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BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

STOLTHAVEN NEW ORLEANS, LLC AND STOLT-NIELSEN USA INC. COMMENTS AND REQUEST FOR CONDITIONS

Stolthaven New Orleans LLC and Stolt-Nielsen USA Inc. (formerly known as Stolt-Nielsen Transportation Group Inc.) (collectively, "Stolthaven") submit these comments in this proceeding in opposition to the proposed merger of Union Pacific ("UP") and Norfolk Southern ("NS"). Stolthaven respectfully asks the Surface Transportation Board ("STB" or "the Board") to reject the merger application, or in the alternative, approve the merger with one of the two alternative conditions proposed below related to Stolthaven's operations in Braithwaite, Louisiana. Combining UP and NS into a single railroad would seriously harm competition at this location and adversely impact our business unless unrestricted reciprocal switching is imposed at the Braithwaite Terminal or, at a minimum, the reciprocal switching restriction is lifted for UP-served origins and destinations.

1. Stolthaven's Interest in the Transaction.

Stolthaven is a leading provider of storage solutions for specialty bulk liquids, including chemicals, clean petroleum products, biofuels, oleochemicals, oils and fats with a terminal located in Braithwaite, Louisiana on the Mississippi River (the "Braithwaite Terminal"). Our customers choose us for many reasons. The three main reasons are (1) **competitive rail economics, i.e., we offer access to connecting Class I railroads through reciprocal switching, subject to existing restrictions,**

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which results in significant freight cost savings for our customers[1]; (2) safe and high-quality service, with capability to provide complex solutions and to store all types of liquid products; and (3) low demurrage exposure that results from effective marine operations with low dock waiting times.

Reciprocal switching is available to the Braithwaite Terminal under NS Tariff 8001, but with a restriction: NS is effectively the exclusive line-haul carrier for Stolthaven's customers between the Braithwaite Terminal and NS-served origins and destinations. At UP-served origins and destinations, by contrast, competition between UP and other Class I railroads gives Stolthaven's customers more leverage to negotiate competitive rates and service terms. If the merger is approved and the combined company claims that the same exclusivity applies to its UP locations, that competition would be eliminated for shipments between the Braithwaite Terminal and the West Coast and other UP-served destinations. Stolthaven's customers value having rail options and dealing with suppliers in a fair, competitive environment that gives them access to competitive pricing and reliable service.

2. Stolthaven Seeks to Preserve Competition at the Braithwaite Terminal Through Either of Two Alternative Conditions Governing Its Reciprocal Switch Arrangement.

To preserve the competition its customers now enjoy, Stolthaven respectfully requests that the STB reject the proposed merger or, in the alternative, approve it on the condition that the Braithwaite Terminal remain open to unrestricted reciprocal switching with connecting railroads, whether the origin or destination is served by NS, UP, or the combined railroad. This condition should eliminate the origin- and destination-based limitations in NS Tariff 8001 for shipments to and from the Braithwaite Terminal. This condition would satisfy the "enhanced competition" standard discussed below. At a minimum, the Board should condition approval on maintaining the reciprocal switching

[1] This reciprocal switching is performed by NS as per tariff NS 8001, Item 1330, Item 4480 and Section 5.

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for UP-served origins and destinations. Without that condition, the merger would harm competition at this location, where UP is currently treated neutrally under NS Tariff 8001.

3. These Two Alternative Conditions Are Mandated Under the More Recent and Prior Merger Guidelines Respectively.

Under 49 U.S.C. § 11324(c), the Board must determine whether the proposed transaction is "consistent with the public interest." And in proceedings involving at least two Class I railroads, the Board must consider at least five enumerated factors, including "whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system." 49 U.S.C. § 11324(b)(5). The assessment of the revised merger application here is also governed by the rules, which the Board adopted in 2001 to govern major transactions like this one. *Major Rail Consolidation Procedures*, 2001 WL 648944 (STB. served June 11, 2001) ("Major Merger Rules").

These regulations "reflect a significant change in the way in which" the Board "appl[ies] the statutory public interest test to any major rail merger application." *See Major Rail Consol. Procs.,* 2001 WL 648944, at *3. In the past, when "the industry was facing numerous bankruptcies by major carriers," the pro-merger framework of the 1980s and 1990s served its purpose: railroads "continued to face effective competition" and were "forced" "to pass on the preponderance of the significant efficiency gains they . . . achieved (through mergers and other means) to the shippers that they serve[d]." *Id.* at *4. But by the turn of the century, "the number of overall railroad companies ha[d] been reduced dramatically, and the size of the remaining carriers ha[d] increased correspondingly." *Id.* at *5. As a result, the Board's earlier, presumptively pro-merger regulations "were outdated and inadequate . . . , given the limited merger-related benefits still obtainable. . . , the significant service disruptions that had been associated with recent rail mergers[,] and the prospect that future merger proposals would trigger other proposals that, if approved, could result in the consolidation of the Class

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I railroad industry into only two North American transcontinental railroads." *Id.* at *2; *see also* Press Release, *Surface Transportation Board Issues Notice of Proposed Rulemaking on New Rules for Major Railroad Mergers*, at 1 (STB served Oct. 3, 2000) (describing the rules as "a major shift in basis from the promerger approach" because "there is no longer the pressing need that the [n]ation's largest railroads once had to consolidate their operations").

Against this backdrop, the Board concluded that "future merger applicants should bear a heavier burden to show that a major rail combination is consistent with the public interest." *See Major Rail Consol. Procs.,* 2001 WL 648944, at *3; *accord* Decision No. 21 at 18. Under the Major Merger Rules, the Board "does not favor consolidations that reduce transportation alternatives available to shippers unless there **are substantial and demonstrable public benefits** to the transaction that cannot otherwise be achieved." 49 C.F.R. § 1180.1(a) (emphasis added). This standard mirrors the "rigorous" antitrust requirement that pro-competitive benefits be significant, verifiable, and merger-specific, and that they outweigh any presumed or actual harm to competition from a merger. *See FTC v. Penn State Hershey Med. Ctr.,* 838 F.3d 327, 349 (3d Cir. 2016). In antitrust law, no disfavored merger has ever met that standard. *See, e.g., id.* at 350 ("This high standard is not met here—nor, we note, has this high standard been met by any proposed efficiencies considered by a court of appeals."); *FTC v. Sysco Corp.,* 113 F. Supp. 3d 1, 82 (D.D.C. 2015) ("The court is not aware of any case . . . , where the merging parties have successfully rebutted the government's prima facie case on the strength of the efficiencies."). Although the Major Merger Rules do not "prejudge the merits of any" merger proposal, they do "disfavor[] mergers that reduce competition options for shippers" and "take a more skeptical, 'show me' attitude toward claims of merger benefits and towards claims that no transitional service problems would occur." *See Major Rail Consol. Procs.,* 2001 WL 648944, at *5. This "heightened" standard is stricter than traditional antitrust law. *See* Dep't of Justice Letter at 3 n.6 (Mar. 3, 2026) (Record No. 310931) (explaining that ordinary-course documents are "even more imperative"

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under the "heightened 'enhanced competition' standard" than the substantial lessening of competition standard).

Now, under the Major Merger Rules, a Class I merger proposal must not only preserve competition—it must enhance it. As the Board recognized in 2001, any merger of Class I railroads likely will involve "merger-related harms that cannot be directly or effectively mitigated," so merging parties must "present proposals that enhance, not merely preserve, competition in order to secure [] approval." *Major Rail Consol. Procs.,* 2001 WL 648944, at *3. The Board was clear: "some new or enhanced rail-to-rail competition or other competitive benefits [are] likely to be necessary to resolve substantial difficulties so as to tip the balance in favor of the public interest." *Id.* at *5. "[P]rovisions for enhanced competition[,] will be given substantial weight" and "are likely to be **extremely important** to [the Board] in determining whether to approve a particular application[,]" *Major Rail Consol. Procs.,* 2001 WL 648944, at *9 (emphasis added).

The Major Merger Rules focus principally on enhancing intramodal competition. In promulgating them, the Board explained that the "heavier burden" it was imposing will require "some new or enhanced **rail-to-rail** competition or other competitive benefits." *See Major Rail Consol. Procs.,* 2001 WL 648944, at *5 (emphasis added). The Board's own examples of qualifying "competitive enhancements"—joint access areas, reciprocal switching arrangements, trackage rights, and the elimination of paper and steel barriers on interchanges—all presume increased access to rail competition for shippers. *See id.* at *3, *9. The Major Merger Rules thus require that a merger provide for enhanced intramodal—that is, rail-to-rail—competition. *See id.* at *9; *see also* 49 C.F.R. § 1180.1(d).

Under the Major Merger Rules and the governing statute, Stolthaven's minimum condition—lifting the reciprocal switching restriction for UP-served origins and destinations—is required even

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under the older, less stringent standard, because the merger could harm competition for shipments to and from the Braithwaite Terminal that involve a UP origin or destination. That loss of competition is the ordinary kind of harm the Board has remedied in past major merger proceedings. To satisfy the enhanced competition standard of the Major Merger Rules, however, the Board should go further and lift the NS restrictions. The competitive remedies UP currently offers, including Commited Gateway Pricing, do not benefit Stolthaven and generally invite additional litigation, rendering them toothless. The effective condition for Stolthaven here is neutral, unrestricted reciprocal switching, which is what the transaction needs in order to meet the enhanced standard.

4. Conclusion

For the foregoing reasons, Stolthaven respectfully requests the Board to reject the merger application or, in the alternative, approve the merger with one of the two alternative conditions described above. Stolthaven believes the transaction could reduce, rather than preserve and enhance, its customers' competitive options.

Stolthaven appreciates the Board's consideration of these comments and stands ready to provide any further information the Board may find helpful.

Respectfully submitted,

/s/ Daniel R. Elliott

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Dated: November 18, 2026

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Comments and Request for Conditions to be served electronically on the Secretary of Transportation and the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Jenifer Soulikias, and all parties of record in this proceeding.

/s/ Daniel R. Elliott
Daniel R. Elliott

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VERIFICATION

I, Henrik Olsson, Regional Commercial and Business Development Manager (Americas) of Stolthaven Terminals, declare under the 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 make this Verification on behalf of Stolthaven New Orleans, LLC and Stolt-Nielsen USA Inc. Executed on November 18, 2026.

Signed by:
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Henrik Olsson

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