUPPLEMENTAL OATH

(By the president or other chief officer of the respondent)

State of Georgia
County of Fulton

Mark R. George makes oath and states that he is President and Chief Executive Officer of Norfolk Southern Combined Railroad Subsidiaries (see page 4 of STB Annual Report R-1); that he has carefully examined the foregoing report; that he believes that all statements of fact contained in the said report are true; and that the said report is a correct and complete statement of the business and affairs of the above-named respondent and the operations of its property during the period of time from and including January 1, 2025, to and including December 31, 2025.

(Signature of affiant)

Subscribed and sworn to before me, a Notary Public in and for the State and county above named, this 31 day of March, 20 26.

My commission expires April 19, 2026

SHANNON EPPERS
NOTARY PUBLIC
STATE OF GEORGIA - FULTON COUNTY
MY COMMISSION EXPIRES APRIL 19, 2026

Use an LS impression seal

Shannon Eppers
(Signature of officer authorized to administer oaths)

MEMORANDA
(FOR USE OF BOARD ONLY)
CORRESPONDENCE

Office Addressed		Date of Letter, Fax or Telegram of			Subject	Answer Needed	Answer			
							Date of Letter, Fax, or Telegram			File Number of Letter, Fax, or Telegram
Name	Title	Month	Day	Year	Page		Month	Day	Year	

CORRECTIONS

Date Correction			Page	Date of Letter, Fax or Telegram of			Authority			Clerk Making Correction Name
							Officer sending letter, fax or telegram		Board File Number	
Month	Day	Year		Month	Day	Year	Name	Title		

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Exhibit 28



Class I Railroad Annual Report R-1

to the Surface Transportation Board for the Year Ending Dec. 31, 2025

OEEAA-R1
Union Pacific Railroad ▪ 1400 Douglas, Omaha, NE 68179

UNION PACIFIC

BUILDING AMERICA®

NOTICE

1. This report is required for every class I railroad operating within the United States. Three copies of this Annual Report should be completed. Two of the copies must be filed with the Surface Transportation Board, Office of Economics, Environmental Analysis, and Administration, 395 E Street, S.W. Suite 1100, Washington, DC 20423, by March 31 of the year following that for which the report is made. One copy should be retained by the carrier.

2. Every inquiry must be definitely answered. Where the word "none" truly and completely states the fact, it should be given as the answer. If any inquiry is inapplicable, the words "not applicable" should be used.

3. Wherever the space provided in the schedules in insufficient to permit a full and complete statement of the requested information, inserts should be prepared and appropriately identified by the number of the schedule.

4. All entries should be made in a permanent black ink or typed. Those of a contrary character must be indicated in parenthesis. Items of an unusual character must be indicated by appropriate symbols and explained in footnotes.

5. Money items, except averages, throughout the annual report form should be shown in thousands of dollars adjusted to accord with footings. Totals for amounts reported in subsidiary accounts included in supporting schedules must be in agreement with related primary accounts. For purposes of rounding, amounts of $500 but less than $1,000 should be raised to the nearest thousand dollars, and amounts of less than $500 should be lowered.

6. Except where the context clearly indicates some other meaning, the following terms when used in this Form have the following meanings:

(a) Board means Surface Transportation Board.

(b) Respondent means the person or corporation in whose behalf the report is made.

(c) Year means the year ended December 31 for which the report is being made.

(d) Close of the Year means the close of business on December 31 for the year in which the report is being made. If the report is made for a shorter period than one year, it means the close of the period covered by the report.

(e) Beginning of the Year means the beginning of business on January 1 of the year for which the report is being made. If the report is made for a shorter period than one year, it means the beginning of that period.

(f) Preceding Year means the year ended December 31 of the year preceding the year for which the report is made.

(g) The Uniform System of Accounts for Railroad Companies means the system of accounts in Part 1201 of Title 49, Code of Federal Regulations, as amended.

7. The ICC Termination Act of 1995 abolished the Interstate Commerce Commission and replaced it with the Surface Transportation Board. Any references to the Interstate Commerce Commission or Commission contained in this report refer to the Surface Transportation Board.

8. Any references to the Bureau of Accounts or the Office of Economics contained in this report refer to the Office of Economics, Environmental Analysis, and Administration of the Surface Transportation Board.

For Index, See Back of Form

ANNUAL REPORT

OF

UNION PACIFIC RAILROAD COMPANY

To The

SURFACE TRANSPORTATION BOARD

For The

Year Ended December 31, 2025

Name, official title, telephone number, and office address of officer in charge of correspondence with the Board regarding this report:

(Name) Carrie Powers (Title) Vice President, Controller, and Chief Accounting Officer

(Telephone number) (402) 544-5565 (or contact David Ross at (402) 544-2013)

(Office address) 1400 Douglas Street - Stop 1780, Omaha, Nebraska 68179

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SPECIAL NOTICE

Docket No. 38559, Railroad Classification Index, (ICC served January 20, 1983), modified the reporting requirements for Class II, Class III, and Switching and Terminal Companies. These carriers will notify the Board only if the calculation results in a different revenue level than its current classification.

The dark borders on the schedules represent data that are captured by the Board.

Supplemental Information about the Annual Report (R-1)

The following information is provided in Compliance with OMB requirements and pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3519 (PRA):

This information collection is mandatory pursuant to 49 U.S.C. § 11145. The estimated hour burden for filing this report is estimated at no more than 800 hours. Information in the Annual Reports is used to monitor and assess railroad industry growth, financial stability, traffic, and operations and to identify industry changes that may affect national transportation policy. In addition, the Board uses data from these reports to more effectively carry out its regulatory responsibilities, such as acting on railroad requests for authority to engage in Board regulated financial transactions (for example, mergers, acquisitions of control, consolidations and abandonments); developing the Uniform Rail Costing System (URCS); conducting rail revenue adequacy proceedings; developing rail cost adjustment factors; and conducting investigations and rulemakings. The information in this report is ordinarily maintained by the agency in hard copy for 10 years, after which it is transferred to the National Archives, where it is maintained as a permanent record. In addition, some of this information is posted on the Board's website, where it may remain indefinitely. All information collected through this report is available to the public. Under the PRA, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information unless it displays a currently valid OMB control number. Comments and questions about this collection (2140-0009) should be directed to Paperwork Reduction Officer, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A. SCHEDULES OMITTED BY RESPONDENT

1. The respondent, at its option, may omit pages from this report provided there is nothing to report or the schedules are not applicable.

2. Show the pages excluded, as well as the schedule number and title, in the space provided below.

3. If no schedules were omitted indicate "NONE."

Page	Schedule No.	Title
81	PTC Supplement	PTC Supplement omitted from 2025 R-1 report per EP 706_1
82	PTC 330	
84	PTC 332	
85	PTC 335	
86	PTC 352B	
87	PTC 410	
94	PTC 700	
96	PTC 710	
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104	PTC Grants	

B. IDENTITY OF RESPONDENT

Answers to the questions asked should be made in full, without reference to data returned on the corresponding page of previous reports. In case any changes of the nature referred to under Inquiry 4 on this page have taken place during the year covered by this report, they should be explained in full detail.

1. Give the exact name of the respondent in full. Use the words "The" and "Company" only when they are parts of the corporate name. Be careful to distinguish between railroad and railway. The corporate name should be given uniformly throughout the report, notably on the cover, on the title page, and in the "Verification." If the report is made by receivers, trustees, a committee of bondholders, or individuals otherwise in possession of the property, state names and facts with precision. If the report is for a consolidated group, pursuant to Special Permission from the Board, indicate such fact on line 1 below and list the consolidated group on page 4.

2. If incorporated under a special charter, give date of passage of the act; if under a general law, give date of filing certificate of organization; if a reorganization has been effected, give date of reorganization. If a receivership or other trust, also give date when such receivership or other possession began. If a partnership, give date of formation and also names in full of present partners.

3. State the occasion for the reorganization, whether by reason of foreclosure of mortgage or otherwise, according to the fact. Give date of organization of original corporation and refer to laws under which organized.

1. Exact Name of common carrier making this report: Union Pacific Railroad Company *

2. Date of incorporation: February 20, 1969

3. Under laws of what Government, State, or Territory organized? If more than one, name all. If in bankruptcy, give court of jurisdiction and dates of beginning of receivership and of appointment of receivers or trustees:
Under the General Corporation Law of the State of Delaware. Articles Amended February 24, 1969, June 8, 1987, April 13, 1989, and August 10, 1993, in perpetuity. Name changed from Southern Pacific Transportation Company, February 1, 1998.

4. If the respondent was reorganized during the year, involved in a consolidation or merger, or conducted its business under a different name, give full particulars:

STOCKHOLDERS' REPORTS

5. The respondent is required to send the Office of Economic and Environmental Analysis, immediately upon preparation, two copies of its latest annual report to stockholders.

Check appropriate box:

[ ] Two copies are attached to this report.
[X] Two copies will be submitted on: (date) March 31, 2026.
[ ] No annual report to stockholders is prepared.

* This report for Union Pacific Railroad Company includes Union Pacific Railroad Company and all U.S. subsidiaries and affiliates (collectively, the Company, Railroad, or UPRR). See page 4 for a listing of included companies.

C. VOTING POWERS AND ELECTIONS

1. State the par value of each share of stock: Common - Common Stock and Class A Stock both $10/ per share; First preferred - None; Second preferred - None; Debenture stock - None.
2. State whether or not each share of stock has the right to one vote; if not, give particulars in a footnote. [x] Yes [ ] No
3. Are voting rights proportional to holdings? [x] Yes [ ] No. If no, state in a footnote the relationship between holdings and corresponding voiting rights.
4. Are voting rights attached to any securities other than stock? [ ] Yes [x] No. If yes, name in a footnote each security, other than stock, to which voting rights are attached (as of the close of the year), and state in detail the relationship between holdings and corresponding voting rights, indicating whether voting rights are actual or contingent and, if contingent, showing the contingency.
5. Has any class or issue of securities any special privileges in the election of directors, trustees, or managers, or in the determination of corporate action by any method? [ ] Yes [x] No. If yes, describe fully in a footnote each such class or issue and give a succinct statement showing clearly the character and extent of such privileges.
6. Give the date of the latest closing of the stock book prior to the actual filing of this report, and state the purpose of such closing: N/A
7. State the total voting power of all security holders of the respondent at the date of such closing, if within one year of the date of such filing; if not, state as of the close of the year - 4,853 votes, as of 12/31/2025.
8. State the total number of stockholders of record, as of the date shown in answer to Inquiry 7. One stockholder.
9. Give the names of 30 security holders of the respondent who, at the date of the latest closing of the stock book or compilation of the list of stockholders of the respondent (if within one year prior to the actual filing of this report), had the highest voting powers in the respondent, showing for each, his or her address, the number of votes he or she would have had a right to cast on that date had a meeting then been in order, and the classification of the number of votes to which he or she was entitled, with respect to securities held by him or her, such securities being classified as common stock, second preferred stock, first preferred stock, and other securities (stating in a footnote the names of such other securities, if any). If any such holder held in trust, give (in a footnote) the particulars of the trust. In the case of voting trust agreements, give as supplemental information the names and addresses of the 30 largest holders of the voting trust certificates and the amount of their individual holdings. If the stock book was not closed or the list of stockholders compiled within such year, show such 30 security holders at the close of the year.

Line No.	Name of Security Holder	Address of Security Holder	Number of Votes to Which Security Holder Was Entitled	Number of Votes, Classified With Respect to Securities on Which Based Stock			Line No.
				Common	Preferred		
					Second	First	
	(a)	(b)	(c)	(d)	(e)	(f)	
1	Union Pacific Corporation	1400 Douglas Street	Common Stock - 4,465	4,465			1
2	"	Omaha, Nebraska 68179	Class A Stock - 388	388			2
3							3
4							4
5							5
6							6
7							7
8							8
9							9
10							10
11							11
12							12
13							13
14							14
15							15
16							16
17							17
18							18
19							19
20							20
21							21
22							22
23							23
24							24
25							25
26							26
27							27
28							28
29							29
30							30

C. VOTING POWERS AND ELECTIONS - Continued

10. State the total number of votes cast at the latest general meeting for the election of the respondent: N/A

11. Give the date of such meeting: March 19, 2026

12. Give the place of such meeting: Virtual

NOTES AND REMARKS

Notes to Page 2, Item 1 - List of consolidated companies, subsidiaries and affiliates

Alton & Southern Railway
Arkansas & Memphis Railway Bridge and Terminal Company
Central California Traction Company
Chicago Heights Terminal Transfer Railroad Company
Chicago & Western Indiana Railroad Company
Doniphan, Kensett & Searcy Railway Company
Donland Development Company
Ekanet, Inc.
Loup Logistics Company
Mexican Pacific, LLC
Midwestern Railroad Properties, Inc.
Missouri Improvement Company
Montwood Corporation
MRT Exploration Company
Ogden Union Railway & Depot Company
Pacific Fruit Express Company
Park Spring, Inc.
Portland Terminal Railroad Company
PS Technology, Inc.
QC North Moeur Road, LLC
Rio Grande Land Company
Southern Illinois and Missouri Bridge Company
Southern Pacific International, Inc.
Southern Pacific Land Corporation
Southern Pacific Motor Trucking Company
Southern Pacific Warehouse Company
St. Joseph & Grand Island Railway Company
Standard Realty and Development Company
Stonegate Park, Inc.
Texas City Terminal Railway Company
Transborder Logistics I LLC
Transborder Logistics II LLC
Transborder Rail Corporation
Transportation Service Systems, Inc.
Union Pacific Railroad Company
Union Pacific Fruit Express Company
Union Pacific Receivables, Inc.
UPCA, LLC
WHL Dallas 45 Advisors, LLC
WHL Dallas 45, LLC
Wisconsin Town Lot Company

CN-38, FD 36873
PUBLIC VERSION

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - ASSETS

(Dollars in Thousands)

Line No.	Cross Check	Account	Title (a)	Balance at close of year (b)	Balance at beginning of year (c)	Line No.
			Current Assets			
1		701	Cash	80,565	42,919	1
2		702	Temporary cash investments	55,821	45,888	2
3		703	Special deposits	7,247	1,341	3
			Accounts receivable			
4		704	- Loan and notes	12,530	10,800	4
5		705	- Interline and other balances	87,578	90,242	5
6		706	- Customers	1,502,259	1,524,597	6
7		707	- Other	271,865	239,434	7
8		709, 708	- Accrued accounts receivables	235,292	337,581	8
9		708.5	- Receivables from affiliated companies			9
10		709.5	- Less: Allowance for uncollectible accounts	(3,552)	(5,570)	10
11		710,711,714	Working funds prepayments deferred income tax debits	106,019	84,815	11
12		712	Materials and supplies	786,495	768,591	12
13		713, 713.5, 713.6	Other Current Assets	10,249	16,507	13
14			TOTAL CURRENT ASSETS	3,152,368	3,157,145	14
			Other Assets			
15		715, 716, 717	Special funds	0	0	15
16		721, 721.5	Investments and advances affiliated companies (Schs. 310 and 310A)	3,475,720	2,698,009	16
17		722, 723	Other investments and advances	0	0	17
18		737, 738	Property used in other than carrier operation (Less Depreciation) 2025 - $12,370 ; 2024 - $12,094	346,130	355,796	18
19		739, 741	Other assets	2,567,180	2,631,396	19
20		743	Other deferred debits	23,615	25,305	20
21		744	Accumulated deferred income tax debits	0	0	21
22			TOTAL OTHER ASSETS	6,412,645	5,710,506	22
			ROAD AND EQUIPMENT			
23		731, 732	Road (Sch. 330) L-30 Col h & b	68,785,905	67,015,989	23
24		731, 732	Equipment (Sch 330) L-39 Col h & b	15,639,670	15,085,110	24
25		731, 732	Unallocated items	1,456,416	1,211,765	25
26		733, 735	Accumulated depreciation and amortization (Schs. 335, 342)	(28,790,260)	(27,513,007)	26
27			Net Road and Equipment	57,091,731	55,799,857	27
28	*		Total Assets	66,656,744	64,667,508	28

NOTES AND REMARKS

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - LIABILITY AND SHAREHOLDERS' EQUITY

(Dollars in Thousands)

Line No.	Cross Check	Account	Title (a)	Balance at close of year (b)	Balance at beginning of year (c)	Line No.
			Current Liabilities			
29		751	Loans and notes payable			29
30		752	Accounts payable: interline and other balances	25,163	24,357	30
31		753	Audited accounts and wages	182,123	236,147	31
32		754	Other accounts payable	40,157	41,255	32
33		755, 756	Interest and dividends payable	5,615	5,638	33
34		757	Payables to affiliated companies			34
35		759	Accrued accounts payable	2,059,897	2,048,231	35
36		760, 761, 761.5, 762	Taxes accrued	596,842	670,786	36
37		763, 763.5, 763.6	Other Current Liabilities	272,994	356,789	37
38		764	Equipment obligations and other long-term debt due within one year	370,141	75,022	38
39			TOTAL CURRENT LIABILITIES	3,552,932	3,458,225	39
			Non-Current Liabilities			
40		765, 767	Funded debt unmatured	0	0	40
41		766	Equipment obligations	360,332	693,021	41
42		766.5	Capitalized lease obligations	65,629	71,577	42
43		768	Debt in default			43
44		769	Accounts payable: affiliated companies	0	0	44
45		770.1, 770.2	Unamortized debt premium	(1,176)	(1,420)	45
46		781	Interest in default			46
47		783	Deferred revenues - transfers from govt. authorities			47
48		786	Accumulated deferred income tax credits	12,567,182	12,296,744	48
49		771, 772, 774, 775, 782, 784	Other long-term liabilities and deferred credits	2,452,086	2,601,909	49
50			TOTAL NON-CURRENT LIABILITIES	15,444,052	15,661,831	50
			Shareholders' Equity			
51		791, 792	Total capital stock	49	49	51
52			Common stock	49	49	52
53			Preferred stock			53
54		793	Discount on capital stock			54
55		794, 795	Additional capital	4,786,377	4,786,377	55
			Retained earnings:			
56		797	Appropriated			56
57		798	Unappropriated	43,285,244	41,243,450	57
58		798.5	Less treasury stock			58
59		799	Accumulated Other Comprehensive Income or (loss)	(411,910)	(482,424)	59
60			Total stockholders equity	47,659,760	45,547,452	60
61			Noncontrolling interest			61
62			Total equity (Lines 60 + 61)	47,659,760	45,547,452	62
63			Total Liabilities & Shareholders' Equity	66,656,744	64,667,508	63

NOTES AND REMARKS

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION -- EXPLANATORY NOTES

(Dollars in Thousands)

The notes listed below are provided to disclose supplementary information on matters which have an important effect on the financial condition of the carrier. The carrier shall give the particulars called for herein and where there is nothing to report, insert the word "none"; and in addition thereto shall enter in separate notes with suitable particulars other matters involving material amounts of the character commonly disclosed in financial statements under generally accepted accounting and reporting principles, except as shown in other schedules. This includes statements explaining (1) service interruption insurance policies and indicating the amount of indemnity to which respondent will be entitled for work stoppage losses and the maximum amount of additional premium respondent may be obligated to pay in the event such losses are sustained by other railroads; (2) particulars concerning obligations for stock purchase options granted to officers and employees; and (3) what entries have been made for net income or retained income restricted under provisions of mortgages and other arrangements.

1. Amount (estimated, if necessary) of net income or retained income which has to be provided for capital expenditures, and for sinking funds pursuant to provisions of reorganization plans, mortgages, deeds of trust, or other contracts. $0.

2. Estimated amount of future earnings which can be realized before paying Federal income taxes because of unused and available net operating loss carryover on January 1 of the year following that for which the report is made. None.

3. (a) Explain the procedure in accounting for pension funds and recording in the accounts the current and past service pension costs, indicating whether or not consistent with the prior year. _____
See Explanatory Note 12 beginning on page 9.

   (b) State amount, if any, representing the excess of the actuarially computed value of vested benefits over the total of the pension fund. $_____. See Explanatory Note 12 beginning on page 9.

   (c) Is any part of pension plan funded? Specify. Yes X No___
   (i) If funding is by insurance, give name of insuring company Not Applicable.
   If funding is by trust agreement, list trustee(s). State Street Bank and Trust Company
   Date of trust agreement or latest amendment. September 1, 2023
   If respondent is affiliated in any way with the trustee(s), explain affiliation: Not Applicable.

   (d) List affiliated companies which are included in the pension plan funding agreement and describe basis for allocating charges under the agreement. See Explanatory Note 12 beginning on page 9.

   (e) (i) Is any part of the pension plan fund invested in stock or other securities of the respondent or any of its affiliates? Specify. Yes ___ No X
   If yes, give number of the shares for each class of stock or other security: _____
   _____.
   (ii) Are voting rights attached to any securities held by the pension plan? Specify. Yes _X_ No ___ If yes, who determines how stock is voted? Voting rights are delegated to investment managers_____
   _____.

4. State whether a segregated political fund has been established as provided by the Federal Election Campaign Act of 1971 (18 U.S.C. 610). Yes __X__ No _____ See Note 18 on page 15C.

5. (a) The amount of employers contribution to employee stock ownership plans for the current year was $16,030,533.
   (b) The amount of investment tax credit used to reduce current income tax expense resulting from contributions to qualified employee stock ownership plans for the current year was NONE.

6. In reference to Docket No. 37465 specify the total amount of business entertainment expenditures charged to the non-operating expense account. NONE.

Continued on following page

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION -- EXPLANATORY NOTES - CONTINUED

7. Give particulars with respect to contingent assets and liabilities at the close of the year, in accordance with instruction 5-6 in the Uniform System of Accounts for Railroad Companies, that are not reflected in the amounts of the respondent.

Disclose the nature and amount of contingency that is material.

Examples of contingent liabilities are items which may become obligations as a result of pending or threatened litigation, assessments or possible assessments of additional taxes, and agreements or obligations to repurchase securities or property. Additional pages may be added if more space is needed. (Explain and/or reference to the following pages.)

SEE NOTE 14 ON PAGE 15.

(a) Changes in valuation accounts.

8. Marketable equity securities

UPRR has no marketable equity securities.

		Cost	Market	Dr. (Cr.) to Income	Dr. (Cr.) to Stockholder's Equity
(Current Yr.)	Current Portfolio				N/A
as of / /	Noncurrent Portfolio			N/A	
(Previous Yr.)	Current Portfolio			N/A	N/A
as of / /	Noncurrent Portfolio			N/A	N/A

(b) At / / , gross unrealized gains and losses pertaining to marketable equity securities were as follows:

	Gains	Losses
Current		
Noncurrent		

(c) A net unrealized gain (loss) of $_____ on the sale of marketable securities was included in net income for _____ (year)
The cost of securities was based on the _____ (method) cost of all the shares of each security held at time of sale.

Significant net realized and net unrealized gains and losses arising after date of the financial statements but prior to the filing, applicable to marketable equity securities owned at balance sheet date shall be disclosed below:

NOTE: / / (date) Balance sheet date of reported year unless specified as previous year.

All stock is owned by the parent company Union Pacific Corporation. Please reference schedule "C" for details.

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION – EXPLANATORY NOTES - CONTINUED

NOTES TO FINANCIAL STATEMENTS

For purposes of this report, unless the context otherwise requires, all references herein to the “Company”, “we”, “us”, and “our” mean Union Pacific Railroad Company. For purposes of this report, unless the context otherwise requires, all references herein to “UPC” and the “Corporation” mean Union Pacific Corporation. All references herein to the “Consolidated Financial Statements“ means the Comparative Statements of Financial Position, Results of Operations, Retained Earnings, and Cash Flows as well as the supplement notes and schedules included in the Class 1 Railroad Annual Report R-1.

9. Accounting Pronouncements

In September 2025, the FASB issued Accounting Standards Update No. (ASU) 2025-06, *Intangibles - Goodwill and Other - Internal-Use Software (Subtopic 350-40): Targeted Improvements to the Accounting for Internal-Use Software*, which details the criteria for capitalization of internal-use software costs. The ASU is effective for fiscal years beginning after December 15, 2027, and interim periods within those fiscal years, may be adopted on a prospective, modified, or retrospective transition approach, and early adoption is permitted. The Company is currently evaluating the effect that the new guidance will have on our consolidated financial statements and related disclosures.

In December 2025, the FASB issued ASU 2025-10, *Government Grants (Topic 832): Accounting for Government Grants Received by Business Entities*, which provides recognition, measurement, and presentation authoritative guidance for grants received by a business entity from a government. The ASU is effective for fiscal years beginning after December 15, 2028, and interim reporting periods within those fiscal years, may be adopted on a modified prospective, modified retrospective, or retrospective approach, and early adoption is permitted. The Company is currently evaluating the effect that the new guidance will have on our consolidated financial statements and related disclosures.

10. Transactions with Affiliates

We had working capital deficits of $401 million and $301 million at December 31, 2025 and 2024, respectively. Our working capital relates to UPC’s management of our cash position. As part of UPC’s cash management activities, we advance excess cash to UPC after satisfying all of our obligations. To the extent we require additional cash for use in our operations, UPC makes such funds available to us for borrowing. We treat these transactions as intercompany lendings and borrowings in the Consolidated Statements of Financial Position.

In 2025, we declared and paid total cash dividends that approximated the net intercompany borrowings with UPC in the current year. We may continue to declare and pay cash dividends to UPC that approximate intercompany borrowings; however, there is no formal requirement to do so. Dividend declarations between us and UPC are determined solely by our Board of Directors.

Intercompany transactions – In December of 2008, UPC established a borrowing limit based on our borrowing capacity and UPC implemented a market based interest rate. The current annual rate effective through June 2026 is 4.9% for borrowings either to or from UPC. The annual rate was 5.2% for borrowings either to or from UPC from July 2024 through June 2025. The annual rate was 5.0% for borrowings either to or from UPC from July 2023 through June 2024. Interest accrues quarterly and is payable quarterly. Although payable on demand, we do not expect a payment from UPC within 12 months, or in the event of borrowing from UPC, we do not expect to be required by UPC to pay back the intercompany borrowings within the next 12 months. Intercompany borrowings are unsecured and rank equally with all of our other unsecured indebtedness. At December 31, 2025 and 2024, the Company had intercompany lendings/(borrowings) to/(from) UPC of $1 billion and $375 million, respectively.

Related party transactions – We and other North American railroad companies jointly own TTX Company (TTX). We have a 37.03% economic interest in TTX while the other North American railroads own the remaining interest. In accordance with ASC 323 I*nvestments – Equity Method and Joint Venture,* we apply the equity method of accounting to our investment in TTX.

TTX is a rail car pooling company that owns rail cars and intermodal wells to serve North America’s railroads. TTX assists railroads in meeting the needs of their customers by providing rail cars in an efficient, pooled environment. All railroads may utilize TTX rail cars through car hire by renting rail cars at stated rates.

We had $2.0 billion and $1.9 billion recognized as investments related to TTX in our Consolidated Statements of Financial Position as of December 31, 2025 and 2024, respectively. TTX car hire expense of $447 million in 2025, $432 million in 2024, and $399 million in 2023 are included in equipment and other rents. In addition, we had accounts payable to TTX of $72 million and $70 million at December 31, 2025 and 2024, respectively.

11. Financial Instruments

Fair value of financial instruments – The fair value of our short- and long-term debt was estimated using a market value price model, which utilizes applicable U.S. Treasury rates along with current market quotes on comparable debt securities. All of the inputs used to determine the fair market value of the Company’s debts are Level 2 inputs and obtained from an independent source. At December 31, 2025, the fair value of total debt was $793 million, approximately $2 million less than the carrying value. At December 31, 2024, the fair value of total debt was $815 million, approximately $24 million less than the carrying value. The fair value of the Company’s debt is a measure of its current value under present market conditions. The fair value of intercompany lendings to UPC approximates carrying value. The fair value of our cash equivalents approximates their carrying value due to the short-term maturities of these instruments.

12. Retirement Plans

Pension benefits

We provide defined benefit retirement income to eligible non-union employees through qualified and non-qualified (supplemental) pension plans. Qualified and non-qualified pension benefits are based on years of service and the highest compensation during the latest years of employment, with specific reductions made for early retirements. Non-union employees hired on or after January 1, 2018, are no longer eligible for pension benefits, but are eligible for an enhanced 401(k) benefit as described below in other retirement programs.

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION – EXPLANATORY NOTES - CONTINUED

NOTES TO FINANCIAL STATEMENTS

Funded status

We are required by GAAP to separately recognize the overfunded or underfunded status of our pension plans as an asset or liability. The funded status represents the difference between the projected benefit obligation (PBO) and the fair value of the plan assets. Our non-qualified (supplemental) pension plan is unfunded by design. The PBO of the pension plans is the present value of benefits earned to date by plan participants, including the effect of assumed future compensation increases. Plan assets are measured at fair value. We use a December 31 measurement date for plan assets and obligations for all our retirement plans.

Changes in our PBO and plan assets were as follows for the years ended December 31:

Funded Status		
Millions	***2025***	*2024*
Projected benefit obligation		
Projected benefit obligation at beginning of year	**$ 3,513**	$ 3,880
Service cost	**41**	52
Interest cost	**179**	186
Actuarial loss/(gain)	**(41)**	(269)
Gross benefits paid	**(417)**	(336)
Projected benefit obligation at end of year	**$ 3,275**	$ 3,513
Plan assets		
Fair value of plan assets at beginning of year	**$ 4,068**	$ 4,400
Actual return/(loss) on plan assets	**294**	(28)
Non-qualified plan benefit contributions	**33**	32
Gross benefits paid	**(417)**	(336)
Fair value of plan assets at end of year	**$ 3,978**	$ 4,068
Funded status at end of year	**$ 703**	$ 555

The 2025 actuarial gains were insignificant. Actuarial gains that decrease the 2024 PBO were driven by an increase in discount rates from 5.00% to 5.61%.

Amounts recognized in the statement of financial position as of December 31, 2025 and 2024, consist of:

Millions	***2025***	*2024*
Noncurrent assets	**$ 1,083**	$ 950
Current liabilities	**(32)**	(32)
Noncurrent liabilities	**(348)**	(363)
Net amounts recognized at end of year	**$ 703**	$ 555

Pre-tax amounts recognized in accumulated other comprehensive income/loss consist of $542 million and $644 million net actuarial loss as of December 31, 2025 and 2024, respectively.

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION – EXPLANATORY NOTES - CONTINUED

NOTES TO FINANCIAL STATEMENTS

Pre-tax changes recognized in other comprehensive income/loss as of December 31, 2025, 2024, and 2023, were as follows:

Millions	***2025***	*2024*	*2023*
Net actuarial (loss)/gain	**$ 93**	$ (11)	$ (159)
Amortization of:			
Actuarial loss	**8**	11	9
Total	**$ 101**	$ -	$ (150)

Underfunded accumulated benefit obligation – The accumulated benefit obligation (ABO) is the present value of benefits earned to date, assuming no future compensation growth. The underfunded accumulated benefit obligation represents the difference between the ABO and the fair value of plan assets.

The following table discloses only the PBO, ABO, and fair value of plan assets for pension plans where the accumulated benefit obligation is in excess of the fair value of the plan assets as of December 31:

Underfunded accumulated benefit obligation		
Millions	***2025***	*2024*
Projected benefit obligation	**$ 380**	$ 395
Accumulated benefit obligation	**$ 376**	$ 389
Fair value of plan assets	**-**	-
Underfunded accumulated benefit obligation	**$ (376)**	$ (389)

The ABO for all defined benefit pension plans was $3.2 billion and $3.3 billion at December 31, 2025 and 2024, respectively.

Assumptions – The weighted-average actuarial assumptions used to determine benefit obligations at December 31:

Percentages	***2025***	*2024*
Discount rate	**5.53%**	5.61%
Compensation increase	**3.60%**	4.00%

Expense

Pension expense is determined based upon the annual service cost of benefits (the actuarial cost of benefits earned during a period) and the interest cost on those liabilities, less the expected return on plan assets. The expected long-term rate of return on plan assets is applied to a calculated value of plan assets that recognizes changes in fair value over a 5-year period. This practice is intended to reduce year-to-year volatility in pension expense, but it can have the effect of delaying the recognition of differences between actual returns on assets and expected returns based on long-term rate of return assumptions. Differences in actual experience in relation to assumptions are not recognized in net income immediately but are deferred in accumulated other comprehensive income/loss and, if necessary, amortized as pension expense.

The components of our net periodic pension benefit/cost were as follows for the years ended December 31:

Millions	***2025***	*2024*	*2023*
Service cost	**$ 41**	$ 52	$ 52
Interest cost	**179**	186	187
Expected return on plan assets	**(242)**	(252)	(248)
Amortization of actuarial loss	**8**	11	9
Net periodic pension (benefit)/cost	**$ (14)**	$ (3)	$ -

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION – EXPLANATORY NOTES - CONTINUED

NOTES TO FINANCIAL STATEMENTS

Assumptions – The weighted-average actuarial assumptions used to determine expense were as follows:

Percentages	***2025***	*2024*	*2023*
Discount rate for interest on benefit obligations	**5.32%**	4.91%	5.14%
Discount rate for service cost	**5.75%**	5.05%	5.19%
Discount rate for interest on service cost	**5.68%**	5.02%	5.21%
Expected return on plan assets	**5.25%**	5.25%	5.25%
Compensation increase	**3.90%**	4.00%	4.10%

We measure the service cost and interest cost components of our net periodic pension benefit/cost by using individual spot discount rates matched with separate cash flows for each future year. The discount rates were based on a yield curve of high-quality corporate bonds. The expected return on plan assets is based on our asset allocation mix and our historical return, taking into account current and expected market conditions.

Cash contributions

The following table details UPC's cash contributions, if any, for the qualified and non-qualified (supplemental) pension plans:

Millions	*Qualified*	*Non-qualified*
2025	$ -	$ 33
2024	-	32

UPC's policy with respect to funding the qualified plans is to fund at least the minimum required by law and not more than the maximum amount deductible for tax purposes.

The non-qualified pension plan is not funded and is not subject to any minimum regulatory funding requirements. Benefit payments for each year represent supplemental pension payments. We anticipate our 2026 supplemental pension payments will be made from cash generated from operations.

Benefit payments

The following table details expected benefit payments for the years 2026 through 2035:

Millions	
2026	$ 213
2027	213
2028	214
2029	215
2030	216
Years 2031 - 2035	1,104

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION – EXPLANATORY NOTES - CONTINUED

NOTES TO FINANCIAL STATEMENTS

Asset allocation strategy

UPC's pension plan asset allocation at December 31, 2025 and 2024, and target allocation for 2026, are as follows:

	Target allocation 2026	*Percentage of plan assets December 31,*	
		2025	*2024*
Equity securities	20% to 30%	**23%**	24%
Debt securities	70% to 80%	**76**	75
Real estate	0% to 2%	**1**	1
Total		**100%**	100%

The pension plan investments are held in a master trust. The investment strategy for pension plan assets is to maintain a broadly diversified portfolio designed to achieve our target average long-term rate of return of 5.25%. While we believe we can achieve a long-term average rate of return of 5.25%, we cannot be certain that the portfolio will perform to our expectations. Assets are strategically allocated among equity, debt, and other investments in order to achieve a diversification level that reduces fluctuations in investment returns. Asset allocation target ranges for equity, debt, and other portfolios are evaluated at least every three years with the assistance of an independent consulting firm. Actual asset allocations are monitored monthly, and rebalancing actions are executed at least quarterly, as needed.

The weighted average credit rating of the debt portfolio was AA- at both December 31, 2025 and 2024. The debt portfolio is also broadly diversified and invested primarily in U.S. Treasury, mortgage, and corporate securities. The weighted-average maturity of the debt portfolio was 21 years and 22 years as of December 31, 2025 and 2024.

The investment of pension plan assets in securities issued by UPC is explicitly prohibited by the plan for both the equity and debt portfolios, other than through index fund holdings.

Fair value measurements

The pension plan assets are valued at fair value. The following is a description of the valuation methodologies used for the investments measured at fair value, including the general classification of such instruments pursuant to the valuation hierarchy.

Federal government securities – Federal government securities consist of bills, notes, bonds, and other fixed income securities issued directly by the U.S. Treasury or by government-sponsored enterprises. These assets are valued using a bid evaluation process with bid data provided by independent pricing sources. Federal government securities are classified as Level 2 investments.

Bonds and debentures – Bonds and debentures consist of debt securities issued by U.S. and non-U.S. corporations as well as state and local governments. These assets are valued using a bid evaluation process with bid data provided by independent pricing sources. Corporate, state, and municipal bonds and debentures are classified as Level 2 investments.

Corporate stock – This investment category consists of common and preferred stock issued by U.S. and non-U.S. corporations. Most common shares are traded actively on exchanges and price quotes for these shares are readily available. Common stock is classified as a Level 1 investment. Preferred shares included in this category are valued using a bid evaluation process with bid data provided by independent pricing sources. Preferred stock is classified as a Level 2 investment.

Venture capital and buyout partnerships – This investment category is comprised of interests in limited partnerships that invest primarily in privately-held companies. Due to the private nature of the partnership investments, pricing inputs are not readily observable. Asset valuations are developed by the general partners that manage the partnerships. These valuations are based on the application of public market multiples to private company cash flows, market transactions that provide valuation information for comparable companies, and other methods. The fair value recorded by the master trust is calculated using each partnership's net asset value (NAV).

Real estate funds – The plan's real estate investments are primarily interests in private real estate investment trusts, partnerships, limited liability companies, and similar structures. Valuations for the holdings in this category are not based on readily observable inputs and are primarily derived from property appraisals. The fair value recorded by the master trust is calculated using the NAV for each investment.

Collective trust and other funds – Collective trust and other funds are comprised of shares or units in commingled funds and limited liability companies that are not publicly traded. The underlying assets in these entities (global stock funds and short-term investment funds) are publicly traded on exchanges and price quotes for the assets held by these funds are readily available. The fair value recorded by the master trust is calculated using NAV for each investment.

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION – EXPLANATORY NOTES - CONTINUED

NOTES TO FINANCIAL STATEMENTS

Collective trust and other funds – Collective trust and other funds are comprised of shares or units in commingled funds and limited liability companies that are not publicly traded. The underlying assets in these entities (global stock funds and short-term investment funds) are publicly traded on exchanges and price quotes for the assets held by these funds are readily available. The fair value recorded by the master trust is calculated using NAV for each investment.

As of December 31, 2025, the pension plan assets measured at fair value on a recurring basis were as follows:

Millions	*Quoted prices in active markets for identical inputs (Level 1)*	*Significant other observable inputs (Level 2)*	*Significant unobservable inputs (Level 3)*	*Total*
Plan assets at fair value:				
Federal government securities	-	1,471	-	1,471
Bonds and debentures	-	1,492	-	1,492
Corporate stock	235	2	-	237
Total plan assets at fair value	$ 235	$ 2,965	$ -	$ 3,200
Plan assets at NAV:				
Venture capital and buyout partnerships				413
Real estate funds				20
Collective trust and other funds				306
Total plan assets at NAV				$ 739
Other assets/(liabilities) [a]				39
Total plan assets				$ 3,978

As of December 31, 2024, the pension plan assets measured at fair value on a recurring basis were as follows:

Millions	*Quoted prices in active markets for identical inputs (Level 1)*	*Significant other observable inputs (Level 2)*	*Significant unobservable inputs (Level 3)*	*Total*
Plan assets at fair value:				
Federal government securities	-	1,448	-	1,448
Bonds and debentures	-	1,512	-	1,512
Corporate stock	220	6	-	226
Total plan assets at fair value	$ 220	$ 2,966	$ -	$ 3,186
Plan assets at NAV:				
Venture capital and buyout partnerships				446
Real estate funds				26
Collective trust and other funds				370
Total plan assets at NAV				$ 842
Other assets/(liabilities) [a]				40
Total plan assets				$ 4,068

[a] Includes accrued receivables, net payables, and pending broker settlements.

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION – EXPLANATORY NOTES - CONTINUED

NOTES TO FINANCIAL STATEMENTS

The master trust's investments in limited partnerships and similar structures (used to invest in private equity and real estate) are valued at fair value based on their proportionate share of the partnerships' fair value as recorded in the limited partnerships' audited financial statements. The limited partnerships allocate gains, losses, and expenses to the partners based on the ownership percentage as described in the partnership agreements.

Other retirement programs

Other post-retirement benefits (OPEB) – We provide medical benefits for eligible retirees hired before January 1, 2004. These benefits are funded as medical claims are paid. In 2025, we completed a buyout of life insurance benefits for eligible retirees hired before January 1, 2004. OPEB expense is determined based upon the annual service cost of benefits and the interest cost on those liabilities plus amortization of net (gain)/loss amounts offset by amortization of prior service credits recorded in AOCI. Our OPEB liability was $84 million and $104 million at December 31, 2025 and 2024, respectively. The liability is based on discount rate assumptions of 5.42% and 5.53% at December 31, 2025 and 2024, respectively. OPEB net periodic (benefit)/cost was ($2) million in 2025, ($5) million in 2024, and ($7) million in 2023.

401(k)/Thrift plan – For non-union employees hired prior to January 1, 2018, and eligible union employees for whom we make matching contributions, we provide a defined contribution plan (401(k)/thrift plan). We match 50% for each dollar contributed by employees up to the first 6% of compensation contributed. For non-union employees hired on or after January 1, 2018, we match 100% for each dollar, up to the first 6% of compensation contributed, in addition to contributing an annual amount of 3% of the employee's annual base salary. Our plan contributions were $29 million in 2025, $28 million in 2024, and $27 million in 2023.

Railroad retirement system – All Railroad employees are covered by the Railroad Retirement System (the System). Contributions made to the System are expensed as incurred and amounted to approximately $681 million in 2025, $671 million in 2024, and $711 million in 2023.

Collective bargaining agreements – Under collective bargaining agreements, we participate in multi-employer benefit plans that provide certain post retirement health care and life insurance benefits for eligible union employees. Premiums paid under these plans are expensed as incurred and amounted to $9 million in 2025, $12 million in 2024, and $16 million in 2023.

13. Capital Stock and Dividend Restrictions

Our Board of Directors has restricted the availability of retained earnings for payment of dividends by $131 million. This represents (a) the amount by which the estimated fair value of our investment in certain subsidiaries, as determined by our Board of Directors, exceeded the net book value of such investment that was transferred to the Corporation by means of a dividend in June 1971 ($110) million and (b) the amount by which the fair market value exceeded the book value of certain investment securities that were transferred to the Corporation by means of a dividend in November 1972 ($21) million.

Our capital structure consists of Class A Stock and Common Stock. The Class A Stock is entitled to a cash dividend whenever a dividend is declared on the Common Stock, in an amount which equals 8 percent of the sum of the dividends on both the Class A Stock and the Common Stock. All of our Common Stock and our Class A Stock, which constitutes all of the voting capital stock, is owned by the Corporation. Accordingly, there is no market for our capital stock.

14. Commitments and Contingencies

Asserted and unasserted claims – Various claims and lawsuits are pending against us and certain of our subsidiaries. We cannot fully determine the effect of all asserted and unasserted claims on our consolidated results of operations, financial condition, or liquidity. We have recorded a liability where asserted and unasserted claims are considered probable and where such claims can be reasonably estimated. We currently do not expect that any known lawsuits, claims, environmental costs, commitments, contingent liabilities, or guarantees will have a material adverse effect on our consolidated results of operations, financial condition, or liquidity after taking into account liabilities and insurance recoveries previously recorded for these matters.

In December 2019, we received a putative class action complaint under the Illinois Biometric Information Privacy Act, alleging violation due to the use of a finger scan system developed and managed by third parties. While we believe that we have strong defenses to the claims made in the complaint and will vigorously defend ourselves, there is no assurance regarding the ultimate outcome. The outcome of this litigation is inherently uncertain, and we cannot reasonably estimate any loss or range of loss that may arise from this matter.

Personal injury – The Federal Employers' Liability Act (FELA) governs compensation for work-related accidents. Under FELA, damages are assessed based on a finding of fault through litigation or out-of-court settlements. We offer a comprehensive variety of services and rehabilitation programs for employees who are injured at work.

Because of the uncertainty surrounding the ultimate outcome of personal injury claims, it is reasonably possible that future costs to settle these claims may range from approximately $413 million to $530 million. We record an accrual at the low end of the range as no amount of loss within the range is more probable than any other. Estimates can vary over time due to evolving trends in litigation.

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION – EXPLANATORY NOTES - CONTINUED

NOTES TO FINANCIAL STATEMENTS

Our personal injury liability activity was as follows:

Millions	***2025***	*2024*	*2023*
Beginning balance	**$ 379**	$ 383	$ 361
Current year accruals	**123**	121	112
Changes in estimates for prior years	**17**	(14)	89
Payments	**(106)**	(111)	(179)
Ending balance at December 31	**$ 413**	$ 379	$ 383
Current portion, ending balance at December 31	**$ 93**	$ 106	$ 113

Environmental costs – We are subject to federal, state, and local environmental laws and regulations. We have identified 343 sites where we are or may be liable for remediation costs associated with alleged contamination or for violations of environmental requirements. This includes 29 sites that are the subject of actions taken by the U.S. government, including 17 that are currently on the Superfund National Priorities List. Certain federal legislation imposes joint and several liability for the remediation of identified sites; consequently, our ultimate environmental liability may include costs relating to activities of other parties, in addition to costs relating to our own activities at each site.

Our environmental liability activity was as follows:

Millions	***2025***	*2024*	*2023*
Beginning balance	**$ 268**	$ 245	$ 253
Accruals	**70**	129	99
Payments	**(79)**	(106)	(107)
Ending balance at December 31	**$ 259**	$ 268	$ 245
Current portion, ending balance at December 31	**$ 62**	$ 83	$ 91

The environmental liability includes future costs for remediation and restoration of sites, as well as ongoing monitoring costs, but excludes any anticipated recoveries from third parties. Cost estimates are based on information available for each site, financial viability of other potentially responsible parties, and existing technology, laws, and regulations. The ultimate liability for remediation is difficult to determine because of the number of potentially responsible parties, site-specific cost sharing arrangements with other potentially responsible parties, the degree of contamination by various wastes, the scarcity and quality of volumetric data related to many of the sites, and the speculative nature of remediation costs. Estimates of liability may vary over time due to changes in federal, state, and local laws governing environmental remediation. Current obligations are not expected to have a material adverse effect on our consolidated results of operations, financial condition, or liquidity.

Indemnities – Our maximum potential exposure under indemnification arrangements, including certain tax indemnifications, can range from a specified dollar amount to an unlimited amount, depending on the nature of the transactions and the agreements. Due to uncertainty as to whether claims will be made or how they will be resolved, we cannot reasonably determine the probability of an adverse claim or reasonably estimate any adverse liability or the total maximum exposure under these indemnification arrangements. We do not have any reason to believe that we will be required to make any material payments under these indemnity provisions.

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION – EXPLANATORY NOTES - CONTINUED

NOTES TO FINANCIAL STATEMENTS

15. Accounts Receivable

Accounts receivable include freight and other receivables reduced by an allowance for doubtful accounts. At December 31, 2025 and 2024, our accounts receivable were reduced by $4 million and $6 million, respectively. Receivables not expected to be collected in one year and the associated allowances are classified as other assets in our Consolidated Statements of Financial Position. At December 31, 2025 and 2024, receivables classified as other assets were reduced by allowances of $64 million and $69 million, respectively.

Receivables securitization facility – On July 28, 2025, the Railroad completed the renewal of the receivables securitization facility (the Receivables Facility). The new $600 million, 3-year facility replaces the prior $800 million facility and will mature in July 2028. Under the Receivables Facility, the Railroad sells most of its eligible third-party receivables to Union Pacific Receivables, Inc. (UPRI), a consolidated, wholly-owned, bankruptcy-remote subsidiary that may subsequently transfer, without recourse, an undivided interest in accounts receivable to investors. The investors have no recourse to the Railroad's other assets except for customary warranty and indemnity claims. Creditors of the Railroad do not have recourse to the assets of UPRI.

The amount recorded under the Receivables Facility was $0 at both December 31, 2025 and 2024. During the year ended December 31, 2025, we issued $0 and repaid $0 under the Receivables Facility. The Receivables Facility was supported by $1.5 billion and $1.6 billion of accounts receivable as collateral at December 31, 2025 and 2024, respectively, which, as a retained interest, is included in accounts receivable, net.

The outstanding amount the Railroad maintains under the Receivables Facility may fluctuate based on current cash needs. The maximum allowed under the Receivables Facility is $600 million with availability directly impacted by eligible receivables, business volumes, and credit risks, including receivables payment quality measures such as default and dilution ratios. If default or dilution ratios increase one percent, the allowable outstanding amount under the Receivables Facility would not materially change.

The costs of the Receivables Facility include interest, which will vary based on prevailing benchmark and commercial paper rates, program fees paid to participating banks, commercial paper issuance costs, and fees of participating banks for unused commitment availability. The costs of the Receivables Facility are included in interest expense and were $3 million, $8 million, and $9 million for 2025, 2024, and 2023, respectively.

16. Leases

We lease certain locomotives, freight cars, and other property for use in our rail operations.

The following are details related to our lease portfolio as of December 31:

		2025	2024
Assets			
Operating leases	Operating lease assets	**$ 1,008**	$ 1,266
Finance leases	Properties, net [a]	**185**	171
Total leased assets		**$ 1,193**	$ 1,437
Liabilities			
Current			
Operating	Accounts payable and other current liabilities	**$ 267**	$ 343
Finance	Third-party debt due within one year	**39**	37
Noncurrent			
Operating	Operating lease liabilities	**712**	897
Finance	Third-party debt due after one year	**66**	72
Total lease liabilities		**$ 1,084**	$ 1,349

[a] Finance lease assets are recorded net of accumulated amortization of $455 million and $472 million as of December 31, 2025 and 2024, respectively.

The following table presents the classification of lease cost components for the year ended December 31:

	2025	*2024*
Operating lease cost [a]	**$ 301**	$ 336
Short-term lease cost	**23**	24
Variable lease cost	**39**	37
Finance lease cost		
Amortization of leased assets [b]	**28**	31
Interest on lease liabilities [c]	**5**	5
Net lease cost	**$ 396**	$ 433

[a] Operating lease cost is primarily reported in equipment and other rents
[b] Amortization of leased assets is reported in depreciation
[c] Interest on lease liabilities is reported in interest expense

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION – EXPLANATORY NOTES - CONTINUED

NOTES TO FINANCIAL STATEMENTS

The following table presents aggregate lease maturities as of December 31, 2025:

Millions	*Operating leases*	*Finance leases*	*Total*
2026	$ 272	$ 42	$ 314
2027	233	37	270
2028	186	14	200
2029	117	21	138
2030	115	-	115
After 2030	168	-	168
Total lease payments	$ 1,091	$ 114	$ 1,205
Less: Interest	117	9	126
Present value of lease liabilities	$ 974	$ 105	$ 1,079

The following table presents the weighted average remaining lease term and discount rate as of December 31:

	2025
Weighted-average remaining lease term (years)	
Operating leases	5.4
Finance leases	2.6
Weighted-average discount rate (%)	
Operating leases	3.9
Finance leases	4.5

The following table presents other information related to our operating and finance leases for the years ended December 31:

Millions	***2025***	*2024*
Cash paid for amounts included in the measurement of lease liabilities		
Operating cash flows from operating leases	**$ 306**	$ 315
Investing cash flows from operating leases	**32**	32
Operating cash flows from finance leases	**4**	6
Financing cash flows from finance leases	**36**	47
Leased assets obtained in exchange for operating lease liabilities	**$ 198**	$ 119

17. Employee Stock Purchase Plan (ESPP)

Employee and Company contributions are used to issue treasury shares the month after employee contributions are withheld based on the settlement date closing price. Effective with the June 10, 2025, purchase (for employee services rendered in May 2025), the Company match was changed from 40% to 20% of the amount contributed by the employee up to a maximum employee contribution of 5% of monthly salary (limited to $15,000 annually). We expense the Company contributions in the month the employee services were rendered (i.e., the month the employee contributions were withheld).

18. Union Pacific Fund for Effective Government

The Corporation, UPRR's parent, is the sponsor of the Union Pacific Fund for Effective Government (the FFEG), a separate segregated fund utilized for political purposes, established and operated in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The administrative expenses of the FFEG are paid by the Corporation. UPRR's executive and administrative personnel are solicited annually by the FFEG within the guidelines of the Act and certain executive officers of UPRR are members of the FFEG's managing finance committee.

CN-38, FD 36873
PUBLIC VERSION

210. RESULTS OF OPERATIONS

(Dollars in Thousands)

1 Disclose requested information for respondent pertaining to results of operations for the year.

2 Report total operating expenses from Sched. 410. Any differences between this schedule and Sched. 410 must be explained on page 18.

3 List dividends from investments accounted for under the cost method on line 19, and list dividends accounted for under the equity method on line 25.

4 All contra entries should be shown in parenthesis.

Cross-Checks

Schedule 210	Schedule 210
Line 15, col b	= Line 66, col b
Lines 47,48,49 col b	= Line 67, col b
Line 50, col b	= Line 68, col b

Schedule 410	
Line 14, col b	= Line 620, col h
Line 14, col d	= Line 620, col f
Line 14, col e	= Line 620, col g

Line No.	Cross Check	Item (a)	Amount for current year (b)	Amount for preceding year (c)	Freight-related revenue & expenses (d)	Passenger-related revenue & expenses (e)	Line No.
		ORDINARY ITEMS					
		OPERATING INCOME					
		Railway Operating Income					
1		(101) Freight	23,219,904	22,811,127	23,219,904		1
2		(102) Passenger	67,131	62,267		67,131	2
3		(103) Passenger-related	205	34		205	3
4		(104) Switching	253,828	244,524	253,828		4
5		(105) Water transfers	28,291	28,166	28,291		5
6		(106) Demurrage	207,105	188,553	207,105		6
7		(110) Incidental	590,137	695,208	590,137		7
8		(121) Joint facility - credit	22,712	28,325	22,712		8
9		(122) Joint facility - debit					9
10		(501) Railway operating revenues (Exclusive of transfers from government authorities-lines 1-9)	24,389,313	24,058,204	24,321,977	67,336	10
11		(502) Railway operating revenues - transfers from government authorities	53,478	130,767		53,478	11
12		(503) Railway operating revenues - amortization of deferred transfers from government authorities					12
13		TOTAL RAILWAY OPERATING REVENUES (lines 10-12)	24,442,791	24,188,971	24,321,977	120,814	13
14	*	(531) Railway operating expenses	14,765,726	14,747,386	14,646,495	119,231	14
15	*	Net revenue from railway operations	9,677,065	9,441,585	9,675,482	1,583	15
		OTHER INCOME					
16		(506) Revenue from property used in other than carrier operations	47,784	47,617			16
17		(510) Miscellaneous rent income	223,378	211,512			17
18		(512) Separately operated properties - profit					18
19		(513) Dividend income (cost method)	67,926	99,094			19
20		(514) Interest income	173,096	7,268			20
21		(516) Income from sinking and other funds					21
22		(517) Release of premiums on funded debt					22
23		(518) Reimbursements received under contracts and agreements					23
24		(519) Miscellaneous income	318,724	37,506			24
		Income from affiliated companies: 519					
25		a. Dividends (equity method)	5,000	899			25
26		b. Equity in undistributed earnings (losses)	82,536	93,459			26
27		TOTAL OTHER INCOME (lines 16-26)	918,444	497,355			27
28		TOTAL INCOME (lines 15, 27)	10,595,509	9,938,940			28
		MISCELLANEOUS DEDUCTIONS FROM INCOME					
29		(534) Expenses of property used in other than carrier operations	25,326	24,466			29
30		(544) Miscellaneous taxes					30
31		(545) Separately operated properties-Loss					31
32		(549) Maintenance of investment organization					32
33		(550) Income transferred under contracts and agreements					33
34		(551) Miscellaneous income charges	1,770	(21,678)			34
35		(553) Uncollectible accounts					35
36		TOTAL MISCELLANEOUS DEDUCTIONS	27,096	2,788			36
37		Income available for fixed charges	10,568,413	9,936,152			37

210. RESULTS OF OPERATIONS - (Concluded)
(Dollars in Thousands)

Line No.	Cross Check	Item (a)	Amount for current year (b)	Amount for preceding year (c)	Line No.
		FIXED CHARGES			
		(546) Interest on funded debt:			
38		(a) Fixed interest not in default	12,734	28,855	38
39		(b) Interest in default			39
40		(547) Interest on unfunded debt	0	68,895	40
41		(548) Amortization of discount on funded debt	1,010	1,061	41
42		TOTAL FIXED CHARGES (lines 38 through 41)	13,744	98,811	42
43		Income after fixed charges (line 37 minus line 42)	10,554,669	9,837,341	43
		OTHER DEDUCTIONS			
		(546) Interest on funded debt:			
44		(c) Contingent interest	0	0	44
		UNUSUAL OR INFREQUENT ITEMS			
45		(555) Unusual or infrequent items (debit) credit			45
46		Income (Loss) from continuing operations (before inc. taxes)	10,554,669	9,837,341	46
		PROVISIONS FOR INCOME TAXES			
		(556) Income taxes on ordinary income:			
47	*	(a) Federal income taxes	1,785,622	2,017,763	47
48	*	(b) State income taxes	382,315	428,902	48
49	*	(c) Other income taxes	(1,698)	1,799	49
50	*	(557) Provision for deferred taxes	246,636	9,144	50
51		TOTAL PROVISION FOR INCOME TAXES (lines 47 through 52)	2,412,875	2,457,608	51
52		Income from continuing operations (line 46 minus line 51)	8,141,794	7,379,733	52
		DISCONTINUED OPERATIONS			
53		(560) Income or loss from operations of discontinued segments (less applicable income taxes of $_____)	N/A	N/A	53
54		(562) Gain or loss on disposal of discontinued segments (less applicable income taxes of $_____)			54
55		Income before extraordinary items (lines 52 through 54)	8,141,794	7,379,733	55
		EXTRAORDINARY ITEMS AND ACCOUNTING CHANGES			
56		(570) Extraordinary items (Net)			56
57		(590) Income taxes on extraordinary items			57
58		(591) Provision for deferred taxes - Extraordinary items			58
59		TOTAL EXTRAORDINARY ITEMS (lines 56 through 58)			59
60		(592) Cumulative effect of changes in accounting principles (less applicable income taxes of $_____)			60
61	*	Net income (Loss) (lines 55 + 59 + 60)	8,141,794	7,379,733	61
62		Less: Net Income attributable to non-controlling interest			62
63		Net Income attributable to reporting railroad	8,141,794	7,379,733	63
64		Basic Earnings Per Share	N/A	N/A	64
65		Diluted Earnings Per Share	N/A	N/A	65
		RECONCILIATION OF NET RAILWAY OPERATING INCOME (NROI)			
66	*	Net revenues from railway operations	9,677,065	9,441,585	66
67	*	(556) Income taxes on ordinary income (-)	(2,166,239)	(2,448,464)	67
68	*	(557) Provision for deferred income taxes (-)	(246,636)	(9,144)	68
69		Income from lease of road and equipment (-)			69
70		Rent for leased roads and equipment (+)			70
71		Net railway operating income (loss)	7,264,190	6,983,977	71

Note: Line 49 reflects current foreign income taxes and unrecognized tax benefits expense.

NOTES AND REMARKS

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210A. CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME

(Dollars in Thousands)

1. This schedule applies only to entities with items of Other Comprehensive Income (OCI)

Cross-Checks

Schedule 210	Schedule 210 A
Line 61, col b	= Line 1, col b

2. Entities must present comprehensive income in two separate but consecutive financial statements.

3. Entities must present reclassification adjustments and the effects of those adjustments on net income and OCI on the face of the financial statements.

4. All contra entries should be shown in parenthesis.

Line No.	Cross Check	Item (a)	Amount for current year (b)	Amount for preceding year (c)	Line No.
1		Net Income	8,141,794	7,379,733	1
2		Other Comprehensive Income, net of tax: Foreign currency translation adjustments	-	-	2
3		Unrealized gains on securities: Unrealized holding gains arising during period			3
4		Less: reclassification adjustment for gains included in net income			4
5		Defined benefit pension plans: Prior service cost arising during period	-	-	5
6		Net loss arising during period	71,245	(13,987)	6
7		Less: amortization of prior service cost included in net periodic pension cost	(10,757)	(10,795)	7
8		Other Comprehensive Income (Loss)	10,026	10,830	8
9		Comprehensive Income (Loss)	8,212,308	7,365,781	9
10		Less: comprehensive income attributable to noncontrolling interest			10
11		Comprehensive Income attributable to reporting railroad (Loss)	8,212,308	7,365,781	11

Notes:

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220. RETAINED EARNINGS

(Dollars in Thousands)

1. Show below the items of retained earnings accounts of the respondent for the year, classified in accordance with the Uniform System of Accounts for Railroad Companies.

2. All contra entries should be shown in parentheses.

3. Show in lines 22 and 23 the amount of assigned Federal income tax consequences for accounts 606 and 616.

4. Segregate in column (c) all amounts applicable to the equity in undistributed earnings (losses) of affiliated companies based on the equity method of accounting.

5. Line 3 (line 7 if a debit balance), column (c), should agree with line 26, column (b), in Schedule 210. The total of columns (b) and (c), lines 3 and 7, should agree with line 61, column (b) in Schedule 210.

6. Include in column (b) only amounts applicable to retained earnings exclusive of any amounts included in column (c).

Line No.	Cross Check	Item (a)	Retained Earnings - Unappropriated (b)	Equity in Undistributed Earnings (Losses) of Affiliated Companies (c)	Line No.
1		Balances at beginning of year	39,164,510	2,078,940	1
2		(601.5) Prior period adjustments to beginning retained earnings			2
		CREDITS			
3		(602) Credit balance transferred from income	8,059,258	82,536	3
4		(603) Appropriations released	0		4
5		(606) Other credits to retained earnings			5
6		TOTAL CREDITS	8,059,258	82,536	6
		DEBITS			
7		(612) Debit balance transferred from income	0		7
8		(616) Other debits to retained earnings	0		8
9		(620) Appropriations for sinking and other funds	0		9
10		(621) Appropriations for other purposes	0		10
11		(623) Dividends: Common stock	6,100,000		11
12		Preferred stock (1)	0		12
13		TOTAL DEBITS	6,100,000	0	13
14		Net increase (decrease) during year (Line 6 minus line 13)	1,959,258	82,536	14
15		Balances at close of year (lines 1, 2, and 14)	41,123,768	2,161,476	15
16		Balances from line 15 (c)	2,161,476	N/A	16
17		(798) Total unappropriated retained earnings and equity in undistributed earnings (losses) of affiliated companies at end of year	43,285,244		17
18		(797) Total appropriated retained earnings:			18
19		Credits during year 0		N/A	19
20		Debits during year 0			20
21		Balance at close of year 0			21
		Amount of assigned Federal income tax consequences			
22		Account 606 $ _____			22
23		Account 616 $ _____			23

1. If any dividends have not been declared on cumulative preferred stock, give cumulative undeclared dividends at beginning of year and end of year. NONE.

240. STATEMENT OF CASH FLOWS

(Dollars in Thousands)

Give the information as requested concerning the cash flows during the year. Either the direct or indirect method can be used. The direct method shows as its principal components operating cash receipts and payments, such as cash received from customers and cash paid to suppliers and employees, the sum of which is net cash flow from operating activities. The indirect method starts with net income and adjusts it for revenues and expense items that were not the result of operating cash transactions in the current period to reconcile it to net cash flow from operating activities. If the direct method is used, complete lines 1 through 41. If the indirect method is used complete lines 10 through 41. Cash, for the purpose of this schedule, shall include cash and cash equivalents which are short-term, highly liquid investments readily convertible to known amounts of cash and so near their maturity that they present insignificant risk of changes in value because of changes in interest rates. Information about all investing and finance activities which do not directly affect cash shall be separately disclosed in footnotes to this schedule. They shall clearly relate the cash (if any) and noncash aspects of transactions. Examples of noncash investing and transactions include converting debt to equity, acquiring assets by assuming directly related liabilities, such as purchasing a building by incurring a mortgage to the seller; obtaining an asset by entering into a capital lease; and exchanging noncash assets or liabilities for other noncash assets or liabilities. Some transactions are part cash and part noncash; only the cash portion shall be reported directly in the statement of cash flows. Refer to FAS Statement No. 95, Statement of Cash Flows, for further details.

CASH FLOWS FROM OPERATING ACTIVITIES

Line No.	Cross Check	Description (a)	Current Year (b)	Previous Year (c)	Line No.
1		Cash received from operating revenues			1
2		Dividends received from affiliates			2
3		Interest received			3
4		Other income			4
5		Cash paid for operating expenses			5
6		Interest paid (net of amounts capitalized)			6
7		Income taxes paid			7
8		Other - net			8
9		NET CASH PROVIDED BY OPERATING ACTIVITIES (lines 1 through 8)			9

RECONCILIATION OF NET INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES

Line No.	Cross Check	Description (a)	Current Year (b)	Previous Year (c)	Line No.
10		Income from continuing operations	8,141,794	7,379,733	10

ADJUSTMENTS TO RECONCILE INCOME FROM CONTINUING OPERATIONS TO NET CASH PROVIDED BY OPERATING ACTIVITIES

Line No.	Cross Check	Description (a)	Current Year (b)	Previous Year (b)	Line No.
11		Loss (gain) on sale or disposal of tangible property and investments	(314,299)	(29,966)	11
12		Depreciation and amortization expenses	2,607,589	2,541,662	12
13		Net increase (decrease) in provision for Deferred Income Taxes	246,636	9,144	13
14		Net decrease (increase) in undistributed earnings (losses) of affiliates	82,536	(93,459)	14
15		Decrease (increase) in accounts receivable	91,112	100,264	15
16		Decrease (increase) in material and supplies and other current assets	(32,850)	(22,035)	16
17		Increase (decrease) in current liabilities other than debt	(200,412)	64,903	17
18		Increase (decrease) in other - net	(195,484)	(166,014)	18
19		Net cash provided from continuing operations (lines 10 through 18)	10,426,622	9,784,232	19
20		Add (Subtract) cash generated (paid) by reason of discontinued operations and extraordinary items	0	0	20
21		NET CASH PROVIDED FROM OPERATING ACTIVITIES (lines 19 and 20)	10,426,622	9,784,232	21

CASH FLOWS FROM INVESTING ACTIVITIES

Line No.	Cross Check	Description (a)	Current Year (b)	Previous Year (b)	Line No.
22		Proceeds from sale of property	357,358	208,584	22
23		Capital expenditures	(3,788,179)	(3,448,617)	23
24		Net change in temporary cash investments not qualifying as cash equivalents	0	0	24
25		Proceeds from sale/repayment of investment and advances	2,576	571	25
26		Purchase price of long-term investment and advances	(22,894)	(50,450)	26
27		Net decrease (increase) in sinking and other special funds	0	0	27
28		Other - net	(750,264)	(444,077)	28
29		NET CASH USED IN INVESTING ACTIVITIES (lines 22 through 28)	(4,201,403)	(3,733,989)	29

(Continued on next page)

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240. STATEMENT OF CASH FLOWS (Concluded)
(Dollars in Thousands)

CASH FLOWS FROM FINANCING ACTIVITIES

Line No.	Cross Check	Description (a)	Current Year (b)	Previous Year (c)	Line No.
30		Proceeds from issuance of long-term debt	0	800,000	30
31		Principle payments of long-term debt	(77,614)	(887,355)	31
32		Proceeds from issuance of capital stock	0	0	32
33		Purchase price of acquiring treasury stock	0	0	33
34		Cash dividends paid	(6,100,000)	(4,471)	34
35		Other - net	(27)	(5,993,556)	35
36		NET CASH FROM FINANCING ACTIVITIES (lines 30 through 35)	(6,177,641)	(6,085,382)	36
37		NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS (lines 21, 29, and 36)	47,579	(35,139)	37
38		Cash and cash equivalents at beginning of the year	88,807	123,946	38
39		CASH AND CASH EQUIVALENTS AT END OF THE YEAR (lines 37 & 38)	136,386	88,807	39
		Footnotes to Schedule Cash paid during the year for:			
40		Interest (net of amount capitalized) *	(59,000)	(51,000)	40
41		Income taxes (net) *	(2,176,000)	(2,489,000)	41

* Only applies if indirect method is adopted

NOTES AND REMARKS

Non-cash capital investments accrued but not yet paid were $131,000 and $165,000 in 2025 and 2024, respectively.

245. WORKING CAPITAL
(Dollars in Thousands)

1 This schedule should include only data pertaining to railway transportation services.
2 Carry out calculations of lines 9, 10, 20, and 21 to the nearest whole number.

Line No.	Item (a)	Source	Amount (b)	Line No.
	CURRENT OPERATING ASSETS			
1	Interline and other balances (705)	Sched. 200, line 5, col. b	87,578	1
2	Customers (706)	Sched. 200, line 6, col. b	1,502,259	2
3	Other (707)	Note A	95,018	3
4	TOTAL CURRENT OPERATING ASSETS	Lines 1 + 2 + 3	1,684,855	4
	OPERATING REVENUE			
5	Railway operating revenue	Sched. 210, line 13, col. b	24,442,791	5
6	Rent income	Note B	227,938	6
7	TOTAL OPERATING REVENUES	Lines 5 + 6	24,670,729	7
8	Average daily operating revenues	Line 7 ÷ 360 days	68,530	8
9	Days of operating revenue in current operating assets	Line 4 ÷ line 8	25	9
10	Revenue delay days plus buffer	Line 9 + 15 days	40	10
	CURRENT OPERATING LIABILITIES			
11	Interline and other balances (752)	Sched. 200, line 30, col. b	25,163	11
12	Audited accounts and wages payable (753)	Note A	182,123	12
13	Accounts payable - other (754)	Note A	40,157	13
14	Other taxes accrued (761.5)	Note A	436,402	14
15	TOTAL CURRENT OPERATING LIABILITIES	Sum of lines 11 through 14	683,844	15
	OPERATING EXPENSES			
16	Railway operating expenses	Sched. 210, line 14, col. b	14,765,726	16
17	Depreciation	Sched 410, lines 136, 137, 138, 213, 232, 317 col h	2,607,589	17
18	Cash related operating expenses	Line 16 + line 6 - line 17	12,386,075	18
19	Average daily expenditures	Line 18 ÷ 360 days	34,406	19
20	Days of operating expenses in current operating liabilities	Line 15 ÷ line 19	20	20
21	Days of working capital required	Line 10 - line 20 (Note C)	20	21
22	Cash working capital required	Line 21 x line 19	688,120	22
23	Cash and temporary cash balance	Sched. 200, line 1 + line 2, col. b	136,386	23
24	Cash working capital allowed	Lesser of line 22 or line 23	136,386	24
	MATERIALS AND SUPPLIES			
25	Total materials and supplies (712)	Note A	786,495	25
26	Scrap and obsolete material included in account 712	Note A	4,456	26
27	Materials and supplies held for common carrier purposes	Line 25 - line 26	782,039	27
28	TOTAL WORKING CAPITAL	Line 24 + line 27	918,425	28

NOTES:

(A) Use common carrier portion only. Common carrier refers to railway transportation service
(B) Rent income is the sum of Schedule 410, column h, lines 121, 122, 123, 127, 128, 129, 133, 134, 135, 208, 210, 212, 227, 229, 231, 312, 314, and 316. Rent income is added to railway operating revenues to produce total revenues. Rent income is also added to total operating expenses to exclude the rent revenue items from operating expense.
(C) If result is negative, use zero.

NOTES AND REMARKS

Note to Schedule 310 on pages 26 - 29

Companies Under Joint Control

Company (UPRR Ownership)	Other Parties	
Alameda Belt Line (50.00%)	BNSF (50.00%)	
Belt Railway of Chicago (8.33%)	NS (25.00%)	CSX (25.00%)
	BNSF (16.67%)	CN (16.67%)
	CPKC (8.33%)	
Brownsville & Matamoros Bridge Co. (50.00%)	Gobierno de Estados Unidos Mexicanos (50.00%)	
Grupo Ferroviaro Mexicano (26.00%)	Mexican Consortium (74.00%)	
Houston Belt & Terminal Ry (50.00%)	BNSF (50.00%)	
Kansas City Terminal Ry Co. (41.67%)	BNSF (25.00%)	NS (8.33%)
	CPKC (25.00%)	
Longview Switching Co (50.00%)	BNSF (50.00%)	
MT Properties, Inc. (42.10%)	BNSF (43.30%)	CPKC (14.60%)
Oakland Terminal Railway (50.00%)	BNSF (50.00%)	
Peoria and Pekin Union Railway (12.50%)	CN (46.86%)	NS (40.64%)
St. Joseph Terminal RR Co (50.00%)	BNSF (50.00%)	
Sunset Railway Co. (50.00%)	BNSF (50.00%)	
Terminal Railroad Association of St. Louis (42.84%)	BNSF (14.29%)	CN (14.29%)
	CSX (14.29%)	NS (14.29%)
TTX (37.03%)	BNSF (17.41%)	FXE (0.63%)
	CN (3.16%)	NS (19.78%)
	CPKC (2.21%)	
	CSX (19.78%)	
Wichita Union Terminal Railway Company (33.33%)	BNSF (66.67%)	

Wholly-owned companies that have a joint interest in subsidiaries

MeteorComm (Ekanet 25.00%)	BNSF (25.00%)	NS (25.00%)
	CSX (25.00%)	
PTC-220 (Ekanet 14.29%)	BNSF (14.29%)	CN (14.29%)
	CPKC (28.58%)	CSX (14.29%)
	NS (14.29%)	
Railpulse (9.76%)	CPKC (9.76%)	G&W (9.76%)
	CSX (9.76%)	Watco (9.76%)
	NS (9.76%)	
	Railroad Development Corporation (4.88%)	
	Various other entities (36.56%)	

Wholly-owned non-US operations companies

Soluciones Logisticas Transfronterizas Mexicanas, S. de R.L. de C.V.

GENERAL INSTRUCTIONS CONCERNING RETURNS IN SCHEDULES 310 AND 310A

1. Schedule 310 should give particulars of stocks, bonds, and other secured obligations, unsecured notes, and investment advances of affiliated companies held by respondent at the close of the year. Also, disclose the investments made, disposed of, and written down during the year and the applicable dividends and interest credited to income as a result of those investments. They should exclude securities issued or assumed by respondent. For definition of affiliated companies, see the rules governing Account No. 721 "Investments and Advances; Affiliated Companies", in the Uniform System of Accounts for Railroad Companies.

2. List the investments in the following order and show a total for each group and each class of investment by accounts in numerical order.

(A)	Stocks	
	(1)	Carriers-active
	(2)	Carriers-inactive
	(3)	Noncarriers-active
	(4)	Noncarriers-inactive
(B)	Bonds (including US government bonds)	
(C)	Other secured obligations	
(D)	Unsecured notes	
(E)	Investment advances	

3. The subclassification of classes (B), (C), (D), and (E) should be the same as those provided for class (A).

4. The kinds of industry represented by respondent's investments in the securities of other companies should be shown by symbol opposite the names of the issuing corporations. The symbols and industrial classifications are as follows:

Symbol	Kind of Industry
I	Agriculture, forestry, and fisheries
II	Mining
III	Construction
IV	Manufacturing
V	Wholesale and retail trade
VI	Finance, insurance, and real estate
VII	Transportation, communications, and other public utilities
VIII	Services
IX	Government
X	All other

5. By carriers, as the term is used here, is meant companies owning or operating railroads, facilities auxiliary thereto such as bridges, ferries, union depots, and other terminal facilities, sleeping cars, parlor cars, dining cars, freight cars, express services and facilities, electric railways, highway motor vehicles, steamboats and other marine transportation equipment, pipe lines (other than those for transportation of water), and other instrumentalities devoted to the transportation of persons or property for hire. Telegraph and telephone companies are not meant to be included.

6. Noncarrier companies should, for the purposes of these schedules, include telephone companies, telegraph companies, mining companies, manufacturing companies, hotel companies, etc. Purely holding companies are to be classified as noncarrier companies, even though the securities held by such companies are largely or entirely issued or assumed by carriers.

7. By an active corporation is meant one which maintains an organization for operating property or administering its financial affairs. An inactive corporation is one which has been practically absorbed in a controlling corporation and which neither operates property nor administers its financial affairs. If it maintains an organization it does so only for the purpose of complying with legal requirements and maintaining title to property or franchises.

8. Combine in one account investments in which the original cost or present equity in total assets is less than $10,000.

9. Include investments in unincorporated entities such as lessee organizations. Exclude amounts normally settled on a current basis.

10. Do not include the value of securities issued or assumed by respondent.

11. For affiliates which do not report to the Surface Transportation Board and are jointly owned, disclose in footnotes the name and extent of control of the other controlling entities.

310. INVESTMENTS AND ADVANCES AFFILIATED COMPANIES

(Dollars in Thousands)

1. Give particulars of investments in stocks, bonds, other secured obligations, unsecured notes, and investment advances of companies affiliated with respondent, from accounts 715 (sinking funds), 716 (capital funds), 721 (investments and advances affiliated companies), and 717 (other funds).
2. Entries in this schedule should be made in accordance with the definitions and general instructions given on page 25, classifying the investments by means of letters, figures, and symbols in columns (a), (b) and (c).
3. Indicate by means of an arbitrary mark in column (d) the obligation in support of which any security is pledged, mortgaged, or otherwise encumbered. Give names and other important particulars of such obligations in footnotes.
4. Give totals for each class and for each subclass and a grand total for each account.
5. Entries in column (d) should show date of maturity of bonds and other evidence of indebtedness. In case obligations of the same designation mature serially, the date in column (d) may be reported as "Serially _____ to _____." Abbreviations in common use in standard financial publications may be used to conserve space.

Line No.	Account No. (a)	Class No. (b)	Kind of Industry (c)	Name of Issuing Company and also lien reference, if any (include rate for preferred stocks and bonds) (d)	Extent of Control (e)	Line No.
1	721	A1	VII	**STOCKS - CARRIERS ACTIVE**		1
2						2
3				Alameda Belt Line	50.0	3
4				Belt Railway of Chicago	8.3	4
5				Brownsville & Matamoros Bridge Co.	50.0	5
6				Houston's Belt & Terminal Ry.	50.0	6
7				Kansas City Terminal Ry.	41.7	7
8				Longview Switching Co.	50.0	8
9				MT Properties, Inc.	42.1	9
10				Terminal Railroad Association of St. Louis	42.8	10
11				TTX	37.0	11
12				Sunset Railway	50.0	12
13				Grupo Ferroviaro Mexicano	26.0	13
14						14
15						15
16	721	A3		**STOCKS - NONCARRIERS - ACTIVE**		16
17						17
18						18
19			X	PTC-220, LLC	14.3	19
20			X	MeteorComm, LLC	25.0	20
21			VI	AXA Financial Inc. (C)	0.0	21
22			VI	RailPulse	9.8	22
23						23
24				**TOTAL CLASS A**		24
25						25
26						26
27						27
28						28
29						29
30						30
31						31
32						32
33						33
34						34
35						35

Kind of Industry in Column (c) is VII unless noted.

(C) Less than 1%.

Note: Companies under joint control are listed on pg. 24.

310. INVESTMENTS AND ADVANCES AFFILIATED COMPANIES - (Continued)

(Dollars in Thousands)

6. If any of the companies included in this schedule are controlled by respondent, the percent of control should be shown in column (e). In case any company listed is controlled other than through actual ownership of securities, give particulars in a footnote. In case of joint control, give names of other parties and particulars of control.
7. If any advances reported are pledged, give particulars in a footnote.
8. Investments in companies in which neither the original cost or present equity in total assets are less than $10,000 may be combined in 1 figure.
9. Also include investments in unincorporated entities such as lessee organizations (exclusive of amounts nominally settled on a current basis).
10. This schedule should not include securities issued or assumed by respondent.
11. For affiliates which do not report to the Surface Transportation Board and are jointly owned, give names and extent of control by other entities by footnotes.

Line No.	Investments and Advances				Disposed of: profit(loss)	Adjustments Acct. 721.5	Dividends or interest credited to income	Line No.
	Opening Balance	Additions	Deductions (if other than sale, explain)	Closing Balance				
	(f)	(g)	(h)	(i)	(j)	(k)	(l)	
1								1
2								2
3	500			500				3
4	260			260				4
5	325			325				5
6	13			13				6
7	917			917				7
8	1			1				8
9	664			664				9
10	6			6				10
11	138,231			138,231				11
12	500			500				12
13	71,334			71,334				13
14								14
15								15
16								16
17								17
18	0			0				18
19	25,047	603		25,650				19
20	141,872	9,000		150,872				20
21	26			26				21
22	2,000			2,000				22
23								23
24	**381,696**	**9,603**	**0**	**391,299**				24
25								25
26								26
27								27
28								28
29								29
30								30
31								31
32								32
33								33
34								34
35								35
36								36
37								37
38								38
39								39
40								40

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310. INVESTMENTS AND ADVANCES AFFILIATED COMPANIES - (Continued)
(Dollars in Thousands)

Line No.	Account No. (a)	Class No. (b)	Kind of Industry (c)	Name of Issuing Company and also lien reference, if any (include rate for preferred stocks and bonds) (d)	Extent of Control (e)	Line No.
1						1
2	721	D3		**UNSECURED NOTES - NONCARRIERS - ACTIVE**		2
3						3
4			X	Union Pacific Corporation - Net		4
5			VII	Soluciones Logisticas Transfronterizas Mexicanas		5
6				**TOTAL CLASS D**		6
7						7
8						8
9	721	E1	VII	**INVESTMENT ADVANCES - CARRIERS - ACTIVE**		9
10						10
11						11
12				Houston Belt & Terminal Ry.		12
13				Kansas City Terminal Ry. Co.		13
14				Port Terminal Railroad Association		14
15				Wichita Terminal		15
16				Longview Switching		16
17						17
18						18
19						19
20						20
21				**TOTAL CLASS E**		21
22						22
23						23
24						24
25						25
26						26
27						27
28						28
29						29
30						30
31						31
32						32
33						33
34						34
35						35
36						36
37						37
38						38
39						39
40						40
41						41
42						42
43						43
44						44
45						45
46						46
47						47
48						48
49				**TOTAL ACCOUNT 721**		49

Kind of Industry in Column (c) is VII unless noted otherwise.

310. INVESTMENTS AND ADVANCES AFFILIATED COMPANIES - (Concluded)

(Dollars in Thousands)

Line No.	Investments and Advances				Disposed of: profit (loss)	Adjustments Acct. 721.5	Dividends or interest credited to income	Line No.
	Opening Balance (f)	Additions (g)	Deductions (if other than sale, explain) (h)	Closing Balance (i)	(j)	(k)	(l)	
1								1
2								2
3								3
4	371,630	668,693	0	1,040,323				4
5	62,790	3,099	0	65,889				5
6	**434,420**	**671,792**	**0**	**1,106,212**				6
7								7
8								8
9								9
10								10
11								11
12	119,277	13,291	0	132,568				12
13	14,155	0	(2,575)	11,580				13
14	2,208	0	0	2,208				14
15	324	0	0	324				15
16	575	0	(1)	574				16
17								17
18								18
19								19
20								20
21	**136,539**	**13,291**	**(2,576)**	**147,254**				21
22								22
23								23
24								24
25								25
26								26
27								27
28								28
29								29
30								30
31								31
32								32
33								33
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36								36
37								37
38								38
39								39
40								40
41								41
42								42
43								43
44								44
45								45
46								46
47								47
48								48
49	**952,655**	**694,686**	**(2,576)**	**1,644,765**				49

Note: Line 13 (h) reflects proportionate share of prior period accounting corrections at KCT impacting APIC and Retained Earnings

310A. INVESTMENTS IN COMMON STOCK OF AFFILIATED COMPANIES

(Dollars in Thousands)

Undistributed Earnings From Certain Investments in Affiliated Companies

1. Report below the details of all investments in common stock included in Account 721, Investments and Advances Affiliated Companies.
2. Enter in column (c) the amount necessary to retroactively adjust those investments. (See instruction 5-2, Uniform System of Accounts).
3. Enter in column (d) the share of undistributed earnings (i.e., dividends) or losses.
4. Enter in column (e) the amortization for the year of the excess of cost over equity in net assets (equity over cost) at date of acquisition.
5. For definitions of carrier and noncarrier, see general instructions.

Line No.	Name of issuing company and description of security held (a)	Balance at beginning of year (b)	Adjustments for investments equity method (c)	Equity in undistributed earnings (losses) during year (d)	Amortization during year (e)	Adjustment for investments disposed of or written down during year (f)	Balance at close of year (g)	Line No.
	CARRIERS: (List specifics for each company)							
1	Belt Ry. of Chicago	438	0	0			438	1
2	Brownsville & Matamoros Bridge Co.	5,070	24	(1,947)			3,147	2
3	Houston Belt & Terminal Rwy.	17,838	0	65			17,903	3
4	Kansas City Terminal Rwy.	8,438	188	5,025			13,651	4
5	MT Properties	1,605	0	179			1,784	5
6	Terminal RR Assn. of St. Louis	81,477	2,487	9,526			93,490	6
7	TTX	1,756,105	366	80,229			1,836,700	7
8	Sunset Railway	425	0	12			437	8
9								9
10								10
11								11
12	**TOTAL CARRIER**	**1,871,396**	**3,065**	**93,089**	**0**	**0**	**1,967,550**	12
13								13
14	***NONCARRIERS: (List specifics for each company)***							14
15								15
16	PTC-220, LLC	(7,360)		(519)			(7,879)	16
17	MeteorComm, LLC	(118,682)		(10,034)			(128,716)	17
18	**TOTAL NONCARRIER**	**(126,042)**	**0**	**(10,553)**	**0**	**0**	**(136,595)**	18
19								19
20								20
21								21
22								22
23								23
24								24
25								25
26								26
27	**TOTAL EQUITY**	**1,745,354**	**3,065**	**82,536**	**0**	**0**	**1,830,955**	27

INSTRUCTIONS CONCERNING RETURNS TO BE MADE IN SCHEDULE 330

1. Give particulars of balances at the beginning and close of the year and of all changes during the year in Account No. 731, "Road and Equipment Property" and Account No. 732, "Improvements on Leased Property" classified by primary accounts in accordance with the Uniform System of Accounts for Railroad Companies. The balances, by primary accounts, should, insofar as known, be stated in column (b) and all changes made during the year should be analyzed in columns (c) to (f), inclusive. Column (g) should be the net of the amounts in columns (c) through (f). Column (h) is the aggregate of columns (b) through (f), inclusive. Grand totals of columns (b) and (h) should equal the sum of Accounts 731 and 732 for the respective periods; if not, a full explanation should be made in a footnote.

2. In column (c), show disbursements made for the specific purpose of purchasing, constructing, and equipping new lines, and for the extension of old lines, as provided for in Instruction 2-1, "Items to be charged" in the Uniform System of Accounts for Railroad Companies for such items.

3. In column (d), show the cost of a railway or portion thereof, acquired as an operating entity or system by purchase, merger, consolidation, reorganization, receivership sale or transfer, or otherwise.

4. Columns (c) and (e) should include all entries covering expenditures for additions and betterments, as defined, whether or not replacing other property.

5. All credits representing property sold, abandoned, or otherwise retires should be shown in column (f).

6. Both the debit and credit involved in each transfer, adjustment, or clearance, between road and equipment accounts, should be included in the column in which the item was initially included. Also, the transfer of prior years' debits or credits from investment in road and equipment to operating expenses or other accounts, or vice versa, should be included in the column applicable to current items of like nature. Each such transfer, adjustment, or clearance should be fully explained when in excess of $100,000.

7. If during the year an individual charge of $100,000 or more was made to Account No. 2, "Land for Transportation Purposes," state the cost, location, area, and other details which will identify the property in a footnote.

8. Report on line 29, amounts not included in the primary road accounts. The items reported should be briefly identified and explained under Notes and Remarks," below. Amounts should be reported on this line only under special circumstances, usually after permission is obtained from the Board for exceptions to prescribed accounting. Reference to such authority should be made when explaining the amounts reported. Respondents must not make arbitrary changes to the printed stub or column headings without specific authority from the Board.

9. If during the year a segment of transportation property was acquired, state in a footnote the name of the vendor, the mileage acquired, and the date of acquisition, giving location and cost of the property to the respondent. Also furnish a statement of the amount included in each primary account representing such property acquired, referring to the column or columns in which the entries appear.

10. If an amount of less than $5,000 is used as the minimum for additions and betterments to property investment accounts as provided for in Instruction 2-2 of the Uniform System of Accounts for Railroad Companies, state the amount used in a footnote.

NOTES AND REMARKS

330. ROAD PROPERTY AND EQUIPMENT AND IMPROVEMENTS TO LEASED PROPERTY AND EQUIPMENT

(Dollars in Thousands)

Line No.	Cross No.	Account (a)	Balance at Beginning of year (b)	Expenditures during the year for original road & equipment & road extensions (c)	Expenditures during the year for purchase of existing lines, reorganizations, etc. (d)	Line No.
1		(2) Land for transportation purposes	5,055,554			1
2		(3) Grading	3,960,461			2
3		(4) Other right-of-way expenditures	213,197			3
4		(5) Tunnels and subways	355,873			4
5		(6) Bridges, trestles and culverts	5,675,132			5
6		(7) Elevated structures	0			6
7		(8) Ties	12,357,592			7
8		(9) Rail and other track material	19,280,393			8
9		(11) Ballast	6,495,094			9
10		(13) Fences, snowsheds and signs	171,210			10
11		(16) Station and office buildings	1,224,272			11
12		(17) Roadway buildings	30,960			12
13		(18) Water stations	8,864			13
14		(19) Fuel stations	408,119			14
15		(20) Shops and enginehouses	649,729			15
16		(22) Storage warehouses	1,003			16
17		(23) Wharves and docks	73,260			17
18		(24) Coal and ore wharves	898			18
19		(25) TOFC/COFC terminals	1,761,691			19
20		(26) Communications systems	820,660			20
21		(27) Signals and interlockers	5,324,376			21
22		(29) Power plants	0			22
23		(31) Power transmission systems	284,481			23
24		(35) Miscellaneous structures	20,250			24
25		(37) Roadway machines	1,288,967			25
26		(39) Public improvements - construction	1,347,331			26
27		(44) Shop machinery	206,622			27
28		(45) Power plant machinery	0			28
29		Other lease/rentals	0			29
30		TOTAL EXPENDITURES FOR ROAD	67,015,989	0	0	30
31		(52) Locomotives	9,517,023			31
32		(53) Freight train cars	3,001,899			32
33		(54) Passenger train cars	0			33
34		(55) Highway revenue equipment	360,907			34
35		(56) Floating equipment	0			35
36		(57) Work equipment	203,915			36
37		(58) Miscellaneous equipment	591,111			37
38		(59) Computer systems & word processing equipment	1,410,255			38
39		TOTAL EXPENDITURES FOR EQUIPMENT	15,085,110	0	0	39
40		(76) Interest during construction	43,236			40
41		(80) Other elements of investment	0			41
42		(90) Construction work in progress	1,168,529			42
43		GRAND TOTAL	83,312,864	0	0	43

330. ROAD PROPERTY AND EQUIPMENT AND IMPROVEMENTS TO LEASED PROPERTY AND EQUIPMENT - (Continued)

(Dollars in Thousands)

Line No.	Cross No.	Expenditures for additions during the year (e)	Credits for property retired during the year (f)	Net changes during the year (g)	Balance at close of year (h)	Line No.
1		47,240	6,653	40,587	5,096,141	1
2		117,731	26,897	90,834	4,051,295	2
3		6,596	2,123	4,473	217,670	3
4		2,090	2,715	(625)	355,248	4
5		273,435	51,395	222,040	5,897,172	5
6		0	0	0	0	6
7		595,871	174,352	421,519	12,779,111	7
8		707,743	243,568	464,175	19,744,568	8
9		216,055	66,321	149,734	6,644,828	9
10		5,766	709	5,057	176,267	10
11		50,795	16,093	34,702	1,258,974	11
12		0	0	0	30,960	12
13		0	0	0	8,864	13
14		15,033	3,882	11,151	419,270	14
15		4,710	875	3,835	653,564	15
16		2,998	0	2,998	4,001	16
17		3,491	0	3,491	76,751	17
18		0	0	0	898	18
19		52,878	12,575	40,303	1,801,994	19
20		36,531	33,217	3,314	823,974	20
21		254,336	122,640	131,696	5,456,072	21
22		0	0	0	0	22
23		8,033	1,589	6,444	290,925	23
24		0	0	0	20,250	24
25		111,335	17,946	93,389	1,382,356	25
26		64,385	23,632	40,753	1,388,084	26
27		2,500	2,454	46	206,668	27
28		0	0	0	0	28
29		0	0	0	0	29
30		2,579,552	809,636	1,769,916	68,785,905	30
31		794,969	386,262	408,707	9,925,730	31
32		142,936	73,825	69,111	3,071,010	32
33		0	0	0	0	33
34		18	1,467	(1,449)	359,458	34
35		0	0	0	0	35
36		24,406	309	24,097	228,012	36
37		79,972	9,584	70,388	661,499	37
38		102,327	118,621	(16,294)	1,393,961	38
39		1,144,628	590,068	554,560	15,639,670	39
40		0	0	0	43,236	40
41		0	0	0	0	41
42		244,651	0	244,651	1,413,180	42
43		3,968,831	1,399,704	2,569,127	85,881,991	43

CN-38, FD 36873
PUBLIC VERSION

332. DEPRECIATION BASE AND RATES - ROAD AND EQUIPMENT OWNED AND USED AND LEASED FROM OTHERS

(Dollars in Thousands)

1. Show in columns (b) and (e), for each primary account, the depreciation base used to compute depreciation charges for the month of January, and in columns (c) and (f), the depreciation charges for the month of December. In columns (d) and (g) show the composite rates used in computing depreciation charges for December, and on lines 30 and 39 of these columns show the composite percentage for all road and equipment accounts, respectively, ascertained by applying the primary account composite rates to the depreciation base used in computing the charges for December, and dividing that total by the total depreciation base for the same month. The depreciation base should not include cost of equipment used, but not owned, when the rents are included in rent for equipment and account nos. 31-22-00, 31-23-00, 31-25-00, 31-21-00, 35-21-00, 35-23-00, 35-22-00, and 35-25-00. It should include cost of equipment owned and leased to others when the rents therefrom are included in the rent for equipment, accounts nos. 32-21-00, 32-22-00, 32-23-00, 32-25-00, 36-21-00, 36-22-00, 36-23-00, and 36-25-00., inclusive. Composite rates used should be those prescribed or authorized by the Board, except that where the use of component rates has been authorized, the composite rates to be shown for the respective primary accounts should be recomputed from the December charges developed by the use of the authorized rates. If any changes in rates were effective during the year, give particulars in a footnote.
2. All leased property may be combined and one composite rate computed for each primary account, or a separate schedule may be included for each such property.
3. Show in columns (e), (f), and (g) data applicable to lessor property, when the rent therefore is included in accounts nos. 31-11-00, 31-12-00, 31-13-00, 31-21-00, 31-22-00, and 31-23-00, inclusive.
4. If depreciation accruals have been discontinued for any account, the depreciation base should be reported, nevertheless, in support of depreciation reserves. Authority for discontinuance of accruals should be shown in a footnote, indicating the effected account(s).
5. Disclosures in the respective sections of this schedule may be omitted if either total road leased from others or total equipment leased from others represents less than 5% of total road owned or total equipment owned, respectively.

Line No.	Account (a)	OWNED AND USED Depreciation Base 1/1 At beginning of year (b)	OWNED AND USED Depreciation Base 12/1 At close of year (c)	OWNED AND USED Annual composite rate % (d)	LEASED FROM OTHERS Depreciation Base At beginning of year (e)	LEASED FROM OTHERS Depreciation Base At close of year (f)	LEASED FROM OTHERS Annual composite rate % (g)	Line No.
	ROAD							
1	(3) Grading	3,958,333	4,152,246	1.20				1
2	(4) Other right-of-way expenditures	213,098	218,891	2.44				2
3	(5) Tunnels and subways	355,650	355,248	0.89				3
4	(6) Bridges, trestles and culverts	5,669,521	5,920,915	1.49				4
5	(7) Elevated structures	0	0	0.00				5
6	(8) Ties	12,348,017	12,772,848	3.99				6
7	(9) Rail and other track material	19,263,203	19,949,389	2.86				7
8	(11) Ballast	6,488,866	6,653,859	2.94				8
9	(13) Fences, snowsheds and signs	171,119	190,419	1.82				9
10	(16) Station and office buildings	1,222,342	1,373,911	3.19				10
11	(17) Roadway buildings	30,960	30,960	2.78				11
12	(18) Water stations	8,864	8,864	2.17				12
13	(19) Fuel stations	408,114	433,070	2.70				13
14	(20) Shops and enginehouses	649,695	710,532	2.13				14
15	(22) Storage warehouses	1,003	5,240	2.00				15
16	(23) Wharves and docks	73,260	76,698	3.03				16
17	(24) Coal and ore wharves	898	898	2.56				17
18	(25) TOFC/COFC terminals	1,761,601	1,924,935	2.38				18
19	(26) Communications systems	817,682	832,084	3.70				19
20	(27) Signals and interlockers	5,310,777	5,527,653	4.35				20
21	(29) Power plants	0	0	0.00				21
22	(31) Power transmission systems	284,480	310,099	2.27				22
23	(35) Miscellaneous structures	20,250	20,250	2.22				23
24	(37) Roadway machines	1,288,029	1,370,520	5.65				24
25	(39) Public improvements - construction	1,346,065	1,389,970	2.33				25
26	(44) Shop machinery	206,373	206,739	3.27				26
27	(45) Power plant machinery	0	0	0				27
28	All other road accounts	0	0	0				28
29	Amortization (other than def. projects)	0	0	0				29
30	TOTAL ROAD	61,898,200	64,436,238	3.05				30
	EQUIPMENT							
31	(52) Locomotives	9,489,238	9,834,066	4.32				31
32	(53) Freight train cars	2,993,548	3,060,116	4.30				32
33	(54) Passenger train cars	0	0	0.00				33
34	(55) Highway revenue equipment	360,950	359,549	5.75				34
35	(56) Floating equipment	0	0	0.00				35
36	(57) Work equipment	203,915	229,222	3.54				36
37	(58) Miscellaneous equipment	591,063	646,538	6.56				37
38	(59) Computer systems & WP equipment	1,407,636	1,556,135	10.46				38
39	TOTAL EQUIPMENT	15,046,350	15,685,626	4.98				39
40	GRAND TOTAL	76,944,550	80,121,864	N/A			N/A	40

335. ACCUMULATED DEPRECIATION - ROAD AND EQUIPMENT OWNED AND USED

(Dollars in Thousands)

1. Disclose the required information regarding credits and debits to Account No. 735, "Accumulated Depreciation: Road and Equipment Property." during the year relating to owned and used road and equipment. Include entries for depreciation of equipment owned but not used when the resulting rents are included in the "Lease Rentals - Credit - Equipment" accounts and "Other Rents - Credit - Equipment" accounts. Exclude any entries for depreciation of equipment that is used but not owned when the resulting rents are included in "Lease Rental - Debit - Equipment" accounts and "Other Rents - Debit - Equipment" accounts.
2. If any data are included in columns (d) or (f), explain the entries in detail.
3. A debit balance in columns (b) or (g) for any primary account should be designated "Dr."
4. If there is any inconsistency between credits to reserves as shown in column (c) and charges to operating expenses, a full explanation should be given.
5. Enter amounts representing amortization under an authorized amortization program other than for defense projects on lines 29 and 39.

Line No.	Cross Check	Account (a)	Balance at beginning of year (b)	CREDITS TO RESERVE During the year: Charges to operating expenses (c)	CREDITS TO RESERVE During the year: Other credits (d)	DEBITS TO RESERVE During the year: Retirements (e)	DEBITS TO RESERVE During the year: Other debits (f)	Balance at close of year (g)	Line No.
		ROAD							
1		(3) Grading	710,097	60,399	0	26,862	0	743,634	1
2		(4) Other right-of-way expenditures	41,762	5,187	0	2,123	0	44,826	2
3		(5) Tunnels and subways	50,926	4,321	0	2,715	0	52,532	3
4		(6) Bridges, trestles and culverts	880,809	112,090	0	50,429	0	942,470	4
5		(7) Elevated structures	0	0	0	0	0	0	5
6		(8) Ties	5,635,228	479,697	0	253,884	0	5,861,041	6
7		(9) Rail and other track material	8,215,855	582,114	0	292,750	0	8,505,219	7
8		(11) Ballast	2,158,398	195,152	0	67,158	0	2,286,392	8
9		(13) Fences, snowsheds and signs	40,328	3,265	0	591	0	43,002	9
10		(16) Station and office buildings	413,167	35,765	0	15,451	0	433,481	10
11		(17) Roadway buildings	24,132	740	0	0	0	24,872	11
12		(18) Water stations	6,744	112	0	(2)	0	6,858	12
13		(19) Fuel stations	180,897	10,408	0	3,405	0	187,900	13
14		(20) Shops and enginehouses	269,605	12,624	0	838	0	281,391	14
15		(22) Storage warehouses	632	36	0	(19)	0	687	15
16		(23) Wharves and docks	35,547	1,295	0	(689)	0	37,531	16
17		(24) Coal and ore wharves	889	20	0	(1)	0	910	17
18		(25) TOFC/COFC terminals	543,227	39,589	0	11,999	0	570,817	18
19		(26) Communications systems	208,386	34,503	0	33,297	0	209,592	19
20		(27) Signals and interlockers	1,185,963	272,420	0	122,198	0	1,336,185	20
21		(29) Power plants	0	0	0	0	0	0	21
22		(31) Power transmission systems	69,368	6,593	0	1,534	0	74,427	22
23		(35) Miscellaneous structures	13,992	376	0	(11)	0	14,379	23
24		(37) Roadway machines **1/**	543,542	37,459	0	(17,134)	0	598,135	24
25		(39) Public improvements - const.	346,460	31,605	0	23,617	0	354,448	25
26		(44) Shop machinery **1/**	111,947	4,947	0	860	0	116,034	26
27		(45) Power plant machinery	0	0	0	0	0	0	27
28		All other road accounts	0	0	0	0	0	0	28
29		Amortization (adjustments)	0	0	0	0	0	0	29
30		TOTAL ROAD	21,687,901	1,930,717	0	891,855	0	22,726,763	30
		EQUIPMENT							
31		(52) Locomotives **1/**	3,722,664	347,374	0	258,035	0	3,812,003	31
32		(53) Freight train cars	1,031,286	123,655	0	53,847	0	1,101,094	32
33		(54) Passenger train cars	0	0	0	0	0	0	33
34		(55) Highway revenue equipment	243,971	12,523	0	497	0	255,997	34
35		(56) Floating equipment	0	0	0	0	0	0	35
36		(57) Work equipment **1/**	41,964	7,562	0	(944)	0	50,470	36
37		(58) Miscellaneous equipment	161,409	38,153	0	8,703	0	190,859	37
38		(59) Computer systems & WP equip.	623,812	147,605	0	118,343	0	653,074	38
39		Amortization (adjustments)	0	0	0	0	0	0	39
40		TOTAL EQUIPMENT	5,825,106	676,872	0	438,481	0	6,063,497	40
41		GRAND TOTAL	27,513,007	2,607,589	0	1,330,336	0	28,790,260	41

1/ Column (c) includes a reduction for costs charged to capital projects.

342. ACCUMULATED DEPRECIATION - IMPROVEMENTS TO ROAD AND EQUIPMENT LEASED FROM OTHERS

(Dollars in Thousands)

1. Enter the required information concerning debits and credits to Account 733, "Accumulated Depreciation - Improvements on Leased Property," during the year relating to improvements made to road and equipment property leased from others, the depreciation charges for which are included in operating expenses of the respondent.
2. If any entries are made for column (d) "Other credits" or column (f) "Other debits," state the facts occasioning such entries in the notes and remarks section. A debit balance in columns (b) or (g) for any primary account should be shown in parenthesis or designated "Dr."
3. Any inconsistency between credits to the reserve as shown in column (c) and charges to operating expenses should be fully explained in the notes and remarks section for Schedule 342.
4. Show in column (e) the debits to the reserve arising from retirements. These debits should not exceed investment, etc.
5. Disclosures in the respective sections of this schedule may be omitted if either total road leased from others or total equipment leased from others represents less than 5% of total road owned or total equipment owned, respectively. However, line 39, Grand Total, should be completed.

Line No.	Cross Check	Account (a)	Balance at beginning of year (b)	CREDITS TO RESERVE During the year: Charges to operating expenses (c)	CREDITS TO RESERVE During the year: Other credits (d)	DEBITS TO RESERVE During the year: Retirements (e)	DEBITS TO RESERVE During the year: Other debits (f)	Balance at close of year (g)	Line No.
		ROAD							
1		(3) Grading							1
2		(4) Other right-of-way expenditures							2
3		(5) Tunnels and subways							3
4		(6) Bridges, trestles and culverts							4
5		(7) Elevated structures							5
6		(8) Ties		Not Applicable					6
7		(9) Rail and other track material							7
8		(11) Ballast							8
9		(13) Fences, snowsheds and signs							9
10		(16) Station and office buildings							10
11		(17) Roadway buildings							11
12		(18) Water stations							12
13		(19) Fuel stations							13
14		(20) Shops and enginehouses							14
15		(22) Storage warehouses							15
16		(23) Wharves and docks							16
17		(24) Coal and ore wharves							17
18		(25) TOFC/COFC terminals							18
19		(26) Communications systems							19
20		(27) Signals and interlockers							20
21		(29) Power plants							21
22		(31) Power transmission systems							22
23		(35) Miscellaneous structures							23
24		(37) Roadway machines							24
25		(39) Public improvements - const.							25
26		(44) Shop machinery *							26
27		(45) Power plant machinery							27
28		All other road accounts							28
29		TOTAL ROAD							29
		EQUIPMENT							
30		(52) Locomotives							30
31		(53) Freight train cars							31
32		(54) Passenger train cars							32
33		(55) Highway revenue equipment							33
34		(56) Floating equipment							34
35		(57) Work equipment							35
36		(58) Miscellaneous equipment							36
37		(59) Computer systems & WP equip.							37
38		TOTAL EQUIPMENT							38
39		GRAND TOTAL	21,701	1,471	-	-	-	23,172	39

* To be reported with equipment expense rather than W&S expenses.

NOTES AND REMARKS

Notes Referring to Schedule 352A, page 38:

1/ Actual value not known. Amounts reported in lieu of actual value represent results of capitalizing rentals at 6 percent.

2/ Amounts of depreciation and amortization accrued are not known.

3/ As inventoried by ICC as of 12/31/1928, and reported in Land Report dated 3/31/1930, Engineering Report dated 5/09/1931. Includes estimated value based on capitalization of rentals at 6 percent.

4/ No depreciation reserve is maintained by respondent or by Moffat Tunnel Improvement District.

Notes Referring to Schedule 352B, page 39:

1/ Amounts on Schedule 352B, Column (c) represents St. Joseph and Grand Island Railway Company, which is included in the respondent's investments in property reported on line 1, column (d) of Schedule 352A.

2/ Amounts on Schedule 352B, Columns (b) and (c), exclude adjustments to Investment For Property Leased To or From Others, for which the "Actual Value is not Known." These items are shown on Schedule 352A as 1/ "Actual Value Not Known." Amounts so reported on Schedule 352A represent results of capitalizing annual rental at 6 percent.

352A. INVESTMENT IN RAILROAD PROPERTY USED IN TRANSPORTATION SERVICE (By Company)
(Dollars in Thousands)

1. Disclose the investment in railway property used in transportation service at the close of the year. This investment represents the aggregate of property owned or leased by respondent and used in respondent's transportation service. Such property includes (a) investment reported in Accounts 731, "Road and Equipment Property" and 732, "improvements on Leased Property" of respondent, less any 731 or 732 property leased to others for their exclusive use of road, track, or bridges (including equipment or other railway property covered by the contract). Equipment leased to others under separate distinct contracts shall not be deducted from respondent's 731 or 732 property, and (b) the investment of other companies' 731 or 732 property (including operating and lessor railroads) used by respondent when the lease is for exclusive use or control of roads, tracks, or bridges (including equipment or other railway property covered by the contract). This excludes leased equipment from operating railroads under separate distinct contracts and the investment of other carriers in property jointly used by respondent.
2. In column (a), classify each company in this schedule as: "R" for respondent, "L" for lessor railroad, "P" for inactive or proprietary company or "O" for other leased properties.
3. In columns (a) to (e), inclusive, first show the data requested for respondent (R); next show data for companies whose entire properties are used in transportation service of the respondent, divided between lessor (L) and proprietary (P) companies; followed by data for carriers and others (O), portions of whose property are used in transportation service of respondent. Show a total for each class of company in columns (d) and (e). Then show, as deductions. data for transportation property leased to carriers and others.
4. In column (c), line-haul carriers report the miles of road used in line-haul service. Report miles in whole numbers.
5. In column (d), show the amount applicable to Accounts 731 and 732 on the books of companies whose names appear in column (b). Values of property of other carriers segregated by estimate or otherwise should correspond in amount to deductions made by the owners in their reports. If separate value is not available, an explanation should be provided. Differences between amounts shown in column (d) of this schedule and column (c), line 24, on the asset side of the general balance sheet of each individual railway should be explained in a footnote. Book values included in Accounts 731 and 732 of the owner should be reported in column (d) in reference to the investment of respondent in securities of the owner unless a good reason can be given for the contrary. Methods of estimating (by capitalizing rentals at 6% or otherwise) value of property of private owners, or portions of property of other carriers, should be explained.
6. In column (e), show the amount of depreciation and amortization accrued as of the close of the year in Accounts 733, 734, 735, 736, and 772, that is applicable to the property of the carriers whose names are listed in column (b), regardless of where reserves therefor are recorded.

Line No.	Class (See Ins. 2) (a)	Name of company (b)	Miles of road used (See Ins. 4) (whole number) (c)	Investments in property (See Ins. 5) (d)	Depreciation & amortization of defense projects (See Ins. 6) (e)	Line No.
1	R	Union Pacific Railroad	26,275	$85,881,991	$28,790,260	1
2						2
3		**Add - Leased From Others**				3
4						4
5	O	U.S. Government - Sable to Bunell, CO used under contract	1			5
6	O	City of Kansas City, KS - Tracks		1/ 244	2/	6
7	O	General Motors		1/ 11	2/	7
8	O	Louisville & Nashville RR Co.,-SCL		16	2/	8
9	O	New Orleans Public Belt Railroad Co.		36	2/	9
10	O	Port of Corpus Christi		1/ 581	2/	10
11	O	Greater Baton Rouge Port Commission		1/ 2,960	2/	11
12	O	Lake Charles Harbor & Terminal District		1/ 104	2/	12
13	O	Port of Beaumont		1/ 419	2/	13
14	O	City and County of San Francisco (Formerly Ocean				14
15		Shore Railway) yard switching tracks		34	2/	15
16	O	Medford Corp, Medford, Oregon-Way switching tracks		40	2/	16
17	O	Nueces County Navigation Dist. No. 1 Terminal				17
18		Properties Corpus Christi, TX		581	2/	18
19	O	Moffat Tunnel Improvement District	9	3/ 11,435	4/	19
20						20
21						21
22						22
23		Total Leased From Others	10	16,461	0	23
24						24
25		**Deduct - Leased to Others:**				25
26						26
27	O	Houston Belt & Terminal Rwy. Co.	3	1/ 3,798	2/	27
28						28
29						29
30		Net Additions	7	12,663	0	30
31		TOTAL	26,282	$85,894,654	$28,790,260	31

See notes on page 37.

352B. INVESTMENT IN RAILROAD PROPERTY USED IN TRANSPORTATION SERVICE (By Property Account)
(Dollars in Thousands)

1. In columns (b) through (e) give, by primary accounts, the amount of investment at the close of the year in property of respondent and each group or class of companies and properties.

2. The amounts for respondent and for each group or class of companies and properties on line 44 should correspond with the amounts for each class of company and property shown in Schedule 352A. Continuing records shall be maintained by respondent of the primary property accounts separately for each company or property included in this schedule.

3. Report on line 29 amounts representing capitalization of rentals for leased property based on 6% per year where property is not classified by accounts by noncarrier owners, or where the cost of property leased from other carriers is not ascertainable. Identify noncarrier owners, and briefly explain on page 39 the methods of estimating value of property on noncarriers or property of other carriers.

4. Report on line 30 amounts not included in the accounts shown, or on line 29. The items reported should be briefly identified and explained. Also include here those items after permission is obtained from the Board for exceptions to prescribed accounting. Reference to such authority should be made when explaining amounts reported. Respondents must not make arbitrary changes to the printed stub or column headings without specific authority from the Board.

Line No.	Cross Check	Account (a)	Respondent (b)	1/ Lessor Railroads (c)	Inactive (proprietary companies) (d)	Other Leased Properties (e)	Line No.
1		(2) Land for transportation purposes	5,090,745	4,066		16	1
2		(3) Grading	4,044,722	6,573		108	2
3		(4) Other right-of-way expenditures	217,442	228			3
4		(5) Tunnels and subways	355,248	0		8,593	4
5		(6) Bridges, trestles and culverts	5,888,176	8,996		72	5
6		(7) Elevated structures	0	0			6
7		(8) Ties	12,768,294	10,817		793	7
8		(9) Rail and other track material	19,707,011	37,552		48	8
9		(11) Ballast	6,632,152	12,676		324	9
10		(13) Fences, snowsheds and signs	175,962	305		5	10
11		(16) Station and office buildings	1,258,290	684		19	11
12		(17) Roadway buildings	30,908	52		38	12
13		(18) Water stations	8,855	9			13
14		(19) Fuel stations	419,261	9			14
15		(20) Shops and enginehouses	653,509	55			15
16		(22) Storage warehouses	5,331	0			16
17		(23) Wharves and docks	76,751	0			17
18		(24) Coal and ore wharves	898	0			18
19		(25) TOFC/COFC terminals	1,800,075	1,919			19
20		(26) Communications systems	823,604	370			20
21		(27) Signals and interlockers	5,449,724	6,348		78	21
22		(29) Power plants	0	0			22
23		(31) Power transmission systems	290,906	19			23
24		(35) Miscellaneous structures	20,199	51			24
25		(37) Roadway machines	1,382,352	4			25
26		(39) Public improvements - construction	1,387,149	935		612	26
27		(44) Shop machinery	206,668	0			27
28		(45) Power plant machinery	0	0			28
29		Leased property (capitalized rentals)	0	0		2/ 950	29
30		Other (specify and explain)	0	0			30
31		TOTAL ROAD	68,694,232	91,668		11,656	31
32		(52) Locomotives	9,925,730	0			32
33		(53) Freight train cars	3,071,010	0			33
34		(54) Passenger train cars	0	0			34
35		(55) Highway revenue equipment	359,458	0			35
36		(56) Floating equipment	0	0			36
37		(57) Work equipment	228,012	0			37
38		(58) Miscellaneous equipment	661,498	1			38
39		(59) Computer systems & WP equipment	1,393,961	0			39
40		TOTAL EQUIPMENT	15,639,669	1			40
41		(76) Interest during construction	42,604	632		1,007	41
42		(80) Other elements of investment	0	0			42
43		(90) Construction work in progress	1,413,185	0			43
44		GRAND TOTAL	$85,789,690	$92,301		$12,663	44

See note on page 37.

INSTRUCTIONS CONCERNING RETURNS TO BE MADE IN SCHEDULE 410

Cross-checks

Schedule 410		**Schedule 210**
Line 620, column (h)	=	Line 14, column (b)
Line 620, column (f)	=	Line 14, column (d)
Line 620, column (g)	=	Line 14, column (e)
		Schedule 412
Line 136 thru 138 column (f)	=	Line 29, column (b)
Line 118 thru 123, and 130 thru 135, column (f)	=	Line 29, column (c)
		Schedule 414
Line 231, column (f)	=	Line 19, columns (b) thru (d)
Line 230, column (f)	=	Line 19, columns (e) thru (g)
		Schedule 415
Lines 207, 208, 211, 212, columns (f)	=	Lines 5, 38, column (f)
Lines 226, 227, column (f)	=	Lines 24, 39, column (f)
Lines 311, 312, 315, 316, column (f)	=	Lines 32, 35, 36, 37, 40, 41, column (f)
		And
		Schedule 414 Minus line 24, columns (b) thru (d) plus line 24, columns (e) thru (g)
		Schedule 415
Line 213, column (f)	=	Lines 5, 38, columns (c) and (d)
Line 232, column (f)	=	Lines 24, 39, columns (c) and (d)
Line 317, column (f)	=	Lines 32, 35, 36, 37, 40, 41, columns (c) and (d)
Lines 202, 203, 216, column (f), equal to or greater than, but variance cannot exceed line 216, column (f)		Lines 5, 38, column (b)
Lines 221, 222, 235, column (f), equal to or greater than, but variance cannot exceed line 235, column (f)		Lines 24, 39, column (b)
Lines 302 through 307 and 320, column (f) equal to or greater than, but variance cannot exceed line 320, column (f)		Lines 32, 35, 36, 37, 40, 41, column (b)
		Schedule 417
Line 507, column (f)	=	Line 1, column (j)
Line 508, column (f)	=	Line 2, column (j)
Line 509, column (f)	=	Line 3, column (j)
Line 510, column (f)	=	Line 4, column (j)
Line 511, column (f)	=	Line 5, column (j)
Line 512, column (f)	=	Line 6, column (j)
Line 513, column (f)	=	Line 7, column (j)
Line 514, column (f)	=	Line 8, column (j)
Line 515, column (f)	=	Line 9, column (j)
Line 516, column (f)	=	Line 10, column (j)
Line 517, column (f)	=	Line 11, column (j)
Schedule 450		**Schedule 210**
Line 4, column (b)	=	Line 47, column (b)

410. RAILWAY OPERATING EXPENSES
(Dollars in Thousands)

State the railway operating expenses on respondent's road for the year, classifying them in accordance with the Uniform System of Accounts for Railroad Companies, and allocate the common operating expenses in accordance with the Board's rules governing the separation of such expenses between freight and passenger services.

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		WAYS & STRUCTURES ADMINISTRATION								
1		Track	21,194	8,062	2,720	10,459	42,435	2,480	44,915	1
2		Bridge & building	680	855	163	0	1,698	1,892	3,590	2
3		Signal	18,166	5,315	10,696	2,092	36,269	1,796	38,065	3
4		Communication	117	119	108	0	344	351	695	4
5		Other	5,658	605	664	279	7,206	1,919	9,125	5
		REPAIRS AND MAINTENANCE								
6		Roadway - running	24,431	2,433	64,506	209	91,579	5,071	96,650	6
7		Roadway - switching	9,731	1,020	22,119	71	32,941	0	32,941	7
8		Tunnels & subways - running	6	0	26,304	0	26,310	860	27,170	8
9		Tunnels & subways - switching	2	0	7,939	0	7,941	0	7,941	9
10		Bridges & culverts - running	20,350	5,351	1,599	2,361	29,661	2,380	32,041	10
11		Bridges & culverts - switching	7,631	1,994	1,854	804	12,283	0	12,283	11
12		Ties - running	5,150	7,899	1,146	1,022	15,217	360	15,577	12
13		Ties - switching	1,778	2,788	390	348	5,304	0	5,304	13
14		Rail & other track material - running	147,451	28,983	60,205	6,172	242,811	8,491	251,302	14
15		Rail & other track material - switching	52,626	10,191	5,966	2,101	70,884	9	70,893	15
16		Ballast - running	30,025	1,581	3,627	0	35,233	215	35,448	16
17		Ballast - switching	10,224	577	1,286	0	12,087	0	12,087	17
18		Road property damaged - running	916	0	383	0	1,299	44	1,343	18
19		Road property damaged - switching	322	0	130	0	452	4	456	19
20		Road property damaged - other	102	0	41	0	143	0	143	20
21		Signals & interlockers - running	69,504	13,171	16,003	1,541	100,219	10,638	110,857	21
22		Signals & interlockers - switching	26,420	5,151	5,746	585	37,902	0	37,902	22
23		Communications systems	17,160	4,504	3,563	311	25,538	53	25,591	23
24		Power systems	1,691	0	0	0	1,691	731	2,422	24
25		Highway grade crossings - running	20,486	262	5,361	0	26,109	1,132	27,241	25
26		Highway grade crossings - switching	0	0	0	0	0	0	0	26
27		Station & office buildings	1,112	5,086	64,586	2	70,786	4,436	75,222	27
28		Shop buildings - locomotives	7,024	0	3,066	0	10,090	119	10,209	28
29		Shop buildings - freight cars	2	0	905	0	907	0	907	29
30		Shop buildings - other equipment	0	39,552	56	0	39,608	0	39,608	30

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

State the railway operating expenses on respondent's road for the year, classifying them in accordance with the Uniform System of Accounts for Railroad Companies, and allocate the common operating expenses in accordance with the Board's rules governing the separation of such expenses between freight and passenger services.

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		REPAIRS AND MAINTENANCE - (Continued)								
101		Locomotive servicing facilities	0	0	15,707	0	15,707	39	15,746	101
102		Miscellaneous buildings & structures	1,346	275	829	0	2,450	1,778	4,228	102
103		Coal terminals	0	0	0	0	0	0	0	103
104		Ore terminals	0	0	0	0	0	0	0	104
105		Other marine terminals	0	0	0	0	0	0	0	105
106		TOFC/COFC terminals	0	0	45,077	0	45,077	0	45,077	106
107		Motor vehicle loading & distribution facilities	0	0	0	0	0	0	0	107
108		Facilities for other specialized service operations	0	0	0	0	0	0	0	108
109		Roadway machines	4,019	1,119	0	448	5,586	1,796	7,382	109
110		Small tools & supplies	0	0	0	0	0	0	0	110
111		Snow removal	148	4,267	14,022	0	18,437	1,392	19,829	111
112		Fringe benefits - running	0	0	0	123,690	123,690	10,247	133,937	112
113		Fringe benefits - switching	0	0	0	38,975	38,975	675	39,650	113
114		Fringe benefits - other	0	0	0	51,459	51,459	1,298	52,757	114
115		Casualties & insurance - running	0	0	0	16,077	16,077	0	16,077	115
116		Casualties & insurance - switching	0	0	0	5,846	5,846	0	5,846	116
117		Casualties & insurance - other	0	0	0	1,462	1,462	0	1,462	117
118	*	Lease rentals - debit -running	0	0	160	0	160	0	160	118
119	*	Lease rentals - debit -switching	0	0	0	0	0	0	0	119
120	*	Lease rentals - debit -other	0	0	55,687	0	55,687	576	56,263	120
121	*	Lease rentals - (credit) - running	0	0	0	0	0	0	0	121
122	*	Lease rentals - (credit) - switching	0	0	0	0	0	0	0	122
123	*	Lease rentals - (credit) - other	0	0	(1,252)	0	(1,252)	0	(1,252)	123
124		Joint facility rent - debit - running	0	0	22,431	0	22,431	0	22,431	124
125		Joint facility rent - debit - switching	0	0	2,793	0	2,793	0	2,793	125
126		Joint facility rent - debit - other	0	0	221	0	221	0	221	126
127		Joint facility rent - (credit) - running	0	0	(4,418)	0	(4,418)	0	(4,418)	127
128		Joint facility rent - (credit) - switching	0	0	(219)	0	(219)	0	(219)	128
129		Joint facility rent - (credit) - other	0	0	(289)	0	(289)	0	(289)	129
130	*	Other rents - debit - running	0	0	0	0	0	0	0	130
131	*	Other rents - debit - switching	0	0	0	0	0	0	0	131
132	*	Other rents - debit - other	0	0	0	0	0	0	0	132
133	*	Other rents - (credit) - running	0	0	0	0	0	0	0	133

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

State the railway operating expenses on respondent's road for the year, classifying them in accordance with the Uniform System of Accounts for Railroad Companies, and allocate the common operating expenses in accordance with the Board's rules governing the separation of such expenses between freight and passenger services.

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		REPAIRS AND MAINTENANCE - (Continued)								
134	*	Other rents - (credit) - switching	N/A	N/A	0	N/A	0	0	0	134
135	*	Other rents - (credit) - other	N/A	N/A	0	N/A	0	0	0	135
136	*	Depreciation - running	N/A	N/A	N/A	1,328,539	1,328,539	2,061	1,330,600	136
137	*	Depreciation - switching	N/A	N/A	N/A	453,215	453,215	0	453,215	137
138	*	Depreciation - other	N/A	N/A	N/A	141,955	141,955	0	141,955	138
139		Joint facility - debit - running	N/A	N/A	135,340	N/A	135,340	189	135,529	139
140		Joint facility - debit - switching	N/A	N/A	11,889	N/A	11,889	0	11,889	140
141		Joint facility - debit - other	N/A	N/A	255	N/A	255	0	255	141
142		Joint facility - (credit) - running	N/A	N/A	(30,747)	N/A	(30,747)	0	(30,747)	142
143		Joint facility - (credit) - switching	N/A	N/A	0	N/A	0	0	0	143
144		Joint facility - (credit) - other	N/A	N/A	(106)	N/A	(106)	0	(106)	144
145		Dismantling retired road property - running	4,357	1,292	8,760	7,728	22,137	0	22,137	145
146		Dismantling retired road property - switching	0	0	0	0	0	0	0	146
147		Dismantling retired road property - other	0	0	0	0	0	0	0	147
148		Other - running	0	0	0	0	0	0	0	148
149		Other - switching	0	0	0	0	0	0	0	149
150		Other - other	0	888	39	0	927	0	927	150
151		TOTAL WAY AND STRUCTURES	509,829	153,340	587,311	2,197,751	3,448,231	63,032	3,511,263	151
		EQUIPMENT - LOCOMOTIVES								
201		Administration	41,589	3,124	5,621	795	51,129	3,203	54,332	201
202	*	Repair & maintenance	104,802	315,195	162,897	1,721	584,615	797	585,412	202
203	*	Machinery repair	0	670	7,894	0	8,564	0	8,564	203
204		Equipment damaged	0	0	0	0	0	0	0	204
205		Fringe benefits	N/A	N/A	N/A	62,971	62,971	545	63,516	205
206		Other casualties & insurance	N/A	N/A	N/A	14,616	14,616	0	14,616	206
207	*	Lease rentals - debit	N/A	N/A	91,186	N/A	91,186	0	91,186	207
208	*	Lease rentals - (credit)	N/A	N/A	0	N/A	0	0	0	208
209		Joint facility rent - debit	N/A	N/A	615	N/A	615	0	615	209
210		Joint facility rent - (credit)	N/A	N/A	0	N/A	0	0	0	210
211	*	Other rents - debit	N/A	N/A	0	N/A	0	0	0	211
212	*	Other rents - (credit)	N/A	N/A	(29,754)	N/A	(29,754)	0	(29,754)	212
213	*	Depreciation	N/A	N/A	N/A	350,951	350,951	34	350,985	213
214		Joint facility - debit	N/A	N/A	560	N/A	560	0	560	214
215		Joint facility - (credit)	N/A	N/A	0	N/A	0	0	0	215
216	*	Repairs billed to others - (credit)	N/A	N/A	0	N/A	0	0	0	216

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

State the railway operating expenses on respondent's road for the year, classifying them in accordance with the Uniform System of Accounts for Railroad Companies, and allocate the common operating expenses in accordance with the Board's rules governing the separation of such expenses between freight and passenger services.

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
217		LOCOMOTIVES - (Continued) Dismantling retired property	0	0	0	0	0	0	0	217
218		Other	3,562	42	162	457	4,223	0	4,223	218
219		TOTAL LOCOMOTIVES	149,953	319,031	239,181	431,511	1,139,676	4,579	1,144,255	219
220		FREIGHT CARS Administration	7,744	(2,479)	508	351	6,124	N/A	6,124	220
221	*	Repair & maintenance	64,975	271,012	98,027	2,658	436,672	N/A	436,672	221
222	*	Machinery repair	0	699	9,342	0	10,041	N/A	10,041	222
223		Equipment damaged	0	0	0	0	0	N/A	0	223
224		Fringe benefits	N/A	N/A	N/A	30,537	30,537	N/A	30,537	224
225		Other casualties & insurance	N/A	N/A	N/A	68,846	68,846	N/A	68,846	225
226	*	Lease rentals - debit	N/A	N/A	152,895	N/A	152,895	N/A	152,895	226
227	*	Lease rentals - (credit)	N/A	N/A	(254)	N/A	(254)	N/A	(254)	227
228		Joint facility rent - debit	N/A	N/A	0	N/A	0	N/A	0	228
229		Joint facility rent - (credit)	N/A	N/A	0	N/A	0	N/A	0	229
230	*	Other rents - debit	N/A	N/A	834,080	N/A	834,080	N/A	834,080	230
231	*	Other rents - (credit)	N/A	N/A	(191,138)	N/A	(191,138)	N/A	(191,138)	231
232	*	Depreciation	N/A	N/A	N/A	124,941	124,941	N/A	124,941	232
233		Joint facility - debit	N/A	N/A	0	N/A	0	N/A	0	233
234		Joint facility - (credit)	N/A	N/A	0	N/A	0	N/A	0	234
235	*	Repairs billed to others - (credit)	N/A	N/A	(301,037)	N/A	(301,037)	N/A	(301,037)	235
236		Dismantling retired property	0	0	0	0	0	N/A	0	236
237		Other	0	0	0	0	0	N/A	0	237
238		TOTAL FREIGHT CARS	72,719	269,232	602,423	227,333	1,171,707	N/A	1,171,707	238
301		OTHER EQUIPMENT Administration	0	0	0	0	0	1,647	1,647	301
		Repair & maintenance:	0	0	0	0				
302	*	Trucks, trailers, & containers - revenue service	1	2,777	12,021	6	14,805	N/A	14,805	302
303	*	Floating equipment - revenue service	0	0	0	0	0	N/A	0	303
304	*	Passenger & other revenue equipment	(684)	0	19	3	(662)	2,545	1,883	304
305	*	Computers and data processing equipment	0	3,820	73,415	0	77,235	25	77,260	305
306	*	Machinery	0	376	2,970	0	3,346	190	3,536	306
307	*	Work & other non-revenue equipment	1,938	1,767	69,060	0	72,765	2,280	75,045	307
308		Equipment damaged	0	0	27	0	27	0	27	308
309		Fringe benefits	N/A	N/A	N/A	527	527	297	824	309
310		Other casualties & insurance	N/A	N/A	N/A	0	0	0	0	310
311	*	Lease rentals - debit	N/A	N/A	64,793	N/A	64,793	693	65,486	311
312	*	Lease rentals - (credit)	N/A	N/A	(614)	N/A	(614)	0	(614)	312

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

State the railway operating expenses on respondent's road for the year, classifying them in accordance with the Uniform System of Accounts for Railroad Companies, and allocate the common operating expenses in accordance with the Board's rules governing the separation of such expenses between freight and passenger services.

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		OTHER EQUIPMENT (Continued)								
313		Joint facility rent - debit	N/A	N/A	0	N/A	0	0	0	313
314		Joint facility rent - (credit)	N/A	N/A	0	N/A	0	0	0	314
315		Other rents - debit	N/A	N/A	239	N/A	239	0	239	315
316		Other rents - (credit)	N/A	N/A	0	N/A	0	0	0	316
317		Depreciation	N/A	N/A	0	205,746	205,746	147	205,893	317
318		Joint facility - debit	N/A	N/A	9,088	N/A	9,088	0	9,088	318
319		Joint facility - (credit)	N/A	N/A	0	N/A	0	0	0	319
320		Repairs billed to others - (credit)	N/A	N/A	(5,875)	N/A	(5,875)	0	(5,875)	320
321		Dismantling retired property	0	0	0	0	0	0	0	321
322		Other	0	70	479	23	572	0	572	322
323		TOTAL OTHER EQUIPMENT	1,255	8,810	225,622	206,305	441,992	7,824	449,816	323
324		TOTAL EQUIPMENT	223,927	597,073	1,067,226	865,149	2,753,375	12,403	2,765,778	324
		TRANSPORTATION								
		TRAIN OPERATIONS								
401		Administration	29,768	4,137	1,136	1,411	36,452	3,720	40,172	401
402		Engine crews	885,944	2,948	1,836	140,485	1,031,213	3,977	1,035,190	402
403		Train crews	551,802	536	71	5	552,414	11,442	563,856	403
404		Dispatching trains	49,240	42	0	141	49,423	700	50,123	404
405		Operating signals & interlockers	0	0	8,186	0	8,186	259	8,445	405
406		Operating drawbridges	0	0	0	0	0	0	0	406
407		Highway crossing protection	0	0	4,152	0	4,152	0	4,152	407
408		Train inspection & lubrication	62,698	38,149	2,089	9,891	112,827	18	112,845	408
409		Locomotive fuel	0	2,051,425	0	0	2,051,425	0	2,051,425	409
410		Electric power produced or purchased for motive power	0	0	0	0	0	0	0	410
411		Servicing locomotives	102,461	1,641	13,188	0	117,290	(7)	117,283	411
412		Freight lost or damaged - solely related	0	0	0	0	0	0	0	412
413		Clearing wrecks	70	66	45,289	0	45,425	0	45,425	413
414		Fringe benefits	0	0	0	686,450	686,450	6,581	693,031	414
415		Other casualties & insurance	0	0	0	75,999	75,999	0	75,999	415
416		Joint facility - debit	0	0	183,053	0	183,053	0	183,053	416
417		Joint facility - (credit)	0	0	(176,938)	0	(176,938)	0	(176,938)	417
418		Other	110,519	185	219,644	4,438	334,786	247	335,033	418
419		TOTAL TRAIN OPERATIONS	1,792,502	2,099,129	301,706	918,820	5,112,157	26,937	5,139,094	419
		YARD OPERATIONS								
420		Administration	6,188	786	11,138	178	18,290	4	18,294	420
421		Switch crews	242,892	8,029	4,299	46,335	301,555	537	302,092	421

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

State the railway operating expenses on respondent's road for the year, classifying them in accordance with the Uniform System of Accounts for Railroad Companies, and allocate the common operating expenses in accordance with the Board's rules governing the separation of such expenses between freight and passenger services.

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		YARD OPERATIONS - (Continued)								
422		Controlling operations	52,385	0	0	0	52,385	1,112	53,497	422
423		Yard and terminal clerical	2,729	352	0	38	3,119	1,011	4,130	423
424		Operating switches, signals, retarders, & humps	198	1	8,141	0	8,340	356	8,696	424
425		Locomotive fuel	0	276,692	0	0	276,692	0	276,692	425
426		Electric power produced or purchased for motive power	0	0	0	0	0	0	0	426
427		Servicing locomotives	0	0	0	0	0	0	0	427
428		Freight lost or damaged - solely related	N/A	N/A	N/A	0	0	0	0	428
429		Clearing wrecks	0	0	0	0	0	0	0	429
430		Fringe benefits	N/A	N/A	N/A	116,570	116,570	1,033	117,603	430
431		Other casualties & insurance	N/A	N/A	N/A	13,154	13,154	0	13,154	431
432		Joint facility - debit	N/A	N/A	74,247	N/A	74,247	0	74,247	432
433		Joint facility - (credit)	N/A	N/A	(3,626)	N/A	(3,626)	0	(3,626)	433
434		Other	0	0	0	0	0	0	0	434
435		TOTAL YARD OPERATIONS	304,392	285,860	94,199	176,275	860,726	4,053	864,779	435
		TRAIN & YARD OPERATIONS COMMON:								
501		Cleaning car interiors	0	814	19,810	N/A	20,624	0	20,624	501
502		Adjusting & transferring loads	0	0	14,836	N/A	14,836	N/A	14,836	502
503		Car loading devices & grain docks	0	222	0	N/A	222	N/A	222	503
504		Freight lost or damaged - all other	0	N/A	0	90,648	90,648	0	90,648	504
505		Fringe benefits	0	N/A	0	0	0	0	0	505
506		TOTAL TRAIN & YARD OPERATIONS COMMON:	0	1,036	34,646	90,648	126,330	0	126,330	506
		SPECIALIZED SERVICE OPERATIONS								
507	*	Administration	4,406	780	9,951	108	15,245	N/A	15,245	507
508	*	Pickup & delivery and marine line haul	0	0	45,404	0	45,404	N/A	45,404	508
509	*	Loading & unloading and local marine	26,814	498	268,394	601	296,307	0	296,307	509
510	*	Protective services	0	0	23,311	0	23,311	N/A	23,311	510
511	*	Freight lost or damaged - solely related	N/A	N/A	N/A	0	0	N/A	0	511
512	*	Fringe benefits	N/A	N/A	N/A	15,592	15,592	N/A	15,592	512
513	*	Casualties & insurance	N/A	N/A	N/A	1,462	1,462	N/A	1,462	513
514	*	Joint facility - debit	N/A	N/A	0	0	0	N/A	0	514
515	*	Joint facility - (credit)	N/A	N/A	0	0	0	N/A	0	515
516	*	Other	9,495	0	3,737	73	13,305	N/A	13,305	516
517	*	TOTAL SPECIALIZED SERVICE OPERATIONS	40,715	1,278	350,797	17,836	410,626	0	410,626	517

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

State the railway operating expenses on respondent's road for the year, classifying them in accordance with the Uniform System of Accounts for Railroad Companies, and allocate the common operating expenses in accordance with the Board's rules governing the separation of such expenses between freight and passenger services.

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		ADMINISTRATIVE SUPPORT OPERATIONS:								
518		Administration	143,632	17,775	4,626	2,209	168,242	1,973	170,215	518
519		Employees performing clerical & accounting functions	7,387	5,924	9,674	121	23,106	2,753	25,859	519
520		Communication systems operations	4,591	0	10,103	261	14,955	880	15,835	520
521		Loss & damage claims processing	2,628	57	6,963	233	9,881	0	9,881	521
522		Fringe benefits	N/A	N/A	0	63,023	63,023	1,157	64,180	522
523		Casualties & insurance	N/A	N/A	0	7,308	7,308	0	7,308	523
524		Joint facility - debit	N/A	N/A	0	N/A	0	0	0	524
525		Joint facility - (credit)	N/A	N/A	(23)	N/A	(23)	0	(23)	525
526		Other	6,332	2	3,003	96	9,433	0	9,433	526
527		TOTAL ADMINISTRATIVE SUPPORT OPERATIONS	164,570	23,758	34,346	73,251	295,925	6,763	302,688	527
528		TOTAL TRANSPORTATION	2,302,179	2,411,061	815,694	1,276,830	6,805,764	37,753	6,843,517	528
		GENERAL AND ADMINISTRATIVE								
601		Officers - general administration	97,629	7,229	49,693	29,003	183,554	206	183,760	601
602		Accounting, auditing, & finance	35,519	19	2,541	882	38,961	271	39,232	602
603		Management services & data processing	67,979	1,549	41,640	1,408	112,576	625	113,201	603
604		Marketing	43,275	1,036	16,585	5,778	66,674	16	66,690	604
605		Sales	0	0	532	0	532	0	532	605
606		Industrial development	3,210	1	3	232	3,446	0	3,446	606
607		Personnel & labor relations	27,135	1,007	3,514	17,834	49,490	1,421	50,911	607
608		Legal & secretarial	16,527	62	69,934	2,303	88,826	338	89,164	608
609		Public relations & advertising	4,549	14	1,112	13,617	19,292	67	19,359	609
610		Research & development	0	0	0	0	0	0	0	610
611		Fringe benefits	N/A	N/A	N/A	159,202	159,202	335	159,537	611
612		Casualties & insurance	N/A	N/A	N/A	86,547	86,547	0	86,547	612
613		Writedown of uncollectible accounts	N/A	N/A	N/A	23,726	23,726	0	23,726	613
614		Property taxes	N/A	N/A	N/A	615,376	615,376	2,719	618,095	614
615		Other taxes except on corporate income or payroll	N/A	N/A	N/A	62,642	62,642	36	62,678	615
616		Joint facility - debit	N/A	N/A	4,782	N/A	4,782	0	4,782	616
617		Joint facility - (credit)	N/A	N/A	0	N/A	0	0	0	617
618		Other	45,224	16,072	68,848	(6,645)	123,499	9	123,508	618
619		TOTAL GENERAL AND ADMINISTRATIVE	341,047	26,989	259,184	1,011,905	1,639,125	6,043	1,645,168	619
620	*	TOTAL CARRIER OPERATING EXPENSE	3,376,982	3,188,463	2,729,415	5,351,635	14,646,495	119,231	14,765,726	620

412. WAY AND STRUCTURES

(Dollars in Thousands)

1, Report freight expenses only.

2. The total depreciation expense reported in column (b), line 29, should balance to the sum of the depreciation expense reported in Schedule 410, column (f), lines 136, 137, and 138.

3. Report in column (c) the lease/rentals for the various property categories of way and structures. The total lease/rentals reported in column (c), line 29, should balance the net amount reported in Schedule 410, column (f), lines 118 through 123, plus lines 130 through 135. If an entire road or segment of track is leased and if the actual breakdown of lease/rentals by property category is not known, apportion the lease/rentals based on the percentage of the categories' depreciation bases for all categories of depreciable leased property. Use Schedule 352B of this report to obtain the depreciation bases of the categories of leased property.

4. Amortization adjustment of each road property type which is included in column (b) shall be repeated in column (d) as a debit or credit to the appropriate line item. The net adjustment on line 29, shall equal the adjustment reported on line 29 of Schedule 335, excluding Account 44, Shop Machinery.

5. Report on line 28, all other lease rentals not apportioned in any category listed on lines 1 through 27.

6. Line 11, Account 16, should not include computer and data processing equipment reported on line 37 of Schedule 415.

Line No.	Cross Check	Property Account	Category (a)	Depreciation (b)	Lease/rentals (net) (c)	Amortization adjustment during year (d)	Line No.
1		2	Land for transportation purposes	N/A		0	1
2		3	Grading	60,334		(1,062)	2
3		4	Other right-of-way expenditures	5,181		6	3
4		5	Tunnels and subways	4,316		(102)	4
5		6	Bridges, trestles and culverts	111,970		1,654	5
6		7	Elevated structures	0		0	6
7		8	Ties	479,184		(17,879)	7
8		9	Rail and other track material	581,491		21,851	8
9		11	Ballast	194,943		4,131	9
10		13	Fences, snowsheds and signs	3,262		105	10
11		16	Station and office buildings	35,725		(1,210)	11
12		17	Roadway buildings	739		(121)	12
13		18	Water stations	112		(72)	13
14		19	Fuel stations	10,397		(702)	14
15		20	Shops and enginehouses	12,610		(1,256)	15
16		22	Storage warehouses	36		0	16
17		23	Wharves and docks	1,294		0	17
18		24	Coal and ore wharves	21		(3)	18
19		25	TOFC/COFC terminals	39,547		(2,448)	19
20		26	Communications systems	34,466		4,033	20
21		27	Signals and interlockers	272,128		39,315	21
22		29	Power plants	0		0	22
23		31	Power transmission systems	6,586		94	23
24		35	Miscellaneous structures	376		(58)	24
25		37	Roadway machines	37,419		(3,518)	25
26		39	Public improvements; construction	31,572		(616)	26
27		45	Power plant machines	0		0	27
28			Other lease/rentals	N/A	54,595	N/A	28
29			TOTAL	1,923,709	54,595	42,142	29

414. RENTS FOR INTERCHANGED FREIGHT TRAIN CARS AND OTHER FREIGHT CARRYING EQUIPMENT

(Dollars in Thousands)

1. Report freight expenses only.
2. Report in this supporting schedule rental information by car type and other freight-carrying equipment relating to the interchange of railroad owned or leased equipment and privately owned equipment. (Reporting for leased equipment covers equipment with the carrier's own railroad markings.)
3. The gross amounts receivable and payable for freight-train cars (line 19, columns (b) through (d), and line 19, columns (e) through (g), respectively) should balance with Schedule 410, column (f) lines 231 (credits) and 230 (debits). Trailer and container rentals in this schedule are included in Schedule 410, column (f) lines 315 and 316. However, the trailer and container rentals in this schedule will not balance to lines 315 and 316 of Schedule 410 because those lines include rents for "Other Equipment" which is reported in Schedule 415, column (e). The balancing of Schedules 410, 414, and 415 "Other Equipment" is outlined in note 6 to Schedule 415.
4. Report in columns (b) and (e) rentals for private-line cars (whether under railroad control or not) and shipper owned cars.
5. Report in columns (c), (d), (f), and (g) rentals for railroad owned cars prescribed by the Board in Ex Parte No. 334, for which rentals are settled on a combination mileage and time basis (basic per diem). Include railroad owned per diem tank cars on line 17.

NOTE: Mechanical designations for each car type are shown in Schedule 710.

Line No.	Cross Check	Type of Equipment (a)	GROSS AMOUNTS RECEIVABLE Per Diem Basis			GROSS AMOUNTS PAYABLE Per Diem Basis			Line No.
			Private Line Cars (b)	Mileage (c)	Time (d)	Private Line Cars (e)	Mileage (f)	Time (g)	
		CAR TYPES							
1		Box - Plain 40 Foot		0	0	0	0	0	1
2		Box - Plain 50 Foot and Longer		1,440	6,839	3,857	2,393	5,219	2
3		Box - Equipped		3,348	15,018	76,804	10,622	23,838	3
4		Gondola - Plain		252	1,960	9,047	1,490	3,097	4
5		Gondola - Equipped		602	5,971	0	6,323	11,185	5
6		Hopper - Covered		7,625	24,872	63,860	8,333	15,733	6
7		Hopper - Open Top - General Service		90	1,011	0	176	221	7
8		Hopper - Open Top - Special Service		26	320	0	33	108	8
9		Refrigerator - Mechanical		1,530	7,381	32	5	52	9
10		Refrigerator - Nonmechanical		1	26	0	14	40	10
11		Flat - TOFC/COFC		0	0	210,216	21,898	48,991	11
12		Flat - Multi-Level		682	6,310	98,245	4,177	51,808	12
13		Flat - General Service		0	0	0	14	54	13
14		Flat - Other		304	2,346	47,789	5,438	13,990	14
15		Tank - Under 22,000 Gallons		0	0	419	0	0	15
16		Tank - 22,000 Gallons and Over		0	0	32	0	0	16
17		All Other Freight Cars		0	1	0	14	52	17
18		Auto Racks		0	103,183	0	0	88,461	18
19		TOTAL FREIGHT TRAIN CARS	0	15,900	175,238	510,301	60,930	262,849	19
		OTHER FREIGHT CARRYING EQUIPMENT							
20		Refrigerated Trailers		0	0	0	0	0	20
21		Other Trailers		0	0	0	0	119	21
22		Refrigerated Containers		0	0	0	0	0	22
23		Other Containers		0	0	0	0	120	23
24	*	TOTAL TRAILERS AND CONTAINERS	0	0	0	0	0	239	24
25		GRAND TOTAL (Lines 19 and 24)	0	15,900	175,238	510,301	60,930	263,088	25

NOTES AND REMARKS

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CN-38, FD 36873
PUBLIC VERSION

GENERAL INSTRUCTIONS CONCERNING RETURNS TO BE MADE TO SCHEDULE 415

1. Report freight expenses only.

2. Report by type of equipment all natural expenses relating to equipment functions (salaries and wages, materials, tools, supplies, fuels and lubricants, purchased services, and general).

3. Report in column (b) net repair expense, excluding the cost to repair damaged equipment.
   Schedule 415, column (b) will balance to Schedule 410, column (f) as follows:
   (a) Locomotives, line 5 plus line 38, compared to the sum of Schedule 410, lines 202, 203, and 216 (excluding wreck repairs). Do not report in Schedule 415, Equipment Damaged from Schedule 410, line 204.
   (b) Freight cars, line 24 plus line 39, compared to the sum of Schedule 410, lines 221, 222, and 235 (excluding wreck repairs). Do not report in Schedule 415, Equipment Damaged from Schedule 410, line 223.
   (c) Sum of highway equipment (line 32), floating equipment (line 35), passenger and other revenue equipment (line 36), computer and data processing equipment (line 37), machinery-other equipment (line 40), and work and other non-revenue equipment (line 41), compared to Schedule 410, the sum of lines 302 through 307, plus line 320 (excluding wreck repairs). Do not report in Schedule 415, equipment damaged from Schedule 410, line 308.
   Note: Lines 216, 235, and 320 of Schedule 410 are credit amounts.
   The allocation of freight car repair expenses reportable on Schedule 415 by car types shall be in accordance with Instruction 2-21, Freight train repair costing, 49 CFR 1201.

4. Depreciation expense for each class of equipment by car type shall be reported in columns (c) and (d). For improvements on leased property, Accounts 732 and 733, use a supplementary Schedule 415, which will relate to Schedules 342.
   Depreciation charges reported in columns (c) and (d) will balance to Schedule 410, column (f) as follows:
   (a) Locomotives, lines 5 and 38, compared to Schedule 410, line 213.
   (b) Freight cars, lines 24 and 39, compared to Schedule 410, line 232.
   (c) Sum of highway equipment (line 32), floating equipment (line 35), passenger and other revenue equipment (line 36), computer and data processing equipment (line 37), machinery-other equipment (line 40), and work and other non-revenue equipment (line 41), compared to Schedule 410, line 317.

5. Amortization adjustment of each equipment type which is included in column (c) shall be reported in column (e) as a debit or credit to the appropriate line item. The net adjustment on line 43 shall equal the equipment amortization adjustment applicable to equipment used in freight service included in line 39, column (c), of Schedule 335.

6. Lease/rentals reported in column (f) should balance to column (f) of Schedule 410 as follows:
   (a) Locomotives, lines 5 and 38, compared to Schedule 410, lines 207, 208, 211, and 212.
   (b) Freight cars, lines 24 and 39, compared to Schedule 410, lines 226 and 227 (note that Schedule 410, lines 230 and 231, are reported in Schedule 415, and are not included in Schedule 415).
   (c) Sum of lease/rentals for all other equipment, lines 32, 35, 36, 37, 40, and 41, will balance to Schedule 410, lines 311, 312, 315, and 316, except for the interchange rental on trailers and containers which is reported in Schedule 414. Therefore, both Schedules 414 and 415 should be used when balancing lease/rentals other equipment to Schedule 410. Do not report in Schedule 415, the trailer and container rentals reported in Schedule 414.

7. Investment base by types of equipment shall be reported in columns (g) and (h) and should not include the cost of equipment used but not owned when rents therefore are included in the rent for equipment and Account Nos. 31-21-00, 31-22-00, 31-23-00, 35-21-00, 35-22-00, and 35-23-00. It should include the cost of equipment owned and leased to others when the rents are included in the rent for Equipment Account Nos. 32-21-00, 32-22-00, 32-23-00, 36-21-00, 36-22-00, and 36-23-00.
   Property used but not owned should also be included when the rent is included in Account Nos. 31-12-00, 31-13-00, 31-21-00, 31-22-00, and 31-23-00, inclusive.
   The grand total of each equipment account in column (h) of Schedule 330 should equal the totals of line items constituting the equipment account totals of columns (g) and (h) of Schedule 415.

8. Accumulated depreciation for each class of equipment shall be reported in columns (i) and (j). The grand total of each equipment reserve account in column (g), Schedule 335, shall equal the combined aggregate total accumulated depreciation for line items constituting the corresponding equipment accounts reported in columns (i) and (j), on Schedule 415.

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415. SUPPORTING SCHEDULE - EQUIPMENT
(Dollars in Thousands)

Line No.	Cross Check	Types of equipment (a)	Repairs (net expense) (b)	Depreciation Owned (c)	Depreciation Capitalized lease (d)	Amortization Adjustment net during year (e)	Line No.
		LOCOMOTIVES					
1		Diesel Locomotives - Yard	10,085	31,430	165	(23,293)	1
2		Diesel Locomotives - Road	574,530	289,680	26,064	(48,563)	2
3		Other Locomotives - Yard					3
4		Other Locomotives - Road					4
5	*	TOTAL LOCOMOTIVES	584,615	321,110	26,229	(71,856)	5
		FREIGHT TRAIN CARS					
6		Box - Plain 40 foot	0	0	0	0	6
7		Box - Plain 50 foot and longer	1,482	12,606	0	362	7
8		Box - Equipped	14,004	4,100	0	(323)	8
9		Gondola - Plain	9,859	6,127	0	(1,241)	9
10		Gondola - Equipped	9,267	6,672	0	(134)	10
11		Hopper - Covered	65,281	25,749	0	(1,591)	11
12		Hopper - Open Top - General Service	6,814	5,068	0	(616)	12
13		Hopper - Open Top - Special Service	2,891	1,306	0	605	13
14		Refrigerator - Mechanical	19,601	20,686	0	168	14
15		Refrigerator - Nonmechanical	250	742	0	241	15
16		Flat - TOFC/COFC	0	8	0	(4)	16
17		Flat - Multi-level	951	(515)	0	(1,005)	17
18		Flat - General Service	0	(2)	0	(14)	18
19		Flat - Other	5,236	1,817	0	(533)	19
20		All Other Freight Cars	0	7	0	0	20
21		Cabooses	0	(106)	0	(106)	21
22		Auto Racks	0	36,850	0	(1,829)	22
23		Miscellaneous Accessories	0	2,540	0	0	23
24	*	TOTAL FREIGHT TRAIN CARS	135,636	123,655	0	(6,020)	24
		OTHER EQUIPMENT - REVENUE FREIGHT HIGHWAY EQUIPMENT					
25		Refrigerated Trailers					25
26		Other Trailers					26
27		Refrigerated Containers					27
28		Other Containers					28
29		Bogies					29
30		Chassis					30
31		Other Highway Equipment (Freight) **1/**	8,930	12,523	0	(8,188)	31
32	*	TOTAL HIGHWAY EQUIPMENT	8,930	12,523	0	(8,188)	32
		FLOATING EQUIPMENT - REVENUE SERVICE					
33		Marine Line-Haul					33
34		Local Marine					34
35	*	TOTAL FLOATING EQUIPMENT	0	0	0	0	35
36	*	OTHER EQUIPMENT Passenger & Other Revenue Equipment (Freight Portion)	(662)	0	0	0	36
37	*	Computer Systems & Word Processing Equip.	77,235	147,605	0	5,368	37
38	*	Machinery - Locomotives (1)	8,564	3,612	0	(483)	38
39	*	Machinery - Freight Cars (2)	10,040	1,286	0	(40)	39
40	*	Machinery - Other Equipment (3)	3,346	49	0	(4)	40
41	*	Work and Other Nonrevenue Equipment	72,765	45,569	0	(2,137)	41
42		TOTAL OTHER EQUIPMENT	171,288	198,121	0	2,704	42
43		TOTAL ALL EQUIPMENT (FREIGHT PORTION)	900,469	655,409	26,229	(83,360)	43

(1) Data reported on line 38, column (b) is the amount reported in Sched. 410, column (f), line 203, reduced by the allocable portion of line 216.
(2) Data reported on line 39, column (b) is the amount reported in Sched. 410, column (f), line 222, reduced by the allocable portion of line 235.
(3) Data reported on line 40, column (b) is the amount reported in Sched. 410, column (f), lines 302 through 306, reduced by the allocable portion of line 320.
1/ Includes containers, chassis and trailers.

415. SUPPORTING SCHEDULE - EQUIPMENT - (Continued)

(Dollars in Thousands)

Line No.	Cross Check	Lease & rentals (net) (f)	Investment base as of 12/31 Owned (g)	Investment base as of 12/31 Capitalized lease (h)	Accumulated depreciation as of 12/31 Owned (i)	Accumulated depreciation as of 12/31 Capitalized lease (j)	Line No.
1		0	909,993	2,677	534,133	2,061	1
2		61,432	8,440,233	572,827	2,958,979	316,830	2
3							3
4							4
5	*	61,432	9,350,226	575,504	3,493,112	318,891	5
6		0	0	0	0	0	6
7		3,970	210,889	0	22,571	0	7
8		32,813	130,367	0	48,708	0	8
9		14,245	171,643	0	99,634	0	9
10		14,013	186,703	0	46,098	0	10
11		54,950	947,457	0	295,402	0	11
12		0	98,490	0	78,229	0	12
13		4,000	13,826	0	6,720	0	13
14		6,097	448,048	0	139,702	0	14
15		0	9,596	0	11,509	0	15
16		794	239	0	222	0	16
17		14,907	6,978	0	8,031	0	17
18		0	193	0	(32)	0	18
19		5,357	47,889	0	26,975	0	19
20		1,495	86	0	(205)	0	20
21		0	0	0	(27)	0	21
22		0	759,848	0	314,605	0	22
23		0	38,758	0	2,952	0	23
24	*	152,641	3,071,010	0	1,101,094	0	24
25							25
26							26
27							27
28							28
29							29
30							30
31		64,268	359,458	0	255,997	0	31
32	*	64,268	359,458	0	255,997	0	32
33							33
34							34
35	*	0	0	0	0	0	35
36	*						36
37	*	0	1,393,961	0	653,074	0	37
38	*	0	155,364	0	87,952	0	38
39	*	0	48,069	0	25,405	0	39
40	*	0	3,235	0	2,677	0	40
41	*	(89)	889,511	0	241,329	0	41
42		(89)	2,490,140	0	1,010,437	0	42
43		278,252	15,270,834	575,504	5,860,640	318,891	43

(1) Data reported on lines 38, 39, and 40 in columns (g) and (h) are investment recorded in property account 44, allocated to locomotives, freight cars, and other equipment.

(2) Depreciation reported on lines 38, 39, and 40 in column (c) is calculated by multiplying the investment in each element by the effective composite rate for property account 44, and then adding or subtracting the adjustment reported in column (e). This calculation should equal the amount shown in column (c), Schedule 335.

417. SPECIALIZED SERVICE SUBSCHEDULE - TRANSPORTATION

(Dollars in Thousands)

1. Report freight expenses only.
2. Report in lines 1, 2, 3, 4, and 10 the total of those natural expenses (salaries and wages, material, tools, supplies, fuels and lubricants, purchased services, and general) incurred in the operation of each type of specialized service facility. This schedule does not include switching services performed by train and yard crews in connection with or within specialized service facilities.
3. When it is necessary to apportion expenses, such as administrative expenses to two or more services, they shall be apportioned on the most equitable basis available to the respondent and only to the services they support. The total expenses in column (j) should balance with the respective line items in Schedule 410, Railway Operating Expenses.
4. Report in column (b), line 2, the expenses incurred in highway movements of trailers and containers performed at the expense of the reporting railroad within a terminal area for the purpose of pick-up, delivery, or highway interchange service. Report in column (b), line 3, the expenses incurred in operating facilities for handling trailers and/or containers, including storage expenses. See Schedule 755, note R.
5. The operation of floating equipment in line-haul service (between distinct terminals) should be reported in column (c) on line 2. Floating operations conducted within a general terminal or harbor area should be reported in column (c), line 3.
6. Report in column (g), line 3, the expenses incurred by the railroad in loading and unloading automobiles, trucks, etc., to and from bi-level and tri-level auto rack cars. Report on line 2, column (g), the expense incurred by the railroad in moving automobiles, etc., between bi-level and tri-level loading and unloading facilities over the highway to shippers, receivers, or connecting carriers. Report in column (f) operating expenses for land facilities in support of floating operations, including the operation of docks and wharves.
7. Report on line 4, column (b), the expenses relating to heating and refrigeration of TOFC/COFC trailers and containers (total debits and credits). The expenses on line 4, column (h) relate to refrigerator cars only.
8. Report in column (i) total expenses incurred in performing rail substitute service, other highway revenue service, LCL terminal operations, warehouse operations, freight car transloading, grain elevator terminal operations, and livestock feeding operations only.

Line No.	Cross Check	Items (a)	TOFC/COFC terminal (b)	Floating equipment (c)	Coal marine terminal (d)	Ore marine terminal (e)	Other marine terminal (f)	Motor vehicle load & distribution (g)	Protective services refrigerator car (h)	Other special services (i)	Total columns (b) - (i) (j)	Line No.
1	*	Administration	15,245					0	0		15,245	1
2	*	Pick up and delivery, marine line haul	42,801					2,603	0		45,404	2
3	*	Loading and unloading and local marine	238,700				1,805	55,802	N/A		296,307	3
4	*	Protective services - total debits and credits	321					22,990	N/A		23,311	4
5	*	Freight lost or damaged - solely related	0					0	0		0	5
6	*	Fringe benefits	15,592					0	0		15,592	6
7	*	Casualty and insurance	1,178				9	275	0		1,462	7
8	*	Joint facility - debit	0					0	0		0	8
9	*	Joint facility - credit	0					0	0		0	9
10	*	Other	13,305					0	0		13,305	10
11	*	TOTAL	327,142				1,814	81,670	0		410,626	11

450. ANALYSIS OF TAXES

(Dollars in Thousands)

A. Railway Taxes

Line No.	Cross Check	Kind of Tax	Amount	Line No.
1		Other than U.S. Government Taxes	1,113,677	1
		U.S. Government Taxes		
		Income Taxes		
2		Normal Tax and Surtax	1,785,622	2
3		Excess Profits	0	3
4	*	Total - Income Taxes (Lines 2 and 3)	1,785,622	4
5		Railroad Retirement	629,900	5
6		Hospital Insurance	50,902	6
7		Supplemental Annuities	0	7
8		Unemployment Insurance	4,842	8
9		All Other United States Taxes	939	9
10		Total - U.S. Government Taxes	2,472,205	10
11		Total - Railway Taxes	3,585,882	11

B. Adjustments to Federal Income Taxes

1. In column (a) are listed the particulars which most often cause a differential between taxable income and pretax accounting income. Other particulars which cause such a differential should be listed under the caption "Other (Specify)," including state and other taxes deferred if computed separately. Minor items, each less than $100,000, may be combined in a single entry under "Other (Specify)."
2. Indicate in column (b) the beginning of the year totals of Accounts 714, 744, 762, and 786 applicable to each particular item in column (a).
3. Indicate in column (c) the net changes in Accounts 714, 744, 762, and 786 for the net tax effect of timing differences originating and reversing in the current accounting period.
4. Indicate in column (d) any adjustments, as appropriate, including adjustments to eliminate or reinstate deferred tax effects (credits or debits) due to applying or recognizing a loss carry-forward or a loss carry-back.
5. The total of line 19 in columns (c) and (d) should agree with the total of the contra charges (credits) to Account 557, Provision for Deferred Taxes, and Account 591, Provision for Deferred Taxes - Extraordinary Items, for the current year.
6. Indicate in column (e) the cumulative total of columns (b), (c), and (d). The total of column (e) must agree with the total of Accounts 714, 744, 762, and 786.

Line No.	Particulars (a)	Beginning of year balance 1/ (b)	Net credits (charges) for current year (c)	Adjustments (d)	End of year balance (e)	Line No.
1	Accelerated depreciation, Sec. 167 IRC: Guideline lives pursuant to Rev. Proc. 62-21.					1
2	Accelerated amortization of facilities, Sec. 168 IRC					2
3	Accelerated amortization of rolling stock, Sec. 184 IRC					3
4	Amortization of rights of way, Sec. 185 IRC					4
5	Other (Specify)					5
6	Property	10,988,371	322,695	0	11,311,066	6
7	Deferred State Income Taxes - Net	1,464,558	(81,097)	4,116	1,387,577	7
8	Current Liabilities	(236,139)	6,365	0	(229,774)	8
9	Long-Term Liabilities	(357,812)	21,170	0	(336,642)	9
10	Retirement Benefits	25,102	8,620	19,076	52,798	10
11	Other Items	412,664	(31,117)	610	382,157	11
12						12
13						13
14						14
15						15
16						16
17						17
18	Investment tax credit *					18
19	TOTALS	12,296,744	246,636	23,802	12,567,182	19

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450. ANALYSIS OF TAXES
(Dollars in Thousands)

* Footnotes:

1.	If flow-through method was elected, indicate net decrease (or increase) in tax accrual because of investment tax credit.	
	If the deferral method for investment tax credit was elected:	
(1)	Indicate amount of credit utilized as a reduction of tax liability for current year	
(2)	Deduct the amount of the current year's credit applied to reduction of tax liability but deferred for accounting purposes	
(3)	Balance of current year's credit used to reduce current year's tax accrual	
(4)	Add amount of prior year's deferred credits being amortized to reduce current year's tax accrual	
(5)	Total decrease in current year's tax accrual resulting from use of investment tax credits	
2.	Estimated amount of future earnings which can be realized before paying Federal income taxes because of unused and available net operating loss carryover on January 1 of the year following that for which the report is made	0

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501. GUARANTIES AND SURETYSHIPS
(Dollars in Thousands)

1. If the respondent was under obligation as guarantor or surety for the performance by any other corporation or association of any agreement or obligation, show the particulars of each contract of guarantee or suretyship in effect at the close of the year or entered into and expired during the year. This inquiry does not cover the case of ordinary commercial paper maturing on demand or not later than two years after the date of issue. Items of less than $50,000 may be shown as one total.

Line No.	Names of all parties principally and primarily liable (a)	Description (b)	Amount of contingent liability (c)	Sole or joint contingent liability (d)	Line No.
1					1
2	Terminal Railroad Association of St Louis	Bridge Funding	31,726	Sole (Note 1)	2
3					3
4					4
5					5
6					6
7					7
8					8
9					9
10					10
11					11
12					12
13					13
14					14
15					15
16					16
17					17
18	Note 1: Terminal Railroad Association of St. Louis has engaged in a credit agreement for the purpose of rebuilding the Merchants Bridge.				18
19	UPRR is severally, but not jointly, liable with BNSF, CSX, ICR, and NS for the bridge loan. UPRR's allocated percentage is 17.28% (of the total $205M				19
20	private placement offering). UPRR recorded both an asset and a liability to include our allocated portion of the principal.				20
21					21
22					22
23					23
24					24
25					25
26					26
27					27
28					28
29					29
30					30
31					31
32					32
33					33
34					34
35					35
36					36
37					37
38					38

2. If any corporation or other association was under obligation as guarantor or surety for the performance by the respondent of any agreement or obligation, show the particulars called for hereunder for each such contract of guaranty or suretyship in effect at the close of the year or entered into and expired during the year. This inquiry does not cover the case of ordinary commercial paper maturing on demand or not later than two years after the date of issue, nor does it include ordinary surety bonds or undertakings on appeals in court proceedings.

Line No.	Finance docket number, title maturity date and concise description of agreement or obligation (a)	Names of all guarantors and sureties (b)	Amount of contingent liability of guarantors (c)	Sole or joint contingent liability (d)	Line No.
1					1
2					2
3					3
4					4
5					5
6					6
7					7
8					8
9					9

502. COMPENSATING BALANCES AND SHORT-TERM BORROWING AGREEMENTS

(Dollars in Thousands)

Using the following notes as a guideline, show the requirements of compensating balances and short-term borrowing agreements. Footnote disclosure is required even though the arrangement is not reduced to writing.

1. Disclose compensating balances not legally restricted, lines of credit used and unused, average interest rate of short-term borrowings outstanding at balance sheet date, maximum amount of outstanding borrowings during the period and the weighted average rate of those borrowings.

2. Time deposits and certificates of deposit constituting compensating balances not legally restricted should be disclosed.

3. Compensating balance arrangements need only be disclosed for the latest fiscal year.

4. Compensating balances included in Account 703, Special Deposits, and in Account 717, Other Funds, should also be separately disclosed below.

5. Compensating balance arrangements are sufficiently material to require disclosure in footnotes when the aggregate of written and oral agreement balances amount to 15 % or more of liquid assets (current cash balances, restricted and unrestricted, plus marketable securities).

6. When a carrier is not in compliance with a compensating balance requirement, that fact should be disclosed, along with stated and possible sanctions, whenever such possible sanctions may be immediate (not vague or unpredictable) and material.

The Company has outstanding letters of credit in the amount of $10.1 million with various banks under which no borrowings were outstanding at December 31, 2025.

510. SEPARATION OF DEBTHOLDINGS BETWEEN ROAD PROPERTY AND EQUIPMENT

(Dollars in Thousands)

The principal use of this schedule is to determine the average rate of debt capital.

I. Debt Outstanding at End of Year

Line No.	Account No. (a)	Title (b)	Source (c)	Balance Close of Year (d)	Line No.
1	751	Loans and Notes Payable	Sch. 200, L. 29	0	1
2	764	Equip. Obligations and Other Debt due within one year	Sch. 200, L. 38	370,141	2
3	765/767	Funded Debt Unmatured	Sch. 200, L. 40	0	3
4	766	Equipment Obligations	Sch. 200, L. 41	360,332	4
5	766.5	Capitalized Lease Obligations	Sch. 200, L. 42	65,629	5
6	768	Debt in Default	Sch. 200, L. 43	0	6
7	769	Accounts Payable: Affiliated Companies	Sch. 200, L. 44	0	7
8	770.1/770.2	Unamortized Debt Premium	Sch. 200, L. 45	(1,176)	8
9		Total Debt	Sum L. 1-8	794,925	9
10		Debt Directly Related to Road Property	Note 1	0	10
11		Debt Directly Related to Equipment	Note 1	796,152	11
12		Total Debt Directly Related to Road & Equipment	Sum L. 10 and L. 11	796,152	12
13		Percent Directly Related to Road	L. 10 divided by L. 12 Whole % plus 2 decimals	0.00%	13
14		Percent Directly Related to Equipment	L. 11 divided by L. 12 Whole % plus 2 decimals	100.00%	14
15		Debt Not Directly Related to Road or Equipment	L. 9 minus L. 12	(1,227)	15
16		Road Property Debt (Note 2)	(L. 13 x L. 15) plus L. 10	0	16
17		Equipment Debt (Note 2)	(L. 14 x L. 15) plus L. 11	794,925	17

II. Interest Accrued During the Year

Line No.	Account No. (a)	Title (b)	Source (c)	Balance Close of Year (d)	Line No.
18	546-548	Total Interest and Amortization (Fixed Charges)	Sch. 210, L. 42	13,744	18
19	546	Contingent Interest on Funded Debt	Sch. 210, L. 44	0	19
20	517	Release of Premium on Funded Debt	Sch. 210, L. 22	0	20
21		Total Interest (Note 3)	(L. 18 + L. 19) minus L. 20	13,744	21
22		Interest Directly Related to Road Property Debt	Note 4	0	22
23		Interest Directly Related to Equipment Debt	Note 4	26,136	23
24		Interest not directly related to road or equipment property debt **1/**	L. 21 minus (L. 22 + L. 23)	(12,392)	24
25		Interest on Road Property Debt (Note 5)	L. 22 plus (L. 24 x L. 13)	0	25
26		Interest on Equipment Debt (Note 5)	L. 23 plus (L. 24 x L. 14)	13,744	26
27		Embedded Rate of Debt Capital - Road Property	L. 25 divided by L. 16	N/A	27
28		Embedded Rate of Debt Capital - Equipment	L. 26 divided by L. 17	1.73%	28

Note 1: Directly related means the purpose which the funds were used for when the debt was issued.
Note 2: Line 16 plus Line 17 must equal Line 9.
Note 3: Line 21 includes interest on debt in Account 769 - Accounts Payable; Affiliated Companies.
Note 4: This interest relates to debt reported on Lines 10 and 11, respectively.
Note 5: Line 25 plus Line 26 must equal Line 21.

1/ Allocation of capitalized interest.

INSTRUCTIONS CONCERNING RETURNS TO BE MADE IN SCHEDULE 512

1. Furnish the information called for below between the respondent and the affiliated companies or persons affiliated with the respondent, including officers, directors, stockholders, owners, partners, or their wives and other close relatives, or their agents. Examples of transactions are, but are not restricted to, management, legal, accounting, purchasing, or other types of service including the furnishing of materials, supplies, purchase of equipment, leasing of structures, land and equipment, and agreements relating to allocation of officers' salaries and other common costs between affiliated companies.

To be excluded are payments for the following types of services:

(a) Lawful tariff charges for transportation services.

(b) Payments to or from other carriers for interline services and interchange of equipment.

(c) Payment to or from other carriers which may reasonably be regarded as ordinarily connected with routine operation or maintenance, but any special or unusual transactions should be reported.

(d) Payments to public utility companies for rates or charges fixed in conformity with government authority.

2. In column (a) enter the name of the affiliated company, person, or agent with which respondent received or provided services aggregating $50,000 or more during the year. If an affiliated company provides services to more than one affiliate, and the aggregate compensation amounts to $50,000 or more for the year, list all the affiliates included in the agreement and describe the allocation of charges. If the respondent provides services to more than one affiliate, and the aggregate compensation amounts to $50,000 or more for the year, reference to this fact should be made and the detail as to the allocation of charges should be stated. For those affiliates providing services to the respondent, also enter in column (a) the percent of affiliate's gross income derived from transactions with respondent.

The respondent may be required to furnish as an attachment to Schedule 512 a balance sheet and income statement for each affiliate with which respondent carrier had reportable transactions during the year, or alternatively, attach a "Pro Forma" balance sheet and income statement for that portion or entity of each affiliate which furnished the agreed to services, equipment, or other reportable transaction. The statements, if required, should be prepared on a calendar year basis in conformity with the prescribed schedules for the balance sheet and income statement in this Annual Report Form R-1, and should be noted (1) to indicate the method used for depreciating equipment or other property furnished to the carrier, and (2) whether the affiliate's Federal income tax return for the year was filed on a consolidated basis with the respondent carrier.

3. In column (b) indicate the nature of the relationship or control between the respondent and the company or person identified in column (a) as follows:

(a) If respondent directly controls the affiliate, insert the word "direct."

(b) If respondent controls through another company, insert the word "indirect."

(c) If respondent is under common control with affiliate, insert the word "common."

(d) If respondent is controlled directly or indirectly by the company listed in column (a), insert the word "controlled."

(e) If control is exercised by other means, such as a management contract or other arrangement of whatever kind, insert the word "other" and provide a footnote to describe such arrangements.

4. In column (c), fully describe the transactions involved such as management fees, lease of building, purchase of material, etc. When the affiliate listed in column (a) provides more than one type of service in column (c), list each type of service separately and show the total for the affiliate. When services are both provided and received between respondent and an affiliate they should be listed separately and the amounts shown separately in column (e).

5. In column (d), report the dollar amounts of transactions shown and the effect of any change in the method of establishing the terms from that used in the preceding period.

6. In column (e), report the dollar amounts due from or to related parties and, if not otherwise apparent, the terms and manner of settlement. Insert (P) for paid or (R) for received by the amount in column (e).

512. TRANSACTIONS BETWEEN RESPONDENT AND COMPANIES OR PERSONS AFFILIATED WITH RESPONDENT FOR SERVICES RECEIVED OR PROVIDED

(Dollars in Thousands)

Line No.	Name of company or related party with percent of gross income (a)	%	Nature of relationship (b)	Description of transactions (c)	Dollar amounts of transactions (d)	Amount due from or to related parties (e)	Line No.
1	Union Pacific Corporation - net		Controlled	Various [see below (2)]	668,693	1,040,323 (R)	1
2	Wasatch Insurance Ltd.		Common	Insurance	(3,767)	(33,365) (P)	2
3	Transcontinental Surety						3
4	of Vermont		Common	Insurance	4,964	(85,083) (P)	4
5							5
6	Soluciones Logisticas Transfronterizas Mexicanas,						6
7	S. de R.L. de C.V. (SLTM)		Direct	Financing & Other	3,099	65,889 (R)	7
8							8
9							9
10							10
11							11
12							12
13							13
14							14
15							15
16							16
17							17
18							18
19							19
20							20
21							21
22							22
23							23
24							24
25							25

(1) Respondent has 50% ownership

(2) Union Pacific Corporation - net transaction breakout:

Balance 12-31-24	$ 371,630
Interest Expense/Income- Net	(160,249)
Dividends	6,100,000
Financing & Other	(5,271,058)
Balance 12-31-25	$ 1,040,323

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INSTRUCTIONS CONCERNING RETURNS TO BE MADE IN SCHEDULE 700

State particulars of all tracks operated by the respondent at the close of the year, according to the following classifications:

(1) Line owned by respondent.
(2) Line owned by proprietary companies.
(3) Line operated under lease for a specified sum, lessor being (A) an affiliated corporation, or (B) independent or not affiliated with the respondent.
(4) Line operated under contract or agreement for contingent rent, owner being (A) an affiliated corporation, or (B) independent or not affiliated with the respondent.
(5) Line operated under trackage rights.

Give subtotals for each of the several numbered classes, in the order listed above, as well as the total for all classes. Lengths of track should be reported to the nearest WHOLE mile adjusted to accord with footings; i.e., counting one-half mile or over as a whole mile and disregarding any fraction less than one-half mile.
In Column (a) insert the figure (and letter, if any) indicating its class in accordance with the above list of classifications.
In Column (b) give the various proportions of each class owned or leased by respondent, listing each proportion once in any grouping. Canadian mileage should be segregated and identified on separate lines in the various groupings. For each listing, in Column (d) give its entire length (the distances between terminals of single or first main track), and in the following columns the lengths of second main track, all other main tracks, passing tracks, cross-overs and turn-outs, way switching tracks, and yard switching tracks. These classes of tracks are defined as follows:

RUNNING TRACKS - Running tracks, passing tracks, cross-overs, etc., including turn-outs from those tracks to clearance points.

WAY SWITCHING TRACKS - Station, team, industry, and other switching tracks for which no separate service is maintained.

YARD SWITCHING TRACKS - Yard where separate switching services are maintained, including classification, house, team, industry, and other tracks switched by yard locomotives.

The returns in Columns (h) and (i) should include tracks serving industries, such as mines, mills, smelters, factories, etc. Tracks belonging to an industry for which no rent is payable should not be included.

Tracks leading to and in gravel and sand pits and quarries, the cost of which is chargeable to a clearing account and which are used in getting out material for the respondent's use, should not be included.

Class (1) includes all lines operated by the respondent at the close of the year to which it has title in perpetuity.

Class (2) includes each line, full title to which is in an inactive proprietary corporation of the respondent (i.e., one all of whose outstanding stocks or obligations are held by or for the respondent, and which is operated by the respondent or an affiliated system corporation without any accounting to the said proprietary corporation). It may also include such line when the actual title to all of the outstanding stocks or obligations rests in a corporation controlled by or controlling the respondent. But in the case of any such inclusion, the facts of the relationship to the respondent of the corporation holding the securities should be fully set forth in a footnote. An inactive corporation is one which has been practically absorbed in a controlling corporation, and which neither operates property nor administers its financial affairs. If it maintains an organization, it does so only for the purpose of complying with legal requirements and maintaining title to property or franchises.

Class (3) includes all tracks operated under a lease or formal conveyance of less than the grantor's interest in the property, with a specific and unconditional rent reserved. The fact that the lessor does or does not maintain an independent organization for financial purposes is immaterial in this connection.

Class (4) is the same as Class (3), except that the rent reserved is conditional upon earnings or some other fact.

Class (5) includes all tracks operated and maintained by others, but over which the respondent has the right to operate some or all of its trains. In the road of this class, the respondent has no proprietary rights, but only the rights of a licensee. Include in this class, also, on main tracks, industrial tracks and sidings owned by noncarrier companies and individuals when the respondent operates over them but does not have exclusive possession of them.

Road held by respondent as a joint or common owner or a joint lessee or under any joint arrangement should be shown in its appropriate class and the entry of length should be the entire length of the portion jointly held. The class symbol should have the letter (J) attached.

Road operated by the respondent as an agent for another carrier should not be included in this schedule.

700. MILEAGE OPERATED AT CLOSE OF YEAR

Line No.	Class (a)	Proportion owned or leased by respondent (b)	Running tracks, passing tracks, cross-overs, etc.				Miles of way switching tracks (g)	Miles of yard switching tracks (h)	TOTAL (i)	Line No.
			Miles of road (c)	Miles of second main track (d)	Miles of all other main tracks (e)	Miles of passing tracks, cross-overs, and turnouts (f)				
1	1	100%	25,650	4,491	367	3,293	1,655	6,579	42,035	1
2										2
3	1J	12.5%	-	-	-	-	-	-	-	3
4	1J	23.0%	-	-	-	-	-	-	-	4
5	1J	25.0%	-	-	-	-	3	38	41	5
6	1J	33.3%	8	2	1	1	7	6	25	6
7	1J	37.5%	-	-	-	-	-	-	-	7
8	1J	40.0%	-	-	-	-	-	-	-	8
9	1J	44.0%	-	-	-	-	-	-	-	9
10	1J	50.0%	617	248	123	78	35	190	1,291	10
11	1J	62.5%	-	-	-	-	-	-	-	11
12	1J	66.7%	-	-	-	-	-	-	-	12
13		Total 1J	625	250	124	79	45	234	1,357	13
14										14
15		Total 1 and 1J	26,275	4,741	491	3,372	1,700	6,813	43,392	15
16										16
17	2	A&S	19	12	-	3	-	105	139	17
18	2		-	-	-	-	-	-	-	18
19		Total 2	19	12	-	3	-	105	139	19
20										20
21	3A		-	-	-	-	-	-	-	21
22	3B		316	-	-	16	12	44	388	22
23		Total 3	316	-	-	16	12	44	388	23
24										24
25										25
26										26
27	4B		-	-	-	-	-	-	-	27
28		Total 4	-	-	-	-	-	-	-	28
29										29
30										30
31										31
32	5		6,279	1,666	238	135	78	99	8,495	32
33	5J		-	-	-	-	-	-	-	33
34		Total 5	6,279	1,666	238	135	78	99	8,495	34
35										35
36										36
37										37
38										38
39										39
40										40
41										41
42										42
43										43
44										44
45										45
46										46
47										47
48										48
49										49
50										50
51										51
52										52
53										53
54										54
55										55
56										56
57		TOTAL	32,889	6,419	729	3,526	1,790	7,061	52,414	57
58		Miles of electrified road or track included in preceding grand total	N/A							58

702. MILES OF ROAD AT CLOSE OF YEAR - BY STATES AND TERRITORIES (SINGLE TRACK)

Give particulars, as of the close of the year, of all road operated and of all road owned but not operated. The respondent's proportion of operated road held by it as a joint or common owner, or under a joint lease, or under any joint arrangement, should be shown in columns (b), (c), (d), or (e), as may be appropriate. The remainder of jointly operated mileage should be shown in column (f). Respondent's proportion of road jointly owned but not operated should be shown in column (h), as appropriate. Mileage which has been permanently abandoned should not be included in column (h).

Mileage should be reported to the nearest WHOLE mile adjusted in accord with footings; i.e., counting one-half mile and over as a whole mile and disregarding any fraction less than one-half mile.

Line No.	Cross Check	State or territory (a)	MILES OF ROAD OPERATED BY RESPONDENT								Line No.
			Line owned (b)	Line of proprietary companies (c)	Line operated under lease (d)	Line operated under contract, etc. (e)	Line operated under trackage rights (f)	Total mileage operated (g)	Line owned, not operated by respondent (h)	New line constructed during year (i)	
1		Arizona	691	-	-	-	-	691	-	-	1
2		Arkansas	1,314	-	5	-	5	1,324	149	-	2
3		California	2,798	-	-	-	563	3,361	641	-	3
4		Colorado	1,315	-	-	-	353	1,668	7	-	4
5		Idaho	868	-	-	-	4	872	41	-	5
6		Illinois	1,534	19	4	-	832	2,389	10	-	6
7		Indiana	-	-	-	-	19	19	-	-	7
8		Iowa	1,279	-	-	-	275	1,554	6	-	8
9		Kansas	1,564	-	-	-	635	2,199	313	-	9
10		Kentucky	-	-	-	-	12	12	-	-	10
11		Louisiana	1,094	-	-	-	54	1,148	24	-	11
12		Minnesota	418	-	-	-	226	644	16	-	12
13		Missouri	993	-	-	-	561	1,554	339	-	13
14		Montana	125	-	-	-	-	125	52	-	14
15		Nebraska	1,007	-	-	-	90	1,097	223	-	15
16		Nevada	1,193	-	-	-	-	1,193	-	-	16
17		New Mexico	535	-	-	-	83	618	-	-	17
18		Oklahoma	513	-	307	-	420	1,240	73	-	18
19		Oregon	862	-	-	-	205	1,067	405	-	19
20		Tennessee	9	-	-	-	8	17	-	-	20
21		Texas	5,189	-	-	-	1,314	6,503	225	-	21
22		Utah	1,245	-	-	-	20	1,265	61	-	22
23		Washington	271	-	-	-	269	540	87	-	23
24		Wisconsin	584	-	-	-	331	915	107	-	24
25		Wyoming	874	-	-	-	-	874	-	-	25
26											26
27											27
28											28
29											29
30											30
31											31
32	Total Mileage (Single Track)		26,275	19	316	-	6,279	32,889	2,779	-	32

INSTRUCTIONS CONCERNING RETURNS TO BE MADE IN SCHEDULE 710

Instructions for reporting locomotive and passenger-train car data.

1. Give particulars of each of the various classes of equipment which respondent owned or leased during the year.

2. In column (c), give the number of units purchased new or built in company shops. In column (d), give the number of new units leased from others. The term "new" means a unit placed in service for the first time on any railroad.

3. Units leased to others for a period of one year or more are reportable in column (l). Units temporarily out of respondent's service and rented to others for less than one year are to be included in column (h). Units rented from others for a period less than one year should not be included in column (i).

4. For reporting purposes, a "locomotive unit" is a self-propelled vehicle generating or converting energy into motion, and designed solely for moving other equipment. An "A" unit is the least number of wheel bases with superstructure designed for use singly or as a lead locomotive unit in combination with other locomotive units. A "B" unit is similar to an "A" unit but it is not equipped for use singly or as a lead locomotive unit. A "B" unit may be equipped with hostler controls for independent operation at terminals.

5. A "self-propelled" car is a rail motor car propelled by electric motors receiving power from a third rail or overhead, or internal combustion engines located on the car itself. Trailers equipped for use only in trains of cars that are self-propelled are to be included as self-propelled equipment.

6. A "diesel" unit includes all units propelled by diesel internal combustion engines regardless of final drive or whether power may at times be supplied from an external conductor. Units other than diesel-electric, e.g., diesel-hydraulic, should be identified in a footnote, giving the number and a brief description.. An "electric" unit includes all units which receive electric power from a third rail or overhead contact wire, and use the power to drive one or more electric motors that propel the vehicle. An "other self-powered unit" includes all units other than diesel or electric, e.g., gas turbine, steam. Show the type of unit, service, and number, as appropriate, in a brief description sufficient for positive identification. An "Auxiliary unit" includes all units used in conjunction with locomotives, but which draw their power from the "mother" unit, e.g., boosters, slugs, etc. For reporting purposes, indicate radio-controlled self-powered diesel units on lines 1 through 8, as appropriate. Radio-controlled units that are not self-propelled, i.e., those without a diesel, should be reported on line 13 under "auxiliary units."

7. Column (k) should show aggregate capacity for all units reported in column (j), as follows: For locomotive units, report the manufacturer's rated horsepower (the maximum continuous power output from the diesel engines or engines delivered to the main generator or generators for tractive purposes). Exclude capacity data for steam locomotives. For passenger-train cars, report the number of passenger seats available for revenue service, counting one passenger to each berth in sleeping cars.

8. Passenger-train car types and service equipment car types correspond to AAR Mechanical Division designations. Descriptions of car codes and designations are published in The Official Railway Equipment Register.

9. Cross-checks

Schedule 710		Schedule 710
Line 5, column (j)	=	Line 11, column (l)
Line 6, column (j)	=	Line 12, column (l)
Line 7, column (j)	=	Line 13, column (l)
Line 8, column (j)	=	Line 14, column (l)
Line 9, column (j)	=	Line 15, column (l)
Line 10, column (j)	=	Line 16, column (l)

When data appear in column (j), lines 1 through 8, column (k) should have data on the same lines.

When data appear in columns (k) or (l), lines 36 through 53, and 55, column (m) should have data on the same lines.

710. INVENTORY OF EQUIPMENT

UNITS OWNED, INCLUDED IN INVESTMENT ACCOUNT, AND LEASED FROM OTHERS

Line No.	Cross Check	Type or design of units (a)	Units in service of respondent at beginning of year (b)	Changes During the Year: Units Installed: New units purchased or built (c)	New units leased from others (d)	Rebuilt units acquired and rebuilt units rewritten into property accounts (e)	All other units including reclassification and second hand units purchased or leased from others (f)	Units retired from service of respondent whether owned or or leased, including reclassification (g)	Units at Close of Year: Owned and used (h)	Leased from others (i)	Total in service of respondent [col (h) & (i)] (j)	Aggregate capacity of units reported in col (j) (See Ins. 7) (k)	Leased to others (l)	Line No.
1		Locomotive Units Diesel-freight units										(HP)		1
2		Diesel-passenger units	3	0	0	0	0	0	3	0	3	6,000	0	2
3		Diesel-multiple purpose units	6,893	0	0	201	0	261	6,228	605	6,833	27,545,900	0	3
4		Diesel-switching units	122	0	0	5	0	7	120	0	120	99,100	0	4
5	*	TOTAL (lines 1 to 4) units	7,018	0	0	206	0	268	6,351	605	6,956	27,651,000	0	5
6	*	Electric locomotives	0	0	0	0	0	0	0	0	0	0	0	6
7	*	Other self-powered units (steam)	2	1	0	0	0	0	3	0	3	8,400	0	7
8	*	TOTAL (lines 5, 6, and 7)	7,020	1	0	206	0	268	6,354	605	6,959	27,659,400	0	8
9	*	Auxiliary units	6	0	0	0	0	1	5	0	5	N/A	0	9
10	*	TOTAL LOCOMOTIVE UNITS (lines 8 and 9)	7,026	1	0	206	0	269	6,359	605	6,964	27,659,400	0	10

DISTRIBUTION OF LOCOMOTIVE UNITS IN SERVICE OF RESPONDENT AT CLOSE OF YEAR BUILT, DISREGARDING YEAR OF REBUILDING

Line No.	Cross Check	Type or design of units (a)	Before 1/1/2005 (b)	Between 1/1/2005 and 12/31/2009 (c)	Between 1/1/2010 and 12/31/2014 (d)	Between 1/1/2015 and 12/31/2019 (e)	Between 1/1/2020 and 12/31/2024 (f)	During Calendar Year: 2025 (g)	2026 (h)	2027 (i)	2028 (j)	2029 (k)	TOTAL (l)	Line No.
11	*	Diesel	4,677	1,097	726	456	0	0	0	0	0	0	6,956	11
12	*	Electric	0	0	0	0	0	0	0	0	0	0	0	12
13	*	Other self-powered units (steam)	2	0	0	0	0	1	0	0	0	0	3	13
14	*	TOTAL (lines 11 to 13)	4,679	1,097	726	456	0	1	0	0	0	0	6,959	14
15	*	Auxiliary units	5	0	0	0	0	0	0	0	0	0	5	15
16	* *	TOTAL LOCOMOTIVE UNITS (lines 14 and 15)	4,684	1,097	726	456	0	1	0	0	0	0	6,964	16

710. INVENTORY OF EQUIPMENT - (Continued)
UNITS OWNED, INCLUDED IN INVESTMENT ACCOUNT, AND LEASED FROM OTHERS

Line No.	Cross Check	Type or design of units (a)	Units in service of respondent at beginning of year (b)	Changes During the Year: Units nstalled: New units purchased or built (c)	Changes During the Year: Units nstalled: New units leased from others (d)	Changes During the Year: Units nstalled: Rebuilt units acquired and rebuilt units rewritten into property accounts (e)	Changes During the Year: Units nstalled: All other units including reclassification and second hand units purchased or leased from others (f)	Units retired from service of respondent whether owned or or leased, including reclassification (g)	Units at Close of Year: Owned and used (h)	Units at Close of Year: Leased from others (i)	Units at Close of Year: Total in service of respondent [col (h) & (i)] (j)	Units at Close of Year: Aggregate capacity of units reported in col (j) (See Ins. 7) (k)	Units at Close of Year: Leased to others (l)	Line No.
17		Passenger-Train Cars Non-Self-Propelled Coaches (PA, PB, PBO)												17
18		Combined cars (All class C, except CSB)												18
19		Parlor cars (PBC, PC, PL, PO)												19
20		Sleeping cars (PS, PT, PAS, PDS)												20
21		Dining, grill, & tavern cars (All class D, PD)										N/A		21
22		Nonpassenger carrying cars (All class B, CSB, M, PSA, IA)										N/A		22
23		TOTAL (Lines 17 to 22)	0	0	0	0	0	0	0	0	0	0		23
24		Self-Propelled Electric passenger cars (EP, ET)												24
25		Electric combined cars (EC)												25
26		Internal combustion rail motorcars (ED, EG)												26
27		Other self-propelled cars (Specify types)												27
28		TOTAL (Lines 24 to 27)	0	0	0	0	0	0	0	0	0	0		28
29		TOTAL (Lines 23 and 28)	0	0	0	0	0	0	0	0	0	0		29
30		Company Service Cars Business cars (PV)	60						60		60	N/A		30
31		Board outfit cars (MWX)	7				2	0	9	0	9	N/A		31
32		Derrick & snow removal cars (MWU, MWV, MWW, MWK)	49				2	0	51	0	51	N/A		32
33		Dump and ballast cars (MWB, MWD)	2,021				219	221	1,319	700	2,019	N/A		33
34		Other maintenance and service equipment cars	4,650				347	92	4,897	8	4,905	N/A		34
35		TOTAL (Lines 30 to 34)	6,787	0	0	0	570	313	6,336	708	7,044	N/A		35

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710. INVENTORY OF EQUIPMENT - Continued

Instructions for reporting freight-train car data.

1. Give particulars of each of the various classes of equipment which respondent owned or leased during the year.

2. In Column (d) give the number of units purchased or built in company shops. In Column (e) give the number of new units leased from others. The term "new" means a unit placed in service for the first time on any railroad.

3. Units leased to others for a period of one year or more are reportable in Column (n). Units temporarily out of respondent's service and rented to others for less than one year are to be included in Column (i). Units rented from others for a period less than one year should not be included in Column (j).

UNITS OWNED, INCLUDED IN INVESTMENT ACCOUNT, AND LEASED FROM OTHERS

Line No.	Cross Check	Class of equipment and car designations (a)	Units in service of respondent at beginning of year: Time-mileage cars (b)	Units in service of respondent at beginning of year: All Others (c)	Changes during the year: Units installed: New units purchased or built (d)	Changes during the year: Units installed: New or rebuilt units leased from others (e)	Changes during the year: Units installed: Rebuilt units acquired and rebuilt units rewritten into property accounts (f)	Changes during the year: Units installed: All other units, including reclassification and second hand units purchased or leased from others (g)	Line No.
		FREIGHT TRAIN CARS							
36		Plain box cars - 40' (B1__, B2__)	0						36
37		Plain box cars - 50' and longer (B3_0-7, B4_0-7, B5__, B6__ B7__, B8__)	649					16	37
38		Equipped box cars (All Code A, Except A_5_)	8,618					5	38
39		Plain gondola cars (All Codes G & J, J__1, J__2, J__3, J__4)	4,353					0	39
40		Equipped gondola cars (All Code E)	6,191					1	40
41		Covered hopper cars (C__1, C__2, C__3, C__4)	23,539		700			57	41
42		Open top hopper cars - general service (All Code H)	3,761						42
43		Open top hopper cars - special service (J__O), and All Code K)	1,476					1	43
44		Refrigerator cars - mechanical (R_5_, R_6_, R_7_, R_8_, R_9_)	3,018						44
45		Refrigerator cars - nonmechanical (R_0_, R_1_, R_2_)	331						45
46		Flat cars - TOFC/COFC (All Code P, Q, & S, Except Q8_)	117						46
47		Flat cars - multilevel (All Code V)	1,924					704	47
48		Flat cars - general service (F10_, F20_, F30_)	7						48
49		Flat cars - other (F_1_, F_2_, F_3_, F_4_, F_5_, F_6_, F_8_, F40_)	1,987					1	49
50		Tank cars - under 22,000 gal. (T__0, T__1, T__2, T__3, T__4, T__5)	0						50
51		Tank cars - 22,000 gal. and over (T__6, T__7, T__8, T__9)	205					20	51
52		All other freight cars (A_5_, F_7_, All Code L & Q8__)	0						52
53		TOTAL (Lines 36 to 52)	56,176	0	700	0	0	805	53
54		Caboose (All Code M-930)							54
55		TOTAL (Lines 53 and 54)	56,176	0	700	0	0	805	55

710. INVENTORY OF EQUIPMENT - Continued

4. Column (m) should show aggregate capacity for all units reported in Columns (k) and (l), as follows. For freight-train cars, report the nominal capacity (in tons of 2,000 lbs) as provided for in Rule 86 of the AAR Code of Rules Governing Cars in Interchange. Convert the capacity of tank cars to capacity in tons of the commodity which the car is intended to customarily carry.

5. Time-mileage cars refers to freight cars, other than cabooses, owned or held under lease arrangement, whose interline rental is settled on a per diem and line haul mileage basis under "Code of Car Hire Rules" or would be so settled if used by another railroad.

UNITS OWNED, INCLUDED IN INVESTMENT ACCOUNT, AND LEASED FROM OTHERS

Line No.	Cross Check	Changes during year (concluded)	Units at close of year						Line No.
		Units retired from service of respondent whether owned or leased including reclassification	Owned and used	Leased from others	Total in service of respondent (col. (i) & (j))		Aggregate capacity of units reported in col (k) & (l) (see ins. 4)	Leased to Others	
					Time-mileage cars	All Others			
		(h)	(i)	(j)	(k)	(l)	(m)	(n)	
36		0	0	0	0	0	0	0	36
37		74	76	515	591	0	57,494	0	37
38		908	3,458	4,257	7,715	0	710,806	0	38
39		111	2,394	1,848	4,242	0	486,862	0	39
40		638	3,736	1,818	5,554	0	592,308	0	40
41		962	16,205	7,129	23,334	0	2,565,452	0	41
42		398	3,363	0	3,363	0	362,015	0	42
43		67	891	519	1,410	0	163,847	0	43
44		229	1,998	791	2,789	0	265,629	0	44
45		59	272	0	272	0	23,100	0	45
46		14	0	103	103	0	29,390	0	46
47		131	563	1,934	2,497	0	113,684	0	47
48		0	7	0	7	0	497	0	48
49		269	1,024	695	1,719	0	178,442	0	49
50		0	0	0	0	0	0	0	50
51		31	0	194	194	0	19,351	0	51
52		0	0	0	0	0	0	0	52
53		3,891	33,987	19,803	53,790	0	5,568,877	0	53
54		0	0	0	0	0	0	0	54
55		3,891	33,987	19,803	53,790	0	5,568,877	0	55

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710. INVENTORY OF EQUIPMENT - Continued

UNITS OWNED, INCLUDED IN INVESTMENT ACCOUNT, AND LEASED FROM OTHERS

Line No.	Cross Check	Class of equipment and car designations (a)	Units in service of respondent at beginning of year: Per diem (b)	Units in service of respondent at beginning of year: All Others (c)	Changes during the year: Units installed: New units purchased or built (d)	Changes during the year: Units installed: New units leased from others (e)	Changes during the year: Units installed: Rebuilt units acquired and rebuilt units rewritten into property accounts (f)	Changes during the year: Units installed: All other units, including reclassification and second hand units purchased or leased from others (g)	Line No.
		FLOATING EQUIPMENT							
56		Self-propelled vessels (tugboats, car ferries, etc.)	N/A						56
57		Non-self-propelled vessels (car floats, lighters, etc.)	N/A						57
58		TOTAL (Lines 56 and 57)	N/A						58
		HIGHWAY REVENUE EQUIPMENT							
59		Chassis (Z1_, Z67_, Z68_, Z_69_)	1,229			0		0	59
60		Dry van (U2_, Z_, Z6_, I-6)							60
61		Flat bed (U3__, Z3__)							61
62		Open bed (U4__, Z4__)							62
63		Mechanical refrigerator (U5_, Z5_)							63
64		Bulk hopper (U0__, Z0__)							64
65		Insulated (U7__, Z7__)							65
66		Tank (Z0__, U6__) (See note)							66
67		Other trailer and container (Special equipped dry van U9__, Z8__, Z9__)	46,663	0	0	0	0	0	67
68		Tractor							68
69		Truck							69
70		TOTAL (Lines 59 to 69)	47,892	0	0	0	0	0	70

NOTES AND REMARKS

Note: Line 66 (Tank) must have fitting code "CN" to qualify as a tank otherwise it is a bulk hopper.

710. INVENTORY OF EQUIPMENT - Concluded

UNITS OWNED, INCLUDED IN INVESTMENT ACCOUNT, AND LEASED FROM OTHERS

Line No.	Cross Check	Changes during year (concluded) Units retired from service of respondent whether owned or leased including reclassification (h)	Units at close of year: Owned and used (i)	Leased from others (j)	Total in service of respondent (col. (i) & (j)) Per diem (k)	All Others (l)	Aggregate capacity of units reported in col (k) & (l) (see ins. 4) (m)	Leased to Others (n)	Line No.
56					N/A				56
57					N/A				57
58					N/A				58
59		617	0	612	612	0	18,666		59
60		0	0	0	0	0	0		60
61		0	0	0	0	0	0		61
62		0	0	0	0	0	0		62
63		0	0	0	0	0	0		63
64		0	0	0	0	0	0		64
65		0	0	0	0	0	0		65
66		0	0	0	0	0	0		66
67		857	45,678	128	45,806	0	1,300,890		67
68									68
69									69
70		1,474	45,678	740	46,418	0	1,319,556		70

NOTES AND REMARKS

710S. UNIT COST OF EQUIPMENT INSTALLED DURING THE YEAR
(Dollars in Thousands)

1. Give particulars, as requested, separately, for the various classes of new units and rebuilt units of equipment installed by respondent during the year. If information regarding the cost of any units installed is not complete at the time of filing of this report, the units should be omitted, but reference to the number of units omitted should be given in a footnote, the details as to cost to be given in the report of the following year. The cost of units under construction at the close of the year should not be reflected in this schedule even though part of the cost appears in the property account for the year. Indicate in column (e) whether an installation represents equipment purchased (P), built or rebuilt by contract in outside railroad shops (C), or built or rebuilt in company or system shops (S), including units acquired through capitalized leases (L).
2. In column (a) list each class or type of locomotive unit, car, or TOFC/COFC equipment on a separate line. By class is meant the standard classification used to distinguish types of locomotive units, freight cars, or other equipment adopted by the Association of American Railroads, and should include physical characteristics requested by Schedule 710. Locomotive units should be identified as to power source, wheel arrangement, and horsepower per unit, such as multiple-purpose diesel locomotive A units (B-B), 2500 HP. Cars should be identified as to special construction or service characteristics, such as aluminum-covered hopper car (LO) or steel boxcars-special service (XAP). For TOFC/COFC, show the type of equipment as enumerated in Schedule 710.
3. In column (c) show the total weight in tons of 2,000 pounds. The weight of equipment acquired should be the weight empty.
4. The cost should be the complete cost as entered on the ledger, including foreign line freight charges and handling charges.
5. Data for this schedule should be confined to the units reported in Schedule 710, columns (c) and (e) for locomotive units, passenger-train cars, and company service cars, and columns (d) and (f) for freight train cars, floating equipment, and highway revenue equipment. Disclose new units in the upper section of this schedule. Disclose rebuilt units acquired or rewritten into the respondent's accounts in the lower section. The term "new" as used herein shall mean a unit or units placed in service for the first time on any railroad.
6. All unequipped boxcars acquired in whole or in part with incentive per diem funds should be reported on separate lines and be appropriately identified by footnote or sub-heading.

NEW UNITS

Line No.	Class of equipment	Number of Units	Total Weight (Tons)	Total Cost	Method of Acquisition (see instructions)	Line No.
1	**LOCOMOTIVES**					1
2	Heritage diesel-electric	1	196	2,036		2
3						3
4						4
5						5
6	**FREIGHT CARS**					6
7	COVERED HOPPERS	700	21,105	61,722		7
8						8
9						9
10						10
11	**TOTAL**	**701**	**21,301**	**63,758**		11
12						12
13						13
14						14
15						15
16						16
17						17
18			**REBUILT UNITS**			18
19	**LOCOMOTIVES**					19
20	GP38N	26	3,537	11,044		20
21	GP40N	15	2,112	6,217		21
22	C44ACM	1	215	1,666		22
23	C44-9W	25	5,385	41,645		23
24	C44ACCTE	118	25,419	196,564		24
25	C44AC	6	1,292	9,995		25
26	GP39N	3	408	882		26
27	SD40	1	136	81		27
28	C45ACCTE	9	1,877	5,518		28
29	SD70ACE	2	417	1,226		29
30						30
31	**TOTAL**	**206**	**40,797**	**274,838**		31
32						32
33						33
34						34
35						35
36						36
37						37
38						38
39						39
40						40
41						41
42	**GRAND TOTAL**	**907**	**62,098**	**338,596**		42

GENERAL INSTRUCTIONS CONCERNING RETURNS TO BE MADE IN SCHEDULES 720

1. For purposes of these schedules, the track categories are defined as follows:
   A. Freight density of 20 million or more gross ton-miles per track-mile per year (including passing tracks, turnouts, and crossovers).

   B. Freight density of less than 20 million gross ton-miles per track-mile per year, but at least 5 million (including passing tracks, turnouts, and crossovers).

   C. Freight density of less than 5 million gross ton-miles per track-mile per year, but at least 1 million (including passing tracks, turnouts, and crossovers).

   D. Freight density of less than 1 million gross ton-miles per track-mile per year (including passing tracks, turnouts, and crossovers).

   E. Way and yard switching tracks (passing tracks, turnouts, and crossovers shall be included in categories A, B, C, D, F, or potential abandonments, as appropriate).

   F. Track over which any passenger service is provided (other than potential abandonments). Mileage should be included within track categories A through E unless it is dedicated entirely to passenger service, category F.

   Potential abandonments - Route segments identified by railroads as potentially subject to abandonment as required by Section 10903 of the ICC Termination Act of 1995.

2. This schedule should include all class 1, 2, 3, or 4 track from Schedule 700, that is maintained by the respondent. (Class 5 track is assumed to be maintained by others)
3. If, for two consecutive years, a line segment classified in one track category maintains a traffic density which would place it in another, it shall be reclassified into that category as of the beginning of the second year.
4. Traffic density related to passenger service shall not be included in the determination of the track category of a line segment.

720. TRACK AND TRAFFIC CONDITIONS

Disclose the requested information pertaining to track and traffic conditions.

Line No.	Track category (a)	Mileage of tracks at end of period (whole numbers) (b)	Average annual traffic density in millions of gross ton-miles per track-mile* (use two decimal places) (c)	Average running speed limit (use two decimal places) (d)	Track miles under slow orders at end of period (e)	Line No.
1	A	18,307	45.86	N/A	87	1
2	B	7,230	12.46	N/A	74	2
3	C	3,104	2.92	N/A	43	3
4	D	6,604	0.27	N/A	47	4
5	E	8,674	N/A	N/A	0	5
6	TOTAL	43,919	21.67	N/A	251	6
7	F	9,561	N/A	N/A	N/A	7
8	Potential abandonments	637	N/A	N/A	N/A	8

* To determine average density, total track-miles (route-miles times number of tracks), rather than route-miles, shall be used.

N/A - Information is not available.

750. CONSUMPTION OF DIESEL FUEL

(Dollars in Thousands)

Line No.	LOCOMOTIVES		Line No.
	Kind of locomotive service (a)	Diesel oil (gallons) (b)	
1	Freight	858,786,721	1
2	Passenger	0	2
3	Yard Switching	78,008,881	3
4	TOTAL	936,795,602	4
5	COST OF FUEL $(000)	$2,328,117	5
6	Work Train	8,295,525	6

* Show cost of fuel charged to train and yard service (function 67-Loco. Fuels). The cost stated for diesel fuel should be the total charges in the accounts specified, including freight charges and handling expenses. Fuel consumed by mixed and special trains that are predominantly freight should be included in freight service, but where the service of mixed special trains predominantly passenger, the fuel should be included in passenger service.

INSTRUCTIONS CONCERNING RETURNS TO BE MADE IN SCHEDULE 755

Unit Train, Way Train, and Through Train data under items 2, 3, 4, 6, and 12 shall be obtained from conductor's wheel reports (freight) or similar reports. Unit train service is a specialized scheduled shuttle type service in equipment (railroad or privately owned) dedicated to such service, moving between origin and destination. The applicable tariffs and/or contracts generally require that a specific minimum tonnage or quantity of carloads be tendered as a unit for shipment on one bill of lading or other shipping document in a solid train for movement between origin and destination. Such tariffs and/or contracts generally contain restricted detention provisions and are subject to time-volume requirements which reflect the approximate capacity of the unit trains for the stated period. Way trains are defined as trains operated primarily to gather and distribute cars in road service and move them between way stations or way points. Through trains are those trains operated between two or more major concentration or distribution points. Do not include unit train statistics in way or through train statistics. A work train is a train operated solely or preponderantly for the purpose of transporting company freight, work equipment, or company employees. Statistics for work trains should be reported under Item 11, only. Statistics related to company equipment, company employees, and company freight moving in transportation trains are not to be reported in Item 11, but are to be reported in Items 4-17, 6-04, 7-02, 8-04, and 8-05, as instructed in notes I, K, and L.

(A) Report miles of road operated at close of year, excluding industrial tracks, yard tracks, and sidings.

(B) A train-mile is a movement of a train a distance of one mile. In computing train-miles, fractions representing less than one-half mile shall be disregarded and other fractions shall be considered as one mile. Train Miles-Running shall be based on the actual distance run between terminals and/or stations and shall be computed from the official time tables or distance tables. Train-Miles shall not be increased to cover the running of locomotives from shops to terminals, doubling hills, switching, or other work at way stations, or for the service of helper or pusher locomotives or of extra locomotives on double-head or triple-head trains. When the carrier's trains are detoured over foreign roads, the miles shall be computed on the basis of the miles actually run and in accordance with the service performed. Train-miles shall be kept separately for trains hauled by locomotives and trains moved by motorcars.

(C) A motorcar is a self-propelled unit of equipment designed to carry freight or passengers, and is not considered a locomotive.

(D) A locomotive is a self-propelled unit of equipment designed solely for moving other equipment. A locomotive unit-mile is a movement of a locomotive unit a distance of one mile under its own power. Include miles made by all locomotive units. Exclude miles made by motorcars. Miles of locomotives in helper service shall be computed on the basis of actual distance run in such service.

(E) All locomotive unit-miles in road service shall be based on the actual distance run between terminals and/or stations. Follow instruction (B) regarding fractions and official time tables for computing locomotive miles.

(F) Train switching locomotive-miles shall be computed at the rate of six miles per hour for the time actually engaged in such service. Include miles allowed for train locomotives for performing switching service at terminals and way stations.

(G) Yard switching locomotive-miles shall be computed at the rate of six miles per hour for the time actually engaged in yard switching service. Include miles allowed for yard locomotives for switching service in yards where regular switching service is maintained and in terminal switching and transfer service.

(H) A car-mile is a movement of a unit of car equipment a distance of one mile. Use car designations shown in Schedule 710. Under Railroad Owned and Leased Cars, Items 4-01 and 4-11, report both foreign cars and respondent's own cars while on the line of the respondent railroad. In Items 4-13 and 4-15, report private-line cars and shipper owned cars. Loaded and empty miles should be reported whether or not the railroad reimbursed the owner on a loaded and/or empty mile basis. Report miles made by flatcars carrying empty highway trailers that are not moving under revenue billings as empty freight car-miles. Do not report miles made by motorcars or business cars.

(I) Exclude from Items 4-01, 4-11, 4-13, and 4-5, car-miles of work equipment, cars carrying company freight, and non-revenue private line cars moving in transportation trains. Include such car-miles in Items 4-17, 4-18, and 4-19. If private line cars move in revenue service, the loaded and empty miles should not be considered no-payment or non-revenue car-miles.

(J) Report miles actually run by passenger-train cars in transportation service. Passenger-train car-miles include miles run by coaches and cars in which passengers are carried at regular tariff fares without extra charge for space occupied; miles run by combination passenger and baggage, passenger and mail, passenger and express; miles run by sleeping, parlor, and other cars for which an extra fare is charged; miles run by dining, cafe, and other cars devoted exclusively to the serving of meals and other refreshments and by club, lounge, and observation cars; and miles run by other passenger-train cars where services are combined, such as baggage, express, and mail.

(K) From conductor's or dispatcher's train reports or other appropriate sources, compute weight in tons (2,000 pounds). Item 6-01 includes weight of all locomotive units moved one mile in transportation trains. Ton-miles of motorcars should be excluded. Items 6-02 and 6-03 represent tons behind locomotive units (cars and contents, cabooses) moved one mile in transportation trains (excluding non-revenue gross ton-miles). Nonrevenue gross ton-miles in transportation trains include work equipment and cars carrying company freight and their contents. Use 150 pounds as the average weight per passenger and four tons as the average weight of contents of each head-end car.

(L) From conductor's train reports or other appropriate sources, compute ton-miles of freight. Ton-miles represent the number of tons of revenue and nonrevenue freight moved one mile in a transportation train. Include net ton-miles in motorcar trains. Exclude l.c.l. shipment of freight handled in mixed baggage express cars. Total ton-miles of revenue freight should correspond to the ton-miles reported on Form CBS.

INSTRUCTIONS CONCERNING RETURNS TO BE MADE IN SCHEDULE 755 - Concluded

(M) Road service represents elapse time of transportation trains (both ordinary and light) between the time of leaving the initial terminals and the time at final terminals, including trains switching at way stations and delays on road as shown by conductor's or dispatcher's train reports. Include time of motorcar service performed by train locomotives at terminals and way stations. Report in Item 9-02, train switching hours included in Item 9-01. Train switching is the time spent by the train while performing switching service at terminals and way stations where no regular yard service is maintained. A train hour is independent of the number of locomotives in the train.

(N) Yard switching hours are hours expended in switching service performed by yard crews in yards where regular switching service is maintained, including switching and transfer service in connection with the transportation of revenue and incidentally of company freight. Hours in yard switching are independent of the number of locomotives used.

(O) Work-train miles include the miles run by trains engaged in company service such as official inspection; inspection trains for railway commissioners for which no revenue is received; trains running special with fire apparatus to save carrier's property from destruction: trains run for transporting the carrier's employees to and from work when no transportation charge is made; wrecking trains run solely for the purpose of transporting company material; trains run for distributing material and supplies for use in connection with operations; and all other trains used in work-train services. Exclude miles run by locomotives while engaged incidentally in switching company materials in company shops or material yards in connection with regular yard switching service or in switching equipment for repairs between yards and shops.

(P) The number of loaded freight cars shall be obtained from the conductors' wheel report and shall be the sum of all loaded cars handled by each train. For example, if a car moves loaded (1) in a way train from the origination points, (2) in two through trains, and (3) in a way-train to the destination point, the total count of loaded cars would be four: two counts for the movements in the way trains and two counts for the movements in through trains. Therefore, each car originated or received from a connecting carrier receives an initial count, plus one count for each subsequent physical transfer between trains on respondent's lines. No additional count is given because of crew change or changes in track identification number unless there is a physical transfer of the car between trains. Each car moving under revenue billing shall be considered as a loaded car.

(Q) Report vehicles (TOFC trailers/containers, automobiles and trucks) loaded and unloaded to and from TOFC and multiple level freight cars when the work is performed at the railroad's expense.

(R) Report the number of loaded revenue trailers/containers picked up, plus revenue trailers/containers delivered in TOFC/COFC and in highway interchange service, when the work is performed at the railroad's expense. (Performed at railroad's expense means that railroad employees perform the service or that the railroad hires a subsidiary or outside contractor to perform the service.) Do not include those trailers/containers which are picked up or delivered by a shipper or motor carrier, etc. when a tariff provision requires that the shipper or motor carrier, etc., and not the railroad, perform that service. Note: The count should reflect the trailers/containers for which expenses are reported in Schedule 417, line 2, column (b).

(S) Report under Marine Terminals, Item 16, the tons loaded onto and unloaded from marine vessels at the expense of the reporting railroad.

(T) Report the total number of foreign railroad cars on line at the end of the year (except surplus cars, see below). Foreign railroad cars refers to freight cars owned by other railroads whose interline rental is settled on time (by hour) and actual line-haul mileage charges under the Code of Car Hire Rules.

Carriers will be governed by local conditions in determining whether a car at an interchange point should be considered "on-line." Unserviceable cars include cars on repair tracks undergoing or awaiting repairs. They include cars on repair tracks repaired and awaiting switching, cars on repair tracks undergoing or awaiting repairs switching, cars awaiting movement to repair tracks held in train yards (excluding cars which are to be repaired in the train yard without loss of time), cars moving empty in trains en route to shop, and cars stored awaiting disposition.

Surplus cars are cars which are in serviceable condition for loading on the last day of the year, but have not been placed for loading within 48 hours. This count can be an annual average based on weekly count of cars that have not been placed for loading within 48 hours.

(U) Flat-TOFC/COFC Car-miles reported in lines 25 (4-020), 41 (4-120), 57 (4-140), and 75 (4-160) will be computed using cars rather than constructed container platforms. For example, an articulated car consisting of five platforms moved one mile will be counted as one car-mile, not five car-miles.

(V) The intermodal Load Factor reported on Line 134 will be calculated for the average number of intermodal (TOFC/COFC) units loaded on the average intermodal car. Units are to be calculated in the same manner as Line 123 (13 TOFC/COFC - No. of Revenue Trailers & Containers Loaded and Unloaded (Q)). Intermodal cars will be calculated in accordance with instruction U for reporting Flat-TOFC/COFC Car-miles. Both intermodal (TOFC/COFC) units and intermodal cars are to be calculated using actual units and not constructed intermodal (TOFC/COFC) units or cars.

755. RAILROAD OPERATING STATISTICS

Line No.	Cross Check	Item Description (a)	Freight Train (b)	Passenger Train (c)	Line No.
1		1 Miles of Road Operated (A)	32,889	0	1
		2 Train Miles - Running (B)			
2		2-01 Unit Trains	22,817,345	XXXXXX	2
3		2-02 Way Trains	6,203,303	XXXXXX	3
4		2-03 Through Trains	69,217,534	0	4
5		2-04 TOTAL TRAIN MILES (Lines 2-4)	98,238,182	0	5
6		2-05 Motorcars (C)	0	0	6
7		2-07 TOTAL ALL TRAINS (Lines 5 and 6)	98,238,182	0	7
		3 Locomotive Unit Miles (D)			
		Road Service (E)			
8		3-01 Unit Trains	77,732,193	XXXXXX	8
9		3-02 Way Trains	12,270,231	XXXXXX	9
10		3-03 Through Trains	247,720,730	0	10
11		3-04 TOTAL (Lines 8-10)	337,723,154	0	11
12		3-11 Train Switching (F)	7,788,987	XXXXXX	12
13		3-21 Yard Switching (G)	22,326,352	0	13
14		3-31 TOTAL ALL SERVICES (Lines 11-13)	367,838,493	0	14
		4 Freight Car-Miles (thousands) (H)			
		4-01 RR Owned and Leased Cars - Loaded			
15		4-010 Box-Plain 40-Foot	0	XXXXXX	15
16		4-011 Box-Plain 50-Foot and Longer	25,780	XXXXXX	16
17		4-012 Box-Equipped	109,159	XXXXXX	17
18		4-013 Gondola-Plain	57,094	XXXXXX	18
19		4-014 Gondola-Equipped	69,086	XXXXXX	19
20		4-015 Hopper-Covered	451,170	XXXXXX	20
21		4-016 Hopper-Open Top-General Service	29,870	XXXXXX	21
22		4-017 Hopper-Open Top-Special Service	23,991	XXXXXX	22
23		4-018 Refrigerator-Mechanical	24,492	XXXXXX	23
24		4-019 Refrigerator-Non-Mechanical	219	XXXXXX	24
25		4-020 Flat-TOFC/COFC	307,020	XXXXXX	25
26		4-021 Flat-Multi-Level	85,588	XXXXXX	26
27		4-022 Flat-General Service	76	XXXXXX	27
28		4-023 Flat-All Other	54,813	XXXXXX	28
29		4-024 All Other Car Types-Total	130	XXXXXX	29
30		4-025 TOTAL (Lines 15-29)	1,238,488	XXXXXX	30

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755. RAILROAD OPERATING STATISTICS - (Continued)

Line No.	Cross Check	Item Description (a)	Freight Train (b)	Passenger Train (c)	Line No.
		4-11 RR Owned and Leased Cars - Empty			
31		4-110 Box-Plain 40-Foot	0	XXXXXX	31
32		4-111 Box-Plain 50-Foot and Longer	21,394	XXXXXX	32
33		4-112 Box-Equipped	102,769	XXXXXX	33
34		4-113 Gondola-Plain	61,173	XXXXXX	34
35		4-114 Gondola-Equipped	77,840	XXXXXX	35
36		4-115 Hopper-Covered	496,324	XXXXXX	36
37		4-116 Hopper-Open Top-General Service	31,329	XXXXXX	37
38		4-117 Hopper-Open Top-Special Service	24,257	XXXXXX	38
39		4-118 Refrigerator-Mechanical	33,871	XXXXXX	39
40		4-119 Refrigerator-Non-Mechanical	386	XXXXXX	40
41		4-120 Flat-TOFC/COFC	10,324	XXXXXX	41
42		4-121 Flat-Multi-Level	25,354	XXXXXX	42
43		4-122 Flat-General Service	76	XXXXXX	43
44		4-123 Flat-All Other	53,361	XXXXXX	44
45		4-124 All Other Car Types-Total	188	XXXXXX	45
46		4-125 TOTAL (Lines 31-45)	938,646	XXXXXX	46
		4-13 Private Line Cars - Loaded (H)			
47		4-130 Box-Plain 40-Foot	0	XXXXXX	47
48		4-131 Box-Plain 50-Foot and Longer	11,990	XXXXXX	48
49		4-132 Box-Equipped	174,619	XXXXXX	49
50		4-133 Gondola-Plain	618,440	XXXXXX	50
51		4-134 Gondola-Equipped	44,713	XXXXXX	51
52		4-135 Hopper-Covered	879,435	XXXXXX	52
53		4-136 Hopper-Open Top-General Service	14,862	XXXXXX	53
54		4-137 Hopper-Open Top-Special Service	160,422	XXXXXX	54
55		4-138 Refrigerator-Mechanical	16,904	XXXXXX	55
56		4-139 Refrigerator-Non-Mechanical	976	XXXXXX	56
57		4-140 Flat-TOFC/COFC	1,194,826	XXXXXX	57
58		4-141 Flat-Multi-Level	473,452	XXXXXX	58
59		4-142 Flat-General Service	255	XXXXXX	59
60		4-143 Flat-All Other	119,012	XXXXXX	60
61		4-144 Tank Under 22,000 Gallons	182,189	XXXXXX	61
62		4-145 Tank - 22,000 Gallons and Over	676,321	XXXXXX	62
63		4-146 All Other Car Types-Total	3,590	XXXXXX	63
64		4-147 TOTAL (Lines 47-63)	4,572,006	XXXXXX	64

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755. RAILROAD OPERATING STATISTICS - (Continued)

Line No.	Cross Check	Item Description (a)	Freight Train (b)	Passenger Train (c)	Line No.
		4-15 Private Line Cars - Empty (H)		XXXXXX	
65		4-150 Box-Plain 40-Foot	0	XXXXXX	65
66		4-151 Box-Plain 50-Foot and Longer	12,524	XXXXXX	66
67		4-152 Box-Equipped	123,570	XXXXXX	67
68		4-153 Gondola-Plain	614,633	XXXXXX	68
69		4-154 Gondola-Equipped	43,068	XXXXXX	69
70		4-155 Hopper-Covered	839,539	XXXXXX	70
71		4-156 Hopper-Open Top-General Service	13,973	XXXXXX	71
72		4-157 Hopper-Open Top-Special Service	156,014	XXXXXX	72
73		4-158 Refrigerator-Mechanical	17,052	XXXXXX	73
74		4-159 Refrigerator-Non-Mechanical	1,009	XXXXXX	74
75		4-160 Flat-TOFC/COFC	45,607	XXXXXX	75
76		4-161 Flat-Multi-Level	148,621	XXXXXX	76
77		4-162 Flat-General Service	163	XXXXXX	77
78		4-163 Flat-All Other	106,079	XXXXXX	78
79		4-164 Tank Under 22,000 Gallons	185,872	XXXXXX	79
80		4-165 Tank - 22,000 Gallons and Over	698,539	XXXXXX	80
81		4-166 All Other Car Types-Total	1,123	XXXXXX	81
82		4-167 TOTAL (Lines 65-81)	3,007,386	XXXXXX	82
83		4-17 Work Equipment and Company Freight Car-Miles	101,031	XXXXXX	83
84		4-18 No Payment Car-Miles (I) <1>	0	XXXXXX	84
		4-19 Total Car-Miles by Train Type (Note)			
85		4-191 Unit Trains	2,978,199	XXXXXX	85
86		4-192 Way Trains	195,083	XXXXXX	86
87		4-193 Through Trains	6,684,275	XXXXXX	87
88		4-194 TOTAL (Lines 85-87)	9,857,557	XXXXXX	88
89		4-20 Caboose Miles	0	XXXXXX	89

<1> Total number of loaded miles ___0___ and empty miles ___0___ by roadrailer reported above.

Note: Line 88, total car miles, is equal to the sum of lines 30, 46, 64, 82, 83, and 84. Accordingly, the car miles reported on lines 83 and 84 are to be allocated to lines 85, 86, and 87, and included in the total shown on line 88. Line 88 excludes business car miles.

755. RAILROAD OPERATING STATISTICS - (Concluded)

Line No.	Cross Check	Item Description (a)	Freight Train (b)	Passenger Train (c)	Line No.
		6 Gross Ton-Miles (thousands) (K)			
98		6-01 Road Locomotives	70,133,672		98
		6-02 Freight Trains, Crs., Cnts, & Caboose			
99		6-020 Unit Trains	249,008,450	XXXXXX	99
100		6-021 Way Trains	15,316,760	XXXXXX	100
101		6-022 Through Trains	600,945,654	XXXXXX	101
102		6-03 Passenger Trains, Crs, & Cnts.		0	102
103		6-04 Non-Revenue	8,373,525	XXXXXX	103
104		6-05 TOTAL (Lines 98-103)	943,778,061	0	104
		7 Tons of Freight (thousands)			
105		7-01 Revenue	470,261	XXXXXX	105
106		7-02 Non-Revenue	6,742	XXXXXX	106
107		7-03 TOTAL (Lines 105 and 106)	477,003	XXXXXX	107
		8 Ton-Miles of Freight (thousands) (L)			
108		8-01 Revenue - Road Service	426,936,393	XXXXXX	108
109		8-02 Revenue - Lake Transfer Service	0	XXXXXX	109
110		8-03 TOTAL (Lines 108 and 109)	426,936,393	XXXXXX	110
111		8-04 Non-Revenue - Road Service	3,456,126	XXXXXX	111
112		8-05 Non-Revenue - Lake Transfer Service	0	XXXXXX	112
113		8-06 TOTAL (Lines 111 and 112)	3,456,126	XXXXXX	113
114		8-07 TOTAL - REVENUE & NON-REVENUE (Lines 110 and 113)	430,392,519	XXXXXX	114
		9 Train Hours (M)			
115		9-01 Road Service	4,481,899	XXXXXX	115
116		9-02 Train Switching	673,656	XXXXXX	116
117		10 TOTAL YARD-SWITCHING HOURS (N)	1,925,774	XXXXXX	117
		11 Train-Miles Work Trains (O)			
118		11-01 Locomotives	1,100,711	XXXXXX	118
119		11-02 Motorcars	0	XXXXXX	119
		12. Number of Loaded Freight Cars (P)			
120		12-01 Unit Trains	2,245,685	XXXXXX	120
121		12-02 Way Trains	2,902,930	XXXXXX	121
122		12-03 Through Trains	9,204,374	XXXXXX	122
123		13 TOFC/COFC-No. of Revenue Trailers & Containers Loaded and Unloaded (Q)	6,519,591	XXXXXX	123
124		14 Multi-Level Cars - No. of Motor Vehicles Loaded & Unloaded (Q)	2,966,751	XXXXXX	124
125		15 TOFC/COFC - No. of Revenue Trailers Picked Up & Delivered (R)	162,586	XXXXXX	125
		16 Revenue-Tons Marine Terminal (S)			
126		16-01 Marine Terminals - Coal	0	XXXXXX	126
127		16-02 Marine Terminals - Ore	0	XXXXXX	127
128		16-03 Marine Terminals - Other	54,658,665	XXXXXX	128
129		16-04 TOTAL (Lines 126 - 128)	54,658,665	XXXXXX	129
		17 Number of Foreign Per-Diem Cars on Line (T)			
130		17-01 Serviceable	37,984	XXXXXX	130
131		17-02 Unserviceable		XXXXXX	131
132		17-03 Surplus		XXXXXX	132
133		17-04 TOTAL (Lines 130 - 132)	37,984	XXXXXX	133
134		TOFC/COFC - Average No. of Units Loaded Per Car	4.5	XXXXXX	134

VERIFICATION

The foregoing report shall be verified by the oath of the officer having control of the accounting of the respondent. This report shall also be verified by the oath of the president or other chief officer of the respondent, unless the respondent states that such officer has no control over the respondent's accounting and reporting.

OATH

(To be made by the officer having control over the accounting of the respondent)

State of Nebraska
County of Douglas

Carrie Powers (Insert here name of the affiant) makes oath and states that he (she) is Vice President, Controller, and Chief Accounting Officer (Insert here the official title of the affiant)

Of Union Pacific Railroad Company (Insert here the exact legal title or name of the respondent)

that it is his or her duty to have supervision over the books of accounts of the respondent and to control the manner in which such books are kept; that he or she knows that such books have been kept in good faith during the period covered by this report; that he or she knows that the entries contained in this report relate to accounting matters that have been prepared in accordance with the provisions of the Uniform System of Accounts for Railroad Companies and other accounting and reporting directives of the Surface Transportation Board; that he or she believes that all other statements of fact contained in this report are true, and that this report is a correct and complete statement, accurately taken from the books and records, of the business and affairs of the above-named respondent during the period of time from and including January 1, 2025, to and including December 31, 2025.

Carrie Powers
(Signature of affiant)

Subscribed and sworn to before me, a Notary Public in and for the State and county above named, this 31st day of March, 20 26.
My commission expires May 11, 2026

Use an LS impression seal

GENERAL NOTARY - State of Nebraska
SARAH LOEFFLER
My Comm. Exp. May 11, 2026

Sarah Loeffler
(Signature of officer authorized to administer oaths)

SUPPLEMENTAL OATH

(By the president or other chief officer of the respondent)

State of Nebraska
County of Douglas

V. James Vena (Insert here name of the affiant) makes oath and states that he (she) is Chief Executive Officer (Insert here the official title of the affiant)

Of Union Pacific Railroad Company (Insert here the exact legal title or name of the respondent)

that he or she has carefully examined the foregoing report; that he or she believes that all statements of fact contained in the said report are true; and that the said report is a correct and complete statement of the business and affairs of the above-named respondent and the operations of its property during the period of time from and including January 1, 2025, to and including December 31, 2025.

V. J. Vena
(Signature of affiant)

Subscribed and sworn to before me, a Notary Public in and for the State and county above named, this 31st day of March, 20 26.
My commission expires May 11, 2026

Use an LS impression seal

GENERAL NOTARY - State of Nebraska
SARAH LOEFFLER
My Comm. Exp. May 11, 2026

Sarah Loeffler
(Signature of officer authorized to administer oaths)

CN-38, FD 36873
PUBLIC VERSION

MEMORANDA
(FOR USE OF BOARD ONLY)
CORRESPONDENCE

Office Addressed		Date of Letter, Fax or Telegram of			Subject	Answer Needed	Answer			
							Date of Letter, Fax, or Telegram			File Number of Letter, Fax, or Telegram
Name	Title	Month	Day	Year	Page		Month	Day	Year	

CORRECTIONS

Date Correction			Page	Date of Letter, Fax or Telegram of			Authority			Clerk Making Correction
							Officer sending letter, fax or telegram		Board File Number	
Month	Day	Year		Month	Day	Year	Name	Title		Name

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