CPKC-73

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

CPKC'S COMMENTS ON APPLICATION AND REQUESTS FOR CONDITIONS

VOLUME I OF IX

THE BOARD SHOULD DENY THE APPLICATION

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TABLE OF CONTENTS

I. OVERVIEW AND EXECUTIVE SUMMARY 1

II. THE 2001 MAJOR MERGER RULES ELIMINATED THE PRESUMPTION IN FAVOR OF CONSOLIDATION AND MATERIALLY RAISED THE BAR FOR PROOF BY APPLICANTS THAT FURTHER CONSOLIDATION IS IN THE PUBLIC INTEREST 20

A. Applicants' Burden of Proof Is Higher than for any Previously Considered Railroad Merger 21

B. The Proper Scope of the Board's Inquiry in This Proceeding Must Include Consideration of Whether a Transcontinental Duopoly Is in the Public Interest 25

C. Congress Did Not Envision the Kind of Consolidation Applicants Propose 27

1. The Statutory Framework Contemplates a Well-Functioning Interline Rail Network, Not a Rail System Dominated by Two Closed-Loop Systems 27

2. Abraham Lincoln Did Not Envision a UP Colossus 30

D. The Proposed Transaction Is Unlike Any Other Previously Approved, and Offers None of the Compelling Public Interest Rationales Underlying Previous Transactions 31

1. The Size, Scope, and Complexity of a "UP Colossus" Network Are Unprecedented and Poses Unique Risks for the Public Interest 32

2. The Core Public Interest Rationales Justifying Previous Transactions Are Absent Here 34

3. This Transaction Is Not Necessary to Address Any Risk to the Financial Health or Effectiveness of the U.S. Rail Network 36

4. "Full Nation" Rail Networks in Other Countries Provide No Support for Applicants' "Transcontinental Railroad" Thesis 41

5. None of Applicants' Other Spurious Claims Justify a "Transcontinental Railroad" 44

(a) U.S. Manufacturing Is Not Held Back by the Absence of a Transcontinental UP Network 45

(b) The UP-NS Transaction Is Completely Unrelated to Competing Harder with Canadian Ports 47

E. The Best Way to Build a More Competitive Rail Network and Encourage Class I Railroads to Pursue Growth Would Be to Send a Clear Message that They Should Not Spend Time and Effort Trying to Merge 49

III. A TRANSCONTINENTAL MERGER IS NOT NEEDED TO SUPPORT HIGH-QUALITY INTERLINE RAIL SERVICE AND TRAFFIC GROWTH 50

A. UP (and to a Lesser Extent NS) Have Historically Chosen to Maximize Price, Margins, and Profits at the Expense of Growth 52

B. Substituting Single-Line Service for Interline Service Is Not Necessary to Compete with Trucks 64

1. Transcontinental Interchanges Do Not Inherently Burden Efficient Interline Rail Services 65

(a) UP-CPKC-NS Transcontinental Intermodal Services Via the Meridian Speedway Show What Interline Service Can Do 67

(b) There Are Many Illustrations of Seamless, Steel-Wheel Interline Services 76

2. Applicants' Airline Analogy Is Inapposite 82

C. Where There Are Opportunities to Attract Traffic Via Single-Line-Like Interline Services, a Merger Is Not Needed to Make Those Offerings Commercially Viable 86

1. Commercial Frictions Are No Impediment to Successful Interline Growth 87

2. If the Growth Opportunities Are Real, UP and NS Have Ample Financial Incentives to Pursue That Traffic Through Rate Reductions and Service-Related Investments 93

D. Shared Technologies for Customer Service Improvements Are in Advanced Stages of Implementation, Without Need for Merger 95

E. Experience with Single-Line-Service Benefits in Past Railroad Combinations Does Not Support Applicants' Benefits Claims Here 97

IV. THE APPLICATION DOES NOT PROVIDE THE EVIDENCE (OR TRANSPARENCY) THE BOARD NEEDS TO ANALYZE THE MERGER'S REAL-WORLD IMPACTS 99

A. The Board Should Have No Confidence in the Reliability of Applicants' Diversion Estimates and Operating Plan 103

B. The Application Does Not Disclose Applicants' Real Post-Merger Plans 105

C. Applicants Provide No Evidence to Allow the Board to Assess What Benefits (if Any) Could Not Be Achieved Without a Merger 114

V. THE TRAFFIC DIVERSIONS APPLICANTS CLAIM WILL FLOW FROM NEW "SINGLE-LINE SERVICES" ARE VASTLY OVERSTATED AND ENTITLED TO NO WEIGHT IN THE BOARD'S PUBLIC-INTEREST ANALYSIS 119

A. Applicants' Continued Reliance on a 2023 Base Year Analysis is Fundamentally Disconnected from 2027-Forward Conditions 122

B. Mr. Hunt's Traffic Diversion Analysis Is Untethered to the Real World 130

1. Real-World Shipper Routing Decisions Depend Upon A Multitude of Customer-Specific Factors 131

2. Converting Shippers from Truck-to-Rail Requires Hard Work 132

3. The Application Fails to Support the Claimed Improvements in Rail Service Performance or Rate Levels Underlying Applicants' Traffic Study 134

(a) The Merger Will Not Yield the Assumed Level of Service Improvements 135

(b) The Merger Will Not Yield the Assumed Level of Rate Improvements 137

C. The Hunt Study Does Not Provide Reliable Evidence of Merger-Specific Diversions 140

1. Mr. Hunt's Truck-To-Intermodal Model Does Not Identify Merger-Related Diversions 141

(a) Mr. Hunt's "Lookalike" Methodology Does Not Isolate the Effect of Single-Line Service From Other Differences Between Markets 143

(b) Mr. Hunt's Truck-To-Intermodal Model Predicts Substantial Diversions Even When the Modeled Merger-Related Improvements Are Removed 148

(c) Additional Tests Demonstrate That Mr. Hunt's Predicted Intermodal Diversions Are Not Linked to the Claimed Merger Improvements 152

2. Mr. Hunt's Truck-To-Carload Model Does Not Identify Merger-Related Diversions 154

(a) Mr. Hunt's Truck-to-Carload "Lookalike" Methodology Does Not Isolate the Effect of Single-Line Service From Other Differences Between Markets 155

(b) Mr. Hunt's Truck-To-Carload Model Predicts Substantial Diversions Even When the Modeled Merger-Related Changes Are Removed 159

(c) Additional Tests Demonstrate That Mr. Hunt's Predicted Carload Diversions Are Not Linked to the Claimed Merger Improvements 162

3. Mr. Hunt's Rail-To-Rail Model Does Not Identify Merger-Related Diversions 165

(a) Mr. Hunt's Rail-to-Rail Model Is Over-Simplified and Omits Important Commercial and Operational Determinants of Shipper Choice 167

(b) Mr. Hunt's Rail-to-Rail Model Does Not Reliably Reproduce Observed Routing Choices 168

(c) Mr. Hunt's Rail-to-Rail Model Demonstrates That Substantial Diversions Are Achievable Through Coordination Agreements 170

4. The Unreliability of Mr. Hunt's Methodology Is Further Proven by Its Transition from the Original Application to the Amended Application 172

D. Applicants' Traffic Diversion Analysis and Truck Cost Savings Calculation Do Not Establish Merger-Specific Public Benefits. 174

VI. THE OPERATING PLAN IS UNTETHERED TO THE REAL WORLD, SHOWING THAT APPLICANTS HAVE NO IDEA WHAT VERSION OF A TRANSCONTINENTAL NETWORK WILL ACTUALLY BE IMPLEMENTED OR WHETHER IT WILL BE FEASIBLE 177

A. Applicants' Base Plan Is Unrealistic and Unreliable 179

B. Applicants' Optimized Plan Is Not Executable on Applicants' Current Systems Under Real World Conditions 181

C. Applicants' Growth Plan Is Not Viable 185

VII. APPLICANTS' OTHER CLAIMED BENEFITS ARE VASTLY OVERSTATED AND DO NOT SUPPORT APPROVAL 188

A. There Is No Sound Foundation for Applicants' Operating Expense Benefits 190

1. Many of Applicants' Operating Cost Savings Are Keyed to an Unsupported and Overoptimized Operating Plan and Equally Unsupported Traffic Analyses 190

2. Other Operating Cost Savings Are Based on an Aspiration of Achieving UP-Like Outcomes on the NS Network, Without Any Showing of Feasibility 192

3. There Is No Showing That the Claimed Operating Expense Savings Could Not Be Achieved Without a Merger Through Ordinary-Course, Arm's-Length Benchmarking and Best Practices 194

B. Applicants' Asserted "Personnel" and "Technology" Savings Affirmatively Undermine the Public Benefits Case for the Merger 195

C. Applicants' Other Claimed Benefits Do Not Warrant Approval 197

D. UP-NS Dis-Synergies Must Be Deducted from Any Claimed Benefits 198

VIII. THE UP-NS MERGER POSES SERIOUS RISKS OF SERVICE DISRUPTION 198

A. A UP-NS Network, from Implementation and for the Next 100-Plus Years, Would Pose Systemic Risks to the U.S. Economy 199

B. Implementation of the Transaction Poses Material Risks of Catastrophic Service Failures 201

1. The Unprecedented Magnitude of This Integration Means There Is No Precedent for a "Smooth" Integration 201

2. UP and NS Have Decidedly Poor Track Records, Both in the Merger Setting and During Steady-State Operations 202

3. The Operating Plan Upon Which All of Applicants' Planning and Capacity Analysis Is Based Will Not Work in the Real World, Putting The Whole Rail Network At Risk 207

C. Applicants' Service Assurance Plan Is Too Generalized to Cure the Deficiencies in the Operating Plan or Protect Against Service Disruption 207

1. Applicants' Claimed "Buffer" Is Insufficient to Prevent Disruption 210

2. Applicants' Contingency Plans Do Not Address Most Facilities and Would Spread Rather than Solve Any Problems They Encounter 213

3. Applicants' Service Assurance Planning Completely Ignores the Effects of IT Cut-Over-Related "Fog" 217

D. The Transaction Will Cause Congestion and Operational Inefficiencies at Key Rail Network Nodes 219

IX. THE TRANSACTION WILL, BY DESIGN, DISMANTLE THE INTERLINE RAIL NETWORK THAT HAS SERVED AMERICA WELL FOR 200 YEARS 222

A. Make No Mistake: The Notion of UP Interchange with Other Rail Carriers Except When Essential to Complete a Move Will Be Incompatible with UP's Operating Philosophy 223

B. UP-NS Will Degrade or Eliminate Existing Interline Services with Other Class I Railroads 226

C. The Transaction Will Give UP Inordinate Control and Influence at Key Industry Ventures That Have Supported Interline Efficiency and Competition 229

1. AAR 229

2. Railroad Equipment Pools 230

(a) TTX 231

(b) The Multilevel Pool 233

(c) North American Boxcar Pool 234

3. Key Terminal Railroads Serving the Mid-Continent Gateways 234

(a) Kansas City: The Kansas City Terminal Railroad 234

(b) Chicago: BRC and IHB 237

(c) St. Louis: TRRA and Alton & Southern 239

X. UP-NS WOULD HARM COMPETITION 241

A. UP-NS Would Create an Unprecedented Degree of Concentration that Calls for an Analysis Different in Scope from Prior Transactions 242

1. Applicants' Competitive Analysis Falls Short of the Broader Inquiry the 2001 Major Merger Rules Require 243

2. Post-Merger UP Would Be So Pervasive that Shippers Would Lack Credible Alternatives to Avoid It 245

B. The Transaction Would Weaken Interline Competition on Both Sides of Major Gateways 252

1. The Merger Would Replace Support for Competing Interline Routes with an Incentive to Favor UP Single-Line Service 253

2. Shippers Benefit from Competition Even When One End of a Movement is Sole-Served 258

3. Empirical Evidence Confirms that Weaker Interline Competition Would Raise Rates 263

4. Applicants' Analyses Do Not Rebut the Evidence of Competitive Harm 264

5. Applicants' Independent Route Screen Does Not Resolve the Competitive Harms 268

6. Open Gateway Commitments Like Those Implemented in *CP/KCS* Would Not Preserve the Competition at Risk 269

7. Though Not Offered as a Remedy for Vertical Harms, UP's Proposed "Committed Gateway Pricing" Would Make Matters Worse 273

C. The Transaction Would Eliminate Geographic Competition and Weaken Bargaining Across Shippers' Facilities 274

D. The Transaction Would Eliminate Competition Between UP and NS for the Longer Haul 282

E. The Transaction Would Also Harm Competition in Specific Corridors and Reduce Independent Innovation, and a Duopoly Would Further Magnify that Problem 285

1. The Transaction Would Eliminate Corridor Competition and Impair Competing Services 286

2. The Transaction Would Reduce Independent Innovation, with Further Losses from a Duopoly 287

XI. APPLICANTS' PROPOSED COMPETITIVE ENHANCEMENTS OR "COMMITMENTS" DO NOT MEASURE UP TO THE REQUIREMENTS OF THE 2001 MAJOR MERGER RULES 288

A. The Only Proposed "Intramodal" Competitive Enhancement—Committed Gateway Pricing (or "CGP")—Would *Harm* Rather than "Enhance" Competition 289

1. There Is Abundant Need for Offsetting Enhancements Given the Serious and Fundamentally Irremediable Consequences of the UP-NS Combination 290

2. CGP Is Not a Competitive Enhancement 291

3. Enhanced Competition Means More Rail-to-Rail Competition, Not Asserted Gains from Trucks 297

B. Neither The ICCTA's General Regulatory Backstops Nor Applicants' Targeted Access and Alternative Dispute Resolution Programs Will Protect Shippers from Merger-Created Market Power 298

XII. THERE IS NO VIABLE REMEDY TO THE PUBLIC INTEREST HARMS AND RISKS POSED BY THE TRANSACTION 300

A. Any Cluster of Commitments and Conditions Could Not Address the Full Scope of the Transaction's Harm to the Long-Term Public Interest 301

B. Forcing the Rail Network to Rely on Regulation, Rather than Competition, to Police UP's Post-Transaction Behavior Would Be Contrary to Statute 303

C. Applicants' Commitment to "Keep Gateways Open on Commercially Reasonable Terms" Is Inadequate to Preserve Competitive Access 304

D. A Transcontinental UP Will Be Even Less Cooperative and Less Readily "Supervised" by the Board than Today's UP Has Been 307

E. Background Regulation, Including the Revised Competitive Access Regime Proposed in EP 788, Would Not Avoid Merger-Related Harms 311

F. The Board Has Recognized the Practical Obstacles to Addressing Future Adverse Consequences Arising from Long-Past Consolidation 313

XIII. THE UP-NS MERGER WILL INEVITABLY CAUSE FURTHER DOWNSTREAM CONSOLIDATION CULMINATING IN A NATIONWIDE DUOPOLY, WHICH WOULD NOT BE IN THE PUBLIC INTEREST 315

A. Why There Will Be Downstream Consolidation 316

B. Follow-On Consolidation Would Be Necessary to Counter Post-Merger UP, But the Outcome Would Not Be in the Public Interest 320

C. Blocking This Transaction Now Is the Only Way to Avoid the Harm from a Downstream Duopoly 325

APPENDIX

APPENDIX A: EVIDENTIARY HIGHLIGHTS SHOWING UP AND NS FAVORING MAXIMIZING PRICE AND MARGINS AT THE EXPENSE OF VOLUME GROWTH AND SERVICE STABILITY A1

APPENDIX B: EVIDENTIARY HIGHLIGHTS SHOWING INTERLINE COLLABORATION WITHOUT A MERGER, INCLUDING ACROSS THE WATERSHED B1

APPENDIX C: EVIDENTIARY HIGHLIGHTS SHOWING FORECLOSURE OF COMPETITION THROUGH BUNDLING, ELIMINATION OF INTERLINE SERVICES, AND OTHER STRATEGIES C1

APPENDIX D: EVIDENTIARY HIGHLIGHTS SHOWING BARRIERS TO APPLICANTS ACHIEVING THEIR FORECASTED TRAFFIC DIVERSIONS, INCLUDING THE DIFFICULTY OF WINNING NEW BUSINESS FROM TRUCK D1

APPENDIX E: EVIDENTIARY HIGHLIGHTS SHOWING APPLICANTS' PRIOR CONSIDERATIONS OF CLASS I CONSOLIDATION, INCLUDING THE INEVITABILITY OF A TRANSCONTINENTAL DUOPOLY E1

I. OVERVIEW AND EXECUTIVE SUMMARY

UP's acquisition of NS is not in the public interest, and under the governing statutory standard and Board regulations cannot be approved. This Transaction presents exactly the situation for which the Board adopted the 2001 Major Merger Rules. UP's proposed acquisition of NS would permanently transform the structure of the North American rail industry. It would combine the largest western railroad with one of the two major eastern railroads, creating a dominant carrier stretching across the United States of unprecedented size and power over shippers.

In isolation, the combination of UP and NS would cause provable harms and create immeasurable risks that outweigh the rewards, if any at all, that could only be achieved through merger. Even if the Board perceives that the Transaction would occur in isolation, it should be disapproved as inconsistent with the public interest.

But the Transaction is *not likely to occur in isolation*. It is likely to trigger an inevitable spiral toward an ultimate industry structure consisting of just two large railroads across all of North America. Such a transition would not overcome the ill effects of the UP-NS merger and would also be incompatible with the public interest as compared with today's industry structure. The Board is not deciding how the Nation's rail system should look for the next five years, ten years, or even twenty years. Its decision will determine the permanent structure of the rail industry for the next century and beyond.

The issues in this case are sweeping in scope and in many ways complex. But the fundamental decision the Board has to make is simple: Can the Board be confident that the permanent transformation of the U.S. rail industry that Applicants are proposing would serve the public better than today's industry structure—not "as of 2023," not for the next five or ten years,

but for the next century or more? CPKC submits that this is an easy call. There would be no turning back from the structural transformation Applicants propose. And with the competitive landscape of today's industry structure permanently altered, there would be no way for the Board to substitute effective regulation of UP-NS that restores that competition, or that even is capable of holding UP-NS to its commitments and potential conditions in a timely and effective way.

CPKC submits that Applicants' case for their Transaction fails at every level:

First, the Application itself fails to lay a foundation upon which Applicants could meet their "heightened burden" of proving that the UP-NS merger is consistent with the public interest. Applicants had their shot to make their case, and they may not backfill their case later in this proceeding when interested parties would have no opportunity to respond. As CPKC's evidence shows, that foundation cannot support approval. Instead, the Application is built on an Operating Plan and traffic diversion analysis that operates in fantasyland rather than the real world.

Second, despite their obligation to do so, Applicants have not and cannot show that a merger is necessary to achieve the kinds of benefits they claim. Applicants have not even attempted to parse their claimed benefits between those that could, and those that might not, be achievable without a merger. As CPKC's evidence shows, Applicants' core benefit—billions in claimed savings from truck-to-rail diversions—would (if achievable at all) come from long-haul run-through intermodal services that railroads operate routinely today in interline service.

Third, the real-world consequences of UP's acquisition of NS render the Transaction unapprovable. The merger would cause massive public interest harms—especially in terms of competitive and service risks—that cannot be squared with the statutory standard for approval.

The risks are too great, the ability to manage those risks is too tenuous, and there would be no ability to turn back the clock once the harmful consequences of the Transaction have arisen.

Fourth, this proceeding is not solely about the UP-NS merger and the harm that it would cause in isolation. This is the Board's one chance to prevent the inevitable transcontinental rail duopoly that UP warned about in 2000.

And finally, the Board cannot decide this case without considering the implications of Applicants' conduct in this proceeding. Regardless of what the Board may ultimately conclude about the implications of that conduct for shipper participation in this proceeding, UP's conduct underscores two key truths that bear directly on whether a UP-NS merger could ever be approved:

- UP knows that it already has market power, in the form of the power to raise prices and the freedom to threaten (or joke about threatening) to do so to an audience of customers; and
- UP has contempt for the Board's regulatory authority and cannot be expected to live up to its commitments or comply with potential conditions without extraordinary efforts by the Board and stakeholders to force UP-NS to honor the rules.

We address these five themes, and the evidence submitted in these Comments that support them, in the pages below.

1.

The Application Fails to Provide a Foundation Upon Which Applicants Could Ever Meet Their Heightened Burden of Proving that the Transaction Would Serve the Public Interest.

As the first major merger adjudicated under the 2001 Major Merger Rules, Applicants' burden of proof is higher than for any previously considered railroad merger. The Transaction may be approved only if Applicants can prove substantial and demonstrable public benefits—such as improved service and safety, enhanced competition, and greater economic efficiency—that outweigh the Transaction's anticompetitive effects, potential service disruptions, or other merger-related harms. 49 C.F.R. § 1180.1(c). (*See* Section II.A) Applicants do not come close to making this showing.

Despite being given multiple opportunities to do so, Applicants have not provided the evidence the Board needs to assess how a combined UP-NS would operate in the real world. The core evidence they offer to support their account of the Transaction's likely effects provides extraordinary cause for concern rather than a basis for approval. And unfortunately for Applicants, their time to analyze the effects of the Transaction have come to an end; they will not be allowed to backfill their case on rebuttal.

The engine of the entire Application and its claims of benefits is Applicants' Operating Plan, which is completely untethered to the real world, showing they have no idea what version of a transcontinental network will actually be implemented or whether it will be feasible to operate. As CPKC's witnesses Messrs. Elphick and Nelson (who have extensive railroad operational planning experience and were responsible for the last Class I merger operating plan presented to the Board) demonstrate, Applicants' so-called Operating Plan is a ticket for operational disaster. (*See* Section VI.) And Applicants' Service Assurance Plan is too

generalized to cure the serious deficiencies in the Operating Plan, leaving the whole system vulnerable to a complete meltdown. (*See* Section VIII.)

Applicants' traffic diversion analysis fares no better. It was put together by consultants at Oliver Wyman for the sole purpose of presenting something Applicants and their counsel thought would be marketable to the Board in this proceeding. (*See* Section IV.B.) As the Board will learn, it is demonstrably unreliable at predicting real-world rail traffic flows and, therefore, cannot be relied upon to support their claim that substituting UP-NS single-line rail service for interline services will allow Applicants to attract massive volumes of truck traffic from the Nation's highways. (*See* Section V.) It also is not reflective of the real world nor UP's internal planning, in which UP quietly predicts [redacted] (*See* Section IV.)

Perhaps most egregiously, Applicants flout the Board's clear instructions in the 2001 Major Merger Rules that future applicants address the wide range of "potential harms" from "anticompetitive effects that would be difficult to mitigate through appropriate conditions," including the "loss of geographic competition," and demonstrate genuine "competitive enhancement"—in the form of enhanced intramodal competition—sufficient to tip the overall balance decisively in favor of the public interest.[1] Instead, Applicants have done less, not more, than merging parties that have come before them to examine the competitive consequences of their merger, and offer no meaningful competitive enhancements. (*See* Sections X & XI.)

As a result, Applicants' case founders at the starting line. They cannot reliably establish what traffic would move differently because of the Transaction, how the combined network

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[1] *Major Rail Consolidation Procedures*, 5 S.T.B. 539, 550, 554, 569, 609, 611 (2001) ("Major Merger Rules").

would actually operate, whether the promised service improvements are achievable, or what the Transaction's full competitive effects would be. Their Application cannot be approved.

2.
The UP-NS Merger Is Not Necessary to Achieve the Benefits Applicants Claim.

Even if the Board entertains the possibility of the Transaction achieving some of the benefits Applicants claim for it, Applicants have not identified merger-specific benefits remotely commensurate with the structural transformation they ask the Board to approve. Applicants tell a sweeping story: creating the United States' first transcontinental railroad will stimulate rail growth, take trucks off the highways, strengthen American industry, and usher in a new era for freight rail. But that story skips over a much more basic question: why is a merger necessary to accomplish any of it?

The core public interest rationales justifying previous transactions are absent here. There is no fundamental problem with the existing U.S. rail network structure or evidence that the absence of a transcontinental UP network is holding back U.S. manufacturing growth. Neither UP nor NS is in need of rescue; they are each supremely profitable already, with no shortage of resources to invest further to support their growth. (*See* Section II.D.)

Nor is a transcontinental merger needed to support high-quality interline rail service and traffic growth. (*See* Section III.) Railroads already can—and routinely do—provide coordinated interline service that is highly competitive with trucks. Where railroads make such interline services a commercial and operational priority, they can succeed. The successful two-interchange services via the Meridian Speedway and UP's success in the I-5 corridor over the Portland gateway are proof of that, along with a raft of other evidence. There is no reason to

allow this Transaction to disrupt this healthy interline rail network that has served America well for 200 years. (*See* Section IX.)

Nor do Applicants adequately confront the role their own commercial strategies have played in limiting rail growth. UP (and to a lesser extent NS) have historically chosen to maximize price at the expense of growth. (*See* Section III.A.) Applicants cannot transform opportunities they have chosen not to pursue aggressively into merger-specific benefits simply by asserting that those opportunities would become easier under common ownership. The best way for the Board to encourage Class I railroads to pursue growth and build a stronger and more competitive rail network would be to send a clear message that they should not spend any more time and effort trying to merge. (*See* Section II.E.)

Moreover, the traffic diversions Applicants claim will flow from new single-line services are vastly overstated and entitled to no weight. (*See* Section V.) Applicants' consultants at Oliver Wyman assume single-line service is a magic wand that automatically improves rail rate and service outcomes relative to what can be achieved through interline cooperation. In reality, there are many reasons to believe Applicants will not deliver on those claimed improvements in rate levels or rail service performance. And even if they could, Oliver Wyman's model does not control for any of the many other factors that influence shippers' decision to choose between rail and truck, such as density, reliability, shipment size and cadence, terminal access, first- and last-mile costs, equipment availability, commercial relationships, and many other factors. As a result, Applicants' model does not provide reliable evidence of merger-specific diversions. Even if Applicants could prove these diversions are likely to occur, that diverted traffic would represent Applicants' expected profit, not a public benefit. Applicants' other claimed benefits,

attributable mostly to operation, personnel, and IT cost savings, likewise, will likely go to Applicants' pockets, if they occur at all. (*See* Section VII.)

UP's decision to invest billions in its acquisition of NS is not evidence that the Transaction will have public benefits. Neither Applicant needs the promised growth or contemplated cost savings from the Transaction to be enormously profitable—and that is part of the problem. UP stands to profit from the Transaction even if the promised truck-to-rail traffic growth UP promises never materializes, because it would cement UP's dominance in all facets of the U.S. rail industry.

The Board could deny the Application for failure of Applicants' benefits case alone.

3.

The UP-NS Merger Will Cause Massive Public Interest Harms in the Real World that the Board Will Not Be Able to Prevent or Repair.

Board's regulations demand that Applicants demonstrate that their Transaction would enhance rail-to-rail competition. Applicants do not (and could not) make that showing.

The UP-NS merger would harm competition. The Transaction is unprecedented in its scope, scale, and potential adverse effects on competition. It would yield a UP Colossus with enhanced and entrenched market power not merely over particular origin-destination pairs, but across the broader U.S. rail ecosystem. A merged UP-NS would have the ability and incentive to foreclose or weaken interline partners and insulate its rates and its profits from that competition, making shippers worse off. The Transaction would weaken geographic competition and reduce shipper optionality and negotiating power in countless ways, many of which have not been posed by previous transactions undertaken in a less concentrated rail industry. It would also eliminate

the competition that exists between UP and NS today to offer shippers better rates in exchange for carrying a greater portion of interline movements. (*See* Section X.)

The Transaction would yield a post-merger UP that is super-dominant across all facets of the rail ecosystem. A combined UP-NS would possess unprecedented influence over the institutions and inputs on which the rail industry depends—including railcar procurement, pooled equipment through TTX and other arrangements, industry joint ventures, interchange relationships, and other shared infrastructure and services. Its sheer scale would create opportunities to influence the competitive environment in ways no existing railroad can. (*See* Section IX.C.)

CPKC does not oppose this Transaction because it is "afraid to compete."[2] CPKC competes hard every day and expects to lose business when another railroad offers customers a better combination of price and service.[3] But that is fundamentally different from losing business because a dominant rival can use its scale and scope to distort the competitive playing field itself. Competition on the merits benefits shippers. Foreclosure does not. The record demonstrates that a combined UP-NS would have unprecedented opportunities to disadvantage rival networks, narrow shipper options, and entrench its own position rather than win traffic through superior price and service.

Applicants' proposed Committed Gateway Pricing ("CGP") does not solve those problems. CGP is the sole remedy Applicants offer as an affirmative "competitive enhancement," but it is nothing more than a rate-setting program. It does not provide shippers with access to another rail carrier or otherwise enhance intramodal competition. (*See* Section

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[2] *See* Kenny Rocker, "I've Heard Enough—This Merger Doesn't Kill Competition. It Unlocks It," June 8, 2026.

[3] *See* Verified Statement of Keith Creel, Vol. III ¶ 6.

II.A & Section XI.) Nor can it remotely counteract the anticompetitive effects of the proposed merger. Applicants themselves admit that "these commitments do not define the merger," referring to them as "narrow ancillary commitments."[4]

The systemic risk to rail service are equally fatal to the Transaction. Applicants have not shown that the combined railroad can reliably deliver the service on which their claimed benefits depend. Applicants' case assumes that UP-NS can absorb substantial new traffic, integrate two enormous systems, and simultaneously provide the improved service necessary to induce customers to abandon existing truck and rail alternatives. The record provides ample reason to question that assumption.

UP (and NS) have shown repeatedly that they cannot be trusted to provide steady and reliable service levels over time, much less handle the added traffic that a robust U.S. economy delivers to it. Their responses to modest traffic increases have included implementing surcharges and other measures designed to manage demand rather than expanding service to capture it. Yet Applicants now ask the Board to assume that they can integrate two massive railroad systems while accommodating the substantial incremental traffic on which their claimed public benefits depend. Their Operating Plan and Service Assurance Plan provide no comfort that they can do so. (*See* Sections VI and VIII.)

The risks of getting that judgment wrong are enormous. Major railroad integrations have historically produced disruptions extending far beyond the merging carriers themselves. Here, those risks would arise on a network of unprecedented geographic reach. The costs of those disruptions would be borne most acutely by the shippers whose service will be disrupted, not UP-NS. And because Applicants' projected benefits depend upon attracting substantial

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[4] *See* Applicants' Second Response to Decision No. 21 (UP-80/NS-78) (filed July 27, 2026) at 27.

incremental traffic to that network, under-resourcing the combined railroad would undermine the very public benefits invoked to justify the Transaction.

No amount of conditions or new industry-wide regulation could transform this Transaction into one consistent with the public interest. No matter what commitments UP makes, or conditions UP or other interested parties urge the Board to impose, a post-merger UP would be effectively ungovernable by regulation. (*See* Section XII.) UP's track record with prior merger conditions speaks for itself. UP's approach has consistently ranged from highly legalistic interpretations of its obligations to outright noncompliance. Conditions that require constant policing, adjudication, and enforcement are not substitutes for preserving a competitive market structure in the first place. Attempting to control the myriad ways in which a railroad of this scale could exercise its market power would require a degree of continuing regulatory intervention fundamentally at odds with the market-oriented structure Congress sought to foster through the Staggers Act. (*See* Section II.C & XII.B.)

4.

The UP-NS Merger Will Be Responsible for Downstream Consolidation Leading to a Continent-Wide Rail Duopoly.

All of the above would be enough to block the proposed Transaction multiple times over, even if consolidation somehow stopped with UP-NS. But there is every reason to believe it would not. Approval of UP-NS would fundamentally alter the strategic position of every remaining Class I railroad. The pressure to respond would not arise because UP would become a better option for rail customers, such that other railroads would seek to consolidate to match UP's pro-competitive capabilities. It would arise because the remaining railroads would need to protect themselves against the competitive power of the new UP Colossus. (*See* Section XIII.)

A combined UP-NS could use its geographic breadth to pursue "all-UP" commercial arrangements spanning far more of a customer's network, potentially stripping traffic and bargaining leverage from competing carriers. Remaining railroads would confront pressure to obtain comparable geographic reach. They also would face a classic first-mover problem: if another round of consolidation appeared likely, each carrier would have an incentive to secure its preferred partner before that partner became unavailable. And investors inevitably would ask why other railroads could not reproduce whatever private financial gains UP demonstrated through consolidation. The result would be a musical-chairs dynamic in which UP-NS becomes the opening move rather than the endpoint. That path leads toward a fundamentally different rail industry—one dominated by two enormous transcontinental systems.

This inevitable downstream consolidation would have sweeping consequences for the U.S. rail network and the Board's regulatory role. A downstream duopoly would not restore the competition lost through UP-NS. It could not recreate the shipper optionality or negotiating leverage that would be eliminated by UP-NS. At most, it would replace today's network of independently competing Class I railroads with two carriers offering competing single-line transcontinental services. Whatever incremental value the Board assigns to those single-line options must be weighed against the enormous structural cost of reducing the industry to a transcontinental duopoly, including the risk of diminished incentives to compete aggressively with one another. (*See* Section II.B.)

That industry structure also would transform the Board's regulatory responsibilities. With fewer independent competitors constraining one another in the marketplace, preserving competition increasingly would fall to the Board. The Board would be asked to police access, gateways, rates, service, interchange, commercial practices, and compliance with an ever-

growing set of merger conditions. That is precisely the opposite of the Staggers Act command that the Board seek ways to rely more on market solutions and less on regulation. The goal should be a market structure in which competition disciplines railroad behavior wherever possible—not an industry whose structure makes increasingly intrusive regulation indispensable.

Nor can the Board avoid that dilemma by approving UP-NS and simply promising to reject the next transaction. Doing so would leave the industry at the worst possible stopping point: a single UP colossus that dominates the industry in ways that diminish rather than increase competition. Once the Board permits UP to break the existing structure of the industry, it cannot assume that the consequences will stop at the boundaries of this Application.

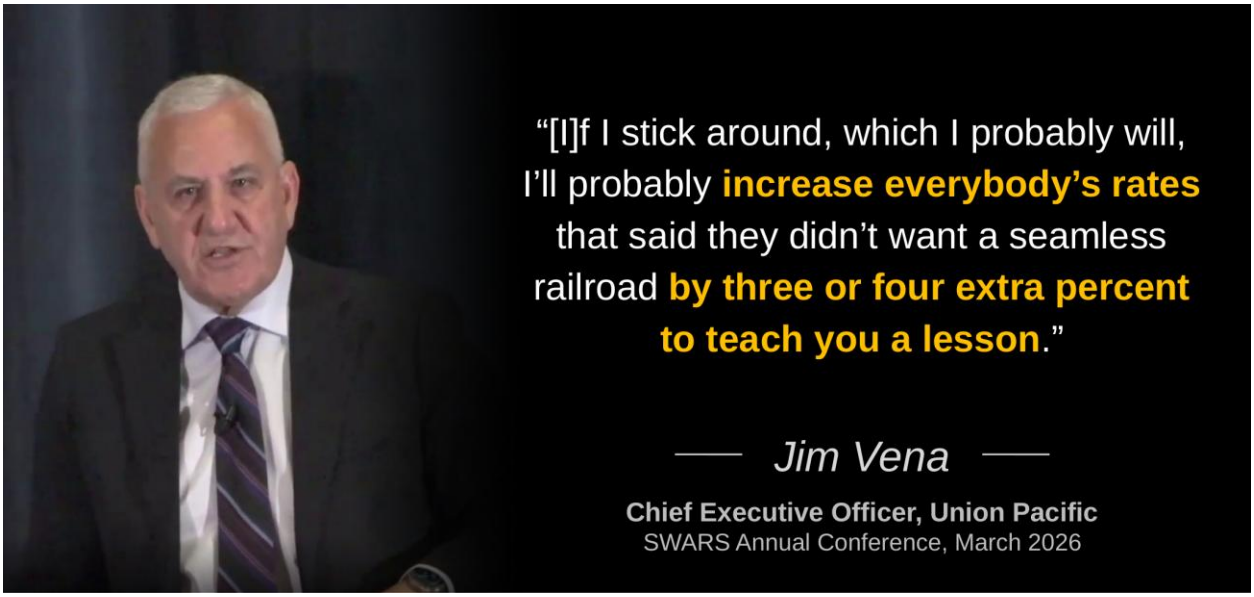
5.

The Threat this Transaction Poses to the Public Interest Is Confirmed by Applicants' Conduct in this Proceeding.

Public comments of UP's CEO Jim Vena encapsulate why the Transaction is contrary to the public interest, starting with his overt threat to shippers at a 2026 conference, promising a rate increase for shippers who oppose the Transaction if UP fails to get its deal approved:

FIGURE 1

JIM VENA THREATENED SHIPPERS



Make no mistake—no CEO of a company that faced meaningful competition across the breadth of its customer base would even consider making such a statement—either in seriousness or as a "joke" as now improbably contended[5]—to hundreds of his customers who could easily take their business elsewhere.[6] That Mr. Vena felt comfortable voicing his threat is powerful proof that he knows his company *already has market power* and believes it to be *beyond the reach of regulation*. And the fact that for the past seven months the UP Board of Directors has known about this threat and taken no action to discipline Mr. Vena shows that UP's attitude of abusing customers through market domination is not limited to its CEO, but has become embedded in

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[5] David Lassen, *Senator renews claims that UP has threatened retaliation against merger opponents*, July 16, 2026, available at https://finance.yahoo.com/economy/policy/articles/senator-renews-claims-threatened-retaliation-222521205.html ("'It's disappointing that a comment was taken out of context and is being used to create a narrative that detracts from the real benefits of a single-line transcontinental railroad,' UP said in a statement to Trains. 'Union Pacific did not threaten anyone.'").

[6] UP's after-the-fact claims that Mr. Vena's comments were "taken out of context" and "Union Pacific did not threaten anyone" are entirely belied by the video, which shows his statement could not be interpreted as anything other than a public threat to shippers everywhere: fall in line, or keep your mouths shut. That is how the shippers heard it too. *See Letter,* Union Pacific's Actions that Discourage Shipper Participation (ACC-9/ACD-9/AFPM-9/NITL-6/TFI-9) (filed October 13, 2026).

UP's corporate culture.[7] That culture also enabled Mr. Vena to testify under oath about his customers in similarly derisive terms—characterizing customers who oppose this transaction as "dumb."[8] The Board should have great concern about the degree of leverage that the Transaction would place in the hands of a railroad already willing to speak to or about its customers in those terms. There is ample reason to doubt that the public interest would be served by approving UP's request to achieve even greater hold over the U.S. rail network. And the Board should not confer that benefit on a party that has (as here) sought to obtain it through dishonest or inequitable conduct. "The public interest is concerned not only with improvements in transportation service, but also with the maintenance of respect for and the observance of the law."[9]

UP's conduct has implications for the Board's decision making in another respect as well. Applicants suggest that the Board should discount customer silence because some customers have privately told UP that they remain undecided or prefer not to take a public position.[10] But silence is not support. The reason customers may hesitate to oppose the Transaction publicly is obvious: if the merger is approved, many will have little practical ability to avoid doing business with the resulting UP-NS system. Customers dependent on a railroad for critical transportation

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[7] Even after the Board expressed its "serious concerns" about the remarks, UP remains unapologetic. After being ordered to produce a public version of the SWARS video, UP posted the video on its website alongside their spin that: "Vena is known for being a dynamic speaker," and his SWARS remarks were part of a "Vena Comedy Club" routine. UP, *Customers Deserve a Debate Based on Facts*, https://www.up.com/about-us/contact-us/play. UP's unapologetic approach is consistent with longstanding concerns about Mr. Vena's leadership style. [redacted] UP_2918062 at -077.

[8] Vincenzo James Vena Deposition Transcript ("Vena Tr.") at 17:6-13 (Oct. 20, 2026).

[9] *Central of Georgia Railway Co. Control*, 307 I.C.C. 39, 43 (1958).

[10] *See* Kenny Rocker, Executive Vice President-Marketing and Sales for Union Pacific, "Silence Is Not Opposition," October 6, 2026, available at https://www.up-nstranscontinental.com/letters/rocker-customer-support/.

services have every incentive to preserve their commercial relationship rather than publicly antagonize a carrier that may soon become essential to their businesses, and that has told them it plans to retaliate against anyone who gets in their way. Applicants' characterization of private conversations cannot substitute for record evidence of affirmative customer support.

The Board is right to have "serious concerns about whether Vena's statement at SWARS—as reflected in the recording—may be influencing certain stakeholders' willingness to participate in this proceeding or share their own views without fear of commercial repercussions."[11] Given Mr. Vena's comments, it would be appropriate for the Board to infer customer silence as opposition to the Transaction—and to question whether shippers who have put in letters of support felt pressured to do so.[12]

* * *

The Board created the 2001 Major Merger Rules because the final rounds of consolidation in an already concentrated industry present different and more serious risks than the mergers that came before them. This Transaction presents those risks in their starkest form. Applicants ask the Board to approve an irreversible restructuring of the Nation's rail network based on benefits that are speculative, not demonstrated to be merger-specific, and dependent upon operating and diversion assumptions that do not withstand scrutiny. In exchange, the Transaction would create a railroad of unprecedented scale and influence, reduce competitive

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[11] Decision No. 45 at 3 (STB served Nov. 4, 2026).

[12] Agencies can apply a presumption that evidence unhelpful to the intimidator would have been available but for the misconduct. *See, e.g., Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. (UAW)* v. *N.L.R.B.*, 459 F.2d 1329, 1338 (D.C. Cir. 1972) ("[T]he adverse inference rule plays a vital role in protecting the integrity of the administrative process[.]"); *Coats & Clark Sales Corp.–Petition for Declaratory Order – Certain Rates & Pracs. of Lee Way Holding Co.*, No. 40299, 1994 WL 61591, at *1 (I.C.C. Feb. 25, 1994) (drawing an adverse inference against respondent for its failure to comply with the Commission's discovery processes).

options, introduce substantial service risks, and place pressure on the remainder of the industry to consolidate in response.

The Board need not—and should not—take that gamble. The governing public-interest standard places the burden on Applicants to justify the transformation they seek, not on CPKC, shippers, or other stakeholders to prove every way in which an unprecedented restructuring of the industry might go wrong. Applicants have not carried that burden.

For all of these reasons, the Board should reject the Application outright, but if it does conclude that it is in the public interest it must act boldly to address the kinds of competitive and service concerns further consolidation of this sort would raise. We address conditions in Volume II of these Comments.

* * *

These Comments are supported by ten verified statements, documents produced in discovery by Applicants, and deposition testimony of Applicants' witnesses. The supporting verified statements are contained in Volumes III and IV of these Comments. Discovery documents, deposition testimony, and other materials cited in these comments is being supplied to the Board in CPKC's accompanying workpapers. In addition, Volumes IV-IX compile evidentiary materials on a number of the key issues in this proceeding.

Volume III of these Comments contains the testimony of the following CPKC company witnesses:

- **Keith Creel (CPKC Chief Executive Officer)** explains why the merger would irreversibly weaken competition, increase systemic service risks, and trigger further consolidation. Drawing on CPKC's experience, he explains why sustainable growth requires reliable service and building customer trust, why interline collaboration can deliver growth without a merger, and why *CP/KCS* provides no justification for this transaction.

- **James Clements (CPKC Executive Vice President Strategic Planning & Corporate Services)** addresses the merger's long-term strategic consequences, including increased concentration, downstream consolidation, and the limits of regulation as a substitute for competition. He also examines integration risks, distinguishes Canada's rail system, and challenges Applicants' claimed merger-specific operating cost savings.

- **John Brooks (CPKC Executive Vice President and Chief Marketing Officer)** explains how the merger would harm competition by reducing shipper routing options and bargaining leverage. He challenges Applicants' growth and shipper-savings projections, describes opportunities for growth through interline collaboration, and explains the commercial need for CPKC's requested conditions in the event the Board were to approve the merger.

- **Mark Redd (CPKC Executive Vice President and Chief Operating Officer)** assesses the risks of integrating and operating a UP-NS network of unprecedented size and complexity. He explains why Applicants overstate the advantages of single-line service and identifies congestion and service risks at key gateways and shared corridors. He also addresses the operational feasibility of CPKC's proposed conditions and the protections needed to preserve network fluidity and reliable access in the event the Board approves the merger.

- **Adolph Gameiro (CPKC Managing Director, Interline & Network Strategy)** describes CPKC's dependence on UP- and NS-controlled infrastructure and their pattern of using contractual and operational control to impede competition. He explains how the merger would expand those risks. He also explains how the merger would lead to UP having inordinate influence at key Mid-Continent terminal railroads: KCT, BRC, IHB, and TRRA. Mr. Gameiro also describes conditions the Board should impose to preserve competition at key terminals, safeguard access rights, remove contractual restrictions, and restore competition at CPKC's Wylie Intermodal Terminal in the event the Board approves the merger.

- **Michael Walczak (CPKC Vice President, Service Design)** explains the essential role of TTX and other railcar pools and how the merger would increase UP's ability to influence these pooling organizations while simultaneously reducing TTX's interest in those pools functioning well in support of efficient interline railroading for the industry as a whole. He proposes various conditions that would limit UP's ability to disrupt the efficient functioning of these pools in the event the Board approves the merger.

Volume IV of these Comments contains the testimony of the following expert witnesses:

- **Ray Elphick (retired CPKC Vice President Service Design & Capacity Management) and Brian Nelson (retired CPKC Managing Director Service Design)** draw upon their experience in Class I railroad operations planning,

including their roles in developing the Operating Plan for the CP/KCS combination, to identify fundamental flaws that undermine the feasibility of Applicants' Operating Plan and Service Assurance Plan, including unrealistic schedules, omitted dwell time, and insufficient allowance for yard capacity constraints and operating variability. They also demonstrate that the Operating Plan will not support the assumed service improvements upon which Applicants base their traffic diversion estimates.

- **Dr. W. Robert Majure (Senior Vice President, Cornerstone Research),** a former leading economist in the Department of Justice Antitrust Division and CPKC's competition expert in the *CP/KCS* proceeding, examines the competition issues related to the proposed merger. In Volume 1 of his Verified Statement, he explains why, in contract to the CP-KCS transaction, the proposed UP-NS merger likely would lead to an array of anticompetitive harms—including the foreclosure of competition from interline services, the loss of gateway competition and shipper bargaining leverage, and the loss of competition between UP and NS for a greater portion of the interline movements in which they participate. He also demonstrates that downstream consolidation would magnify rather than overcome these effects. In Volume 2 of his Verified Statement, he addresses the extent to which CPKC's requested conditions would mitigate competitive harm.

- **Dr. Nicholas Powers (Principal, The Brattle Group)** identifies flaws in Applicants' traffic diversion analysis and explains why Applicants have not demonstrated that a merger between UP and NS would lead to the substantial traffic diversions they project, and, therefore, why Applicants cannot claim any public benefits that rely on those diversion estimates.

- **Andrew Fox (President, Overland Limited Associates, Inc.)** draws on his experience at railroads to explain how interline partnerships support growth and investment and how consolidation would diminish shipper options, innovation, and entrepreneurial initiative.

Volumes V through IX contain compilations of documentary, deposition testimony, and other evidence relevant to the Board's assessment of the public interest consequences of the merger. They are organized by topic.

- Volume V addresses evidence bearing on the reasons Applicants have not achieved the full potential for rail traffic growth, including their emphasis on maximizing prices and margins at the expense of volume growth and resourcing to support service resiliency.

- Volume VI addresses evidence of the potential for successful interline collaboration without a merger, including across the watershed region and via two-interchange routes using the Meridian Speedway.

- Volume VII addresses evidence supporting the merger leading to the foreclosure of competition through bundling and the elimination of interline options.
- Volume VIII addresses evidence relating to barriers to Applicants achieving their traffic diversion estimates, particularly the difficulty of winning traffic from truck.
- Volume IX addresses evidence relating to Applicants' prior consideration of Class I consolidation and the further consolidation likely to follow this merger.

II. THE 2001 MAJOR MERGER RULES ELIMINATED THE PRESUMPTION IN FAVOR OF CONSOLIDATION AND MATERIALLY RAISED THE BAR FOR PROOF BY APPLICANTS THAT FURTHER CONSOLIDATION IS IN THE PUBLIC INTEREST

In the wake of the Staggers Act, the ICC adopted merger rules that were "decidedly pro-merger."[13] At the time, there were dozens of Class I railroads, many of which were struggling financially, and some of which (such as Penn Central) had already declared bankruptcy.[14] Consolidation was thus viewed as a key tool for stabilizing the industry. But after the merger wave of the 1990s—and the serious service problems those mergers created—the STB promulgated a far more merger-skeptical set of rules. The 2001 Major Merger Rules reflected a "paradigm shift" in the Board's merger review process.[15] The final rule stated that "[t]hese new rules reflect our concerns about what an appropriate rail merger policy should be in light of the declining number of Class I railroads, the elimination of the industry's excess capacity, and the serious transitional service problems that have accompanied recent major rail consolidations."[16] The Board emphasized that "[t]he prospect of reducing the already small number of major Class I railroads even further . . . gives us substantial concern."[17]

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[13] *Major Rail Consolidation Procedures*, Notice of Proposed Rulemaking, Ex Parte No. 582 (Sub-No. 1), at 9 (STB served Oct. 3, 2000)

[14] *See id.* at 9-10.

[15] *Id.* at 10.

[16] Major Merger Rules, 5 S.T.B. at 546.

[17] *Id.* at 549.

Those concerns dictate the rigor and breadth of the Board's inquiry here. First, as the first merger adjudicated under the 2001 Major Merger Rules, Applicants bear an unprecedented burden to prove substantial and demonstrable public benefits—including meaningful competitive enhancements—that outweigh the Transaction's harms. Second, the Board must consider not only the Transaction's immediate effects, but also its cumulative and downstream consequences, including whether approval would trigger further consolidation and produce a transcontinental duopoly that the Board—and UP itself—previously warned could be considered only once and could not readily be undone. Third, the governing statutes confirm that Congress contemplated an interconnected national network of independent railroads competing and interchanging with one another, not two potentially closed-loop systems keeping traffic captive from origin to destination. Finally, this unprecedented Transaction lacks any compelling public-interest rationale comparable to those supporting earlier mergers: neither railroad is failing or financially constrained; the industry has no excess capacity requiring rationalization; and Applicants' appeals to President Lincoln, foreign rail systems, and a need to bolster U.S. manufacturing and competition with Canadian ports do not establish any need for common ownership of eastern and western railroads. The public interest would be better served by denying the Transaction and directing railroads' resources toward investment, innovation, and commercially reasonable collaborations that improve the existing competitive network.

A. Applicants' Burden of Proof Is Higher than for any Previously Considered Railroad Merger

This is the first proposed merger to be adjudicated under the 2001 Major Merger Rules. It is also, as the Board recognized in its Decision No. 21, a transaction of "unprecedented

scope."[18] There, the Board emphasized that the 2001 Major Merger Rules were "forged following real-world consequences emanating from a 1990s wave of major mergers"—consequences that "cannot be ignored, assumed away, or overlooked based on vague intentions or promises."[19] The 2001 Major Merger Rules therefore impose a "'heavier burden' for applicants," including new requirements addressing "competitive enhancement, benefit estimate integrity, service assurance, and downstream effects."[20] Those Rules embody a "more skeptical, 'show me' attitude" toward claimed benefits and assurances that service disruptions will not occur.[21] Under this heightened showing, a Major Merger serves the public interest "only when substantial and demonstrable gains in important public benefits—such as improved service and safety, enhanced competition, and greater economic efficiency—outweigh any anticompetitive effects, potential service disruptions, or other merger-related harms."[22]

The Board's statements in Decision No. 21 faithfully reflect the intended operation of the 2001 Major Merger Rules. Testifying shortly after their adoption, then-Chairman Linda Morgan explained the significance of the rule change:

> "Some have said that the new rules do not really change anything, but the rules clearly reflect otherwise. For one thing, our old rules provided for the approval of a merger 'unless,' whereas our new rules provide for approval 'only if.' Our new rules clearly reflect a greater skepticism about the benefits of future mergers and a greater concern about the potential harm of further consolidation."[23]

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18 Decision No. 21 at 18 (STB served May 28, 2026).

19 *Id*.

20 *Id.* (quoting Major Merger Rules, 5 S.T.B. at 546, 549).

21 *Id.*

22 49 C.F.R. § 1180.1(c).

23 The Surface Transportation Board's New Merger Rules: Hearing Before the Subcomm. on Surface Transportation & Merchant Marine of the S. Comm. on Commerce, Science & Transportation,

Commissioner Burkes likewise explained that the new rules fundamentally reversed the orientation of the prior regime. Whereas the former rules "actually encouraged railroad mergers" as a means of rationalizing facilities and reducing excess capacity, the new rules "encourage the enhancement of competition."[24]

Chairman Morgan was equally direct about what an applicant must bring forward to satisfy the 2001 Major Merger Rules' heightened standard:

> "[I]f anybody brings an application to us and they want it approved, they had better have some sort ***of enhanced intramodal competition***. And that is a message that I think is very clear throughout the rules. If you want your transaction approved and you want to make sure that you bring something that has a pretty good chance of getting approved, then if I were advising an individual, I would say you had best come in with some sort of ***enhanced intramodal competition***."[25]

And Chairman Morgan linked that requirement directly to the Rules' heightened skepticism of further consolidation:

> "If they want to come in and they want to get some sort of approval, then I think the rules are pretty clear that we are a little more skeptical about benefits from further consolidation, we are concerned about harm from further consolidation. So, we will be looking very carefully at the benefits from future consolidation, and if you want to show us that the benefits box is fuller than the harm box, then enhanced competition should be what is brought to the Board."[26]

In other words, merely preserving selected aspects of the status quo competitive environment, or insisting that competitive harm will be limited, is not enough. Applicants must demonstrate

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107th Cong. 5 (2001) (statement of Hon. Linda J. Morgan, Chairman, Surface Transportation Board) ("2001 Senate Hearing").

[24] *Id.* at 79 (response of Commissioner Wayne O. Burkes to Written Question No. 6 from Senator McCain).

[25] *Id.* at 17 (statement of Hon. Linda J. Morgan, Chairman, Surface Transportation Board).

[26] *Id.* at 17 (emphases added).

genuine competitive enhancement—in the form of enhanced intramodal competition—sufficient to tip the overall balance decisively in favor of the public interest.[27]

Despite this clear guidance, Applicants take the position that the 2001 Major Merger Rules "permit Applicants to rely on the 'transaction' itself to demonstrate enhanced competition," and because, in their view, "the UP/NS merger's core public benefits will provide a transformational enhancement of rail-to-rail competition and competition between railroads and trucks by creating a single, integrated railroad network," no further competitive enhancement is needed.[28] Applicants' position cannot be squared with the history or text of the 2001 Major Merger Rules.

The Board's public-interest inquiry is also not confined to a checklist of enumerated statutory factors. In *Central Vermont Railway, Inc*. v. *ICC*, the D.C. Circuit explained that the statute permits consideration of "factors other than those specifically listed" and "does not restrict the factors that the ICC may consider."[29] The Board therefore must assess the Transaction's implications for the Nation's rail system as a whole, including its long-term effects on interline cooperation, investment, innovation, service resiliency, and industry structure. Further, an unbroken line of precedent from this Board and the Interstate Commerce Commission ("ICC") establishes that "the public interest" encompasses the integrity of an adjudicator's decisional process—and precludes conferring a public license or other benefit on a

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[27] *See also Major Merger Rules*, 5 S.T.B. at 550 ("[O]ffering some new or enhanced rail-to-rail competition or other competitive benefits is likely to be necessary" to tip the balance in favor of approval.).

[28] *See* Applicants' Response Regarding Their Prima Facie Case (UP-94/NS-93) (filed August 26, 2026) at 21.

[29] 711 F.2d 331, 335 (D.C. Cir. 1983). Although *Central Vermont* addressed a predecessor statute, the 2001 Major Merger Rules expressly ground the Board's public-interest inquiry in 49 U.S.C. § 11324, which retains the same nonexclusive directive that the agency "shall consider at least" the enumerated factors. *See* 49 C.F.R. § 1180.1(b); 49 U.S.C. § 11324(b).

party that has (as here) sought to obtain it through dishonest or inequitable conduct. "The public interest is concerned not only with improvements in transportation service, but also with the maintenance of respect for and the observance of the law."[30]

In short, Applicants cannot narrow the public-interest inquiry to their asserted efficiencies and conventional measures of competitive overlap.

B. The Proper Scope of the Board's Inquiry in This Proceeding Must Include Consideration of Whether a Transcontinental Duopoly Is in the Public Interest

The Board—backed by UP's urging in 2000—has already determined that this merger proceeding is the one and only opportunity to consider the potential consequences of a transcontinental duopoly. When a proposed *BNSF/CN* combination threatened to trigger another round of consolidation, the Board rejected the contention that it should consider that transaction "on its own merits" without regard to subsequent mergers.[31] The Board concluded that it could not "close [its] eyes to the fact that the mere consideration of any major merger now would likely generate responsive proposals that, if approved, could result in a North American duopoly," and declared a moratorium on major mergers until the Board had an opportunity to reexamine its merger policy and issue new merger rules fit to evaluate the potential landscape-altering

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[30] *Central of Georgia Railway Co. Control*, 307 I.C.C. 39, 43-44 (1958). *See also PYCO Industries, Inc.—Feeder Line Application—Lines of South Plains Switching Ltd.*, Finance Docket No. 34890 (STB served Aug. 31, 2007) at 12 ("reliable rail service in this sense presupposes a business relationship that allows shippers to raise concerns about their service with the railroad (or with the Board) without fear of retribution by the carrier). The Supreme Court has likewise held that the "relevance" of a carrier applicant's pattern of "past or continuing violations of Commission regulations" "to a finding of consistency with the public interest is self-evident." *Gilbertville Trucking Co.* v. *United States*, 371 U.S. 115, 128-29 (1962).

[31] *Public Views on Major Rail Consolidations*, 4 S.T.B. 546, 552-553 (2000).

transactions that could come before it.[32] UP echoed these concerns in its own 2000 comments to the Board:

> "The important public policy question in the next major Class 1 merger proceeding will focus on whether a North American railroad duopoly is in the public interest. The Board will choose between a future in which two huge transcontinental systems develop single-line services in isolation from each other and a future in which all remaining railroads strive to develop more efficient services over remaining interline routes. This is an important choice that can be made only once, because mergers are likely to be permanent."[33]

The Board incorporated that principle into the 2001 Major Merger Rules, providing that:

> "Because there are so few remaining Class I carriers and the railroad industry constitutes a network of competing and complementary components, the Board cannot evaluate the merits of a major transaction in isolation. The Board must also consider the cumulative impacts and crossover effects likely to occur as rival carriers react to the proposed combination."[34]

Accordingly, the Board must consider not only whether the UP-NS merger, in isolation, would harm competition and be contrary to the public interest (it would), but also whether approving it would initiate the very "end-game" the Major Merger Rules were designed to address: a North American rail system dominated by two closed-loop transcontinental networks. As discussed in Section XIII, approval of UP-NS will inevitably trigger the remaining Class I railroads to consolidate to counter the anticompetitive threats posed by a UP Colossus. That outcome would have sweeping consequences for the U.S. rail network and would not be in the public interest.

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32 *Id*.

33 *STB Major Rail Consolidation Procedures*, UP Reply Comments, Ex Parte No. 582 (Sub-No. 1) (filed Dec. 18, 2000) at 8.

34 49 C.F.R. § 1180.1(i).

C. Congress Did Not Envision the Kind of Consolidation Applicants Propose

When Congress granted the ICC authority over rail mergers more than a century ago, it expressly endorsed moderate and gradual rail consolidation far short of what Applicants propose. This vision holds true today.

1. The Statutory Framework Contemplates a Well-Functioning Interline Rail Network, Not a Rail System Dominated by Two Closed-Loop Systems

Congress first granted the ICC authority over rail mergers in the Transportation Act of 1920.[35] Enacted after federal control during World War I, the 1920 Act directed the ICC to "prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems."[36] Congress did not contemplate two closed transcontinental systems dividing the Nation between them. The Senate Report accompanying the Act discussed the "gradual unification of the railways into not less than 20 nor more than 35 systems."[37] And Congress expressly required that, in constructing the proposed systems, "competition shall be preserved as fully as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained."[38]

In enacting the 1920 Act, Congress was attempting to address the financial weakness of portions of the rail industry and the resulting inability of some carriers to maintain adequate

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[35] Transportation Act of 1920, Pub. L. 66-152, § 407(6)(c), 41 Stat. 456, 482 (1920) (the "1920 Act").

[36] 1920 Act, § 407(4).

[37] S. Rep. No. 66-304, at 14 (1919). The consolidation planning effort of the 1920s, which culminated in the ICC's 1929 "Final Report," consistently envisioned multiple large railroads serving each region of the country, with those regional systems connecting to one another via major interchange gateways. *See Consolidation of the Railroads*, 159 I.C.C. 522, 524-51 (1929).

[38] 1920 Act, § 407(4).

facilities and attract investment.[39] Its solution contemplated competitively balanced systems capable of earning sufficient returns to maintain and improve their properties. It did not contemplate eliminating competition among systems or allowing dominant carriers to foreclose the established routes through which independent railroads served shippers. To the contrary, the Act simultaneously required carriers to provide "reasonable, proper, and equal facilities for the interchange of traffic" with connecting lines and prohibited discrimination against those lines in rates or in the distribution of unrouted traffic.[40] It also empowered the ICC to establish through routes, joint rates, and the terms under which those routes would operate.[41] The 1920 Act therefore supplies no historical mandate for consolidation toward two dominant transcontinental carriers.

In the Transportation Act of 1940, Congress replaced the 1920 planning provisions with case-specific review of voluntary mergers and control transactions under a public-interest standard.[42] The revised statute authorized approval only where the ICC found a proposed transaction "consistent with the public interest," and required the agency to consider, among other matters, the transaction's effect on adequate transportation service and "the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved."[43] Congress also authorized the ICC, where consistent with the public interest, to require the inclusion of another railroad as a condition of approval.[44] At the same time, the 1940 Act

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39 *See Dayton-Goose Creek Ry.* v. *United States*, 263 U.S. 456, 478-80 (1924) (explaining that the 1920 Act sought to maintain adequate railway capacity while providing support to weaker carriers).

40 1920 Act § 405(3).

41 1920 Act § 418(1), (3).

42 Transportation Act of 1940, ch. 722, § 7, 54 Stat. 898, 905-06 (the "1940 Act").

43 1940 Act, § 7(b)-(c).

44 1940 Act, § 7(d).

required all carriers to afford "reasonable, proper, and equal facilities for the interchange of traffic" with connecting lines and prohibited discrimination against a connecting carrier in rates or in the distribution of traffic.[45] Thus, when Congress moved away from centrally planned consolidation, it did not move toward isolated or closed railroad systems. It retained—and expressly reinforced—the duties that allow independently owned railroads to function together as a national network.

Congress carried the same structure forward in the ICC Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803 ("ICCTA"). The ICCTA directs the Board to "ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers,"[46] and "to avoid undue concentrations of market power."[47] ICCTA's operative provisions are equally clear. Section 10703 provides that rail carriers "shall establish through routes (including physical connections) with each other," together with the rates, classifications, operating rules, facilities, and compensation necessary to make those routes function.[48] Section 10742 separately requires each carrier to "provide reasonable, proper, and equal facilities" for interchanging, receiving, forwarding, and delivering traffic to and from a connecting railroad.[49] And Section 11324 requires the Board, when reviewing a Class I merger, to consider not only regional competitive effects but whether the transaction would adversely affect competition "in the national rail system."[50] ICCTA's legislative history eliminates any possible doubt about the

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45 1940 Act, § 5(e).

46 49 U.S.C. § 10101(4).

47 49 U.S.C. § 10101(12).

48 49 U.S.C. § 10703.

49 49 U.S.C. § 10742.

50 49 U.S.C. § 11324(b)(5).

importance Congress attached to these provisions. The Conference Report described the statutory obligation to provide interchange with connecting railroads as "the cornerstone of the integrity of the national rail system," because it "precludes the balkanization of the system through the possible refusal of one carrier to deal with another connecting carrier."[51]

What Applicants propose—a system in which two dominant transcontinental railroads seek to retain traffic within their respective networks from origin to destination and possess both the incentive and ability to disadvantage interline alternatives—is not the integrated, competitively balanced network Congress prescribed. It is the "balkanization" Congress sought to prevent, implemented at continental scale.

2. Abraham Lincoln Did Not Envision a UP Colossus

Contrary to UP's repeated assertions, a single, dominant transcontinental railroad is not what President Lincoln envisioned.[52] Applicants have their history wrong.[53] President Lincoln and the Pacific Railway Act he signed into law contemplated an interconnected rail network of independent railroads interchanging with one another. The Pacific Railway Act of 1862 authorized UP and Central Pacific to construct "a continuous line" from a point along the 100th meridian west in Nebraska to the Pacific Ocean near San Francisco, meeting and interchanging in Nevada.[54] With that new line, President Lincoln envisioned that there would be, and by 1869 actually was, a connected rail network—*not a single railroad company*—linking the East with

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51 H.R. Rep. No. 104-422, at 177 (1995) (Conf. Rep.).

52 Rev. App. 1-15.

53 Creel V.S. ¶ 35.

54 *Union Pac. R.R.* v. *Hall*, 91 U.S. 343, 344-345 (1875); *see* Pacific Railway Act of 1862, 12 Stat. 489 (the "Pacific Railway Act").

the West. His vision actually eschewed the idea of a single railroad company from coast to coast.

Consider Section 15 of the Pacific Railway Acts, which President Lincoln signed. As the ICC found in 1982: "The nondiscrimination provision was added by Section 15 of the Act of 1864. Section 15 also declared that any company then or thereafter incorporated should have the right to connect its road with the road and branches provided by the Pacific Railroad Acts. From its inception the *nondiscrimination clause provided the means for all railroads connecting with the transcontinental route constructed under the Pacific Railroad Act to be treated equally.*"[55] In other words, the ICC found that the vision of a transcontinental railroad that UP attributes to President Lincoln was fulfilled before UP acquired Western Pacific in 1982: "With the development of the western railroads since passage of the Pacific Railroad Acts, *the fundamental purpose of these Acts has been fulfilled* and the public interest now lies in encouraging competition among these available transcontinental routes, as discussed in detail elsewhere in this decision."[56]

D. The Proposed Transaction Is Unlike Any Other Previously Approved, and Offers None of the Compelling Public Interest Rationales Underlying Previous Transactions

Applicants propose a merger of unprecedented size, scope, and hegemony. Approving it would permanently transform the North American rail network for the next century and beyond, in ways both predictable and not. Applicants fail to identify any compelling public need that justifies upending a thriving rail network and asking the American public to bear the colossal downside risk.

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[55] *Union Pac. Corp.—Control—Mo. Pac. Corp.*, 366 I.C.C. 462, 552 (1982) (emphasis added).

[56] *Id.* at 561 (emphasis added).

1. The Size, Scope, and Complexity of a "UP Colossus" Network Are Unprecedented and Poses Unique Risks for the Public Interest

The Transaction far outstrips any previous merger in scale. The merged entity—valued at $250 billion—would cover over 50,000 route miles and 100 ports in 43 states.[57] UP-NS would be in nearly every market, every port, and every state. This unprecedented reach would grant UP-NS market dominance—both overall and for many key commodity flows. It would leave a single CEO in complete control of over a third of the Nation's Class I rail network by mileage and [redacted] by revenue.[58] And this is without crediting Applicants' ambitious growth claims. This merged colossus would dwarf every other rail network.

Not only would UP-NS be dominant in absolute terms, but also in terms of the control it would exercise over the ability of other Class I carriers to meaningfully compete.[59] Approving the merger would render the remaining Class I carriers heavily dependent on the merged UP-NS for the operating rights needed to meaningfully compete. As shown in Figure 1 to Mr. Gameiro's report, reproduced below as Figure 2, a post-merger UP-NS would control critical portions of CPKC's U.S. network. CPKC would rely on UP-NS for operating rights across hundreds of miles of trackage in Texas—a strategically vital link between Laredo and Beaumont—as well as trackage between Chicago and Detroit. At all of these strategic lines and points, UP-NS would control dispatching, operating rules, and investment in new capacity.[60] In addition, there are over 80 locations along the CPKC network where CPKC's trackage and

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57 *See* Union Pac. Corp., *Union Pacific and Norfolk Southern to Create America's First Transcontinental Railroad* (July 29, 2025), https://www.up.com/press-releases/growth/norfolk-southern-transcontinental-nr-250729.

58 Verified Statement of Dr. W. Robert Majure, Vol. IV, Vol. 1 ¶ 9, 23, 31-32.

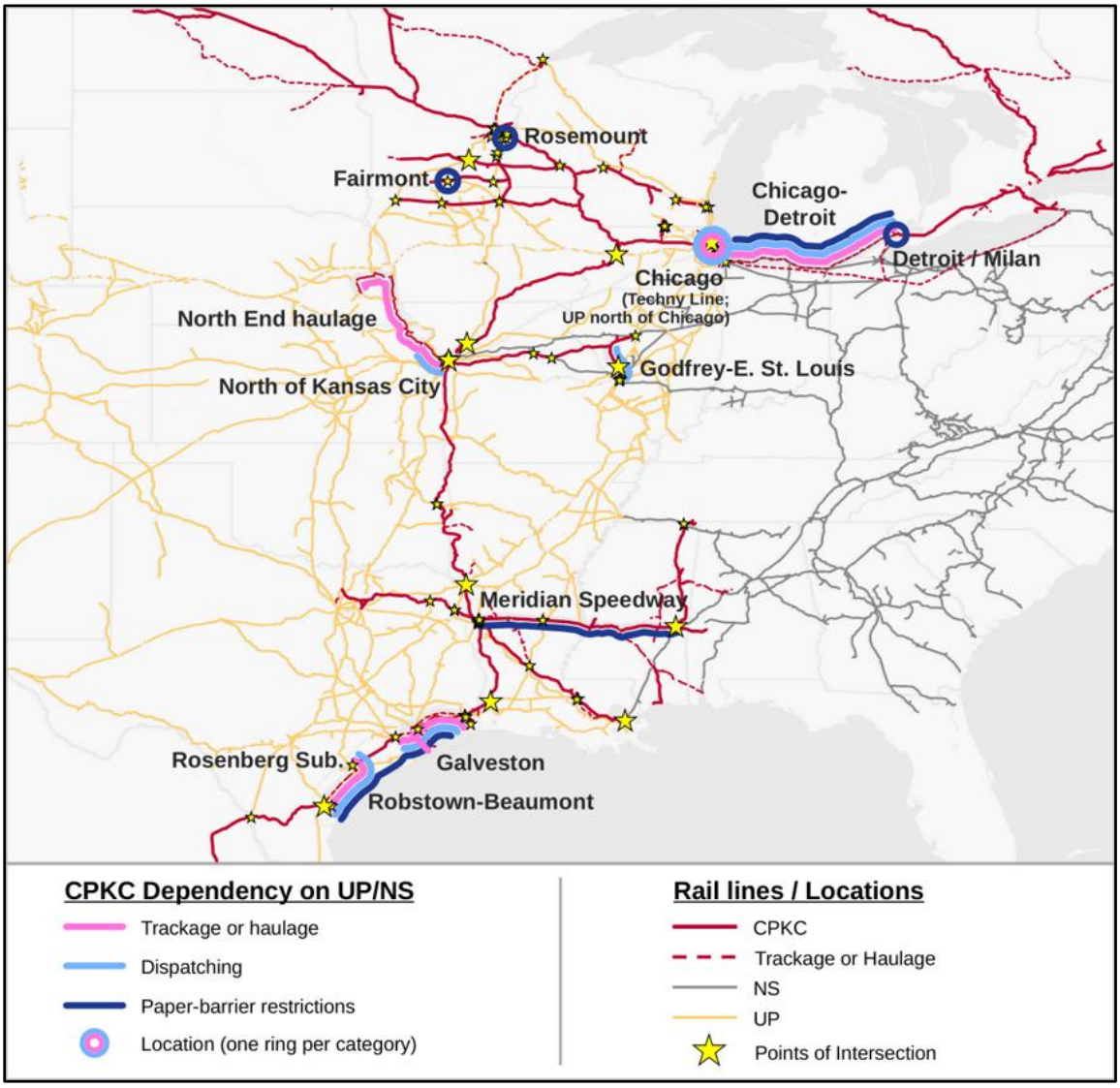
59 *See* Verified Statement of Mark Redd, Vol. III ¶¶ 53, 72, 76, 96, 102-103, 107-112, 128-129, 134-140, 142-143.

60 Verified Statement of Adolph Gameiro, Vol. III ¶¶ 7-9.

operations come in contact with UP or NS trackage and operations, such as crossing diamonds, interlockers, and jointly owned or jointly used track. At virtually all of these points, a merged UP-NS has the potential to interfere with CPKC's operations.[61]

FIGURE 2

GAMEIRO FIGURE 1: DEPENDENCY OF CPKC COMPETITION ON ACCESS TO UP AND NS LINES AND FACILITIES



[61] Gameiro V.S. ¶ 10.

If the Transaction is approved, the number of major railroads in North America would be reduced to just five, with each railroad outside of the UP-NS system even more dependent on UP-NS to compete, and with likely further consolidation to follow soon thereafter. This concentration diminishes the Board's ability to remedy potential competitive harms and other negative outcomes.[62]

2. The Core Public Interest Rationales Justifying Previous Transactions Are Absent Here

One guiding principle for the 2001 Major Merger Rules was that the public interest rationales supporting previous consolidations no longer applied. The Board noted that the prior merger policy was adopted when "good government required a merger policy that, while recognizing the importance of competition, would encourage railroads to formulate proposals that would help rationalize excess capacity in the industry."[63] But subsequent consolidation meant this goal had "largely been achieved" and, by 2000, "[i]t [did] not appear that there [were] significant public interest benefits to be realized from further downsizing or rationalizing of rail route systems."[64]

Nor do any of the other public interest rationales underpinning previous mergers—which arose in materially different circumstances—hold weight here. In *UP/SP*, for example, the Board concluded that combining the carriers would stimulate rail competition in the West by preserving and stabilizing a weakened carrier in SP, while creating a more efficient competitor to BNSF and simultaneously radically expanding BNSF's own competitive capabilities through

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[62] *See Major Merger Rules*, 5 S.T.B. at 554 ("[I]t is increasingly difficult to remedy certain competitive harms directly and proportionally.").

[63] *Public Views on Major Rail Consolidations*, 4 S.T.B. 456, 552 (2000).

[64] *Id.*; *see also Major Merger Rules*, 5 S.T.B. at 546 ("[R]ail mergers are no longer needed to address significant excess capacity in the rail industry").

extensive grants of trackage rights.[65] The *Conrail* transaction likewise was structured to preserve competitive balance in the East. Rather than permit either CSXT or NS to acquire Conrail outright, Conrail's lines were divided "roughly half to each carrier," enabling both CSXT and NS to provide new single-line service "in competition with . . . each other" and producing "a substantial increase in rail-to-rail competition."[66] In other words, Conrail's near-monopoly on rail transportation in much of the Northeast was broken up. The Board also imposed trackage-rights and shared-assets arrangements where necessary to preserve two-carrier access.[67]

This proposed merger does not save a carrier from imminent collapse, like *UP/SP*. And it does not significantly boost intramodal competition as the *Conrail* merger did by splitting up a monopoly and preserving competitive balance in the East. In short, Applicants request approval of a merger of unprecedented scale and importance, despite lacking any of the compelling public interest rationales on which the Board relied in approving the prior transactions that created today's two-in-the-West and two-in-the-East structure. Nor is this Transaction remotely like *CN/IC* or *CP/KCS*, which involved much smaller railroads and were seen as necessary for those carriers to offer transportation options that stood a chance of competing against their much larger rivals, which had already evolved into two huge single-line networks serving the entire East and the entire West. It bears remembering how the Board portrayed *CP/KCS* in 2023: "The Transaction will allow CPKC to compete more effectively against the larger Class I railroads that surround it."[68] The Board's decision reproduced Figure 3 from Mr. Creel's Verified Statement

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65 *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, 1 S.T.B. 233, 375 (1996).

66 *CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc.*, 3 S.T.B. 196, 248 (1998).

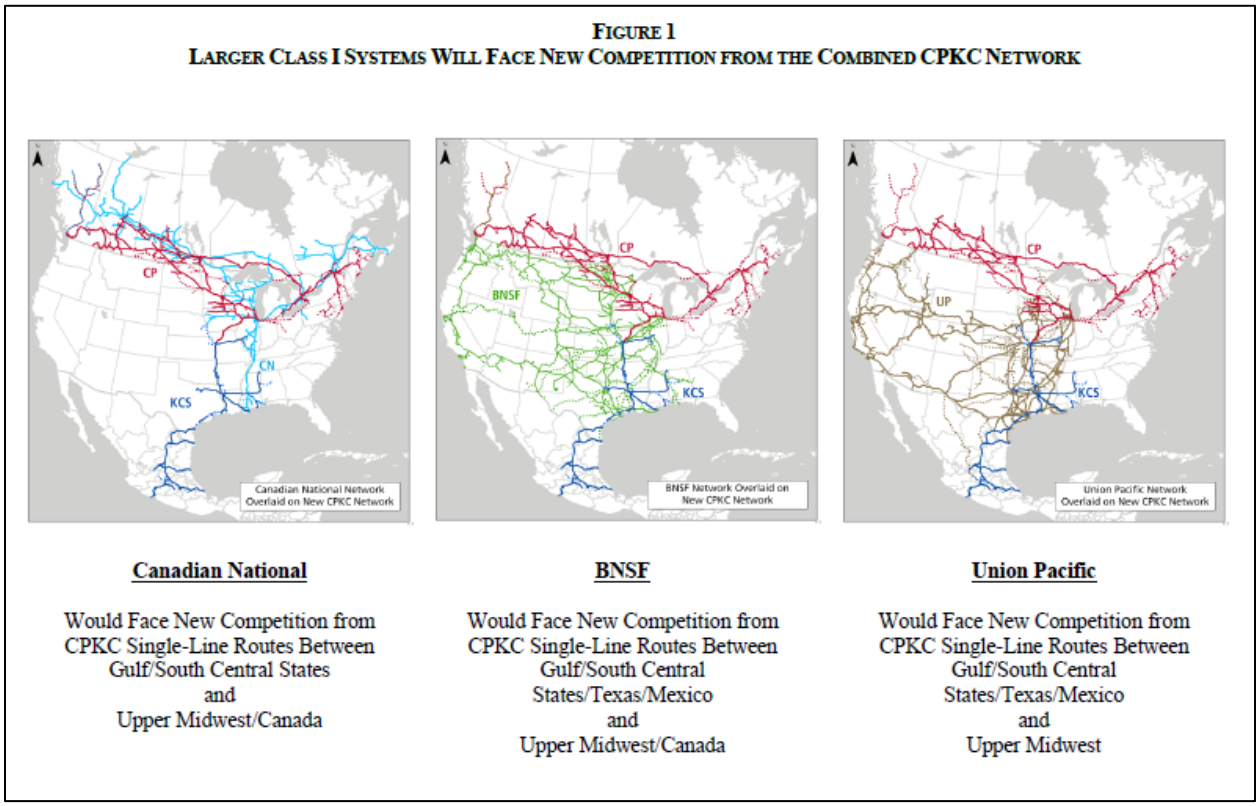
67 *Id.* at 228-31.

68 *Canadian Pacific Ry. – Control – Kansas City Southern*, Finance Docket No. 36500 (STB served Mar. 15, 2023) at 26.

in that proceeding to illustrate this point. (*See* Figure 3, below.) The UP-NS transaction bears no resemblance to the procompetitive *CP/KCS* combination.

FIGURE 3

***CP/KCS* BOARD DECISION NO. 35[69]**



3. This Transaction Is Not Necessary to Address Any Risk to the Financial Health or Effectiveness of the U.S. Rail Network

Applicants' merger proposal is the farthest cry from a financial rescue merger. Neither UP nor NS is failing, financially constrained, unable to maintain its network, or otherwise incapable of serving shippers and continuing to grow. Nor is there any fundamental problem with the existing U.S. rail network structure. To the contrary, the U.S. freight rail network is

[69] *Canadian Pacific Ry.—Control—Kansas City Southern*, Finance Docket No. 36500 (STB served Mar. 15, 2023) at 26 & Figure 1.

second to none.[70] As the Federal Railroad Administration notes, it is "widely considered the largest, safest, and most cost-efficient freight system in the world," sustained through freight railroads investing nearly $25 billion annually in maintaining, improving, and expanding their systems.[71] The record provides no basis to conclude that the present industry structure is failing or that further consolidation is needed to preserve an effective national rail system.

UP and NS are each supremely profitable already, with no shortage of resources to invest further to support their growth. From a regulatory standpoint, the Board found both railroads to be revenue adequate in 2025.[72] UP reported record net income of $7.1 billion in 2025.[73] It invested approximately $3.8 billion into the company while spending another $5.9 billion on share repurchases and dividends.[74] UP's 2026 capital plan calls for another $3.3 billion investment to support growth, safety, resiliency, and operating efficiency.[75] UP itself characterized 2025 as a "record-breaking year," with its best-ever full-year results for net income, safety, freight-car velocity, locomotive productivity, terminal dwell, train length, workforce productivity, and fuel-consumption rate.[76] That trend has continued into 2026. UP's Q1 2026 was its best first quarter financial performance in UP history, UP's Q2 2026 was its best second quarter financial performance in UP history, and [redacted]

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70 Creel V.S. ¶ 15.

71 U.S. Department of Transportation, Federal Railroad Administration, "The Freight Rail Network," https://railroads.dot.gov/rail-network-development/freight-rail-overview.

72 *See* Verified Statement of James Clements, Vol. III ¶ 10 & n.1. NS was the first Class I to be found revenue adequate, in 2004, and it was found revenue adequate in 14 of the next 21 years, including 2025. UP has been found revenue adequate in every year since 2010.

73 Rev. App. 4-225 (UP 2025 Form 10-K at 29).

74 Rev. App. 4-225, -232 (UP 2025 Form 10-K at 29, 36).

75 Rev. App. 4-234 (UP 2025 Form 10-K at 38).

76 Union Pacific, *Union Pacific Reports Fourth Quarter and Full Year 2025 Results* (Jan. 27, 2026), https://www.up.com/press-releases/financial/4q25-earnings-announcement-260127.

[redacted][77] Figure 4 is an excerpt from UP's 3Q 2026 earnings presentation touting this financial success. Those are not the results of a railroad that needs a merger to remain financially healthy and invest in its network to support traffic growth.

FIGURE 4

EXCERPT OF UP'S THIRD QUARTER 2026 EARNINGS PRESENTATION[78]



Third Quarter 2026 Highlights

Financials	Reported	Adjusted*
Operating Income *vs. 3Q'25*	$ 2.9B ▲ 15%	$ 3.0B ▲ 14%
Operating Ratio *vs. 3Q'25*	59.1% ▼ 0.1	58.8% ▲ 0.3
Net Income *vs. 3Q'25*	$ 2.1B ▲ 16%	$ 2.1B ▲ 15%
Earnings per Share *vs. 3Q'25*	$ 3.49 ▲ 16%	$ 3.53 ▲ 15%

Executive Summary:

- Record Financial Results – Freight Revenue, Freight Revenue Excl. Fuel Surcharge, Operating Revenue, Operating Income and Net Income
- Operating at a consistently high level while growing volume
- Six percent carload growth, core pricing gains, and productivity more than offset higher fuel prices and inflation
- Intermodal, Metals & Minerals, Energy & Specialized, and Grain & Grain Products growth was partially offset by lower Coal carloads

*See Union Pacific website under Investors for a reconciliation to GAAP.

SAFETY + SERVICE & OPERATIONAL EXCELLENCE

4

The same is true of NS. In 2025, NS earned approximately $2.9 billion in net income and invested approximately $2.6 billion in its network.[79] At the same time, it repurchased $533 million in stock and paid approximately $1.2 billion in dividends.[80] NS planned another approximately $1.9 billion in capital investments during 2026.[81] NS has also continued its strong

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77 *See* Jennifer Hamann Deposition Transcript ("Hamann Tr.") at 106:5-107:6; 141:12-143:7 (Oct. 15, 2026).

78 Union Pacific Corp., Third Quarter 2026 Earnings Presentation, at 4 (Oct. 22, 2026), https://investor.unionpacific.com/static-files/be7edc8a-147d-4650-84e5-94b8f9ded2ac.

79 Rev. App. 4-436, -47 (NS 2025 Form 10-K at K27, K38).

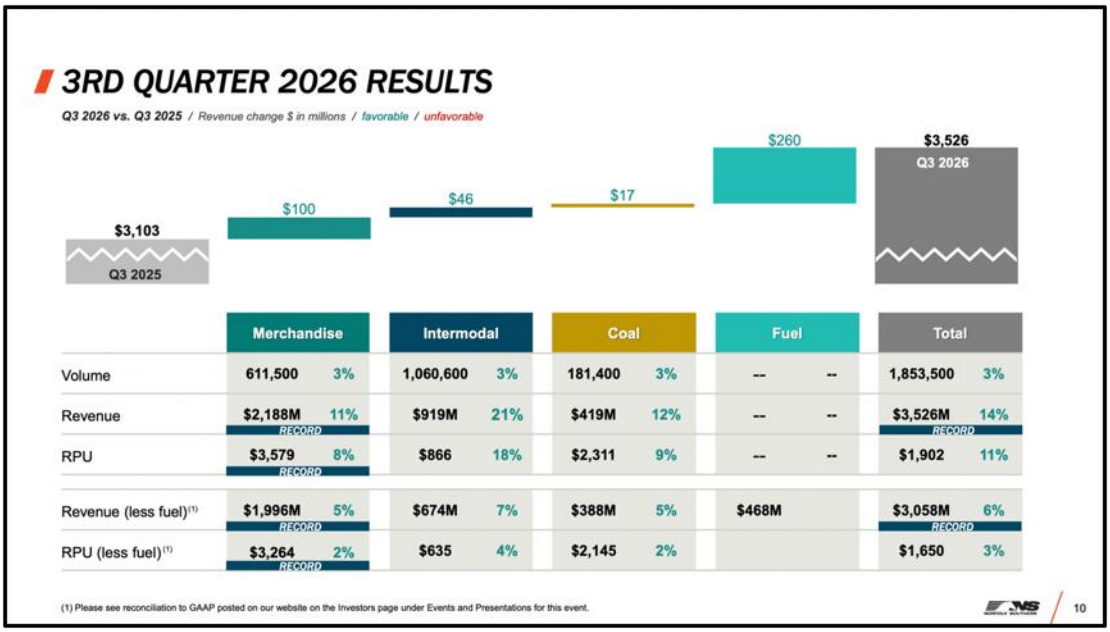
80 Rev. App. 4-461, -94 (NS 2025 Form 10-K at K52, K85).

81 Rev. App. 4-447 (NS 2025 Form 10-K at K38).

performance in 2026. In its July 23, 2026 quarterly earnings presentation, NS reported operating revenues of approximately $3.5 billion, an all-time quarterly record for NS, up 11% compared to Q2 2025.[82] This trend continued in Q3 for NS, where it reported record revenue of $3.526 billion at its October 22, 2026 quarterly earnings presentation, a 14% increase compared to Q3 2025.[83] Figure 5 is an excerpt from NS's 3Q 2026 earnings presentation touting this financial success.

FIGURE 5

EXCERPT OF NS'S THIRD QUARTER 2026 EARNINGS PRESENTATION[84]



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82 Norfolk Southern Corp., Second Quarter 2026 Earnings Presentation (July 23, 2026), https://filecache.investorroom.com/mr5ir_nscorp/1425/Q2_2026_Earnings_Combined_Presentation_FINAL.pdf. *See also* Claude (Ed) Elkins Deposition Transcript ("Elkins Tr.") at 93:25-100:10 & Exhibit 205 (Sept. 9, 2026).

83 Norfolk Southern Corp., Third Quarter 2026 Earnings Presentation (Oct. 22, 2026), https://filecache.investorroom.com/mr5ir_nscorp/1464/Q3_2026_Earnings_Combined_Presentation-v2_FINAL.pdf; NS 2026 Third Quarter Form 10-Q at 3.

84 Norfolk Southern Corp., Third Quarter 2026 Earnings Presentation (Oct. 22, 2026), https://filecache.investorroom.com/mr5ir_nscorp/1464/Q3_2026_Earnings_Combined_Presentation-v2_FINAL.pdf.

Together, Applicants generated approximately $10 billion in net income in 2025, invested nearly $6 billion in their properties, and returned more than $7.5 billion to shareholders through dividends and repurchases. A shortage of investment capital is not a problem this Transaction solves.

Applicants identify no resource that either railroad lacks and no investment that either is financially incapable of making independently. The Transaction itself underscores the point. UP proposes to fund approximately $20.1 billion of cash consideration, fees, and expenses through cash on hand and new debt, and Applicants represent that UP will have no difficulty absorbing the resulting fixed charges.[85] Applicants likewise claim that the combined company can readily finance the more than $2 billion in capacity expansion and implementation expenditures associated with the Transaction.[86] A company capable of financing tens of billions of dollars to acquire a competitor plainly has the resources to finance economically justified improvements to its own network—or to participate in commercially reasonable joint investments with connecting carriers.

Mr. George agreed at his deposition that NS is "in a position of strength," and "can continue to grow its business even without the merger."[87] And when asked whether UP would grow absent the merger, Mr. Vena testified: "The merger allows us more opportunity, better service, seamless, better product to put to customers than we would as a standalone railroad. But

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85 Rev. App. 1-36.

86 Rev. App. 1-59.

87 Mark George Deposition Transcript ("George Tr.") at 92:20-93:6 (Sept. 17, 2026) ("Q. Today, Norfolk Southern is in a position of strength, correct? A. Yes. That's correct. Q. And Norfolk Southern is strong on its own, correct? A. That is correct, as I wrote in my verified statement. Q. And you agree that Norfolk Southern can continue to grow its business even without a merger. True? A. With cooperative markets, yes.").

standalone railroad, we are still good, we would grow."[88] What Applicants ultimately identify is not an impairment of either railroad's financial or other *capability*, but UP's desire to control a railroad in the East. Applicants contend that common ownership would remove the "operational and commercial frictions" associated with interchange and permit UP to control movements that now depend on cooperation with an eastern railroad.[89] But UP's inability to dictate the operations and commercial decisions of one of its two independent interchange partners in the East is not a defect in the national rail network; it is a beneficial *feature* of America's interline rail network that supports greater competition and a stronger and more resilient rail network.

4. "Full Nation" Rail Networks in Other Countries Provide No Support for Applicants' "Transcontinental Railroad" Thesis

Applicants invoke foreign rail systems in Canada, Mexico, Russia, China, and India as support for their proposition that the United States also needs a single railroad extending from coast to coast.[90] It does not. Whether a particular country's network structure promotes the public interest depends on unique geography, traffic flows, commodity mix, transportation alternatives, industrial history, infrastructure ownership, and regulatory regime. Applicants have not shown that the asserted success of any foreign system resulted from common ownership of geographically expansive rail lines—by the state in most parts of the world—much less that such ownership would produce comparable benefits in the fundamentally different U.S. market. Nor have they accounted for the competitive value of America's existing Mid-Continent gateways, through which multiple Class I railroads can form alternative competing routes. A foreign network developed without comparable gateways—or under government ownership or rules

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88 Vena Tr. at 69:7-24.

89 Rev. App. 1-38.

90 Rev. App. 1-221 to -22 (Vena V.S. ¶ 25); Rev. App. 1-245 (George V.S. ¶ 6).

requiring competitors to share infrastructure—provides no sound basis for eliminating that optionality here.

Applicants' suggestion that the Canadian experience with two transcontinental railroads lends support for approving one in the United States is misguided.[91] Canada's geography, network development, and regulatory framework differ markedly from those of the United States, making any comparison essentially irrelevant.[92] When understood in context, the Canadian experience should counsel strongly *against* discarding the U.S. system of interline railroading in favor of the more regulatory Canadian regime.[93]

The transcontinental reach of Canada's two railways was not the product of merger. Both were built as transcontinental lines reflecting Canada's distinctive nation-building history and geography.[94] Canada's demographics and geography are also materially different from the United States. Canada's population is only about one-tenth that of the United States, and roughly two-thirds of Canadians live within 100 kilometers of the U.S. border, while the rest of the country is sparsely populated.[95] In addition, the Canadian economy has traditionally been oriented heavily towards trade with the United States. About half of Canadian manufactured products were sold abroad in 2024, with roughly 80 percent of those exports going to the United States.[96]

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91 *See* Rev. App. 1-222 (Vena V.S. ¶ 25); Rev. App. 1-258 (George V.S. ¶ 38).

92 Creel V.S. ¶ 33-34.

93 Clements V.S. ¶ 101.

94 Clements V.S. ¶¶ 102-103.

95 Clements V.S. ¶ 104.

96 Clements V.S. ¶ 104.

Canada also does not have a natural geographic break between east and west that serves as a hub, as Chicago is to the United States. To the extent Canadian railroading has such a hub, it is Chicago, in the United States—where CN's and CP's U.S. lines connect with other U.S. railroads. Nor does Canada have an equivalent to St. Louis or New Orleans, gateway cities located at strategic river crossings separating East from West. These Mid-Continent U.S. gateways are efficient, and their pro-competitive architecture provides the U.S. rail network with a unique advantage, supporting efficient connections among multiple joint-line routing options.[97]

Nor does a transcontinental footprint mean that Canadian traffic generally moves without interchange. For example, approximately [redacted] of CPKC's domestic Canadian traffic involved another carrier, including regulated switching and shortline haulage.[98] For comparison, the Board's 2025 Freight Commodity Statistics show that approximately 38% of UP's traffic and 39% of NS's traffic was received from or delivered to another carrier, or both.[99] While not identical metrics, these data undermine the suggestion that Canada's transcontinental railroads owe their effectiveness to eliminating interchange.

Canada likewise has a meaningfully different regulatory framework—one the United States should not want to emulate.[100] Canada's regulatory regime entails a host of regulatory tools that are not part of the U.S. rail regulatory framework, most notably: (a) mandatory "interswitching," under which any solely-served shipper or receiver is entitled to interswitching so long as a connection with another railway is within 30 kilometers; (b) Final-Offer Arbitration

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97 Clements V.S. ¶ 105; *see also* Redd V.S. ¶¶ 19, 54-55, 59.

98 Clements V.S. ¶ 106.

99 Clements V.S. ¶ 106.

100 *See also* Vena Tr. at 257:8-11 ("The only thing from the Canadian that I think would be helpful competitive-wise is interswitching, or the way we call it in Canada reciprocal switching, right?").

(or "FOA"), which allows railroad customers dissatisfied with the rate or other terms and conditions offered by a railway to compel arbitration over those matters, with no threshold requirement to show that the railway has "market dominance" and no set standards governing how an arbitrator will decide what rate or other terms and conditions to impose on the railway; and (c) Long-Haul Interswitching (or "LHI"), which effectively allows the regulator to grant long-haul trackage rights over a Canadian railway in order to provide a shipper or group of shippers with a new head-to-head competitive alternative.[101] The access that Canadian shippers have to these regulatory tools stands in sharp contrast to how the U.S. regulatory regime would apply to the new transcontinental railroad that UP desires to create.

Mexico is no better a comparison for Applicants. Mexico's present rail structure is the result of the restructuring of a government-owned system that had become a substantial fiscal burden and required extensive private investment. To the extent there are any lessons in Mexico's partial privatization of the railroads, it is that nation's desire to create new interchanges between the separate concessions created out of a single state-run railroad.

5. None of Applicants' Other Spurious Claims Justify a "Transcontinental Railroad"

Applicants attempt to elevate the Transaction into a solution for an assortment of national economic issues—from the competitiveness of U.S. manufacturing to competition between U.S. and Canadian ports. But rhetoric about "Building America" and "driving America's growth" is not a substitute for evidence linking any identified concern to the absence of a single coast-to-coast railroad under common ownership.[102] In fact, there is no such evidence.

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[101] Clements V.S. ¶¶ 109-115.

[102] Rev. App. 1-221 to -22 (Vena V.S. ¶ 25).

(a) U.S. Manufacturing Is Not Held Back by the Absence of a Transcontinental UP Network

Applicants assert that the existing division between eastern and western railroads has constrained manufacturing and other economic growth, particularly in the so-called watershed region, and that creation of a single transcontinental UP-NS system would unlock additional growth.[103] But Applicants identify no evidence that U.S. manufacturers have declined to build facilities, expand output, or invest in new capacity because UP does not own an eastern railroad. Nor do they identify manufacturers unable to reach suppliers or customers because their shipments must interchange between railroads. In fact, as Dr. Powers shows in Figure 63 of his Verified Statement, reproduced below as Figure 6, manufacturing data do not show systematic underperformance in watershed states.[104]

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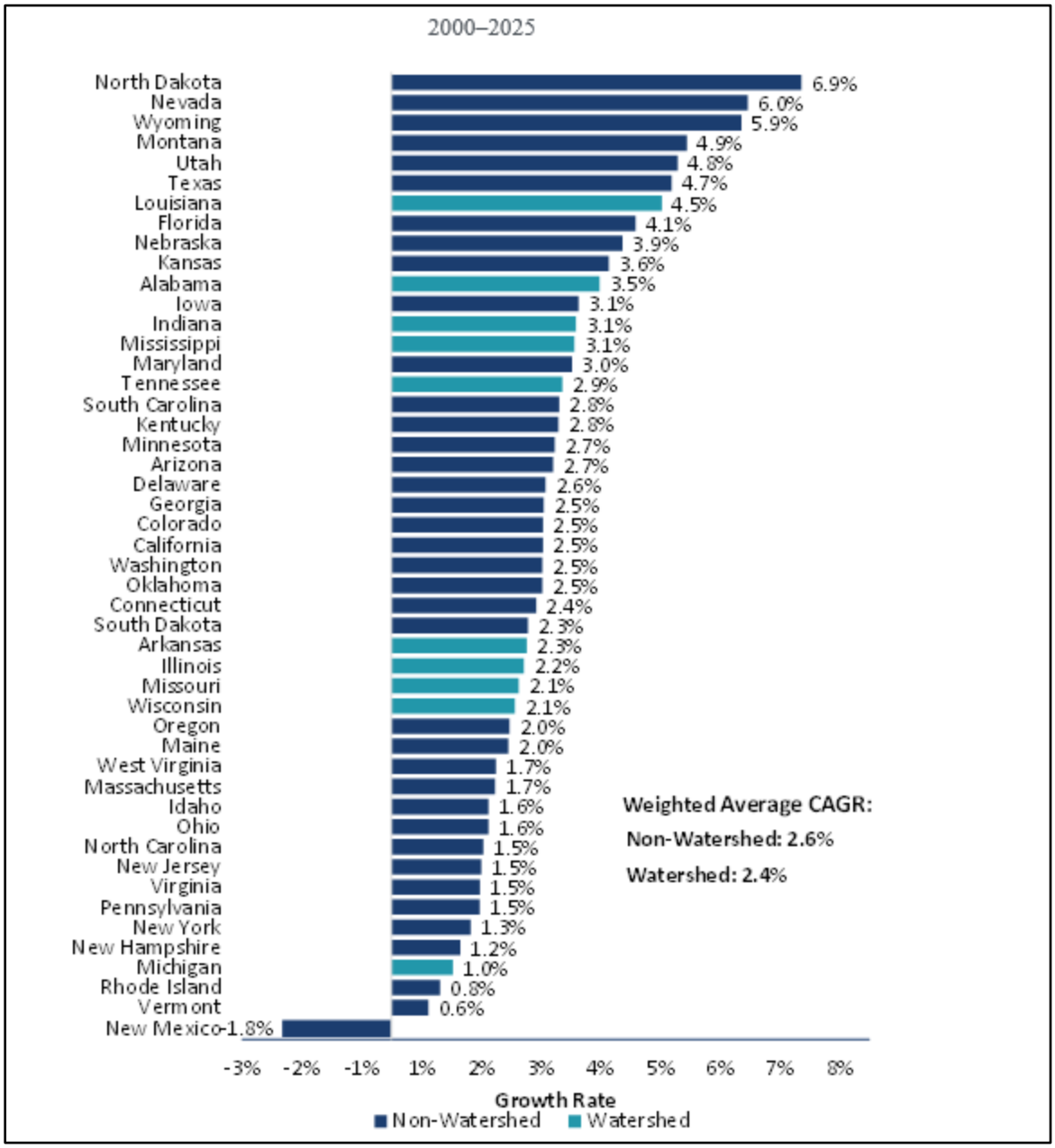
[103] Rev. App. 1-14 to -15, -34 to -35, -50 to -51; Rev. App. 1-233 to -34 (George V.S. ¶3).

[104] Verified Statement of Dr. Nicholas Powers, Vol. IV ¶ 336.

FIGURE 6

DR. POWERS FIGURE 63: MANUFACTURING GROWTH IN WATERSHED STATES HAS BEEN SIMILAR TO GROWTH ELSEWHERE



Nor do Applicants present an analysis linking cross-country differences in rail-network structure to differences in manufacturing or broader economic performance. Nor could they—the U.S. economy is the envy of the world. The fact that other countries have differently structured rail systems provides not a shred of evidence that the United States would have

experienced greater manufacturing or broader economic growth if its principal freight rail network had been under transcontinental single ownership, or that approval of this merger would produce such growth in the future.[105]

(b) The UP-NS Transaction Is Completely Unrelated to Competing Harder with Canadian Ports

There is likewise no basis for Applicants' assertion that a merger is needed to allow U.S. ports to compete more effectively with Canadian ports. Mr. George asserts that "[t]he existence of Canada's transcontinental railroads allows Canadian companies to divert into their ports freight that is ultimately bound for U.S. markets," with the result that the freight supposedly "can move more efficiently across Canada and into the U.S. than it can move across our own country."[106] Messrs. Rocker and Elkins similarly predict that freight that otherwise "might have moved through Canadian or Mexican ports" would have "a stronger reason to stay here at home" if it could move over "a truly national rail system."[107]

This is nonsense. Canadian rail carriers handle traffic primarily from Canadian ports to points within Canada, and to the extent that freight moves to the United States, it is destined for the mid-montinent gateways, such as Chicago and Memphis, and other points that are already reachable by UP or NS (or other U.S. carriers) *via their own separate single-line networks*. A merger is irrelevant to these traffic flows.

To start, the volume of imports entering the United States by rail from a Canadian port is tiny in comparison to the volumes entering at U.S. ports.[108] When rail traffic does enter the

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105 Powers V.S. ¶ 337.

106 Rev. App. 1-258 (George V.S. ¶ 38).

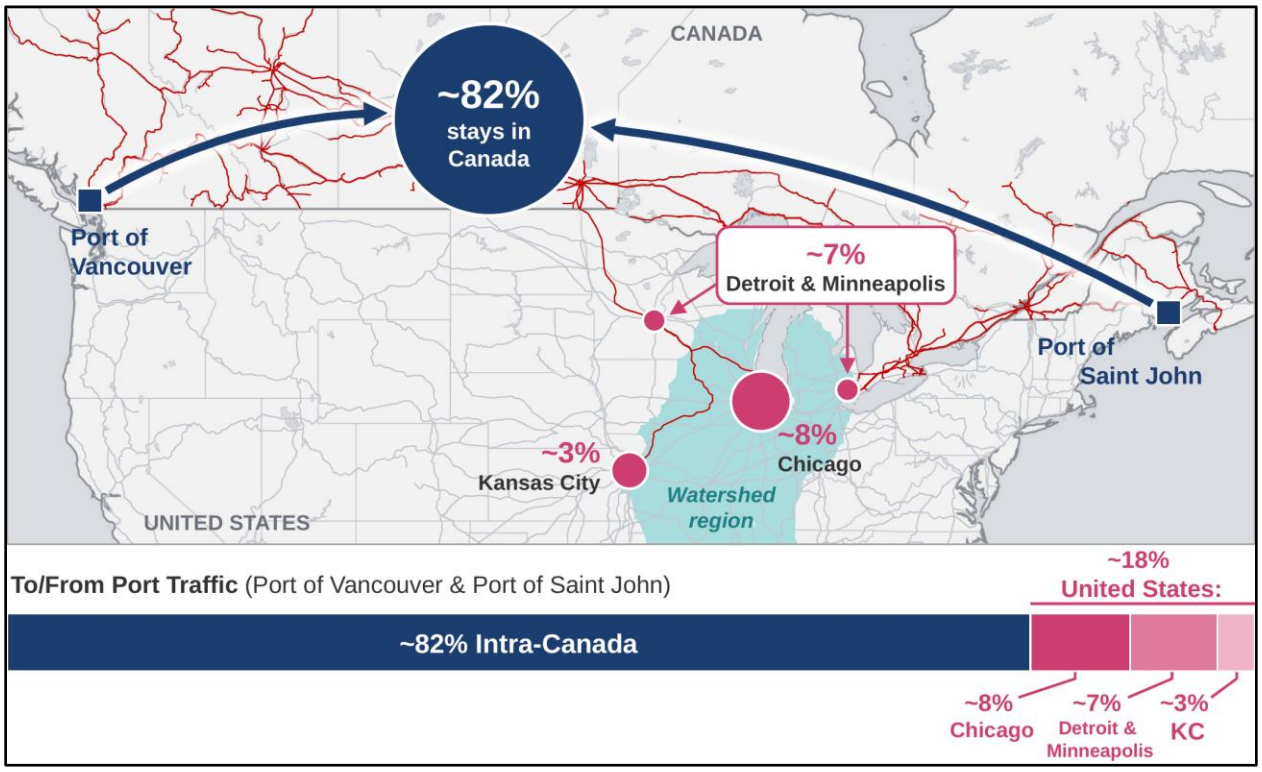
107 Rev. App. 1-336 (Rocker & Elkins V.S. ¶ 141).

108 Verified Statement of John Brooks, Vol. III ¶¶ 154-55.

United States via a Canadian port, it moves to the Midwest from either an East Coast port or a West Coast port, and does not cross the Mid-Continent boundary.[109] Specifically, traffic that CPKC and CN move from Canadian West Coast ports in Vancouver or Prince Rupert ends up in Chicago, Memphis, or other Midwest markets. The same is true of traffic from Canadian East Coast ports in Halifax, Saint John, or Montreal. CPKC's flows are shown Figure 12 to Mr. Brooks' Verified Statement, reproduced as Figure 7, below.

FIGURE 7

BROOKS FIGURE 12: CANADIAN PORT TRAFFIC TO THE UNITED STATES



UP and NS are fully capable of competing for this traffic today using their single-line routes from the West Coast ports that UP serves and the East Coast ports that NS serves.[110]

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[109] Brooks V.S. ¶ 155.

[110] Brooks V.S. ¶ 155.

Moreover, any speculative ability that Applicants believe they have to attract traffic from Canada must be netted against the consequences of *eliminating competition* between UP and NS for traffic moving through U.S. ports. Today, West Coast ports served by UP and East Coast ports served by NS may compete for discretionary cargo bound for inland destinations.[111] UP and NS have independent incentives to improve service and pricing so that traffic enters through a port on their respective networks. The Transaction would place those competing routings under common control, reducing the combined railroad's incentive to use price and service to shift traffic from one Applicant's port gateway to the other.

E. The Best Way to Build a More Competitive Rail Network and Encourage Class I Railroads to Pursue Growth Would Be to Send a Clear Message that They Should Not Spend Time and Effort Trying to Merge

This proceeding has been, and continues to be, a major distraction for UP, NS, and the entire industry. Indeed, as NS CEO Mark George remarked in 2021, [redacted][112] Other railroads must also devote enormous management attention, legal resources, and capital to this proceeding.

Applicants say they are pursuing the Transaction to achieve elusive growth, but their focus on merging diverts attention from the day-to-day work of achieving that goal. If UP and NS are permitted to merge, they will be singularly focused on integrating their rail systems, at the expense of pursuing other initiatives and investments, including collaborations with other

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111 *See* NS_00145507 (explaining that [redacted] *See also* UP_0210300, at -302 (describing [redacted]

112 NS_00571615.

railroads that might improve the Nation's rail network. As UP put it in 2000, transcontinental railroads would represent a "future in which two huge transcontinental systems develop single-line services in isolation from each other" distinct from "a future in which all remaining railroads strive to develop more efficient services over remaining interline routes."[113] Potential UP-CSXT and NS-BNSF interline growth initiatives would be placed on a back burner or scrapped altogether.

Rejecting Applicants' merger proposal will send not just UP and NS, but all railroads back to their drawing boards. Instead of spending years and hundreds of millions of dollars analyzing merger proposals, the industry could channel that time and energy into growing the North American rail network, including by developing new services or joint ventures focused on intermodal services, like those touted in the Application, which decidedly do *not* require a merger to pursue. Indeed, [redacted][114]

III. A TRANSCONTINENTAL MERGER IS NOT NEEDED TO SUPPORT HIGH-QUALITY INTERLINE RAIL SERVICE AND TRAFFIC GROWTH

One of the central questions for the Board to consider is "whether the benefits claimed by applicants could be realized by means other than the proposed consolidation."[115] Applicants say "[t]his merger is fundamentally about growth."[116] But if Applicants want to grow, they do not

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113 *STB Major Rail Consolidation Procedures,* Ex Parte No 582, UP Reply Comments at 8.

114 *See* Michael McClellan Deposition Transcript ("McClellan Tr.") at 134:11-135:16 (Oct. 9, 2026). NS, in particular, would emerge with substantial resources: the $2.5 billion termination fee payable by UP if the Transaction does not close. Those funds could be devoted to improving and offering new services to the benefit of shippers.

115 49 C.F.R. § 1180.1(c).

116 Rev. App. 1-12.

need this merger to do it. For years leading up to this proposed merger, UP (and to a lesser extent NS) made conscious commercial decisions that they recognized as getting in the way of the growth they claim to be pursuing now. They prioritized price, margins, and operating efficiency over volume growth, customer satisfaction, and a sustained effort required to attract new traffic. Their pursuit of PSR initiatives and related resourcing decisions led them to suffer repeated service disruptions that gave customers little confidence in the reliability of UP's and NS's service. If these railroads could abandon their myopic focus on maximizing price and pursue traffic during a period of sustained high-quality service, they would find that there are plenty of opportunities short of a merger to attract new customers and deepen existing customer relationships.

Applicants' story for why they need this merger to grow boils down to a claim that substituting single-line rail service for interline service will allow Applicants to attract massive volumes of truck traffic from the Nation's highways.[117] The support for that claim is Applicants' assertion that single-line service is essential to eliminate "interchange[s]" where "freight today must change hands, where delays and costs accumulate, and where railroads lose freight to trucking because of those interchange delays and costs."[118] That core premise is false. "Interchanges" (i.e., the act of handing off railcars from one railroad to another) do not usually take time. What takes time is the work performed at or near the point of interchange (e.g., swapping blocks or breaking up an entire train at a classification yard), which would need to be performed whether a railcar is moving from one railroad to another or simply moving through a

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[117] Rev. App. 1-12, 14, 56-57.

[118] Rev. App. 1-13.

major terminal on a single railroad.[119] Applicants' proposed merger is accordingly not needed (or likely) to enable more truck-competitive interline rail services.

Indeed, successful interline partnerships across the industry demonstrate that independent railroads can and do coordinate to improve service, develop new products, and compete for additional traffic without common ownership. If the operational and commercial changes Applicants identify truly would unlock the substantial volumes and profits they project, UP and NS would already be pursuing those opportunities through means available to them today, without the need for a merger.

A. UP (and to a Lesser Extent NS) Have Historically Chosen to Maximize Price, Margins, and Profits at the Expense of Growth

Applicants' assertion that the lack of merger activity among major railroads is a "key driver of malaise" in the U.S. rail industry[120] is incorrect and presents a misleading picture of the priorities and strategies UP and NS chose to adopt over the last decade. As discussed in Section II.D, above, Applicants are doing quite well going at it alone. To the extent Applicants think there is room to grow, there is nothing stopping UP and NS from moving away from their historic practice of prioritizing price, margins, and profits over volume growth. Those choices produced record profits and industry-leading margins; they also produced the very stagnation that Applicants now offer as the rationale for upending the U.S. rail network.[121]

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119 Redd V.S. ¶ 17.

120 Rev. App. 1-255 to -56 (George V.S. ¶ 35).

121 A selection of evidentiary highlights demonstrating UP's and NS's emphasis on maximizing prices and margins at the expense of volume growth and service stability can be found at Appendix A, hereto. To view these documents in their entirety, please refer to Volume V, which contains a copy of this Appendix A that is hyperlinked to the documents and testimony cited therein.

UP leadership has frequently touted its approach of maximizing rates and margins to investors. The following are among the many examples of illustrative public statements:

- "I don't care what level of rail cars we have come in . . . . We're going to be **the best margin railroad in North America**."[122]
- "Core pricing was very strong and reached the **highest quarterly level in the past 10 years.**"[123]
- "[W]e have always been very price disciplined. **Meaning, you know, the last to lower, the first to increase** . . . ."[124]

The evidence in this proceeding demonstrates that UP has repeatedly emphasized price over volume growth in its commercial strategy.[125] Their documents are replete with statements [redacted][126]

[122] Union Pacific Corp., 2023 Stephens Annual Investment Conference, Transcript (Nov. 14, 2023) (remarks of Jim Vena).

[123] Union Pacific Corp., Q1 2025 Earnings Call, Transcript (Apr. 24, 2025) (remarks of Jennifer Hamann).

[124] Union Pacific Corp., Union Pacific Live Investor Roadshow, Transcript (Sept. 19, 2024) (remarks of Kenny Rocker); *see also* Rynaski Tr. at 193:13-194:2 [redacted]

[125] *See* Appendix A.

[126] *See* UP_0243518, at - [redacted] UP_1641198, at -198-99. [redacted]

UP reinforces its price-focused strategy in several ways, and it [redacted]

- [redacted][127] The UP M&S group is instructed to [redacted][128]
- [redacted][129] At his deposition, Mr. Rocker recounted [redacted][130]

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127 UP_2230903, at -908.

128 UP_1118754, at -758.

129 UP_2213153, at -155; *see also* Daniel McLaughlin Deposition Transcript ("McLaughlin Tr.") at 279:13-280:11 (Sept. 30, 2026) [redacted]

130 Kenny Rocker Deposition Transcript ("Rocker Tr.") at 119:11-120:9 (Oct. 29, 2026); *see also* UP_0243518, at -520 [redacted]

- [redacted][131] Consistent with their public statements, [redacted][132]
- [redacted][133]

The data further confirms this story. As Dr. Powers shows in Figures 3, 4, and 5 of his Verified Statement, reproduced below as Figures 8, 9, and 10, respectively, UP's revenue over variable cost [redacted] relative to both UP's historical level and other Class I railroads. UP's revenue per ton-mile also [redacted] while its ton-mile growth was considerably [redacted] Those patterns are consistent with UP's longstanding commercial strategy that has prioritized extracting more revenue from traffic already on the railroad rather than using price and service to expand the volume of traffic moving by rail.[134]

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[131] UP_0024657, at -661; *see also* UP_0405407, at -409 [redacted] UP_0282009, at -011 [redacted]

[132] UP_0208474, at -480 [redacted] *id.* at -482 [redacted]

[133] UP_1857599, at -601.

[134] Powers V.S. ¶ 21; *see also* Hamann Tr. at 153:4-154:1; 154:21-155:24 [redacted]

FIGURE 8

DR. POWERS FIGURE 3: UP'S REVENUE OVER VARIABLE COST HAS [redacted] OVER THE LAST 25 YEARS



FIGURE 9

DR. POWERS FIGURE 4: UP'S REVENUE PER TON-MILE HAS [redacted]



FIGURE 10

DR. POWERS FIGURE 5: UP'S TRAFFIC HAS [redacted] OVER THE LAST 25 YEARS



CPKC's own commercial experience with UP reinforces the same point: UP has repeatedly approached interline opportunities with an eye toward extracting as much revenue as possible, rather than jointly designing an interline service that can win new traffic.[135]

NS's CEO, Mark George, has offered his own similarly candid view of NS and the industry's growth challenges. In May 2026, George told analysts:

> "[L]et's face it, this industry, the rail industry has been a little bit lazy, and a little bit -- since I've joined six years ago, I kind of had the realization, 'Oh my God, I joined a utility.' There wasn't a lot of spryness to try to compete aggressively and to perform at levels that your customers expect."[136]

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[135] Brooks V.S. ¶ 87.

[136] Norfolk Southern Corp., Wolfe Research 19th Annual Global Transportation & Industrials Conference, Transcript (May 19, 2026) (remarks of Mark George).

NS's Chief Strategy Officer, Mike McClellan,

[137] Shawn Tureman Deposition Transcript ("Tureman Tr.") at 419:1-12 (Oct. 20, 2026); *see also* NS_00219452.

[138] *See* NS_00219452, at -453; *see also* Tureman Tr. at 420:17-426:16.

[139] Tureman Tr. at 424:23-425:4.

[140] *See* NS_00219452, at -461.

[141] *See* Tureman Tr. at 426:24-427:16.

[142] *See* NS_00130382, at -382

[redacted][143]

[redacted][144]

Indeed, a decade of inward focus on adopting PSR led many railroads, UP and NS included, to emphasize streamlining their own networks to increase productivity at the expense of growth and the customer. Under PSR, [redacted][145]

As UP describes it, [redacted]

(*See* Figure 11.)[146]

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143 *See* NS_00132618, at -624 [redacted] NS_00137875, at -877 [redacted]

144 NS_00181116, at -117 (emphasis added); *see also* NS_00346346 ("[redacted]").

145 Verified Statement of Ray Elphick & Brian Nelson, Vol. IV ¶ 602.

146 UP_0299269, at -280.

FIGURE 11

[redacted][147]



At UP, PSR has led to a single-minded focus on what is best for UP, not the customer. As Shane Keller, then-SVP Engineering & Mechanical, remarked in 2022: [redacted] [148] UP's current Chief Operating Officer, Eric Gehringer, commented on the issue of [redacted] Mr. Gehringer's term for this: [redacted]

147 UP_0299269, at -280.

148 UP_1858492, at -492 (emphasis added); *see also id.* at -492-93 [redacted]

[redacted][149] Both UP and NS have intentionally pruned capacity in furtherance of PSR.[150] Interline services were hit particularly hard by PSR. Shortly after announcing its shift to PSR, UP discontinued hundreds of domestic intermodal interline connections with NS alone.[151]

Both railroads' focus on operating ratios and high-margin traffic has stifled their growth, while under-resourcing and staffing miscalculations have contributed to serious service disruptions that have caused customers to question the reliability of the transportation services these railroads provided.[152] NS [redacted]

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149 UP_1858492, at -494 (emphasis added).

150 *See* UP_0799414 [redacted] UP_1396743 [redacted] UP_0849200, at -201 [redacted] NS_00205551, at -559 [redacted] NS_00549755, at -760 [redacted] NS_00883695, at -752 [redacted] NS_00333009, at -009 [redacted] NS_00318316, at -319-20 [redacted]

151 Elphick & Nelson V.S. at ¶ 602; *see* Union Pacific, *Interline service changes to eastbound intermodal traffic handled by UP and NS*, Announcement No. IM2018-389 (Dec. 6, 2018) https://www.up.com/customers/announcements/intermodal/internationalservicelanesandschedules/IM2018-389.html; *see also*, *UP-NS EASTBOUND DOMESTIC INTERLINE CHANGES (INTERMODAL).xlsx* (last accessed October 19, 2026), https://www.up.com/cs/groups/public/@uprr/@customers/@announcements/@intermodal/documents/ms-nativedocuments/wcccon1037505.xlsx.

152 Verified Statement of Andrew Fox, Vol. IV ¶¶ 55-57.

[redacted][153] One example of such a presentation is set forth in Figure 12, below.

FIGURE 12[154]

[redacted]

The experience of short line railroads underscores that these are choices about how to pursue business, not structural barriers that require a merger to overcome. As Mr. Fox explains, short lines have increased traffic even though virtually every carload they handle must be interchanged with another railroad, often in volumes far smaller than those moving through the major Mid-Continent gateways. Their success reflects an entrepreneurial approach in which every carload matters, in contrast to an inward focus on optimizing existing business and demanding rapid returns that can discourage experimentation and investment in growth. NS's own Short Line Performance Project demonstrates the opportunity: A subset of participating

153 NS_00120237, at -240.

154 *Id.*

connections achieved double-digit growth through better identification, measurement, and resolution of interchange problems. These results show that sustained commercial attention and cooperation can unlock growth without eliminating interchanges or independent railroads.[155]

In sum, the Board should not credit a merger rationale premised on "unlocking growth" when the parties advancing that rationale have spent the last decade telling their investors that growth is not their objective and have plenty of options left at their disposal to pursue it.

B. Substituting Single-Line Service for Interline Service Is Not Necessary to Compete with Trucks

Applicants' central thesis is that the Transaction will allow UP-NS to convert existing interline lanes into a "seamless, single-line service across the country that improves transit times, increases reliability, and reduces costs," by removing interchange handoffs "that can add 24 to 48 hours to shipments."[156] In the intermodal arena, Applicants make much of the potential to convert so-called rubber-tire interchanges (where containers are moved from one terminal to another by highway) into steel wheel movements, where containers would move across gateways by rail.[157] Applicants contend that these advantages would improve not only transit times, but also reliability, visibility, equipment utilization, inventory costs, and accountability to the customer.[158]

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155 Fox V.S. ¶¶ 34-39, 41-44

156 *See* Rev. App. 1-224 (Vena V.S. ¶ 32); *see also* Rev. App. 1-19; *id.* at 1-261 to -62 (George V.S. ¶¶ 45, 47); *id.* at 1-294 (Rocker & Elkins V.S. ¶ 50). In Mr. Hunt's diversion analysis, he assumed interchange-related dwell of 22 hours. *See* Rev. App 2-416 (Hunt Second Errata V.S. § 3.4).

157 *See* Rev. App. 1-311 (Rocker & Elkins Second Errata V.S. ¶ 80).

158 *See* Rev. App. 1-60 to 62.

1. Transcontinental Interchanges Do Not Inherently Burden Efficient Interline Rail Services

Applicants' characterization of the operational costs of "interchange" is inaccurate.[159] There is nothing about an "interchange" between two independently owned railroads that inherently adds transit time. What takes time is the physical work that would need to be performed whether a railcar is moving from one railroad to another or simply moving through a major terminal on a single railroad—crew changes, refueling, classification, switching, block swaps, inspections, etc.[160] Moving that work away from the interchange does not eliminate it; it would have to occur somewhere along the route regardless of whether the railcar is moving onward to a destination on the same railroad or a different railroad.[161]

When the volume of traffic flows in an interline rail corridor is sufficiently dense to support train- or block-level handling, independent connecting railroads already know how to structure efficient interline operations that avoid unnecessary processing at or near the point of interchange.[162] East-West traffic volumes across the key UP-NS gateways—Chicago, Kansas City, St. Louis, Memphis, Meridian/Shreveport, and New Orleans—are all dense enough to support efficient interline service today.[163]

As Mr. Redd explains in detail, interchanges are not an inherent source of operating friction. The Mid-Continent gateways in particular, especially Chicago, support efficient interline transportation by offering a location where traffic can be effectively aggregated and

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159 Redd V.S. ¶ 16.

160 Redd V.S. ¶¶ 17, 22-24.

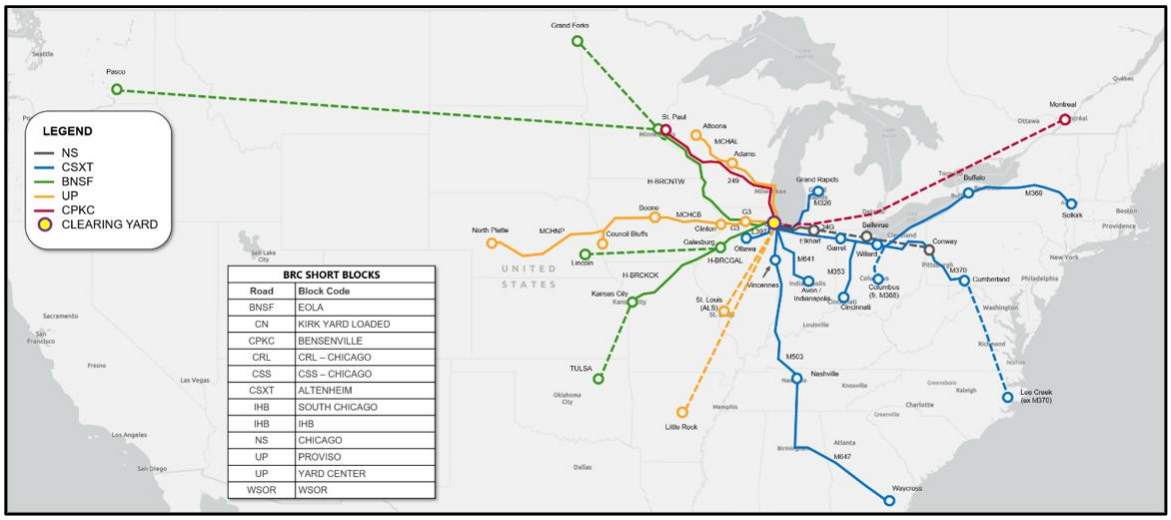
161 Redd V.S. ¶¶ 17, 71-76; Elphick & Nelson V.S. ¶¶ 144, 176, 611.

162 Redd V.S. ¶¶ 18, 36-41, 49-52.

163 Redd V.S. ¶ 19.

handed off among multiple connecting railroads.[164] In many cases, if those gateways did not exist, it would mean that processing activity would need to occur elsewhere on the network and would be less efficient, not more. Mr. Redd illustrates this point with the map shown in Figure 3 of his Verified Statement, reproduced as Figure 13, below, of the trains and blocks that the Belt Railway of Chicago builds for the railroads serving Chicago.[165] This represents a highly efficient hub and spoke operation that aggregates and distributes traffic. If this work were not performed in Chicago it would need to happen elsewhere and less efficiently, meaning that the 19 to 20 hours of dwell at BRC's Clearing Yard is not "wasted time" that a rail merger can sweep away. It is part of what makes transcontinental railroading work well today.[166]

FIGURE 13
REDD FIGURE 3: TRAINS AND BLOCKS BUILT BY BRC'S CLEARING YARD



As both Mr. Redd and Messrs. Elphick and Nelson explain, when there is density supporting it, railroads routinely cooperate to support the efficient handling of traffic moving

164 Redd V.S. ¶¶ 19, 54-59.

165 Redd V.S. ¶¶ 62-65, Figure 3.

166 Redd V.S. ¶¶ 60, 66, 70-71.

across railroad-ownership boundaries.[167] Just as railroads build bypass blocks and through trains on their own networks today (like what Applicants say they plan to do when UP and NS are commonly owned), they cooperate to build efficient interline services as well. Specifically, when volumes are present, they build bypass blocks that bypass interchange locations and run-through trains that operate without locomotive change or railcar re-classification deep into one another's networks. That is, NS may build a block of railcars at one of its yards in the East that it delivers to UP, which can transport the block deep into its network before needing to process those cars more finely for delivery to receivers on UP's network in the West. This type of arrangement saves both UP and NS from having to break down or re-build blocks at the interchange and converts the interchange to a step no different from a block-swap somewhere on NS's or UP's own network.[168] Similarly, run-through trains arrive to an interchange "pre-built"—the interchange then only requires a crew change. In this way, two independent railroads are fully capable of delivering reliable, high-performance interline service.[169] Mr. Redd, Mr. Fox, and Messrs. Elphick and Nelson describe numerous such operations that occur daily on today's rail network.[170]

(a) UP-CPKC-NS Transcontinental Intermodal Services Via the Meridian Speedway Show What Interline Service Can Do

A prime example of highly efficient run-through interline service is in the Los Angeles-Southeast corridor where Applicants claim to anticipate extensive truck-to-rail diversions as a result of the merger—172,465 units, or approximately 14% of all Applicants' predicted truck-to-

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167 Redd V.S. ¶¶ 18, 20, 50; Elphick & Nelson ¶¶ 254, 612, 614.

168 Redd V.S. ¶¶ 50-51; Elphick & Nelson V.S. ¶¶ 611, 615, 634.

169 Elphick & Nelson V.S. ¶ 615.

170 Redd V.S. ¶¶ 22-23, 36-41, 50, 52, 67; Fox V.S. ¶¶ 11, 14, 16; Elphick & Nelson V.S. ¶¶ 616-626, 628-634.

intermodal diversions are on this route.[171] The route this traffic will take on the UP-NS system is the same route that currently supports high-quality interline service: UP from California to Shreveport, CPKC on the Speedway between Shreveport and Meridian (moving in NS haulage service), and NS from Meridian to Atlanta and other terminals in the Southeast.[172] Applicants claim extensive improvements in transit time by routing traffic that currently moves via Memphis across this route, and they also anticipate massive truck diversions to this service once UP and NS are commonly controlled.[173]

Those forecasts are quite telling, because the only change the merger would bring in this corridor would be UP's ownership of NS. The operation would not change—it would still involve handoffs from UP to CPKC at Shreveport and from CPKC to NS at Meridian. This two-interchange route is efficient because run-through train service is efficient. UP originates domestic intermodal traffic in Southern California that it hands off to CPKC in Shreveport, LA. Those UP trains may pick up and drop off traffic along the way from Los Angeles to Shreveport, and all of that work would affect their overall transit times and reliability. But when the trains get to Shreveport, they are interchanged seamlessly to CPKC—the average dwell time (including inspections for open container doors, work to shorten the train as necessary, and crew changes) is approximately [redacted][174] CPKC then moves the trains intact in haulage

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171 Rev. App. 1-310 (Rocker & Elkins Second Errata V.S., Figure 16); Rev. App. 2-406 (Hunt Second Errata V.S. §§ 2.3, 6.3.2, 7.1.1); *see* Powers V.S. ¶ 165.

172 Rev. App. 2-695 to -97 (Gehringer & Orr Second Errata V.S. ¶ 189, Figures 22-23); *id*. at 2-727 to -29 (Gehringer & Orr Second Errata V.S. ¶¶ 249-50).

173 Rev. App. 2-614 (Gehringer & Orr Second Errata V.S. ¶ 7).

174 *See* Appendix to CPKC Letter to the Board regarding Applicants' Prima Facie Case (CPKC-38). [redacted]

service on behalf of NS to Meridian, MS, where CPKC again hands them off to NS for movement east to Atlanta, Charlotte, Jacksonville, and other points. The Meridian interchange is even more swift, with an average dwell time of approximately [redacted][175] In sum, Shreveport and Meridian both are interchange points, but these trains do not spend 24-48 hours (or even Mr. Hunt's 22 hours) of dwell at those locations.[176] To the contrary, they run through with minimal delay occasioned by the need for crew changes in Shreveport and Meridian. The locomotives stay on the train, and crews are called in advance of the train's arrival to be prepared to step on. The process takes minutes at each interchange point, not days.[177]

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[175] *See* Appendix to CPKC Letter to the Board regarding Applicants' Prima Facie Case (CPKC-38). [redacted]

[176] Mr. Hunt's transit time calculation assumes one fewer interchange and a reduction of approximately 22 hours. *See* Powers V.S. ¶ 165.

[177] Redd V.S. ¶ 25.

FIGURE 14

TRANSCONTINENTAL INTERLINE INTERMODAL SERVICE VIA THE MERIDIAN SPEEDWAY SHOWS THE POWER OF RUN-THROUGH INTERCHANGE[178]



When UP's trains do spend hours in Shreveport it is not because of the interchange process, but because of other work that UP chooses to perform at Shreveport—specifically, shortening over-length trains to come under the uniformly applicable train-length limit onto the Meridian Speedway and inspecting and rectifying open doors on containers on UP's inbound trains.[179] Even if the brief time required for this work were properly assigned to "interchange" dwell at Shreveport, it would add up to only a few hours total. Yet UP claims that its acquisition of NS will allow it to move the same trains on schedules that are *70 to 95 hours faster*—still with two handoffs to CPKC and from CPKC.[180] That claim is not plausible on its face.

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178 Rev. App. 1-294 (Rocker & Elkins Second Errata V.S. ¶ 50) ("At interchange points, the costs are measurable. Transfers between carriers can add 24 to 48 hours of dwell time…."); Rev. App. 2-32 to -33 (Bailey V.S. ¶ 54) ("The Rocker-Elkins VS reports that interchange points between carriers can add between 24 and 48 hours of dwell time." (quoting Rocker & Elkins V.S. ¶ 50)).

179 Redd V.S. ¶¶ 29-31.

180 Redd V.S. ¶ 33.

NS Chief Marketing Officer Ed Elkins described UP-NS service over the Meridian Speedway as the "fastest, shortest route" between the West Coast and the Southeast.[181]

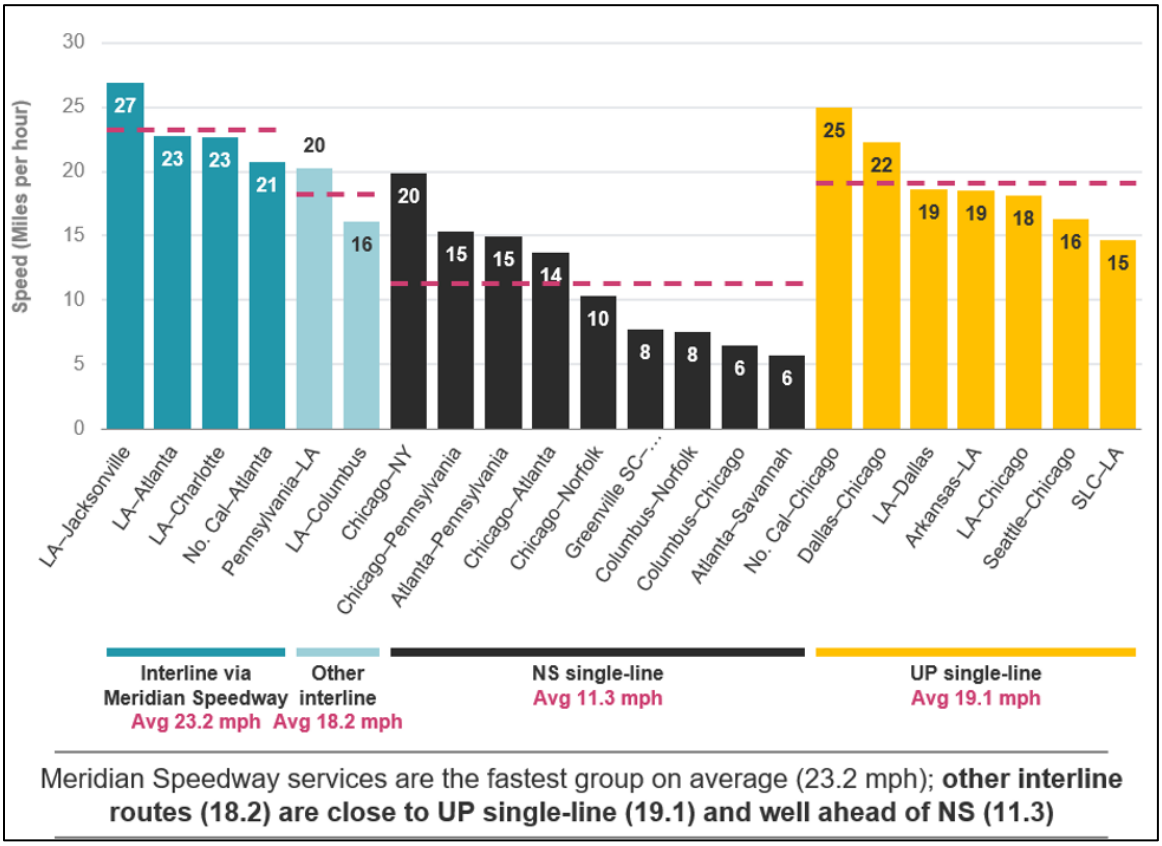
[redacted][182]

[181] *See* Norfolk Southern Corp. Q3 Earnings Call Transcript (Oct. 24, 2025) at 13 (remarks of Ed Elkins).

[182] *See* CPKC-38 at 7-9; *see also* Elphick & Nelson V.S. ¶¶ 637-640 & Figure 146; *id*. at App'x G.

FIGURE 15

DR. POWERS FIGURE 21: EXISTING MERIDIAN SPEEDWAY INTERLINE SERVICES MATCH OR EXCEED THE SPEEDS OF THE UP AND NS SINGLE-LINE SERVICES IN MR. TURNER'S BENCHMARK



The high average speeds over the Meridian Speedway are the result of extensive interline cooperation that minimizes work at each handoff. As shown in Elphick & Nelson Figure 146, reproduced as Figure 16, below, trains over the Meridian Speedway incur very little delay at the handoff points.

FIGURE 16

ELPHICK & NELSON FIGURE 146: CUMULATIVE TRANSIT TIMES FOR INTERMODAL TRAFFIC USING THE MERIDIAN SPEEDWAY

Lathrop, CA → Charlotte, NC



Charlotte, NC → Lathrop, CA



The success of the Meridian Speedway is direct evidence that a two- or three-carrier product can be truck-competitive without common ownership. In the *CP/KCS* proceeding, NS's Chief Marketing Officer testified that:

> "Since its inception in 2006, the Meridian Speedway has delivered efficiency enhancements that have increased options for and improved the transportation experience for NS's intermodal customers. ***This growth in intermodal shipments over the Meridian Speedway has primarily come from the highway*** as opposed to other rail routes."[183]

NS's Chief Strategy Officer, Mike McClellan, likewise described the Meridian Speedway as

[redacted][184]

In light of the demonstrated capabilities of interline service via Shreveport and Meridian, one might wonder why UP and NS have not already diverted more intermodal traffic to this route. Perhaps the bounty of traffic Applicants anticipate is not really there. Perhaps Applicants' pricing of the service has interfered with their ability to convert trucks.[185] Or perhaps UP's fixation on running long trains has gotten in the way, given the 8,500-foot train-length limitation on the Speedway.[186] The important point is that none of these possible

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[183] *Canadian Pacific Ry. – Control – Kansas City Southern*, Amended Comments of Norfolk Southern Ry. and Request for Conditions, Finance Docket No. 36500 (NS-12 filed June 9, 2022) (Elkins Am. V.S. at 4) (emphasis added).

[184] NS_00136603, at -609.

[185] Because the traffic moves in NS haulage service across the Speedway, CPKC does not participate in pricing.

[186] Recently UP has bizarrely pointed to this service via the Meridian Speedway as an example of why interline cooperation does not work, apparently because CPKC has chosen to enforce the 8,500-foot design limit for trains operating on the Meridian Speedway. *See* Union Pacific Corp., Barclays 43rd Annual Industrial Select Conference (Feb. 18, 2026),

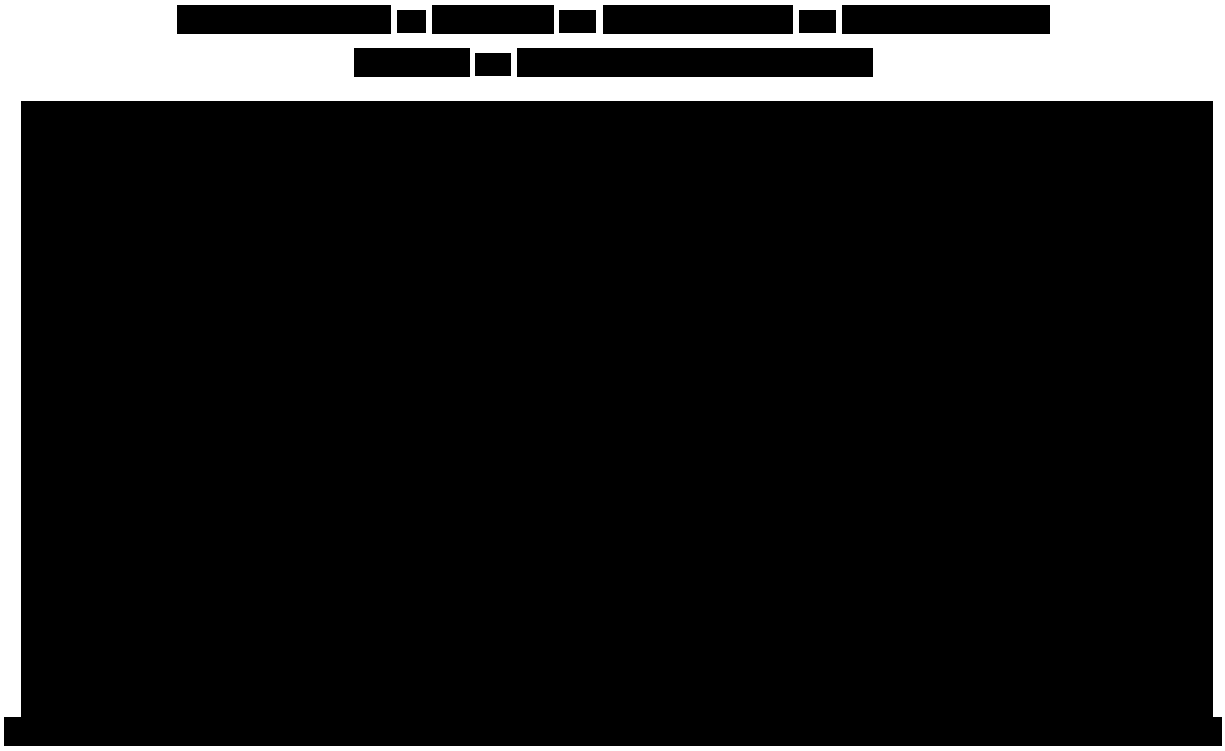
explanations would be addressed by a UP-NS merger. [redacted]

[redacted][187]

https://stockanalysis.com/stocks/unp/transcripts/556131-barclays-43rd-annual-industrial-select-conference/ (remarks of Jim Vena) ("With Canadian Pacific, before they purchased Kansas City Southern, we delivered an 11,000-plus foot train, okay? To go across the Norfolk Southern over the Meridian Speedway. . . . Now we have to split the train in two pieces and give them max 8,500 feet. I think that's a pretty prime example of railroads."). That topic has been the subject of multiple submissions before the Board in Finance Docket No. 36500 (Sub-No. 6). CPKC is fully supporting a highly efficient transcontinental run-through intermodal service and is available to add additional trains to that service.

[187] NS_00131279 at -282.

FIGURE 17[188]



UP and NS do not need to merge to run more trains via the Meridian Speedway. UP's insistence otherwise reflects a bald-faced desire to shun growth in favor of operational efficiency, not a justification for a merger.

(b) There Are Many Illustrations of Seamless, Steel-Wheel Interline Services

The Meridian Speedway is by no means unique. There are numerous other examples of independent railroads cooperating to support efficient, truck-competitive, interline services.

- In 2023, UP announced its new Falcon service—which spans three independent railroads—FXE in Mexico, UP, and CN—as a "best-in-class Mexico-US-Canada

[188] NS_00131279; s*ee also* NS_00130790 UP_2701868

service with a seamless rail connection in Chicago."[189] UP described this service as maximizing speed and reliability and producing "significant truck-to-rail conversion."[190] In a recent letter to customers, Kenny Rocker boasted that UP's gateway volume is up over 5% with Mexico since 2023, explaining that when Schneider National shifted their Mexico business to CPKC, UP "responded by adjusting [its] pricing to compete with CPKC's single line service, delivering more competitive value to customers."[191]

- In December 2024, CPKC and CSXT launched their Southeast Mexico Express ("SMX") service connecting the southeastern United States with Texas and Mexico through their interchange in Myrtlewood, Alabama. SMX offers industry-best, truck-competitive transit times between southeastern markets such as Atlanta, Charlotte or central Florida, and markets in Texas and Mexico, including Dallas and Monterrey.[192]
- In August 2025, BNSF and CSXT announced coast-to-coast intermodal products between (i) Southern California and Charlotte and Jacksonville; (ii) Phoenix and Atlanta; and (iii) Kansas City and the Port of New York/New Jersey and Norfolk. CSXT described the services as seamless and efficient and specifically identified the

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189 Press Release, Union Pacific, *CN, UP, and GMTX Announce New Transformational Mexico-US-Canada Intermodal Service* (April 24, 2023), https://www.up.com/press-releases/service/falcon-premium-intermodal-nr-230424.

190 *Id*.

191 Kenny Rocker, *I've Heard Enough – This Merger Doesn't Kill Competition. It Unlocks It.*, Union Pacific-Norfolk Southern Transcontinental (June 8, 2026), https://www.up-nstranscontinental.com/featured/ive-heard-enough-this-merger-doesnt-kill-competition-it-unlocks-it-2/.

192 Brooks V.S. ¶¶ 99-100; Redd V.S. ¶ 36. In May 2026, the railroads announced service improvements providing approximately 20 to 45 percent improvement to SMX transit times. CSX, *CSX, CPKC upgrade Southeast Mexico Express with dedicated train, faster transit times* (May 6, 2026), https://www.csx.com/index.cfm/about-us/media/press-releases/csx-cpkc-upgrade-southeast-mexico-express-with-dedicated-train-faster-transit-times.

Phoenix-Atlanta route as aiming to convert over-the-road freight to rail. To support that service, they added two 10,000-foot sidings between Phoenix and Flagstaff to improve meet-and-pass operations. No merger was required: BNSF and CSXT aligned the service offering and investment around the identified traffic opportunity.[193]

- There are many other examples, involving each of the Class I railroads. Indeed, in March of 2025 [redacted][194]

These kinds of run-through/steel-wheel interchange interline services are longstanding and are not limited to traffic for which each railroad has a long haul. In 2023, for example, [redacted][195] An excerpt of an internal NS document discussing this initiative is reproduced as Figure 18, below. [redacted][196]

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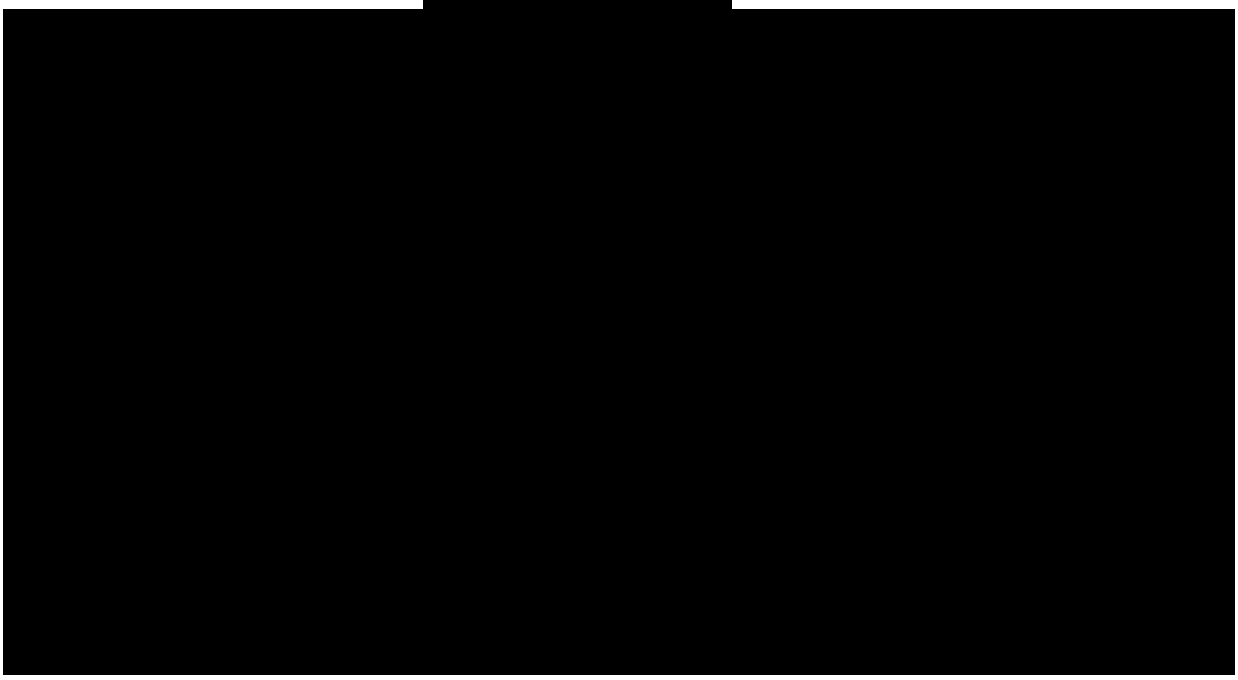
193 CSX, *CSX, BNSF Announce New Intermodal Services, Offering Seamless Coast-to-Coast Rail Solutions* (Aug. 22, 2025), https://www.csx.com/index.cfm/about-us/csx-bnsf-announce-new-intermodal-services-offering-seamless-coast-to-coast-rail-solutions/.

194 *See* NS_00130721, at -721, -724-25.

195 Fox V.S. ¶ 19.

196 Fox V.S. ¶ 19.

FIGURE 18
NS [redacted] SLIDE[197]



UP and NS themselves regularly cooperate to provide high-performance interline service.[198] In 2019, UP publicly described an ongoing joint initiative with NS to improve existing interline intermodal service.[199] UP explained that the two railroads had "[discontinued] small volume lanes to reduce train complexity," while simultaneously introducing "high-density blocking that will increase the velocity on our interchange at our major interline gateways" like Chicago and Memphis. UP expressly stated that the objective was a more fluid, less complex interchange that would reduce transit times and improve customer service. These are the same basic operating tools—high-density blocking, reduced handlings, and more efficient interchanges—that Applicants now characterize as important advantages of operating one

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197 NS_00143201, at -203.

198 Elphick & Nelson V.S. ¶¶ 627-28.

199 Elphick & Nelson V.S. ¶ 628; *see* Union Pacific, *Interline Service Changes to Eastbound Intermodal Traffic Handled by UP and NS*, Announcement No. IM2019-70 (May 31, 2019), https://www.up.com/customers/announcements/intermodal/allintermodal/IM2019-70.html.; Elphick & Nelson V.S. ¶ 628.

combined network.[200] And in January 2022, UP announced that customers could access comprehensive domestic intermodal schedules covering UP-NS and UP-CSXT traffic, making their interline service function similarly to single-line services from the customer's perspective.[201]

More recently, in September 2025, UP and NS launched new steel-wheel interchange service for intermodal traffic moving between the West and NS's Louisville terminal, which the railroads touted as involving a "seamless handoff" at Kansas City.[202] When Applicants announced this new service, they described it as providing "truck-competitive transit times" and characterized the product as "another example of Union Pacific and Norfolk Southern developing innovative interline service products, just as each have with other short line and Class I rail partners in the past."[203] This example is particularly telling, as the interline service between the West Coast and Louisville, KY serves many of the markets in which Applicants assert they need a merger to establish new transcontinental intermodal services, including Lathrop CA, Los Angeles, Seattle, Salt Lake City, and Houston, TX.

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200 Elphick & Nelson V.S. ¶ 628.

201 Elphick & Nelson V.S. ¶ 630.

202 *See* Powers V.S. ¶ 55.

203 Elphick & Nelson V.S. ¶ 631; Union Pacific, *New Union Pacific and Norfolk Southern Intermodal Gateway Expands Market Access* (Sept. 15, 2025), https://www.up.com/news/growth/louisville-intermodal-service-it-250915; Norfolk Southern, *New Union Pacific and Norfolk Southern intermodal gateway expands market access* (Sept. 15, 2025), https://www.norfolksouthern.com/en/newsroom/news-releases/new-union-pacific-and-norfolk-southern-intermodal-gateway-expands-market-access.

FIGURE 19

[redacted][204]



As Elphick and Nelson explain in their Verified Statement, Applicants' own operational data demonstrates that through these types of cooperative agreements UP and NS have effectively aligned their operations to minimize dwell within lanes where Applicants currently provide run-through train service.[205] Indeed, since the announcement of the merger, Applicants have already [redacted][206]

Applicants have acknowledged the success of these interline initiatives at achieving truck conversion to intermodal service and growing rail traffic, showing that coordination to offer a

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204 NS_00095664.

205 Elphick & Nelson V.S. ¶¶ 635-36.

206 Rocker Tr. at 314:6-320:17.

compelling service is possible without a merger.[207] The track record established by these examples bears directly on Applicants' claim that a merger is necessary to achieve substantial traffic growth. There is no apparent reason why UP and NS—or other combinations of independent Class I carriers—could not use the same kinds of coordinated interline products on the lanes from which Applicants project post-merger growth.

The Board has noted that Applicants' public-interest case relies principally on diverting approximately 2.1 million truckloads of long-haul traffic to rail.[208] For the 1.203 million annual truck movements Mr. Hunt projects will convert to intermodal rail, the average door-to-door haul is 2,070 miles, and nearly 80% are 1,500 miles or longer.[209] Those are *precisely* the kinds of long-haul movements for which the existing interline examples discussed above demonstrate that multiple railroads can coordinate an efficient, truck-competitive product without common ownership.[210]

2. Applicants' Airline Analogy Is Inapposite

Applicants' CEOs frequently invoke an airline analogy, comparing interline rail service to forcing airline passengers to change airports mid-journey. (*See* Figure 20, below.)

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[207] *See* Elkins Tr. at 76:18-77:1 [redacted] Union Pacific, *New Union Pacific and Norfolk Southern Intermodal Gateway Expands Market Access* (Sept. 15, 2025), https://www.up.com/news/growth/louisville-intermodal-service-it-250915 (remarks of Kenny Rocker) ("Enhancements to the newly expanded Kansas City Intermodal Terminal and Norfolk Southern investments in Louisville allow us to compete with trucks, removing thousands from the nation's congested highways."); UP_0990304, at 304-05 [redacted] NS_00095664 ([redacted]).

[208] Decision No. 21 at 24.

[209] *Id.* at 26 n.31; Rev. App. 2-450 to -51 (Hunt V.S. at ¶¶ 63-64).

[210] Powers V.S. ¶¶ 53-54, 59; *see also* Redd V.S. ¶¶ 44-45.

FIGURE 20

APPLICANTS' SIMPLISTIC AIRLINE ANALOGY [211]

Norfolk Southern Corporation (NSC) M&A Call, Transcript (July 29, 2025)

Vincenzo James Vena - *Union Pacific Corp. - CEO & Director*
I give the example for people that aren't railroaders. I know I've read a lot of your articles lately. So you're a railroader, just like I am, okay? And at the end of the day is I would like to have in the United States of America that if you cross the Mississippi and you were flying from one end of the country to the other, you'd have to get on the plane in New York, get up in Chicago at O'hare, change plans change carrier and go to another airline to go to L.A. And that's what we do.

Mark R. George - *Norfolk Southern Corp. - President, CEO & Director*
And book two tickets to do it.

Vincenzo James Vena - *Union Pacific Corp. - CEO & Director*
Book 2 tickets to do that.

Mark R. George - *Norfolk Southern Corp. - President, CEO & Director*
With two different companies.

Vincenzo James Vena - *Union Pacific Corp. - CEO & Director*
Exactly. So but that's how we treat freight in our country.

Applicants' airline analogy is not an accurate description of modern interline rail service—and, considered carefully, it proves nearly the opposite of what Applicants intend. A shipper using interline service does not ordinarily purchase separate "tickets," because railroads have offered through rates for more than a century;[212] separate Rule 11 rates are available primarily at the request of shippers seeking to enable and encourage separate competitive rate making.[213] Likewise, intermodal customers have just one contract with the trucking company

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211 Norfolk Southern Corp., Q2 2025 Earnings Call, Transcript (July 29, 2025) (remarks of Jennifer Hamann and Mark George); *see* Rev. App. 1-225 (Vena V.S. ¶ 34).

212 *See* George Tr. at 26:10-27:15 [redacted] Elkins Tr. at 54:15-22 [redacted]

213 *See* Majure V.S. Vol. 1 ¶¶ 73-78.

(such as JB Hunt or Hub Group), even if the rail service component involves multiple railroads.[214]

Nor must the shipper "collect its baggage" at the gateway. The freight ordinarily remains in the same sealed railcar or container as it passes between carriers. Where traffic density supports it, independent railroads can provide run-through trains, bypass intermediate classification, and conduct steel-wheel interchanges without unloading the freight.[215] UP's own three-carrier Falcon Premium service illustrates this point.[216] Where densities are not sufficient for these operations, even a transcontinental railroad will need to handle freight at intermediate terminals to build density.[217] Applicants' analogy also confuses single-carrier service with nonstop service. A passenger flying on one airline may still have to connect through a hub, change aircraft, and wait between flights. Likewise, freight moving via a single carrier may still require intermediate switching, train assembly, crew changes, and terminal dwell.

The analogy also relies on the personal inconvenience of passenger air travel, which has no equivalent for freight. A passenger changing airports must physically navigate the transfer, manage baggage, and endure the disruption to work, rest, and personal plans. A sealed container experiences none of those inconveniences. While transit time matters to certain shippers, for

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214 *See* Elkins Tr. at 48:1-49:8 [redacted]

215 *See* Redd V.S. ¶ 18.

216 *See* Bill Stephens, *CN, UP, and Ferromex tighten new Canada-Mexico intermodal schedules*, Trains (May 3, 2023), https://www.trains.com/trn/news-reviews/news-wire/cn-up-and-ferromex-tighten-new-canada-mexico-intermodal-schedules/ (describing how "CN and UP will use steelwheel interchange to exchange the traffic" on the Falcon Premium service).

217 *See* Redd V.S. ¶¶ 82-84.

many shipments, predictable arrival at an acceptable cost matters more than the shortest possible journey.

More fundamentally, the airline analogy overlooks the competitive value of interline service. Airlines ordinarily do not permit a traveler to mix and match one carrier's New York-Chicago fare with a rival carrier's Chicago-San Francisco fare. Rail shippers, by contrast, can use Rule 11 rates to negotiate separately with connecting carriers and capture the benefits of competition on whichever side of the gateway competing service exists. A single UP-NS rate may appear "seamless," just as a single-airline itinerary does, but it would come at the cost of that optionality, placing both legs of the movement under the control of one railroad.[218] Applicants' own analogy should make the competitive danger familiar: airline fares tend to be higher at airports where one carrier has a dominant position.[219] The relevant question is therefore not whether a single carrier could offer a coast-to-coast itinerary, but what would happen if that carrier obtained dominant control over the principal gateways and East-West corridors through which competing itineraries must pass. That—not a fictional mid-journey airport transfer—is the apt analogy for what Mr. Vena proposes across the Nation's East-West rail network.

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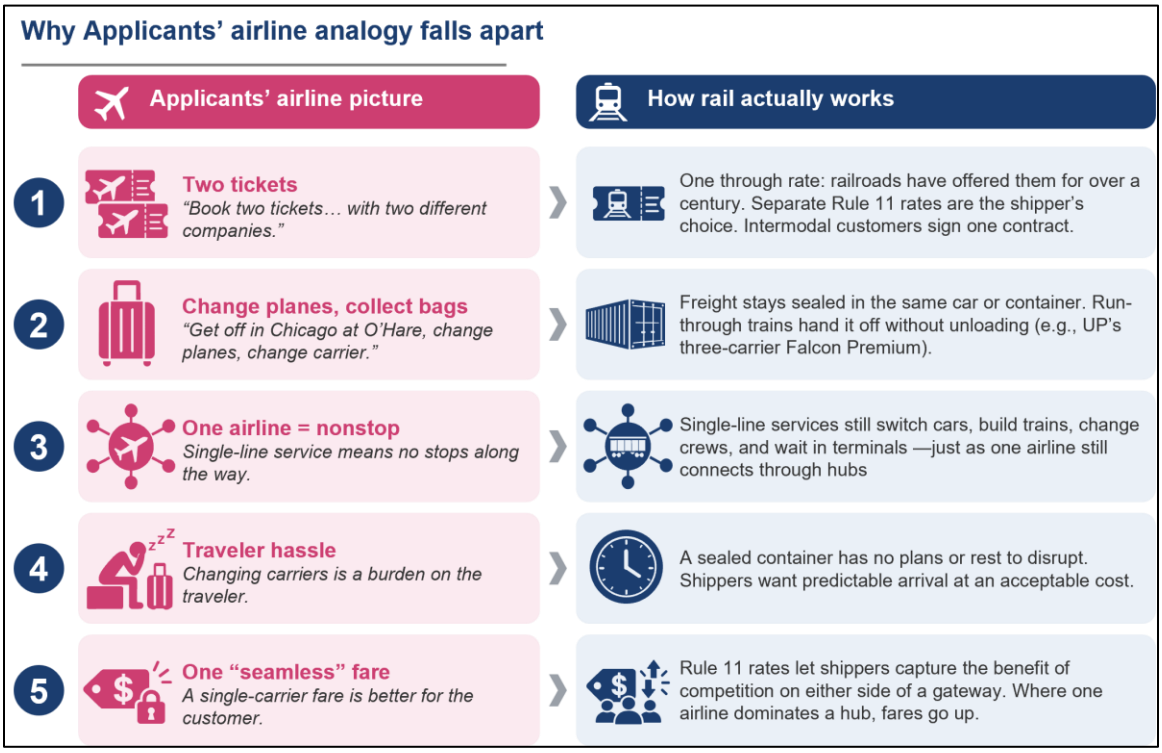
[218] *See* Majure V.S. Vol. 1 ¶¶ 73-78.

[219] *See* U.S. Government Accountability Office, *Airline Industry: Potential Mergers and Acquisitions Driven by Financial and Competitive Pressures*, GAO-08-845, at 30 & n.36 (July 2008) (finding "increased airline dominance at an airport results in increased fare premiums, in part because of competitive barriers to entry").

FIGURE 21

THE AIRLINE ANALOGY FALLS APART



C. Where There Are Opportunities to Attract Traffic Via Single-Line-Like Interline Services, a Merger Is Not Needed to Make Those Offerings Commercially Viable

The success of the interline services outlined above speaks for itself. Class I railroads have shown that, where traffic density exists, independent railroads can solve coordination issues by allocating revenue and responsibilities, establishing operating plans and performance standards, and making targeted investments through commercial agreements in order to support seamless and commercially viable transcontinental services.[220] The lack of a merger has not

[220] Clements V.S. ¶¶ 96, 98-100; *see also id.* ¶ 107; Brooks V.S. ¶¶ 75-78.

prevented the participants in those initiatives from having the financial incentive to participate or the operational acumen to deliver commercially attractive interline service to rail customers.[221]

1. Commercial Frictions Are No Impediment to Successful Interline Growth

Just as on the operational front, railroads have numerous tools to make interline services work commercially, when each participant is motivated to do so. Some of the interline success stories have involved a grant of haulage by one carrier to another. The transcontinental Meridian Speedway services discussed above are supported by NS's haulage rights between Shreveport and Meridian, taking CPKC out of the rate-making loop. The [redacted][222] Haulage grants are commonplace in this context. Others involve old-fashioned interline rate-making, such as UP's and NS's services via Louisville, among many others.

In the past, railroads have also shown creativity in developing wide-ranging alliance-style relationships to support interline traffic opportunities. Examples of Class I railroads working together in this way include:

- A strategic alliance between UP and CSXT, in which the two used MultiRail to analyze their traffic "as if the cars were moving on a single railroad" and then developed "interchange points and blocking schemes for run-through trains" as

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[221] A selection of evidentiary highlights that address successful and potential interline collaboration without a merger, including across the watershed and via the Meridian Speedway, can be found at Appendix B, hereto. To view these documents in their entirety, please refer to Volume VI, which contains a copy of this Appendix B that is hyperlinked to the documents and testimony cited therein.

[222] *See* NS_00143201, at 203; *see also* Fox V.S. ¶ 19.

"a means of reducing overall transit times and minimizing terminal handling" at five strategic gateways.[223]

- Two strategic alliances between CN and KCS (now CPKC), which involved the granting of certain haulage and trackage rights and investments in certain joint facilities, that resulted in an 18% increase in traffic.[224]
- Interline service agreements formed between BNSF and CN after their failed merger attempt in 2000, which involved granting one another "authority to market and price carload traffic originating with one railroad and terminating with the other, without first negotiating terms of the movement," to attract new traffic and make existing routes more efficient.[225]

The track record of interline cooperation also shows that where new interline services require investments in infrastructure, the participating railroads know how to finance those investments. To be sure, there are examples where one railroad did not see the merit in an investment to support some new interline initiative that the other railroad was eager to pursue, just as there are investments that individual railroads choose not to make that a marketing department eager to sell new services might desire. But, again, when traffic opportunities present themselves, railroads have shown the ability to find ways to get the job done. Moreover, much of what is contemplated in the Operating Plan can be accomplished by the types of ordinary service-design decisions—such as building deeper blocks, coordinating two train schedules, agreeing to accept a run-through train, changing the gateway through which traffic

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223 Elphick & Nelson V.S. ¶ 617.

224 Elphick & Nelson V.S. ¶ 618.

225 Elphick & Nelson V.S. ¶ 620.

moves, or arranging for a block to bypass an intermediate classification—that railroads routinely cooperate on today.[226]

There are also numerous examples of Class I railroads cooperating on joint capital investments to improve rail performance where traffic density is sufficient to justify the investment, including the Meridian Speedway (NS and KCS, now CPKC) and the Patriot Corridor (NS and Pan Am, now CSXT) projects.[227] BNSF's siding investments to support BNSF-CSXT Phoenix-to-East interline services are another.[228]

Applicants have not shown that only a merger is capable of unlocking opportunities for traffic growth in the so-called Watershed region. Indeed, Applicants' own analysis of new traffic opportunities proves the point: If the projected Watershed traffic is sufficient after the merger to support new manifest trains and deep blocks, the same underlying demand exists before the merger and can be aggregated through interline agreements; if the traffic is insufficient, common ownership will not create the freight.[229]

Applicants' reliance on the I-5 proportional-rate agreement illustrates the potential for interline arrangements to overcome commercial impediments to Watershed-style interline traffic growth. The I-5 agreement gave UP the right to quote pre-established rates on BNSF between the Portland gateways and BNSF-served points in Washington (effectively a Watershed-style setting in which BNSF handled the traffic for relatively short hauls while UP had much longer

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226 Elphick & Nelson V.S. ¶¶ 610, 615-26.

227 Elphick & Nelson V.S. ¶ 626.

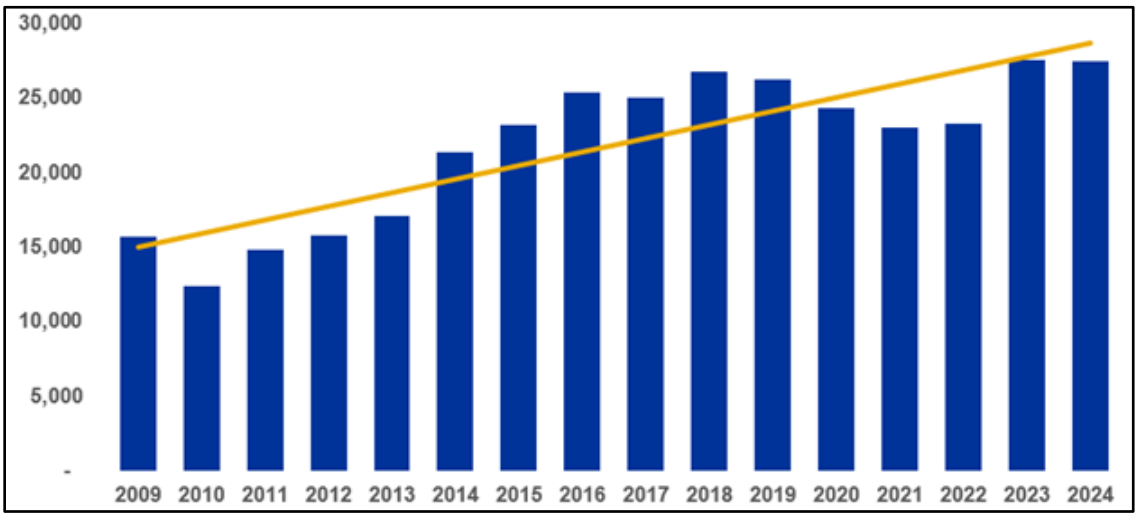
228 *See* CSX, *CSX, BNSF Announce New Intermodal Services, Offering Seamless Coast-to-Coast Rail Solutions* (Aug. 22, 2025), https://www.csx.com/index.cfm/about-us/csx-bnsf-announce-new-intermodal-services-offering-seamless-coast-to-coast-rail-solutions/.

229 Clements V.S. ¶ 13, 97-100; Brooks V.S. ¶ 97, 116; *see also* Elphick & Nelson ¶ 270.

hauls between Portland and Southern California and the Southwest).[230] The arrangement addressed potential commercial friction through pre-established proportional rates that permit rates to be quoted without awaiting concurrence, and UP itself has credited the arrangement with attracting new customers and traffic from trucks.[231] Applicants' chart showing the growth this arrangement unlocked is shown as Figure 22, below.

FIGURE 22[232]

APPLICANTS' FIGURE 1: GROWTH OF UP'S I-5 TRAFFIC OVER TIME



Similar commercial tools could be applied across the Mid-Continent Watershed just as easily. To be sure, the I-5 agreement arose in a context where BNSF was receiving other value from UP and thus willing to give UP this rate-making authority. But there are endless ways for railroads to trade value if there is opportunity for profitable traffic growth. UP and NS could, for example, explore reciprocal "I-5-style" arrangements under which UP makes attractive

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230 *See* Rev. App. 1-377 to -78 (Novak V.S. ¶¶ 11, 13 & Figure 1.); *id.* 1-351 (Rocker & Elkins V.S. ¶174); Clements V.S. ¶¶ 98-99.

231 Rev. App. 1-377 to -78 (Novak V.S. ¶¶ 11, 13); *id.* 1-351 to -52 (Rocker & Elkins V.S. ¶¶ 174-75, 177).

232 Rev. App. 1-353 (Rocker & Elkins Second Errata V.S., Figure 21).

proportional rates available to NS for traffic moving to UP-served customers in Wisconsin and northern Illinois, while NS makes comparable rates available to UP for traffic moving to NS-served customers in Tennessee and Mississippi.[233]

This is not a fanciful and theoretical prospect of CPKC's invention. [redacted]

[233] Clements V.S. ¶¶ 99-100.

[234] *See* UP_0703627.

[235] Rocker Tr. at 334:12-15.

[236] UP_0703629 at -630.

FIGURE 23[237]

[redacted]

[redacted]

[redacted

[redacted] }[240]

2. If the Growth Opportunities Are Real, UP and NS Have Ample Financial Incentives to Pursue That Traffic Through Rate Reductions and Service-Related Investments

Applicants appear to claim that, whatever the potential capabilities of interline service might be, the unaligned interests and incentives of interline partners prevent these initiatives from forming or cause them to unravel eventually. Only a merger, they say, can once and for all time create a complete alignment of interests.

Applicants' point that their merger will create a permanent and perfect alignment of interests between UP and NS is true, but that is a reason for concern, not a cause to rejoice. Permanently cementing that alignment will preclude UP-NS's incentives to work with a variety of other connecting carriers whose route networks would now overlap the UP transcontinental network. [redacted][241] Equally important, the flexibility of independent railroads to adapt to changing market conditions by shifting their focus, pursuing innovative new ideas with a different partner as conditions change, is a virtue not a vice.[242]

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240 *Compare* UP_3157069 [redacted] *with* UP_2743582 ("[redacted]"), *and* UP_3208295 (("[redacted]").

241 NS_00103605 at -654.

242 *See* Clements V.S. ¶¶ 13, 45, 128; Majure Vol. 1 ¶¶ 160, 339.

FIGURE 24[243]

[redacted]



Applicants might have a stronger position were it true that only a merger could give railroads financial incentives to pursue growth opportunities like those reflected in Applicants' post-merger traffic forecasts. But it is unquestionable that, if Applicants are even close to right about the amount of traffic growth that could be achieved by better interline service and lower interline rates, UP and NS would have intense financial incentives to pursue those initiatives, and ample new margins out of which to pay for rate increases or service improvements.

Applicants estimate $3.5 billion in annual shipper savings, $2.855 billion in annual operating revenue benefit and cost savings to themselves, and 2.1 million truck-to-rail diversions.[244] If those projections are realistic, Applicants should have substantial incentives to pursue at least some of that traffic (and the associated profits) today absent a merger. Dr. Powers

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243 NS_00103605 at -654.

244 Rev. App. 1-20; Rev. App 1-516 (Janke Second Errata V.S. at Table 4).

demonstrates that it would be highly profitable for them to pursue such opportunities—if those opportunities were real—as independent companies.[245]

In sum, Applicants and other independent railroads have a long history of cooperating to provide interline service that mitigates dwell and is as fast or faster than the best single-line service.[246] If Applicants are right that there is an opportunity to attract sufficient volume to make the single-line trains and blocks in their Operating Plan operationally and commercially attractive, that same volume would create an incentive for UP and NS as separate railroads to cooperate to win that business.[247] Each railroad would earn additional line-haul revenue from traffic that it otherwise would not carry, and each would have an interest in designing an interline product capable of competing for that traffic and offering rates that are sufficiently attractive to win the business.[248]

D. Shared Technologies for Customer Service Improvements Are in Advanced Stages of Implementation, Without Need for Merger

New technology is improving coordination among independent railroads and allowing customers to monitor and manage shipments across interline boundaries. These improvements are already being developed and deployed through industry collaboration, without the proposed merger. RailPulse, for example, uses GPS and onboard sensors to provide information about railcar location, condition, and health. NS has explained that the initiative's open communication protocols are intended to "facilitate interoperability across the entire rail supply chain," enabling customers to monitor shipments and respond proactively to potential delays and

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245 Powers V.S. ¶¶ 64-81; *see also* Majure V.S. Vol. 1 ¶¶ 58, 138-141.

246 Elphick & Nelson V.S. ¶ 644.

247 Elphick & Nelson V.S. ¶ 646.

248 Elphick & Nelson V.S. ¶ 646.

disruptions.[249] UP likewise has described RailPulse as an industry effort to improve shipment visibility and rail's competitiveness against trucking, identifying benefits that include productivity gains, faster decisions, enhanced shipment protection, cost savings, and improved customer service.[250]

The same progress is evident in intermodal service. UP recently announced that GPS tracking is embedded in its EMP and UMAX domestic containers—fleets owned in partnership with other Class I railroads—and that an enhanced Blume Global platform provides customers with real-time shipment visibility. UP identifies concrete benefits: delivery notifications, location and loaded-or-empty status alerts, customized geofencing, and connectivity that integrates data into customers' systems. According to UP, these capabilities help customers resolve issues faster, plan more effectively, and reduce manual follow-ups.[251]

Technology also supports coordination of the interline movement itself. In 2022, Blume announced an interline scheduling platform developed in partnership with UP, NS, and CSXT that provides visibility into movements between railroads and allows shippers and intermodal marketing companies to synchronize shipments using current rail schedules. Its accompanying asset-management functionality tracks interchanges and checks actual movements against schedules to identify missing interchange points and improve future accuracy. UP endorsed the neutral platform as "encourag[ing] further collaboration among the rails, IMCs, and other users," while NS explained that it would "improv[e] the visibility" of customers' cross-country

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[249] Norfolk Southern, *Revolutionizing rail shipping with RailPulse* (Feb. 26, 2024), https://www.norfolksouthern.com/en/newsroom/story-yard/revolutionizing-rail-shipping-with-railpulse.

[250] Union Pacific, *RailPulse: Next-Gen Rail Car Tracking* (Oct. 21, 2022), https://www.up.com/news/service/rail-car-tracking-it-221021.

[251] Union Pacific, *From Rail to Real-Time: Union Pacific Empowers Intermodal Customers with Enhanced GPS Tracking* (Jan. 5, 2026), https://www.up.com/news/growth/customers-enhanced-gps-tracking-260105.

shipments.[252] Railinc's Clear Path system provides another operational example: it allows originating, bridge, and receiving carriers to negotiate and agree upon operating times for interchange trains, while sharing terminal information and traffic-flow metrics.[253]

Recent developments in AI may further accelerate implementation of these shared technologies.[254] Advances in software, which will benefit from AI, are steadily improving the ability of railroads to connect their own proprietary platforms with one another and communicate with shared customers as seamlessly, or almost as seamlessly, as they can with a customer whose needs are local to one railroad.[255] While some of this progress predates recent developments in AI, such as CPKC's CLEAR customs system which allows interline carriers to see and communicate data back and forth during an interline move, AI-enabled tools are likely to accelerate it further.[256]

E. Experience with Single-Line-Service Benefits in Past Railroad Combinations Does Not Support Applicants' Benefits Claims Here

Experience with prior railroad combinations does not support Applicants' contention that common ownership is necessary to achieve the benefits associated with single-line service. The relevant circumstances matter. Where, as is the case with UP and NS, connecting railroads

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252 Blume Global, *Blume Global introduces interline rail schedule solution to improve freight visibility* (Jan. 18, 2022), https://www.prnewswire.com/news-releases/blume-global-introduces-interline-rail-schedule-solution-to-improve-freight-visibility-301462741.html.

253 *See* Railinc, *Clear Path® System*, https://public.railinc.com/products-services/clear-path-system.

254 *See* David Lehlbach Deposition Transcript ("Lehlbach Tr.") at 85:4-9 (Sept. 10, 2026) [redacted] Union Pacific Live Investor Roadshow, Transcript (Sept. 19, 2024) at 17-18 (remarks of Rahul Jalali) (Pfeifer Dep. Ex. 31) [redacted]

255 Brooks V.S. ¶ 126.

256 Brooks V.S. ¶¶ 126-27.

already handle sufficiently dense traffic flows between one another, they can use commercial and operating arrangements to approximate many of the features of single-line service.[257]

CP/KCS presented a materially different circumstance. In that case, there was little traffic moving between the two railroads; the North-South lane was already dominated by single-line services offered by UP and BNSF, and the parties had been unsuccessful in growing that traffic despite trying hard through the Ice Pick initiative and others.[258] CP's acquisition was truly necessary to unlock potential new competitive services, like a through intermodal train between Chicago and Mexico.[259] That train started very small: trains averaged only [redacted] total containers, over the first six months, or approximately [redacted] containers per day combined across both directions.[260] Without a merger, that service almost certainly could not have been justified.

The circumstances of this case are nothing like *CP/KCS*. As discussed further in Section V, there are already high-density traffic flows between UP and NS (as there are between UP and CSXT, and between BNSF and both NS and CSXT) across each of the key Midcontinent Gateways.[261] In these circumstances, the experience of *CP/KCS* provides little to no support for treating common ownership as necessary to achieve Applicants' claimed service benefits.

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257 Redd V.S. ¶¶ 18-19, 36-37; Elphick & Nelson ¶¶ 611-12, 614.

258 Brooks V.S. ¶¶ 118, 121.

259 Brooks V.S. ¶ 119; Creel V.S. ¶ 17, 28.

260 Brooks V.S. ¶ 119.

261 Redd V.S. ¶ 19; Brooks V.S. ¶¶ 122-24.

IV. THE APPLICATION DOES NOT PROVIDE THE EVIDENCE (OR TRANSPARENCY) THE BOARD NEEDS TO ANALYZE THE MERGER'S REAL-WORLD IMPACTS

The central thesis of the Application is that the Transaction is in the public interest because substituting UP-NS single-line rail service for interline services will allow Applicants to attract massive volumes of truck traffic from the Nation's highways, saving customers $3.5 billion annually.[262] Under the Board's "more skeptical, 'show me' attitude toward claims of merger benefits and toward claims that no transitional service problems would occur,"[263] to substantiate that claim, Applicants needed to present the Board with (a) a robust empirical traffic diversion study supporting that estimate, (b) an Operating Plan that demonstrates Applicants have an achievable plan both to generate service improvements that attract that traffic and to run their system with that additional traffic, and (c) evidence a merger is required to unlock all of the growth that they project.[264] What Applicants submitted does not come close to making that showing.

Throughout this proceeding, both UP and NS have operated with an extraordinary sense of entitlement. Having decided that this merger serves their own private interests, UP and NS have shown a consistent lack of respect for the Board and its process and have required multiple attempts to file an application that is sufficiently complete to allow the Board and the public to analyze the potential effects of the Transaction. Applicants' cavalier attitude towards this proceeding is apparent in both Mr. Hunt's traffic diversion analysis and in the Operating Plan sponsored by Mr. Barr and Mr. Gehringer.

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262 Rev. App. 1-12 to 15.

263 Decision No. 21 at 18 (quoting Major Merger Rules, 5 S.T.B. at 549).

264 *See* 49 C.F.R. § 1180.7(b); 49 C.F.R. § 1180.8; 49 C.F.R. § 1180.1(a).

Mr. Hunt's diversion analysis is fundamentally unreliable. He treats single-line service like a magic wand that automatically drops prices and improves services relative to what could be achieved through interline coordination and ignores all the nuance and complexity that goes into a shipper's choice of whether to ship by rail and with which carrier. And despite relying so heavily on those assumptions, he admits he has not even read the Operating Plan, which, it turns out, does not support the service improvements his model assumes.

Applicants' Operating Plan bears no relation to the way traffic moves in the real world across the UP and NS systems today, and therefore provides no comfort that a combined UP-NS system would be able to support even the existing UP and NS traffic without disruption, much less the traffic Mr. Hunt predicts would divert to UP-NS and the accompanying service improvements upon which the diversions depend. Having an executable Operating Plan is vital; without one, traffic can be stranded, key terminals can experience congestion and elevated dwell times, trains move slower than promised, and crews, locomotives, and other assets can be misaligned throughout the system.[265] At best, the merged railroad would have a host of service issues like these that will hamper its ability to attract new traffic. At worst, it could suffer a total system meltdown.[266]

Applicants do not have an executable Operating Plan. Applicants start with a Base Plan based on a MultiRail-based model that is replete with errors that distort train schedules in ways that do not resemble traffic flows that can actually be achieved under real world conditions.[267] A Base Plan that bears no relation to the way traffic moves in the real world across the UP and

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265 Elphick & Nelson V.S. ¶¶ 25-27, 38-39.

266 Elphick & Nelson V.S. ¶¶ 13, 27-29, 39.

267 Elphick & Nelson V.S. ¶¶ 83, 89-90, 139-40.

NS systems today cannot provide a reliable operational baseline against which to measure potential merger-related improvements.[268] Applicants' Optimized and Growth Plans then layer onto that unrealistically over-optimized baseline train speeds, train lengths, block swaps, yard workloads, and traffic volumes that Applicants do not show they have any hope of executing.[269] Any version of their Growth Plan that would be executable would not achieve the transit times and service improvements that Applicants say they need to drive diversions.[270]

If that were not enough to deny the Application, discovery has revealed that the diversion analysis and Operating Plan were created for the sole purpose of obtaining the Board's approval, and do not reflect Applicants *actual* plans for a combined UP-NS.[271] The lawyer-driven nature of this exercise is further evidenced by the fact that several of Applicants' own affiants lack personal knowledge of the matters to which they attested. Mr. Elkins admitted [redacted] his verified statement endorsing the diversion analysis, that he did not speak with any non-lawyers at NS about its contents, and that he spent a total of four to six hours reviewing it.[272] Mr. Barr—who is theoretically responsible for operating the entire NS portion of the network [redacted][273] And Ms. Novak, whose verified statement

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268 Elphick & Nelson V.S. ¶¶ 12, 139-40.

269 Elphick & Nelson V.S. ¶¶ 141-43, 151, 261-65.

270 Elphick & Nelson V.S. ¶¶ 264-65.

271 This is not the only example of Applicants telling the Board what Applicants think the Board wants to hear. During the Application drafting process, NS's Chief Strategy Officer [redacted] *See* NS_00329313.

272 Elkins Tr. at 160:14-21; 166:8-15.

273 Brian Barr Deposition Transcript ("Barr Tr.") at 118:22-119:8; 122:11-13 (Sept. 3, 2026).

Applicants rely upon to support CGP, was [redacted][274] In [redacted][275] The Board would be right to disregard any sworn statements that the affiants themselves cannot explain.

Even setting aside the many flaws with the diversion analysis and the Operating Plan, the Applicants nowhere attempt to quantify how much of the contemplated additional traffic they could achieve without merging UP and NS. Applicants instead gesture to the vague notion that certainly *some* amount of growth could not be achieved without a merger. But they never show that *all* (or even a majority) of the growth that they are projecting actually requires a merger. And Applicants' suggestion that "the transaction's significant public benefits . . . do not depend on whether Applicants capture every projected diversion," says something about the confidence they have in their diversion estimates.[276]

In short, Applicants ask the Board to approve their Transaction based on a diversion model and Operating Plan that are not shown to predict actual shipper behavior or actual rail operations, that could not be executed in the real world, that their executives have given only a cursory read, and that Applicants have no intention of actually using to run the combined company. And they never even try to argue that a merger is required to achieve *all* of their projected growth and cost savings. The Board has no basis upon which to find this merger is in the public interest.

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274 Katherine Novak Deposition Transcript ("Novak Tr.") at 172:12-173:5; 176:5-15 (Sept. 24, 2026).

275 Novak. Tr. at 344:23-346:9.

276 UP-80/NS-78 at 67.

A. The Board Should Have No Confidence in the Reliability of Applicants' Diversion Estimates and Operating Plan

The Board should have no confidence in either Mr. Hunt's diversion analysis or Applicants' Operating Plan. Their many defects are cataloged in detail in Sections V and VI of this Comment, as well as in the Verified Statements of Dr. Powers and Messrs. Elphick and Nelson.

The defects in the diversion analysis and the Operating Plan also compound one another. Mr. Hunt's predicted traffic growth is predicated on assumed service improvements. If those assumed service improvements do not materialize, there is no support for Mr. Hunt's predicted diversions. However, the routes and transit times on which Mr. Hunt's conclusions depend are not supported by the levels of service the Operating Plan actually describes. And the Operating Plan itself offers no reliable support for Mr. Hunt's assumptions: it begins with a baseline that does not reflect actual operations and adds unrealistic schedules, omitted dwell, and trains that do not fit the physical or commercial constraints of the network. Mr. Hunt's assumed routes and transit times also depart from the service the Operating Plan actually describes.[277]

The dependency also runs in the other direction. Applicants use Mr. Hunt's predicted diversions to supply the traffic density needed to support certain new trains in the Growth Plan, then invoke those services to justify the predicted diversions. If that traffic arrives more slowly, appears in different lanes, or fails to materialize, Applicants may have to reduce frequency, hold shipments, or consolidate trains, weakening the service supposedly attracting the traffic.[278] Applicants thus rely on unsupported traffic diversion forecasts to sustain their unrealistic

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277 *See* Powers V.S. ¶¶ 102-105; *see also* Elphick & Nelson ¶¶ 362-77.

278 *See* Powers V.S. ¶¶ 166-167; *see also* Elphick & Nelson ¶¶ 378-81.

Operating Plan, and on that Operating Plan to support the service improvements that would drive the forecasted traffic diversions.

The deficiencies in the diversion analysis and Operating Plan infect other parts of the Application too. Applicants' Service Assurance Plan sponsored by Mr. Turner builds on the severely flawed diversion analysis and Operating Plan and relies on use of overflow yards that are already themselves at or near capacity.[279] Mr. Janke's calculation of the merger-related benefits relies entirely on Mr. Hunt's diversion analysis for his calculation of operating revenues and profits, and his claims of operating cost savings depend almost entirely on the Operating Plan for estimated reductions in handlings, drayage, and tracking fees.[280] And Applicants' economic experts, Dr. Israel and Dr. Bailey, rely on the diversion analysis, the Operating Plan, and Mr. Janke's cost-savings calculations to support their opinions that the Transaction is in the public interest.[281]

In sum, Applicants' public benefits case is a house of cards. If (as it should) the Board has doubts about Applicants' traffic diversion analysis or their Operating Plan, Applicants' whole public benefits case comes crashing down. (*See* Figure 25.)

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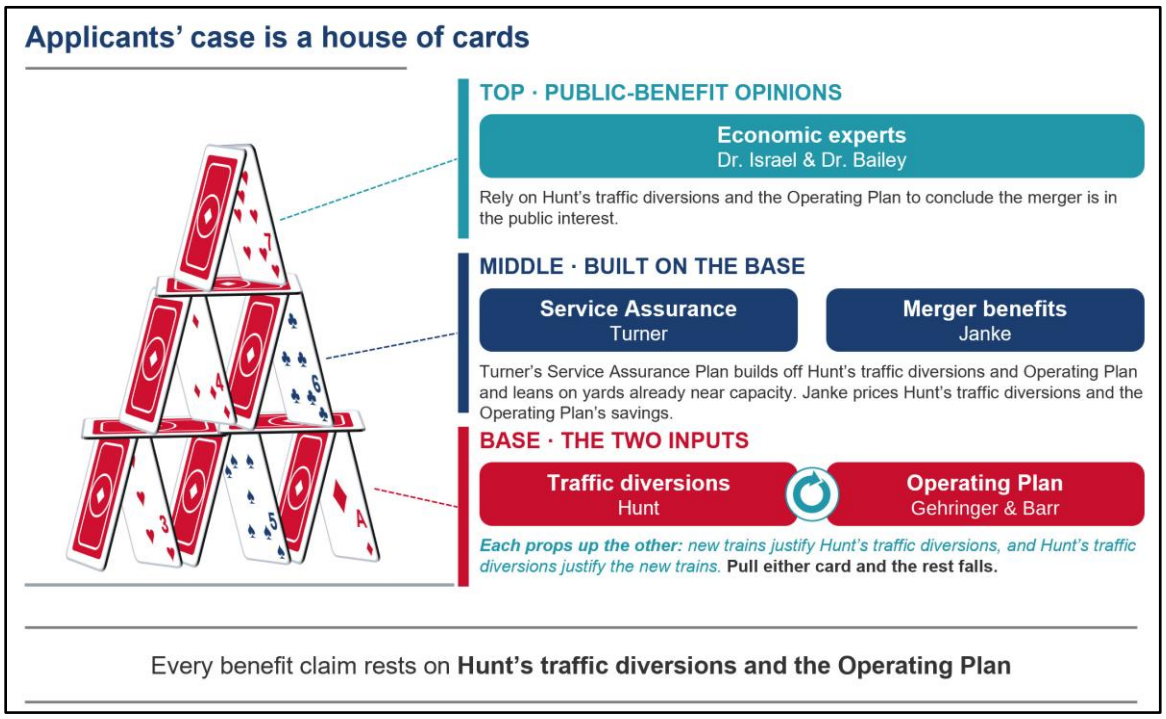
[279] John Turner Deposition Transcript ("Turner Tr.") at 230:15-17 (Aug. 20, 2026) (agreeing that the Service Assurance Plan "relies in several ways on the operating plan"); *id*. at 222:6-223:4 (agreeing that the Growth Plan cars-per-day figures are "based on the projections from the Oliver Wyman study," while admitting he "didn't read" Mr. Hunt's verified statement, saying "I don't know who Mr. Hunt is"); *see also* Elphick & Nelson V.S. ¶¶ 544, 548-71.

[280] Grant Janke Deposition Transcript ("Janke Tr.") at 88:20-24 (Sept. 1, 2026) (agreeing that his net revenue gains are "dependent upon Mr. Hunt's analysis").

[281] Dr. Mark Israel Deposition Transcript ("Israel Tr.") at 77:18-80:2 (Oct. 15, 2025) (agreeing that, with his diversions analysis, "for the details of the calculations, [he] was relying on [Mr. Hunt]."); Dr. Elizabeth Bailey Deposition Transcript ("Bailey Tr.") at 172:6-174:16 (Oct. 29, 2026) (confirming that while she was "broadly familiar" with Mr. Hunt's work and would describe it as "broadly consistent with economic methods," she did not "check" it or conduct her own analysis).

FIGURE 25

APPLICANTS' BENEFITS CASE IS A HOUSE OF CARDS



B. The Application Does Not Disclose Applicants' Real Post-Merger Plans

Testimony from several UP witnesses confirms that Mr. Hunt's diversion analysis and the Operating Plan were created solely for purposes of obtaining the Board's approval—not for purposes of actually operating a combined UP-NS. That disconnect is fundamental. The Board cannot find that this unprecedented transaction is consistent with the public interest based on an Operating Plan that Applicants themselves do not regard as a useful basis for pursuing post-merger traffic opportunities.

The Board's Major Merger Rules require an application grounded in how Applicants actually anticipate operating and competing after the merger. This includes the requirement to submit a "full-system operating plan" describing anticipated operational changes and their timing, service patterns, traffic levels, equipment needs, and capital improvements, and explaining the "gains in service, operating efficiencies, and other benefits anticipated from the

merger."[282] The accompanying market analyses should "reflect the consolidated company's marketing plan" and assess the Transaction's likely effects on traffic patterns, competition, and shippers' alternatives.[283] Reinforcing that practical focus, the 2001 Major Merger Rules require a Service Assurance Plan that identifies concrete steps to ensure that projected service levels are attainable and explains how operating efficiencies would translate into benefits for shippers.[284] Together, these requirements demand a credible account of the railroad Applicants expect to operate and the traffic they expect to carry.

Several UP senior executives have confirmed that [redacted]

[282] 49 C.F.R. § 1180.8(a), (b)(1)-(4)

[283] 49 C.F.R. § 1180.7(a), (b)(1)-(4).

[284] 49 C.F.R. § 1180.10.

[285] Jacob Thomas Deposition Transcript ("J. Thomas Tr.") at 18:4-15 (Aug. 21, 2026).

[286] David Welch Deposition Transcript ("Welch Tr.") at 281:15-23 (July 29, 2026).

[287] Yannik Thomas Deposition Transcript ("Y. Thomas Tr.") at 208:9-11 (Oct. 13, 2026) [redacted] Welch Tr. at 182:9-182:17 [redacted]

[288] Aaron Pfeifer Deposition Transcript ("Pfeifer Tr.") at 51:12-15 (Aug. 20, 2026).

[redacted][289]

[redacted][290] Indeed, UP's Assistant Vice President of Marketing & Sales Operations, Dan McLaughlin, confirmed at his deposition that UP's original internal synergy estimates projected intermodal conversion opportunities that were [redacted][291] (*See* Figure 26.) Applicants have one diversion analysis for the Board and another for running the railroad.

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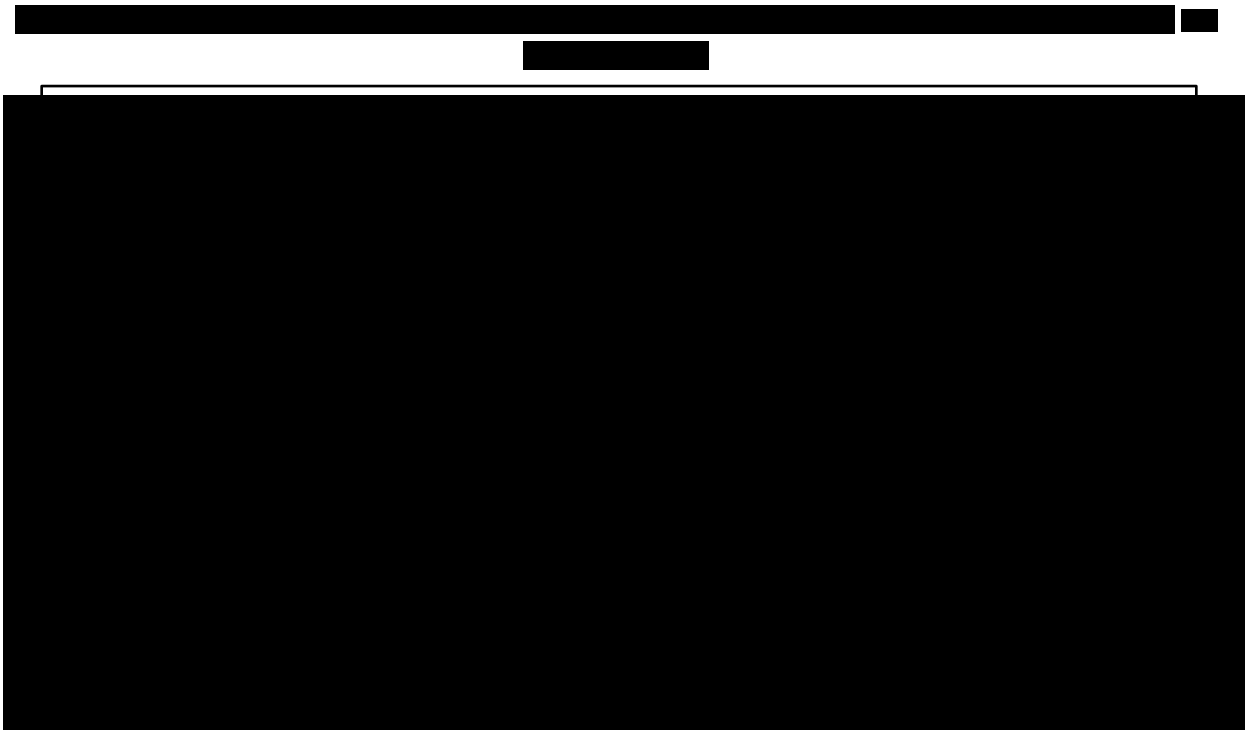
289 Pfeifer Tr. at 152:16-153:17 [redacted]

290 Welch Tr. at 243:25-244:14; Rynaski Tr. at 287:10-17.

291 McLaughlin Tr. at 119:22-120:14

FIGURE 26[292]



Applicants chose not to present their actual commercial plan as part of the Application, so it is not in the record before the Board and cannot be relied upon to support approval of the Application. But the limited documentary record available shows that it differs materially from Mr. Hunt's analysis. For example, Mr. Hunt estimates that approximately [293] of diversions from the Transaction will be intermodal diversions, which includes approximately

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[292] *See* UP_2762349, at Sheet OW Comparison, Cells T36, T40; Rev. App. 2-404 (Hunt Second Errata V.S. ¶ 3, Ex. 2-4).

[293] Rev. App. 2-405 (Hunt Second Errata V.S. ¶ 3, Ex. 2-4).

[redacted][294] of Applicants' projected truck-to-rail diversion opportunities. In total, Mr. Hunt estimates that approximately [redacted] of diversions will be truck-to-rail.[295]

By contrast, [redacted]

[294] Rev. App. 2-405 (Hunt Second Errata V.S. ¶ 3, Ex. 2-4). [redacted]

[295] Rev. App. 2-405 (Hunt Second Errata V.S. ¶ 3, Ex. 2-4). [redacted]

[296] UP_0092813 at -816.

FIGURE 27[297]

[redacted]



[redacted]

(*See* Figure 29, below.)

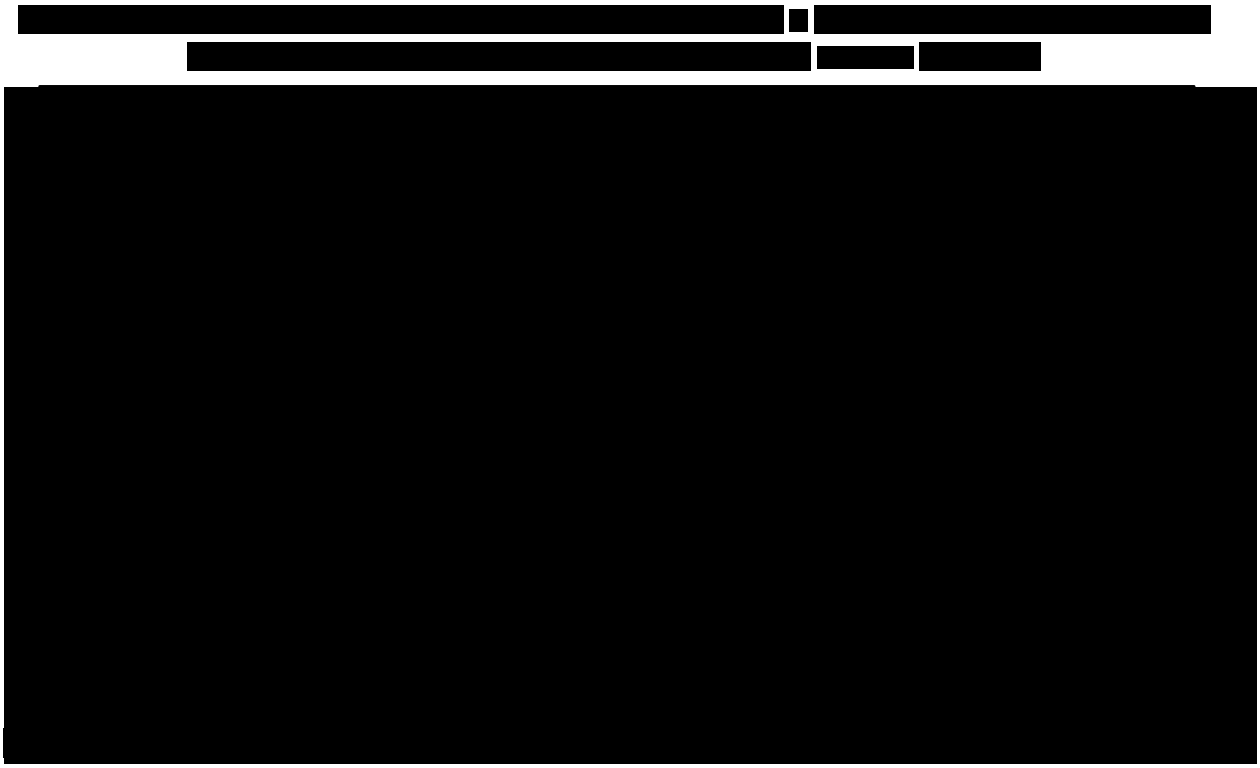
[297] UP_0092813 at -816. UP Premium consists almost entirely of intermodal and automotive traffic. In 2025, it comprised 3.357 million intermodal units and 793,000 automotive carloads. *See* Union Pacific Corp., Annual Report (Form 10-K) (Feb. 6, 2026), at 31.

[298] UP_0092813 at -817.

FIGURE 28[299]



FIGURE 29



The drafting of the Operating Plan appears to have been a similarly outcome-driven exercise. Mr. Barr, who sponsors the Operating Plan for NS following Mr. Orr's departure, admitted that [redacted][300] In total, he [redacted][301] Mr. Orr confirmed that [redacted][302] Mr. Gehringer, who sponsors the Operating Plan for UP, meanwhile, could not recall reviewing the September version of the Operating Plan submitted under his verification, did not know what had changed since the version he signed in April, and could not recall even being told that changes had been made.[303] These admissions undermine any suggestion that the filed Operating Plan reflects the informed judgment of the executives who would be responsible for implementing it.

UP acknowledges internally that [redacted][304]

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299 UP_0092813 at -817.

300 Barr Tr. at 88:12-23; 99:11-23; 100:14-23; 106:15-20; 107:20-108:6; 108:17-24; 356:9-17; 359:5-360:1.

301 Barr Tr. at 118:22-119:8; 122:11-13.

302 John Orr Deposition Trancript ("Orr Tr.") at 414:22-415:3 (Oct. 22, 2026).

303 Eric Gehringer Deposition Transcript ("Gehringer Tr.") at 17:5-20:1 (Oct. 13, 2026).

304 *See* UP_0094437 at -438.

[redacted][305] In other words, Applicants ask the Board to approve the Transaction based on an Operating Plan that does not reflect the traffic the merged railroad would actually be anticipated to handle and would not reflect how the merged railroad would actually operate.

That is precisely backwards. The Operating Plan is not a paper exercise designed to be discarded as soon as Applicants obtain approval. It is the mechanism through which Applicants purport to demonstrate that the combined network can accommodate the traffic they expect to carry while maintaining reliable service. It is the mechanism for assessing how the railroads' operating costs will change as a result of the merger. And it is the mechanism for determining the level of service the merged carrier can provide, as a key driver of the anticipated volumes of traffic it will attract. If the plan submitted to the Board does not reflect the trains Applicants actually expect to run, the traffic they actually expect to handle, or the facilities they actually expect to use, it cannot support the required finding that the Transaction is operationally feasible and consistent with the public interest. It cannot provide a basis for assessing cost changes or service levels post-merger. Worse still, the mismatch creates a real risk of system failure.[306]

Applicants' own documents confirm that this is not a theoretical concern. [redacted]

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[305] Pfeifer Tr. at 356:10-24 [redacted]

[306] *See* Elphick & Nelson V.S. ¶¶ 17-18, 26, 69, 251-53.

[redacted][307] Yet, UP executives testified that [redacted][308] Applicants thus have not demonstrated [redacted] The Board therefore has no reliable basis to conclude that the railroad described in the Application is the railroad Applicants will actually operate—or that their actual railroad can safely and reliably handle the traffic their commercial teams intend to pursue. The Board cannot approve a merger of this magnitude on the basis of a placeholder operating plan developed from litigation-driven traffic assumptions that Applicants have set aside for their own business planning.

C. Applicants Provide No Evidence to Allow the Board to Assess What Benefits (if Any) Could Not Be Achieved Without a Merger

CPKC does not dispute that in some circumstances single-line service can provide incremental benefits over interline service or that common ownership sometimes may permit beneficial coordination beyond what independent railroads can achieve through voluntary agreements. But acknowledging that possibility does not establish that all—or even a material portion—of Applicants' projected benefits both *would be achieved* following the Transaction and *require the Transaction* to be achieved. Here, the claimed benefits depend heavily on price and/or service improvements that Applicants could pursue on their own, or in collaboration with another railroad without merging. No matter what the Board may conclude about the plausibility of the benefits Applicants are claiming, Applicants have made no meaningful effort to

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307 UP_0094437 at -437.

308 Welch Tr. at 120:22-121:8 [redacted] Gehringer Tr. at 177:17-178:4 ("To my knowledge is [sic] nobody is [working on the operating plan], [we] don't intend to change it.").

distinguish which, or even what portion, of those benefits require UP's acquisition of NS to be achieved.

That distinction is central to the Major Merger Rules. Among the key changes in the 2001 Major Merger Rules was the "'heavier burden' for applicants" relating to "benefit estimate integrity."[309] The Major Merger Rules require Applicants to enumerate and, where possible, quantify the net public benefits their merger would generate, and to "discuss whether the particular benefits they are relying upon could be achieved short of merger."[310] In adopting that requirement, the Board expressly rejected the contention that merger applicants should not be required to explain whether their merger benefits could be achieved through other forms of coordination.[311] Although consolidation may produce some unique benefits, the Board explained, that does not establish that "all of the claimed benefits require a merger for their accomplishment," or "address shipper concerns that a carrier might seek to gain enhanced market power through a merger, while claiming that this harm would be offset by efficiencies that could actually be achieved by means short of merger."[312] Accordingly, the Board concluded that it "need[s] to have a full awareness of which of the claimed benefits are obtainable only through a merger so that [the Board] can fairly weigh them against potential harms."[313]

The Board's decision in *CP/KCS* does not relieve Applicants of that obligation. There, the Board explained that the availability of some efficiencies without a combination did not negate the transaction's benefits, because common ownership could produce additional

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309 Decision No. 21 at 18 (quoting Major Merger Rules, 5 S.T.B. at 546, 549)).

310 49 C.F.R. § 1180(b)(11).

311 Major Merger Rules, 5 S.T.B. at 559.

312 Major Merger Rules, 5 S.T.B. at 559.

313 Major Merger Rules, 5 S.T.B. at 559.

coordination gains.[314] As discussed in Section II.D and III.E, *CP/KCS* was fundamentally different from this Transaction in a multitude of ways. Of most immediate relevance, *CP/KCS* was not decided under the 2001 Major Merger Rules, which "reflect a much greater skepticism about the benefits of future mergers and a greater concern about the potential harm of further consolidation,"[315] and therefore call for a more exacting inquiry of whether claimed benefits are truly achievable and merger-specific.

Applicants' experts did not perform the analysis needed to answer that question. Dr. Bailey, who opined that the Transaction "will result in substantial competitive benefits and greater economic efficiency," that "outweigh" the Transaction's horizontal anticompetitive effects,[316] testified at her deposition that it was not within the scope of her assignment to assess whether any of those benefits could be achieved without a merger, such as through interlining.[317] Likewise, Dr. Israel, who opined that "vertical integration is the only way to achieve the 'faster, more efficient, more reliable and more accessible way[s] to ship goods" that the merged UP and NS have committed to and will have the incentive to provide,"[318] testified at his deposition that

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314 *Canadian Pacific Ry. – Control – Kansas City Southern*, Finance Docket No. 36500 (STB served Mar. 15, 2023) at 29.

315 The Surface Transportation Board's New Merger Rules: Hearing Before the Subcomm. on Surface Transportation & Merchant Marine of the S. Comm. on Commerce, Science & Transportation, 107th Cong. 5 (2001) (S. Hrg. 107-1031) (statement of Hon. Linda J. Morgan, Chairman, Surface Transportation Board) ("2001 Senate Hearing").

316 Rev. App. 2-10 (Bailey Second Errata V.S. ¶ 10).

317 Bailey Tr. at 162:7-12 ("Q. So fair to say that you never assessed whether UP and NS could improve their interline operations without a merger? A. That wasn't my assignment in this matter."); *id*. at 167:25-168:6 ("And my question is, did you do any analysis to quantify the benefits that UP and NS could achieve without merging? A. That wasn't my assignment in this matter.").

318 Rev. App. 2-185 (Israel Second Errata V.S. ¶ 11) (quoting Union Pacific and Norfolk Southern, "Facts About the Union Pacific and Norfolk Southern Combination," available at https://assets.up-nstranscontinental.com/One%20Pagers/20251107-up-ns-myths-facts-onepager.pdf, accessed November 24, 2025).

he did not do any independent analysis of whether some portion of the benefits could be achieved through interlining or operational improvements short of a merger—he merely assumed, as a matter of "economics," that they could not.[319] And Mr. Hunt, who purported to estimate potential diversions "that could occur as a result of [the] merger,"[320] acknowledged at his deposition that determining how many projected diversions could be achieved through alternatives to the merger would require modeling that he had not undertaken.[321] These admissions show that Applicants consciously chose to leave the central question unanswered: how much of the traffic growth and other benefits Applicants claim as a public benefit depends on the Transaction? Having provided no answer to that question, Applicants cannot establish

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[319] Israel Tr. at 268:14-20 ("Q. Did you do any sort of analysis of whether or not there's still additional interlining that could be done between UP and NS to achieve some of the merger benefits that they would set out? A. No, not specifically interlining, no."); *id.* at 268:22-269:15 ("Q. So what's your basis for saying that none of the benefits could be achieved by a means short of a merger? A. I mean, much of the benefit is -- that I talk about and contribute is single-lining and elimination of double marginalization, which I think are inherent to a single railroad. Beyond that, I guess I'm not saying there's absolutely nothing that someone could do better as alliances. It's just economics saying they have been a long time trying to maximize profits as separate railroads. And so, again, I wouldn't say my opinion is there's nothing they could possibly do better, but there's a fundamental failure when you maximize separate profit pools that can only be overcome as a matter of the merger. That's an opinion based on economics."); *id.* at 270:20-271:3 ("Q. . . . You haven't done any analysis to determine whether or not the parties could work operationally to decrease the amount of time they're spending at an interchange, for example? A. I haven't . . . studied the railroad operations of that."); *see also* Janke Tr. at 121:15-122:2 [redacted] *id.* at 144:10-18 [redacted]

[320] Rev. App. 2-402 (Second Errata Hunt V.S. at 2.3).

[321] David Hunt Deposition Transcript ("Hunt Tr.") at 700:9-18 (Oct. 7-8, 2026). ("Q. Right. So sitting here today, you can't say how many diversions could have been achieved verse [sic] the 2023 real-world traffic data that you looked at by options other than a merger, correct? A. I would have to model that. Q. Right. And you haven't done so, correct? A. I have not.").

any cognizable public interest benefits supporting approval, and it would be too late to attempt to backfill such a showing on rebuttal.[322]

Class I railroads are more than capable of improving their interline service and pursuing growth, as shown in Section III above. UP's and NS's Chief Operating Officers acknowledged that they would pursue improvements regardless of the merger.[323] In particular, Mr. Barr [redacted][324] Mr. Orr, who was responsible for the Operating Plan prior to his departure from NS, likewise [redacted][325] And NS's Vice President of Network

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[322] *See R.R. Consolidation Procedures Expedited Processing*, 363 I.C.C. 767, 769-70 (1980) ("Expedited Processing") ("The case-in-chief concept of the recently adopted rail consolidation regulations permits us to have, upon the filing of an application, *all of the applicants' supporting evidence*.") (emphasis added).

[323] *See, e.g.*, Gehringer Tr. at 273:8-15 ("Q. Okay. As EVP of operations, you would adopt improvements that would make Union Pacific a safer railroad, correct? A. Just to be clear, pre merger? Q. Yes, sitting here today in your job. A. We are Union Pacific are always looking for opportunities to continue to drive safety efficiency.");

[324] Barr Tr. at 381:9-388:9 [redacted] *see also* Y. Thomas Tr. at 94:3-10 [redacted] *id.* at 94:11-16 [redacted] *id.* at 97:7-15 [redacted] George Tr. at 93:7-14 ("Q. …[I]f the STB denies the merger, you still believe Norfolk Southern can be a successful independent company. True? A. I still believe it can be a successful independent company.")

[325] Orr Tr. at 211:8-212:3 [redacted] Orr Tr. at 212:14-23 [redacted]

Design and Optimization, Yannik Thomas, suggested to NS CEO, Mark George that [redacted][326] Applicants' ordinary-course documents likewise [redacted][327]

Applicants cannot credit the merger with improvements merely because they expect to implement them after consummation. They must establish what the Transaction adds beyond the improvements reasonably achievable without it. Their failure to undertake that comparison leaves the Board without a reliable basis to determine the merger-specific portion of their projected benefits. Whatever incremental value single-line service might offer, Applicants have not shown that it supports the scale of benefits they invoke to justify this Transaction's serious competitive harms and service risks.

V. THE TRAFFIC DIVERSIONS APPLICANTS CLAIM WILL FLOW FROM NEW "SINGLE-LINE SERVICES" ARE VASTLY OVERSTATED AND ENTITLED TO NO WEIGHT IN THE BOARD'S PUBLIC-INTEREST ANALYSIS

Applicants' benefits case rests on an extraordinary prediction: that common control of UP and NS will draw more than 2 million truckloads to rail and nearly half a million additional

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[redacted]); *see also* Turner Tr. at 295:15-19 [redacted] Tureman Tr. at 404:22-405:5 [redacted]

[326] NS_STB_00001421 at -423 [redacted]

[327] NS_00103605 at -650 [redacted] NS_00155457 (identifying various [redacted]

carloads from other railroads.[328] Applicants attribute those diversions largely to the conversion of existing interline movements into single-line service. According to Applicants, those diversions will simply materialize because "[c]ustomers strongly favor single-line service over interline service because of its lower costs, improved reliability, and faster transit times."[329] Applicants then ask the Board to treat the resulting traffic and revenue as proof that the merger is in the public interest.

Applicants' claim is implausible. At the outset, as discussed above in Section IV, [redacted] UP's ordinary course documents show that, [redacted]

Even taking their application at face value and assessing their diversion claims on their own merits, there are many fundamental problems. To start, Mr. Hunt uses outdated data from a historically anomalous year to project his diversions. On top of that, he treats single-line service like a magic wand that automatically improves rail rate and service outcomes relative to what can be achieved through interline cooperation. Mr. Hunt assumes, but does not show, that single-line routes will have lower rates and reduced transit times. But common sense and experience tell us there are numerous reasons why it is wrong to make that categorical assumption. And there are many reasons to believe that, in this particular case, Applicants will not deliver on those claimed improvements in rate levels or rail service performance.

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328 Rev. App. 1-20 (citing Hunt V.S., § 2.3, Exhibit 2-5); Rev. App. 2-405 (Hunt V.S. Exhibit 2-4). Per Mr. Hunt, "The 2.13 million truckloads result in 1.4 million rail carloads and intermodal units." Rev. App. 2-408 (Hunt V.S. Exhibit 2-5 & fn.16).

329 Rev. App. 2-402 (Hunt Second Errata V.S. ¶ 1).

Mr. Hunt also ignores that customers' routing choices reflect a range of commercial, operational, and market factors. Shippers have many reasons for using long-haul trucking rather than rail that have nothing to do with whether the rail option is single-line or interline. Some own their own truck fleets. Some have dispersed origins and destinations, irregular volumes, short lead times, time-sensitive delivery windows, or facilities that lack rail or efficient intermodal access. Others value truck reliability, flexibility, and recovery options enough to pay a higher price.[330] Indeed, the evidentiary record in this case makes clear that there are numerous factors that go into a shipper's choice of what route to pick. The truth is growing rail traffic is hard work whether it entails a railroad marketing its own network or two railroads working together to offer interline services. Simply converting interline services that have not been well developed or marketed into single-line options will not cause traffic to magically materialize.

Mr. Hunt's diversion models ignore all of this nuance and are incapable of reliably predicting merger-related traffic diversions. Dr. Powers catalogs the many problems with Mr. Hunt's truck-to-intermodal, truck-to-carload, and rail-to-rail diversion models in Section IV of his Verified Statement. Mr. Hunt's truck-to-intermodal and truck-to-carload models purport to use a "lookalike" methodology to compare similar markets to one another to predict the post-merger shares of UP-NS single-line services. But he groups together markets that are different in ways that go to the core of the question being asked: why do certain shippers use truck instead of rail? These differences—not the availability of single-line service—are the drivers of Mr. Hunt's diversions. As demonstrated by the results of Dr. Powers' "no-change diagnostic tests," Mr. Hunt's models would still predict substantial diversions—approximately 40% of Mr. Hunt's truck-to-intermodal diversions and 61% of Hunt's predicted truck-to-carload diversions—even

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330 Brooks V.S. ¶ 135.

when the modeled merger-related improvements in price and service are removed. These no-change diagnostics thus show that hundreds of thousands of the truck-to-rail diversions claimed by Mr. Hunt are an artifact of the methodology rather than any claimed merger-induced improvement. Mr. Hunt's models thus do not provide reliable evidence that the claimed diversions will occur, much less that they are merger-specific.

Mr. Hunt's rail-to-rail model fares no better. That slightly more complicated model purports to demonstrate the effect of removing "route impedance" and reducing "junction frequency" on the competitiveness of a combined UP and NS offering. At the outset, we know this model is flawed because it cannot predict current, pre-merger traffic flows that reflect the current state of rail competition. A model that does not reflect the present cannot predict the future. Compounding that error, Mr. Hunt completely ignores the fact that railroads can and do work together to reduce interline friction and, in many cases, create interline service that competes effectively with single-line rail routings and with trucks.

Finally, even if Applicants could prove these diversions are likely to occur, that diverted traffic would represent Applicants' expected profit, not a public benefit. The relevant benefit to the public is the incremental value, if any, that the post-merger service would deliver to shippers over the best service available without the merger. Applicants do not measure that increment. They instead count private revenue and the full rail-truck price differential as though both were public gains.

A. Applicants' Continued Reliance on a 2023 Base Year Analysis is Fundamentally Disconnected from 2027-Forward Conditions

Mr. Hunt estimates that a merged UP-NS would divert an estimated [redacted]

[redacted]}[331] As discussed above, Mr. Hunt estimates that approximately [redacted] of those diversions would be intermodal diversions, which includes approximately [redacted] of Applicants' projected truck-to-rail diversion opportunities.[332]

But 2023 is not a neutral benchmark. It was an unusually poor—and unrepresentative—year for U.S. freight rail generally and NS in particular. By measuring the asserted benefits of the Transaction from that anomalously depressed baseline, Mr. Hunt's analysis necessarily treats traffic that may have returned from truck to rail through ordinary economic recovery and NS's standalone service improvements as traffic caused by the merger. The analysis therefore measures the distance from a historic trough, and says nothing about the incremental diversions that the Transaction might be expected to produce in the real-world, relative to the future performance of UP and NS without their merger.

This is the year 2026, not 2023. Much has changed for the better in the U.S. freight economy—and particularly in NS's business—since Mr. Hunt's selected base year. A diversion analysis frozen in the rail and truck markets of 2023 potentially wrongly counts as potential merger-specific truck-to-rail diversions traffic that has already shifted to rail due to changed macroeconomic conditions, tightening truck capacity, improved rail service, and the parties' own standalone initiatives.

The year 2023 was right in the middle of a "freight recession."[333] In 2023, the U.S. market was experiencing weak demand for consumer goods and lower levels of manufacturing coming out of the COVID-era, where there had been an "extraordinary" period of consumer

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331 Rev. App. 2-405 (Hunt Second Errata V.S. ¶ 3) (emphasis added).

332 Rev. App. 2-405 (Second Errata Hunt V.S. ¶ 3, Ex. 2-4).

333 Elkins Tr. at 85:1-2.

demand.[334] As a result, the U.S. market was also oversupplied with trucking capacity, which resulted in the railroads facing more aggressive competition from trucks.[335] As shown in a

[redacted]

FIGURE 30

[redacted][336]



The "inverse" is true today.[337] Intermodal growth has been exceptional, while other macroeconomic factors have been more varied.[338] The macroeconomic conditions that have made intermodal solutions are more economically attractive since 2023 are illustrated below by

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334 *See* Elkins Tr. at 88:19-92:1.

335 *See* Elkins Tr. at 88:19-92:1.

336 NS_00573873, at 881.

337 *See* Elkins Tr. at 104:9-11.

338 *See* Powers V.S. ¶¶ 40-41 & Figure 14. *See also* AAR, Rail Industry Overview, Oct. 2026, at 1, https://www.aar.org/wp-content/uploads/2026/10/AAR-RIO-October-2026-FINAL.pdf.

Figure 14 to Dr. Powers' Verified Statement, reproduced below as Figure 31, and Figure 6 to Mr. Brooks' Verified Statement, reproduced below as Figure 32.

FIGURE 31

DR. POWERS FIGURE 14: FREIGHT MARKET CONDITIONS AND RAIL TRAFFIC HAVE EVOLVED SINCE 2023

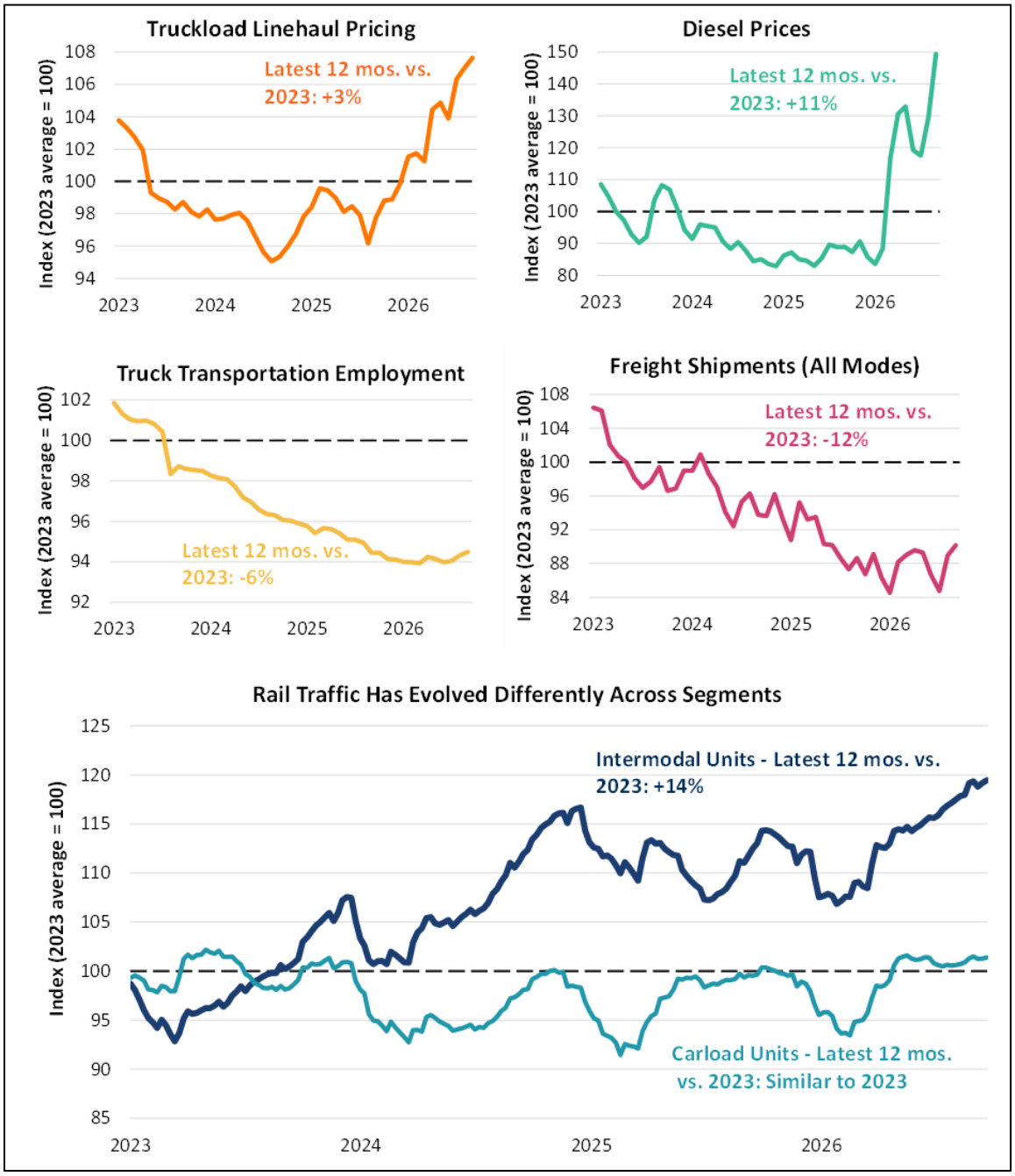
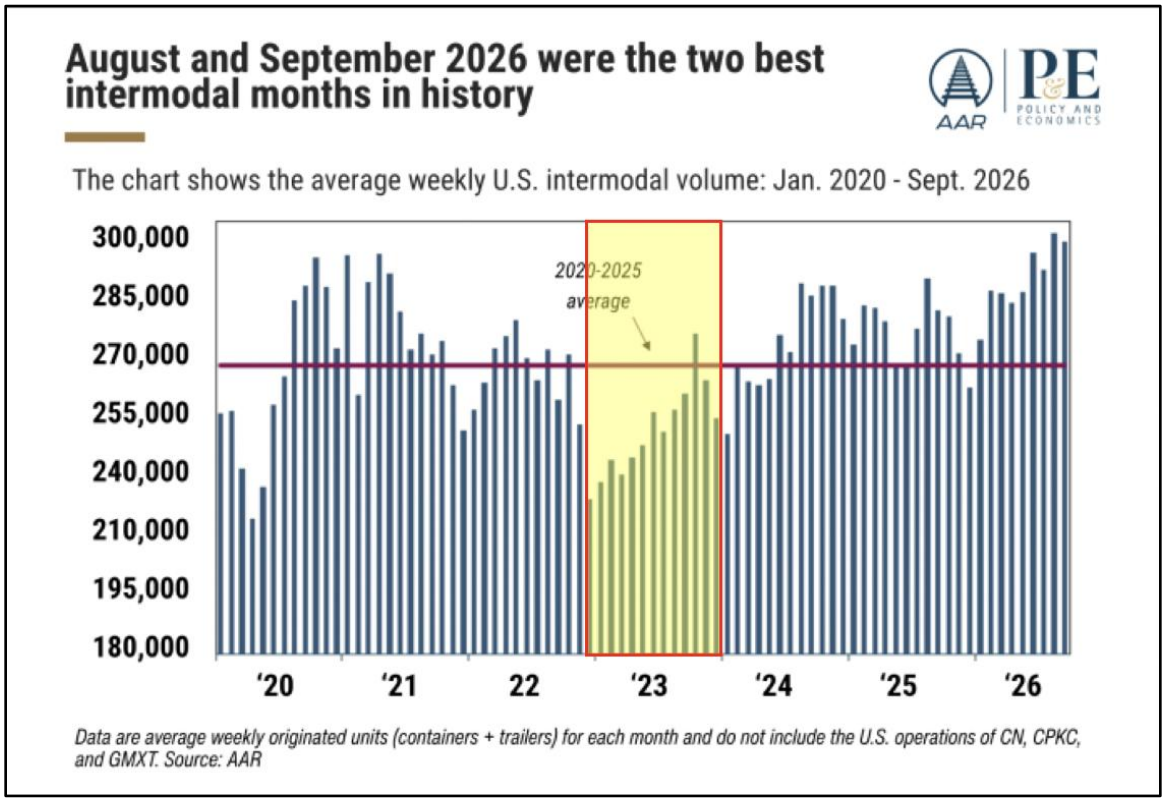


FIGURE 32[339]

BROOKS FIGURE 6: INTERMODAL GROWTH SINCE 2023 DRIVEN BY MACROECONOMIC FACTORS



Moreover, 2023 was a "historically challenging" year for NS, in particular.[340] In February 2023, an NS train derailed in East Palestine, Ohio, a "historically bad event," which damaged the NS business.[341] NS also faced [redacted] that resulted in "substantial congestion" on the NS network, and a lowering of NS's overall capacity, which [redacted][342] These disruptions were unique to 2023,

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339 *See* Brooks V.S. ¶ 74 & Figure 6; *see also* AAR, Rail Industry Overview, Oct. 2026, at 1, https://www.aar.org/wp-content/uploads/2026/10/AAR-RIO-October-2026-FINAL.pdf.

340 George Tr. at 57:15-18.

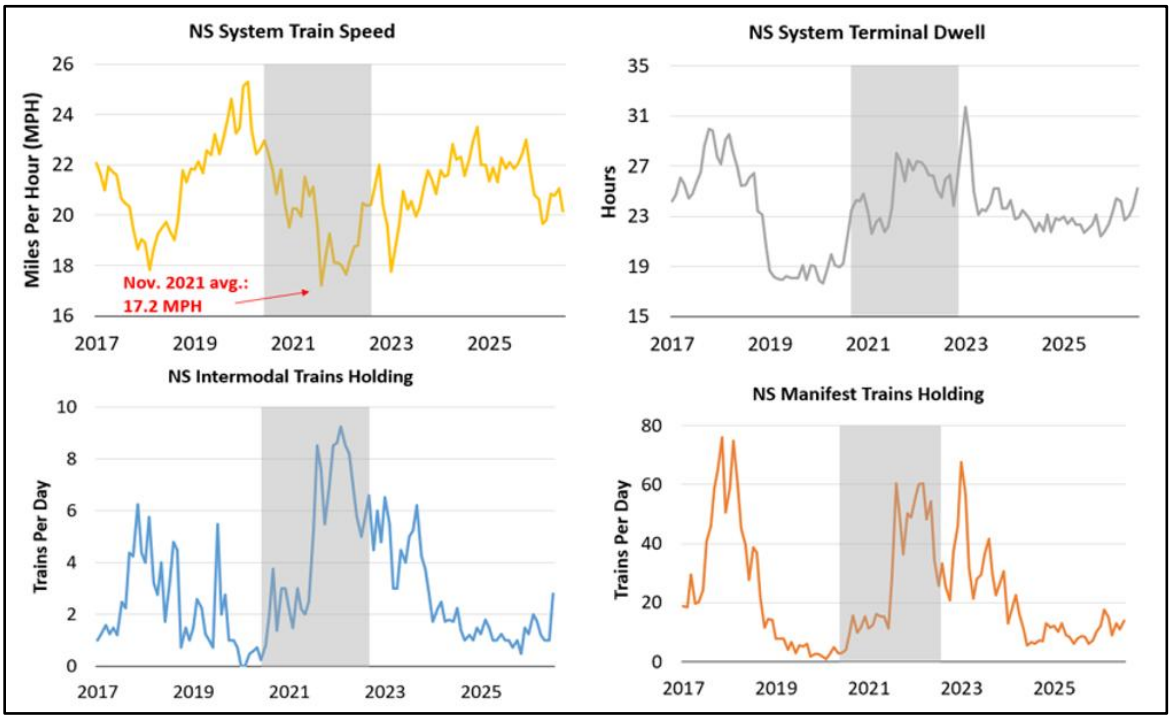
341 George Tr. at 57:20-21; 58:2-4.

342 Elkins Tr. at 84:15-21; 90:15-19; 92:21-93:11; *see also* NS_00624016, at 024 [redacted]

and NS has not experienced service disruptions at this level in the years since.[343] (*See* Dr. Powers Figure 12, reproduced as Figure 33, below.)

FIGURE 33

DR. POWERS FIGURE 12: NS OPERATING PERFORMANCE DETERIORATED MATERIALLY IN 2021–2022



As a result of the combination of these NS-specific disruptions and the macroeconomic factors impacting the entire rail industry, NS experienced a 41% decline in income from its railway operations in 2023 compared to 2022. But that decline was temporary. In 2024, NS fully recovered and experienced a 43% increase in income from its railway operations, as compared to 2023.[344] (*See* Dr. Powers Figure 13, reproduced as Figure 34, below.)

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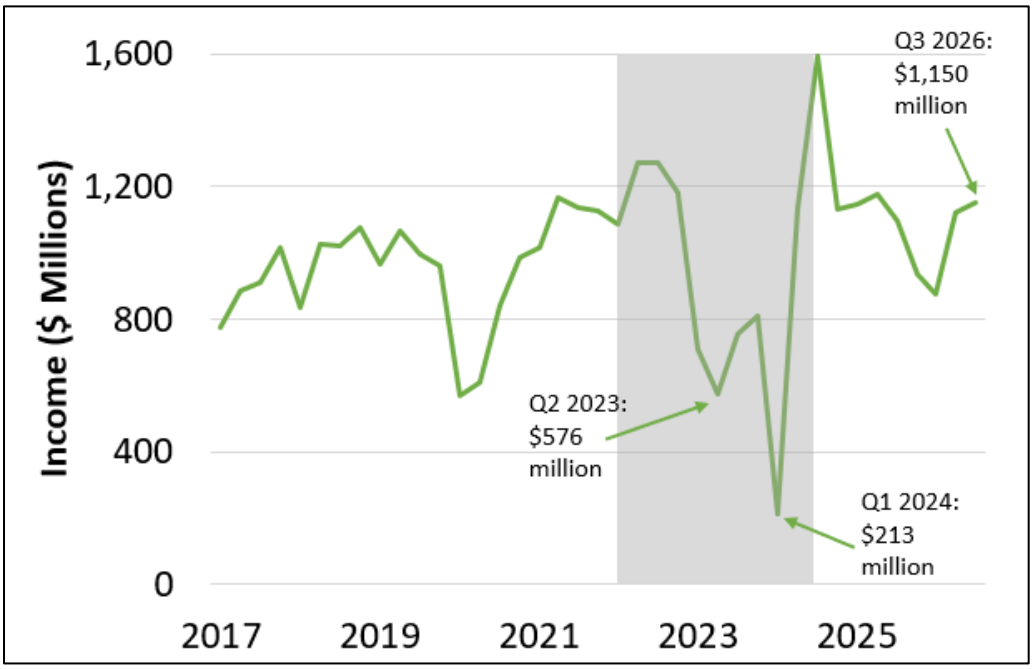
343 Elkins Tr. at 84:18-21.

344 *See* Powers V.S. ¶ 36 & Figure 13. *See* George Tr. at 58:13-59:0.

FIGURE 34

DR. POWERS FIGURE 13: NS REPORTED QUARTERLY INCOME FROM RAIL OPERATIONS DECLINED IN 2023



As discussed in Section II.D.3, NS is performing incredibly well in 2026. In its July 23, 2026, quarterly earnings presentation, NS reported operating revenues of $3.5 billion, an all-time quarterly record for NS, up 11% compared to Q2 2025.[345] NS's performance in intermodal was particularly strong, up 22% compared to Q2 2025.[346] Indeed, NS's Chief Commercial Officer, Ed Elkins testified that, [redacted][347] [redacted]

[345] Norfolk Southern Corp., Second Quarter 2026 Earnings Presentation (July 23, 2026), https://filecache.investorroom.com/mr5ir_nscorp/1425/Q2_2026_Earnings_Combined_Presentation_FINAL.pdf. *See also* Elkins Tr. at 93:25-100:10 & Exhibit 205.

[346] Norfolk Southern Corp., Second Quarter 2026 Earnings Presentation (July 23, 2026), https://filecache.investorroom.com/mr5ir_nscorp/1425/Q2_2026_Earnings_Combined_Presentation_FINAL.pdf. *See also* Elkins Tr. at 93:25-100:10 & Exhibit 205.

[347] Elkins Tr. at 73:25-74:7.

[redacted][348] NS projects the intermodal market conditions to remain strong looking forward.[349] As Mr. McClellan agreed at his deposition, NS is [redacted][350]

Finally, as the Board observed its Decision 21, Mr. Hunt's diversion analysis presented in the Amended Application also does not account for "industry changes" since 2023, including the *CP/KCS*, *CSXT/Pan Am*, and *CN/Iowa Northern* transactions.[351] Applicants conceded in the Second Supplement that Mr. Hunt "did not attempt to forecast the effects of those transactions . . . to create a new 2023 base traffic file before using observed 2023 traffic to estimate diversions from that base to UP/NS."[352] Nor did Mr. Hunt update the base to reflect any traffic that UP and NS have been able to attract since 2023 using their interline partnerships, including traffic they have attracted from trucks on their domestic intermodal service between Louisville and western and southern markets through an interchange at the Kansas City Intermodal Terminal announced in September 2025. Mr. Hunt likewise did not update the base to reflect intervening changes truck pricing, fuel costs, manufacturing and international-trade conditions, or the broader economy, among other factors.[353]

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348 Elkins Tr. at 74:24-75:8.

349 Elkins Tr. at 103:7-25.

350 McClellan Tr. at 73:14-74:6; 77:24-78:21.

351 Decision No. 21 at 30.

352 UP-80/NS-78 at 139; *see also* Rev. App. 2-425 (Hunt Second Errata V.S., Exhibit 4-4).

353 Rev. App. 2-425 (Hunt Second Errata V.S., Exhibit 4-4); *See also*. Powers V.S. ¶¶ 40-41, 55.

Taken together, these defects leave Mr. Hunt without a reliable baseline. His analysis begins with traffic patterns from a freight recession, when excess truck capacity made trucking unusually competitive and extraordinary disruptions left NS unable to satisfy existing demand. It then attributes to the Transaction traffic that may naturally return (without any merger) as freight markets normalize, truck capacity tightens, and NS improves its standalone service. At the same time, it disregards truck traffic already captured by new and improved competitive rail services since 2023. Mr. Hunt's projections thus do not isolate the incremental diversions caused by the Transaction. They instead compare a hypothetical post-merger UP-NS against an outdated snapshot of UP and NS at an unusually weak moment, further contributing to Mr. Hunt's overstatement of the merger-specific diversions that are likely to be realistically achievable.

B. Mr. Hunt's Traffic Diversion Analysis Is Untethered to the Real World.

Mr. Hunt's diversion analysis assumes that converting interline routes to single-line service will produce lower rates, faster transit times, and greater reliability—and that those changes will attract substantial traffic to UP-NS.[354] But winning that traffic requires meeting shippers' varied operational needs and sustained commercial effort, neither of which can be reduced to assigning a route the traffic share observed in a supposedly similar market. Applicants also have not established that the assumed service improvements are achievable: Mr. Hunt's assumptions not only depart from Applicants' Operating Plan but the Operating Plan itself is deeply flawed, and some planned services depend on the very traffic growth they are invoked to justify. Nor have Applicants substantiated Mr. Hunt's assumed rate reductions, which conflict with the evidence in this proceeding that rates are likely to go up, not down. (*See* Section

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[354] Powers V.S. ¶¶ 25, 64.

X.B.2). Mr. Hunt's resulting estimates do not provide a reliable measure of traffic the Transaction would actually attract.[355]

1. Real-World Shipper Routing Decisions Depend Upon A Multitude of Customer-Specific Factors

Real-world shipper routing decisions cannot be reduced to a mechanical comparison of price and transit time. Those factors matter, but they are only part of a much broader commercial and operational assessment that includes the commodity type to be shipped, service frequency and consistency, first- and last-mile costs, facility access, shipment size and cadence, equipment availability, loading and handling requirements, loss-and-damage risk, inventory practices, supply-chain flexibility, existing carrier relationships and contractual commitments, backhaul opportunities, and the consequences of a missed delivery, among other factors.[356] Different shippers—and even different shipments by the same shipper—place different weights on those considerations. Accordingly, a nominally cheaper or faster rail offering will not necessarily induce diversion if it fails to satisfy the shipper's other operational requirements or does not improve sufficiently to justify redesigning an established truck-based supply chain.[357]

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[355] A selection of evidentiary highlights that address barriers to achieving Applicants' diversion estimates, particularly the difficulty of winning traffic from truck, can be found at Appendix C, hereto. To view these documents in their entirety, please refer to Volume VII, which contains a copy of this Appendix C that is hyperlinked to the documents and testimony cited therein.

[356] *See* Hunt Tr. at 182:16-23 (agreeing that shippers selecting freight modes and carriers "consider numerous factors in their decisionmaking").

[357] *See* NS_00161228, at 229 [redacted] UP_1193830, at 866, 868 [redacted] Hunt Tr. at 227:16-228:1 (stating that price is only one factor among "many" that shippers consider when deciding whether to use truck or rail); McLaughlin Tr. at 271:22-272:2 [redacted] Table 1 in the Verified Statement of Dr. Powers shows that UP's own customer records show that shippers consider many factors apart from price when deciding whether to use rail. *See* Powers V.S. Table 1.

2. Converting Shippers from Truck-to-Rail Requires Hard Work

Growing rail traffic is hard work whether it entails a railroad marketing its own network or two railroads working together to offer interline services. Simply converting interline services that have not been well developed or marketed into single-line options will not cause traffic to magically materialize.[358] CPKC's experience after *CP/KCS* shows how hard it is to induce shippers to convert from truck to rail.[359] CPKC has pursued truck conversions even where rail offers a better service than truck by, for example, avoiding border inspections, customs friction, and driver regulations. Even with those tailwinds, CPKC has struggled to convert traffic at the level the company had expected.[360] UP and NS will not have nearly the same service advantages over truck in the lanes where they are projecting traffic diversions.[361]

Rather than start with an analysis of shippers' transportation needs, Mr. Hunt constructs "lookalike" markets where single-line service is available today and then assumes that new single-line services resulting from the merger will magically grow rail modal share to the same level as those markets. That is not how traffic growth works. You need to meet shippers where they are—out in the real world with real needs.[362] Indeed, Applicants' internal documents show that pounding the pavement to identify opportunities, visit customers, and convince customers of

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358 *See* Creel V.S. ¶¶ 16-19 (describing CPKC's MMX and SMX experience and explaining that attracting traffic requires sustained investment and earning customers' trust, whether service is single-line or interline).

359 Brooks V.S. ¶¶ 137-38.

360 Brooks V.S. ¶¶ 140.

361 Brooks V.S. ¶¶ 135, 142-45.

362 Brooks V.S. ¶¶ 135, 145.

the superiority of your product are all essential elements of winning business and sustainable growth.[363]

And the Application itself demonstrates that UP and NS are not planning on doing the hard work required for truck conversions. At the same time that Applicants project astronomical traffic growth, they also propose shrinking NS management personnel by almost 20%, as shown in Figure 49 to Dr. Powers' Verified Statement, reproduced as Figure 35, below.[364] These reductions, which include Marketing and Sales personnel, stand in stark contrast to Applicants' claims of growth. Shedding the personnel that are most likely to have customer knowledge and established relationships with shippers makes any claims about growth especially suspect.[365]

[363] UP_0024575, at 584 [redacted] UP_0024575 at 583 [redacted] UP_0037972, at 979 [redacted] McLaughlin Tr. at 272:18-276:5 [redacted]

[364] *See* Powers V.S. ¶¶ 219 & Figure 49. *See also* Brooks V.S. ¶¶ 146-47 & Table 11 (citing Rev. App. 1-529 (Perkes V.S. ¶ 10, Table 1)).

[365] Brooks V.S. ¶ 147.

FIGURE 35

DR. POWERS FIGURE 49: POTENTIAL INCONSISTENCIES IN OBJECTIVES BETWEEN PREDICTED REVENUE GROWTH AND MARKETING PERSONNEL REDUCTION



3. The Application Fails to Support the Claimed Improvements in Rail Service Performance or Rate Levels Underlying Applicants' Traffic Study

Applicants' diversion estimates are based on a fundamental premise that converting interline routes to single-line will drive down prices, reduce transit times, and improve reliability. Mr. Hunt simply assumes that the Transaction will change these characteristics on routes that will shift from interline to single-line services, and then uses those assumed changed

characteristics to predict traffic shifts.[366] The evidence does not support these changes being realized in the real world.

(a) The Merger Will Not Yield the Assumed Level of Service Improvements

Applicants have not shown that the service improvements underlying Mr. Hunt's diversion estimates can or will be achieved.

First, Mr. Hunt's assumed routes and transit times are not derived from the trains, schedules, and work required by Applicants' Operating Plan. In fact, Mr. Hunt never reviewed the Operating Plan.[367] In some cases, he assumes more direct routes than Applicants actually plan to operate, omitting intermediate work and associated delays.[368] For example, between East Minneapolis and Cincinnati, Mr. Hunt assumes a direct route for the diverted traffic, while the Operating Plan routes the traffic less directly and includes five block swaps. Those work events require as much as [redacted] of dwell that Mr. Hunt's service calculation omits.[369] Thus, the Operating Plan does not substantiate the direct service or transit time improvement assumed in the diversion estimate.[370] Discrepancies like these can inflate his intermodal estimates in two ways: first, by increasing the amount of truck traffic he treats as available for conversion; and second, by increasing the share he predicts will shift to rail.[371]

Second, as will be discussed below in Section VI, Applicants' Operating Plan is over-optimized and will not work in the real world, so cannot provide a foundation for assumed

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366 Powers V.S. ¶¶ 11, 137.

367 *See* Hunt Tr. at 691:20-22.

368 Powers V.S. ¶¶ 104, 160-62.

369 Elphick & Nelson V.S. ¶¶ 368-71 & Figures 87-88.

370 Powers V.S. ¶ 162.

371 Powers V.S. ¶ 161.

improvements in service levels. Correcting the Growth Plan to resolve omitted dwell, train-length and density problems, or route assignments could change the service Applicants actually provide and would further degrade the already limited extent to which the Growth Plan supports Mr. Hunt's assumed improvements.[372]

Third, as discussed in Section III.B, interline service is not distinctly inferior to single-line in terms of either transit time or reliability. There is nothing inherent about an "interchange" that necessarily adds transit time, and there are numerous examples of railroads working together to provide interline truck-competitive services that are comparable to single-line services. Mr. Hunt nevertheless assumes the reduction of interchanges will always result in service improvements. In particular, Mr. Hunt generally assumes that eliminating an interchange saves approximately 22 hours, based on systemwide terminal-dwell statistics that do not measure the delay actually caused by interchange.[373] Applicants do not establish that these predicted service improvements could be achieved—and in at least some cases, they could not be. For example, the intermodal service that UP, CPKC, and NS provide along the Meridian Speedway is among [redacted][374]

Mr. Hunt nevertheless assumes service improvements for UP and NS's single-line service across the Southeast, including removal of an interchange, and a transit time reduction of 22 hours, without confirming that a post-merger UP-NS would (or even could) implement operational changes that would achieve those results. In fact, Mr. Hunt testified in his deposition that two interchanges would remain along the Meridian Speedway post-merger, that he does not know

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372 Powers V.S. ¶¶ 105, 160-62.

373 Powers V.S. ¶ 110.

374 Powers V.S. ¶ 165.

whether there would be any operational improvements, and that, as stated above, he did not read the Operating Plan, which his diversion model is meant to reflect.[375] Approximately 14% of Mr. Hunt's predicted truck-to-intermodal diversions rely on this assumed Meridian Speedway service improvement, which Mr. Hunt and others at UP have now confirmed will not occur.[376]

Finally, Applicants' service improvements are circular. Applicants rely on Mr. Hunt's predicted traffic growth to create sufficient density for certain new trains and other service improvements in the Operating Plan, then invoke those services to support Mr. Hunt's traffic forecast. If the traffic falls short or develops more slowly, the combined railroad may need to reduce frequency, hold shipments while traffic accumulates, or combine traffic with other trains—undermining the service improvements supposedly attracting that traffic. Mr. Hunt does not test that possibility. The Operating Plan therefore provides no independent assurance that the service underlying his diversion estimates would be operationally and commercially sustainable.[377]

(b) The Merger Will Not Yield the Assumed Level of Rate Improvements

Applicants' diversion estimates depend on a foundational assumption that unified ownership will produce materially lower rail rates. Mr. Hunt's truck-to-rail model, for example,

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375 Mr. Hunt testified that he reduced the impedance along the Meridian Speedway simply because the number of railroads, as distinct from the number of interchanges, involved in the move would fall by one. *See* Hunt. Tr. at 688:5-692:11. Mr. McClellan, the Chief Strategy Officer at NS, testified in his deposition that the [redacted] along the Meridian Speedway. McClellan, Tr. at 15:10-12, 347:16-348:1. Eric Gehringer, the Chief Operating Officer of Union Pacific, agreed that nothing will change operationally about the Speedway because of the merger. *See* Gehringer Tr. at 302:21-304:24. In a moment of candor, UP's COO acknowledged that the only thing that would change was UP's ability to use its increased size and bargaining leverage to force CPKC to accept different contractual terms. Gehringer Tr. at 305:1-22.

376 Powers V.S. ¶ 165.

377 Powers V.S. ¶ 166-67.

assigns different pricing curves to single-line and interline movements and assumes that a lane converted from interline to single-line service will move to the lower single-line curve. Those estimated price reductions then help move the lane into a new "lookalike" category with a higher predicted rail modal share.[378] The projected diversions thus assume the very result Applicants must prove: that combining UP and NS will cause the price paid by shippers to fall materially.

The available economic evidence points in the opposite direction. While Applicant's economic expert, Dr. Israel, purports to find that single-lines are substantially cheaper than interlines, the relevant question is not whether single-line movements happen to be priced below interline movements in isolation, but how creating a new single-line option changes the merged railroad's incentives to support competing interline routes.[379] Comparing corridors that resemble current competitive conditions with otherwise comparable corridors that resemble the post-merger structure, CPKC's economic expert, Dr. Majure, finds that shippers pay more when one railroad operates on both sides of a gateway and therefore has an incentive to favor its own single-line service over competing interline combinations. That result persists after controlling for observable shipment, commodity, and corridor characteristics: in corridors sole-served at one end and served by two railroads at the other, estimated rates are estimated rates are 9% higher under a generalized version of Applicants' own regression and 7% higher under Dr. Majure's corrected, conservative specification; in corridors served by two railroads at both ends, rates are 8% and 15% higher, respectively. In short, the evidence shows that the loss of effective interline

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[378] *See* Rev. App. 2-426 to -428 (Hunt Second Errata V.S. at 151-55, 160-64).

[379] Majure V.S. Vol. 1 ¶ 46, 92, 114.

competition drives rates up and outweighs any asserted efficiency from single-line service, leaving shippers with fewer meaningful alternatives and higher rates.[380] (*See* Section X.B.3).

Applicants' statements to investors further undermine Mr. Hunt's assumption that improved service will translate into lower rates. UP has repeatedly described better service as a basis for securing *higher* prices. During UP's third-quarter 2025 earnings call, management explained that faster cycle times and more reliable service were producing "very positive price," and Vena stated that UP would "price [service] at the value that we're giving the customer."[381] During the fourth-quarter call, management was even more direct: UP was "pricing to" the level of its service product, and Vena summarized the company's commercial strategy in three words—"service drives price."[382] And in April 2026, UP reported that pricing dollars again exceeded inflation dollars while management emphasized that it was pricing consistently "for the value" of its service.[383] [redacted][384]

Even if prices were going down, Applicants have not shown that any purported rate reduction requires a merger. A carrier can reduce the price of its segment of an interline movement, enter a through-rate arrangement, or negotiate a Rule 11 rate without acquiring its

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380 *See* Majure V.S. Vol. 1 ¶¶ 94-98 & Exs. 18-19.

381 Union Pacific Corp. Q3 2025 Earnings Calls, Transcript (Oct. 23, 2025).

382 Union Pacific Corp. Q4 2025 Earnings Calls, Transcript (Jan. 27, 2026).

383 Union Pacific Corp. Q1 2026 Earnings Calls, Transcript (Apr. 23, 2026).

384 Vena Tr. at 116:4-21; *see also* Hamann Tr. at 32:14-21 [redacted]

connection. The relevant comparison is therefore not single-line versus interline in the abstract, but the proposed merger versus the best practicable interline alternative.[385]

C. The Hunt Study Does Not Provide Reliable Evidence of Merger-Specific Diversions

Mr. Hunt uses three principal models to estimate traffic diversions resulting from the transaction: (1) truck-to-intermodal, (2) truck-to-carload, and (3) rail-to-rail.[386] The models differ in their construction, but they share the common feature of treating single-line status as an independent driver of rail modal share. In reality, shippers choose between rail and truck, and among rail routes, based on a multitude of shipper-specific commercial, operational, market, and other factors.[387] Thus, for Mr. Hunt to reliably model traffic that is likely to divert to a merged UP-NS as a result of the merger, his analysis would need to isolate the effect of merger-related changes to price and service, from the many pre-existing differences among the markets and routes he studies.[388]

Mr. Hunt does not make that distinction. His truck-to-carload and truck-to-intermodal models infer post-merger diversions from trucks to UP-NS based on the historical performance of rail in other markets without accounting for many of the factors that explain why rail carries a greater percentage of traffic in some markets than in others.[389] His rail-to-rail model likewise relies on a simplified view of how shippers will choose routes that is objectively unreliable because it cannot reproduce the routings that customers actually choose today.[390]

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385 Powers V.S. ¶¶ 60, 64-68, 79, 81.

386 Powers V.S. ¶ 82.

387 Powers V.S. ¶¶ 9, 32, 82.

388 Powers V.S. ¶¶ 82-83.

389 Powers V.S. ¶ 83.

390 Powers V.S. ¶¶ 83, 203, 208.

Dr. Powers conducted multiple additional diagnostic tests that show Mr. Hunt's models would still predict substantial diversions, even without the modeled merger-related improvements in price and service, and that the magnitude of predicted diversions is often weakly related to the magnitude of those merger-related improvements on which it is supposedly based.[391] Because Mr. Hunt's models assume the causal relationship they are supposed to prove, they have no predictive value.

The sections below explain these problems in each model and their implications for Mr. Hunt's estimates of how much traffic the merger would divert.

1. Mr. Hunt's Truck-To-Intermodal Model Does Not Identify Merger-Related Diversions

Mr. Hunt estimates that the proposed merger will divert approximately 1.2 million annual truck movements to intermodal rail.[392] Those diversions represent approximately 78% of Mr. Hunt's total 1.532 million projected annual diversions, and roughly 44% of the entire post-merger addressable tuck market.[393] Virtually all of these projected diversions are attributable to the conversion of 141 interline markets to single-line markets after the merger.[394]

Mr. Hunt uses a "lookalike" methodology that has never before been used to measure truck-to-rail diversions in a merger proceeding.[395] Mr. Hunt concedes that he did not cite a single publication or scholarly paper in which a "lookalike" methodology was used to estimate

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391 Powers V.S. ¶¶ 83-84.

392 *See* Rev. App. 2-405 (Hunt Second Errata V.S., Exhibit 2-4); Powers V.S. ¶ 131.

393 Powers V.S. ¶ 131 & n.210.

394 Powers V.S. ¶ 131 & n.209.

395 *See* Hunt Tr. at 238:14-19.

traffic diversions.[396] Indeed, this is Mr. Hunt's first time ever using a "lookalike" methodology to estimate traffic diversions.[397]

Mr. Hunt groups intermodal lanes into "archetypes," or "lookalike," groups using only four variables: single-line versus interline status, intermodal mileage, transit time relative to truck, and intermodal price relative to truck.[398] Within each "lookalike" group, he calculates a weighted average intermodal share using the traffic in the current markets assigned to that "lookalike" group. Mr. Hunt also separately constructs his own post-merger addressable market of both existing and potential new intermodal lanes and identifies lanes that would receive improved rail service after the merger. Mr. Hunt then identifies UP-NS lanes that will convert from interline to single-line service as a result of the merger to create "diversion" markets. To estimate diversions, Mr. Hunt pairs diversion markets to a "lookalike" group and assigns the diversion market the weighted average rail modal share of the "lookalike" group. If the pre-merger intermodal share of the diversion market is *lower* than the weighted average rail modal share of the "lookalike" group, Mr. Hunt treats the difference between the diversion market's current interline rail modal share and the average rail model share of the "lookalike" group as a merger-caused diversion. If the pre-merger intermodal share of the diversion market is *higher* than the weighted average rail modal share of the "lookalike" group, Mr. Hunt tosses out those results and assumes the diversions for those diversion markets are zero. His model thus serves as a one-way ratchet designed to find the answer he is looking for.[399]

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396 *See* Hunt Tr. at 238:14-19; 242:12-21.

397 *See* Hunt Tr. at 243:20-244:2.

398 Powers V.S. ¶ 134.

399 Powers V.S. ¶¶ 134-37.

(a) Mr. Hunt's "Lookalike" Methodology Does Not Isolate the Effect of Single-Line Service From Other Differences Between Markets

Mr. Hunt's "lookalike" methodology does not isolate the likely effect of any merger-related improvements due to single-line service on rail modal share because his model does not account for a myriad of factors that go to the competitiveness of rail against truck.[400] For example, Mr. Hunt does not account for the unique ability of trucks to serve low and irregular volumes, first- and last-mile costs, equipment availability, shipment timing, or truck's faster and more predictable transit in many lanes.[401] As a result, he combined what he describes as similar markets into "lookalike" groups in a way that glosses over relevant differences that drive whether a given lane has a high rail modal share.[402] Figures 37 and 38 to the Verified Statement of Dr. Powers, reproduced below as Figures 36 and 37, illustrate the problem with Mr. Hunt's "lookalike" groups. Dr. Powers' Figure 37 shows the rail modal shares for the markets that Mr. Hunt assigns to the "lookalike" group that shares the following characteristics: (i) single-line, (ii) a length-of-haul no shorter than 2,000 intermodal miles, (iii) intermodal transit time no more than 24 hours longer than truck transit time, and (iv) intermodal prices within 10 percent of truck prices. Despite sharing in common Mr. Hunt's four modeled characteristics, these markets have vastly different intermodal shares, ranging from [redacted][403]

The same problem infects Mr. Hunt's interline "lookalike" groups. For example, Figure 38 shows the intermodal shares for the markets that Mr. Hunt assigns to the "lookalike" group that shares the following characteristics: (i) interline, (ii) at least 2,000 intermodal miles,

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400 Powers V.S. ¶¶ 139-40.

401 Powers V.S. ¶¶ 144-46.

402 Powers V.S. ¶ 139-44.

403 Powers V.S. ¶ 141 & Figure 37.

(iii) intermodal transit time no more than 72 hours longer than truck transit time, and (iv) intermodal prices within 10 percent of truck prices. Despite sharing in common Mr. Hunt's four modeled characteristics, these markets have intermodal shares ranging from [redacted] [redacted][404]

FIGURE 36

DR. POWERS FIGURE 37: MR. HUNT'S MODELED CHARACTERISTICS DO NOT DETERMINE INTERMODAL SHARE

[redacted]

404 Powers V.S. ¶¶ 142-143 & Figure 38.

FIGURE 37

DR. POWERS FIGURE 38: INTERMODAL SHARES VARY WIDELY WITHIN INTERLINE ARCHETYPES



Mr. Hunt never asks the obvious questions of why there is so much variation within his "lookalike" groups, or why a particular lane's current rail modal share, for example Cincinnati to Los Angeles in the above Dr. Powers Figure 38, is so far below the average for his selected "lookalikes". He instead assumes that the merger erases the unmodeled reasons for that difference. As Dr. Powers explains, the wide variation in Mr. Hunt's "lookalike" groups means

that Mr. Hunt is not comparing apples-to-apples. Instead, Mr. Hunt groups markets together that are likely different in key competitive respects.[405]

Dr. Powers' Figures 37 & 38 are proof that there are other characteristics beyond the four that Mr. Hunt included in his "lookalike" groups that are driving rail modal shares. Those differences may include traffic density, service frequency, terminal conditions, network connectivity, equipment availability, market maturity, and commercial relationships, among other factors.[406] Applicants' internal analyses of intermodal service identify additional factors that Mr. Hunt did not consider, including: [redacted][410]

Moreover, there is substantial evidence in the record that suggests the characteristics Mr. Hunt does consider would not necessarily explain a high rail modal share in a particular market. For example, [redacted]

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405 Powers V.S. ¶¶ 139-44.

406 Powers V.S. ¶ 144 & Figures 37-38.

407 NS_00152958, at 962, 969 (explaining that [redacted]

408 NS_00152958, at -959-960, 970 (NS observing that [redacted]

409 NS_00219377 [redacted]

410 NS_00205551, at 561 [redacted]

[redacted][412]

In addition, some of the variation in Mr. Hunt's "lookalike" groups appears to be attributable to which Class I railroads are serving the intermodal markets. Dr. Powers' Figure 40, reproduced as Figure 39, below, compares UP with BNSF in Western single-line "lookalike" markets and NS with CSXT in Eastern single-line "lookalike" markets where both railroads carry intermodal traffic. Across all relevant length-of-haul categories, BNSF's average share exceeds UP's in the Western "lookalike" markets, and CSXT's average share exceeds NS's in the Eastern "lookalike" markets, with the disparity largest in the long-haul markets that are most relevant to Mr. Hunt's diversion estimates.[413] This result suggests that the single-line "advantage" that Mr. Hunt purports to show through his model is really an advantage that BNSF and CSXT have over the Applicants. Yet Mr. Hunt's model applies the aggregate intermodal shares observed in the "lookalike" markets to future UP-NS markets without establishing that UP and NS could achieve comparable performance.[414] In effect, Applicants are claiming diversions based on BNSF's and CSXT's outperformance of UP and NS in the pre-merger world.

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411 NS_00152958, at 959, 966.

412 NS_00205551, at 565 [redacted]

413 Powers V.S. ¶¶ 154-56 & Figure 40.

414 Powers V.S. ¶ 156.

FIGURE 39

DR. POWERS FIGURE 40: BNSF AND CSX CARRY MOST TRAFFIC IN THE LONG-HAUL SINGLE LINE BENCHMARK MARKETS THAT MOST INFLUENCE MR. HUNT'S DIVERSIONS



In sum, by glossing over key differences between intermodal markets, Mr. Hunt "bakes in" diversions even when the merger would not change many of the factors that drive intermodal shares.

(b) Mr. Hunt's Truck-To-Intermodal Model Predicts Substantial Diversions Even When the Modeled Merger-Related Improvements Are Removed

One way to evaluate whether Mr. Hunt's model isolates the effect of the merger is to ask what his model predicts when the modeled merger-related improvements in price and service are removed. If the model still predicts that traffic would divert from truck to rail without any merger related price or service improvement, those diversions must necessarily arise from other

features of the model, not the modeled changes in rail competitiveness.[415] Mr. Hunt acknowledges that a gap between actual rail traffic and the amount his model predicts under existing conditions is not itself an effect of the merger.[416] Yet his truck-to-intermodal model nevertheless counts that gap as merger-related diversion whenever the prediction exceeds actual traffic.[417]

To test the magnitude of this problem, Dr. Powers performed a "no-change" diagnostic test to re-estimate the diversions predicted by Mr. Hunt's model holding fixed market characteristics at their pre-merger levels.[418] Because Mr. Hunt's merger assumptions affect both the size of the post-merger addressable market (i.e., the volume of truck traffic he considers available to shift to rail) and the share he predicts rail will capture, Dr. Powers ran two tests: one that retains Mr. Hunt's post-merger addressable market size and one that rebuilds the post-merger addressable market to match pre-merger conditions.

As illustrated by Dr. Power's in Figure 44 to his Verified Statement, reproduced as Figure 40 below, the first "no-change" diagnostic test that retains Mr. Hunt's post-merger addressable market but assigns each diversion market to a "lookalike" group based on its premerger characteristics produces approximately 39% of Mr. Hunt's reported diversions.[419] In unit terms, the no-change diagnostic produces approximately 470,119 of Mr. Hunt's 1.2 million annual truck to intermodal diversions. Those diversions still arise even when merger-induced changes in intermodal mileage, transit time relative to truck, and intermodal price relative to

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415 Powers V.S. ¶¶ 171-72, 176.

416 *See* Hunt Tr. at 621:8-624:18.

417 Powers V.S. ¶¶ 175-76.

418 Powers V.S. ¶¶ 172-174.

419 Powers V.S.¶ 175 & Figure 44.

truck are stripped away because Mr. Hunt's model is simply assigning lanes with below average rail modal share the average rail modal share of selected single-line "lookalike" lanes. The results of the no-change diagnostic test, therefore, expose significant flaws in Mr. Hunt's model, which cause him to misattribute variation in rail modal shares across markets to diversions achievable by the merger.[420]

The second "no-change" diagnostic test that reconstructs the addressable truck market size using a modified current state dataset to resemble pre-merger levels but assigns each diversion market to a "lookalike" group based on its premerger characteristics produces approximately 30% of Mr. Hunt's reported diversions.[421] In unit terms, this second no-change diagnostic produces approximately 216,037 of Mr. Hunt's 1.2 million annual truck to intermodal diversions. As shown in Dr. Powers Figure 44, both diagnostic tests demonstrate that a substantial number of Applicants' modeled diversions have nothing to do with the merger and everything to do with Mr. Hunt's unsupported methodology.

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420 Powers V.S. ¶ 176.

421 Powers V.S. ¶ 175.

FIGURE 40

DR. POWERS FIGURE 44: MR. HUNT'S MODEL PREDICTS SUBSTANTIAL TRUCK-TO-INTERMODAL DIVERSIONS EVEN WITHOUT ASSUMED POST-MERGER SERVICE IMPROVEMENTS



The results of the no-change diagnostic tests, therefore, expose serious design flaws in Mr. Hunt's model, which cause him to misattribute variation in rail modal shares across markets to diversions achievable by the merger.[422] Mr. Hunt would have discovered this error if he had bothered to validate his model in this way, but he did not.[423] To be clear, the no-change diagnostic tests *do not* suggest that the remaining diversions that Mr. Hunt's model predicts are merger related. Those remaining predicted diversions remain subject to all of the other problems discussed above, including whether the diversion and "lookalike" markets are sufficiently comparable (they are not) and whether the assumed price and service improvements are

422 Powers V.S. ¶ 176.

423 *See* Hunt Tr. at 625:8-:21.

supported by the record (they are not).[424] More fundamentally, a sound diversion study should not predict traffic diversions when there would be no change in any relevant factor determining shippers' choice of transportation options. The fact that Mr. Hunt's model does is evidence that his model is methodologically flawed and that the assumptions underlying his methodology may be incorrect.[425]

(c) Additional Tests Demonstrate That Mr. Hunt's Predicted Intermodal Diversions Are Not Linked to the Claimed Merger Improvements

Several additional analyses of the results of Mr. Hunt's model reveal another common problem: Mr. Hunt's truck-to-intermodal model predicts diversions that are not connected to the price and service improvements supposedly driving them.

First, Mr. Hunt's own competitiveness benchmark does not explain the traffic patterns his model seeks to predict. He states that shippers are likely to give intermodal serious consideration when it is no more than one day slower than truck and at least 10 percent cheaper, and he uses those thresholds to group markets and select comparators. Yet approximately 94% of existing intermodal traffic—and approximately 85% of his predicted diversions—falls in markets that do not meet that benchmark. Either Mr. Hunt's stated conditions do not adequately describe when intermodal competes with truck, his modeled price and transit time measures do not accurately capture the conditions shippers face, or both. This inconsistency undermines his reliance on these thresholds as meaningful dividing lines for predicting shipper behavior.[426]

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424 Powers V.S. ¶¶ 120, 175-76.

425 Powers V.S. ¶ 112 & n. 184.

426 Powers V.S. ¶¶ 177-78.

Second, holding the other modeled characteristics constant, "lookalike" groups offering lower intermodal prices or faster service do not consistently have higher intermodal shares. In some comparisons, the relationship runs in the opposite direction: intermodal's share falls as its price or transit time becomes more favorable. These results indicate that factors beyond the handful of characteristics Mr. Hunt models must help explain why rail carries more traffic in some markets than in others. Assigning a diversion market the rail modal share observed in another "lookalike" group therefore does not reliably establish how shippers would respond to the merger.[427]

Third, further testing shows that Mr. Hunt's diversion estimates barely respond to the size of the interchange-delay savings he assumes would be a driver for diversions. Varying that delay from zero to twice his approximately 22-hour delay assumption changes predicted diversions by just 0.15% of his reported intermodal total. That result is particularly difficult to reconcile with Applicants' reliance on eliminating interchange delay as a source of traffic growth. The explanation lies in the model's design: price and transit time determine which comparator group a market is assigned to, and the observed rail modal share of that group supplies the prediction. Substantially different service assumptions can therefore produce essentially the same diversion estimate. This result is evidence that Mr. Hunt's model does not reliably measure shippers' responses to the claimed improvements.[428]

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427 Powers V.S. ¶¶ 179, 182.

428 Powers V.S. ¶¶ 183-186.

2. Mr. Hunt's Truck-To-Carload Model Does Not Identify Merger-Related Diversions

Mr. Hunt estimates that the proposed merger will divert approximately 191,000 annual merchandise and bulk carloads from truck to rail and increase UP-NS revenue by approximately $1.3 billion. Those diversions represent approximately 32% of Mr. Hunt's predicted revenue increase.[429]

Mr. Hunt's truck-to-carload model uses a "lookalike" methodology similar to the truck-to-intermodal model, and therefore, suffers from the same fundamental problem: it does not isolate the likely effect of any merger-related improvements due to single-line service on rail modal share because it does not account for the myriad of factors that go to the competitiveness of rail against truck.

Similar to his truck-to-intermodal model, Mr. Hunt groups carload lanes into "archetypes" or "lookalike" groups using the same four variables: rail mileage, rail transit hours, rail price, and single-line versus interline status. For each lookalike, Mr. Hunt calculated the weighted average rail modal share. To model the effect of the merger, Mr. Hunt identified lanes that would convert from interline to single-line service ("diversion" markets) and then matched each of those diversion markets to a similar lookalike. If the weighted average rail modal share of the lookalike was *greater* than the pre-merger rail modal share of the diversion market, then Mr. Hunt treated the difference as a diversion. If the diversion lane already had a higher rail modal share than the lookalike, meaning that Mr. Hunt's model would predict that the diversion market would actually experience a decrease in rail modal share because of the merger, Mr. Hunt

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[429] *See* Powers V.S. ¶ 85 & n.132.

set the diversion to zero, rather than a negative number that would offset Mr. Hunt's predicted positive diversions.[430]

(a) Mr. Hunt's Truck-to-Carload "Lookalike" Methodology Does Not Isolate the Effect of Single-Line Service From Other Differences Between Markets

As a threshold issue, Mr. Hunt assumes, but does not establish, that the truck traffic he predicts would divert could actually shift to rail.[431] In practice, however, whether rail is a practical alternative for an existing truck customer can depend on characteristics of the shipper, receiver, commodity, facilities and infrastructure, equipment availability, first- and last-mile logistics, and customer operating practices, and shipment patterns that Mr. Hunt's framework generally does not take into account.[432]

As with the truck-to-intermodal model, Mr. Hunt's truck-to-carload model also groups together markets that have little resemblance to one another. For example, Mr. Hunt predicts that the rail modal share on the route between Nueces County, TX and Morgan County, AL will increase from 0% before the merger to 77% as a result of the merger. He reaches this conclusion by assigning the Nueces-Morgan market to a "lookalike" group comprised of 2,210 markets with a weighted-average rail modal share of 77%. As shown in Dr. Powers' Figure 28, reproduced here as Figure 41, the 77% benchmark share assigned to this "lookalike" group obscures the fact that 1,924 (87%) of the markets in this "lookalike" group have 0% rail participation. Mr. Hunt conducts no analysis of whether the Nueces-Morgan market would look more like the 1,924 markets with zero rail modal share, or the handful of larger markets driving the 77% weighted-

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430 *See* Powers V.S. ¶ 86.

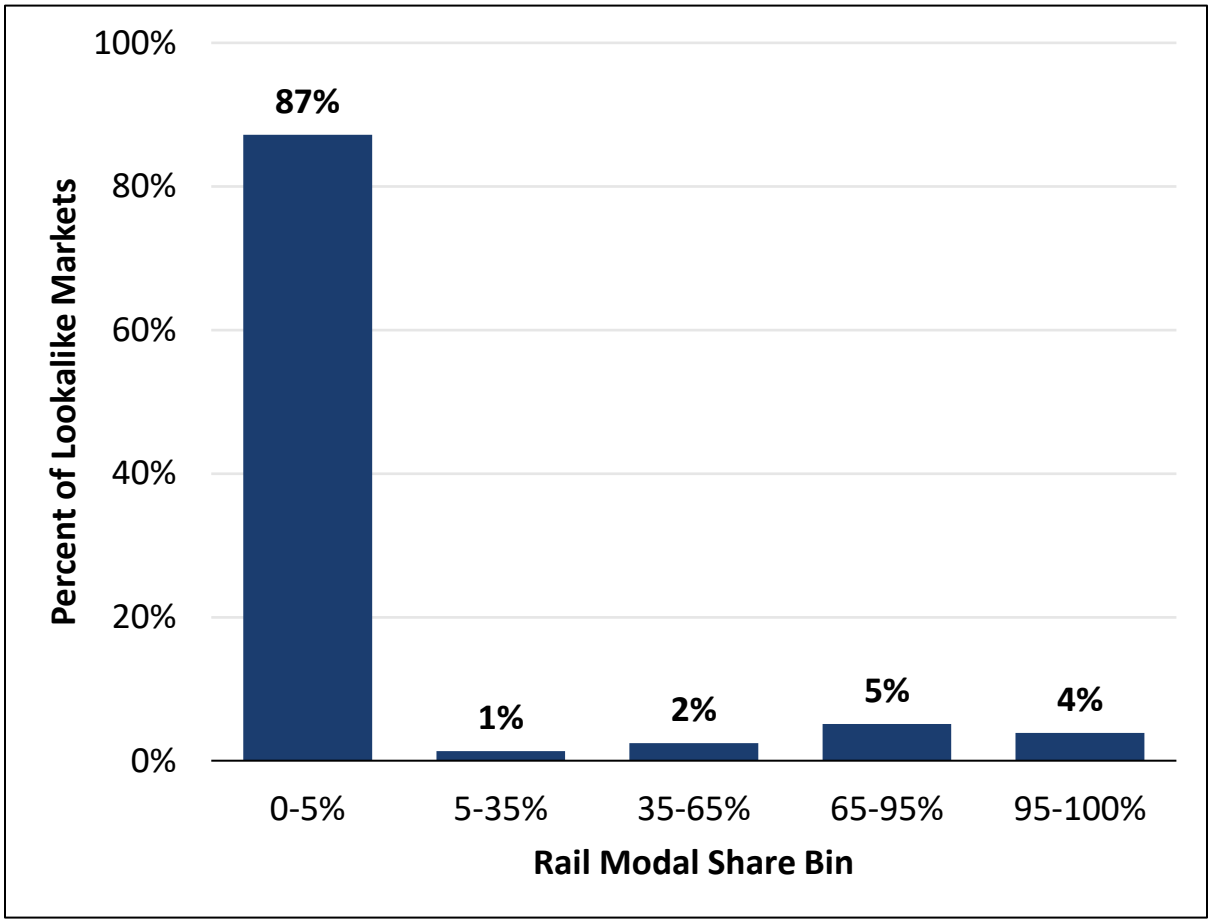
431 *See* Powers V.S. ¶¶ 88-89.

432 *See* Powers V.S. ¶¶ 89-91.

average rail modal share. In fact, Mr. Hunt testified that he never investigated why the historical Nueces-Morgan rail modal share was zero.[433]

FIGURE 41

DR. POWERS FIGURE 28: RAIL MODAL SHARES VARY WIDELY WITHIN MR. HUNT'S NUECES-MORGAN ARCHETYPE



This Nueces-Morgan example is not a one-off. As Dr. Powers explains, the results of his regression model demonstrate that Mr. Hunt's "lookalike" methodology fails to explain the vast majority of the different rail modal shares that we observe between markets.[434] In other words,

433 Hunt Tr. at 619:22-620:2; *see* Powers V.S. ¶ 93 & Figure 28.

434 *See* Powers V.S. ¶¶ 94, 97.

whether a railroad will be successful at taking share from truck in a given market is not something that Mr. Hunt's model can meaningfully predict.

One illustration of how Mr. Hunt's "lookalike" methodology groups together markets with important differences is his decision to treat all commodities within an archetype as comparable, even though he acknowledges that "[t]here are more truck-centric commodities and more rail-centric commodities."[435] Yet his "lookalike" groups treat [redacted][436] For example, [redacted][437] This decision conflicts with common sense—different commodities can have materially different handling requirements, shipment profiles, facility needs, and rail suitability. UP's own internal synergy analysis prepared to analyze the potential for the UP-NS merger to attract truck traffic treats commodity type as relevant to the potential for truck-to-rail conversions.[438] As shown in

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435 Hunt Tr. at 198:22-199:7; 559:6-14; *see also* McClellan Tr. at 162:6-163:15 [redacted]

436 *See* Hunt Tr. at 641:3-18; 663:14-22.

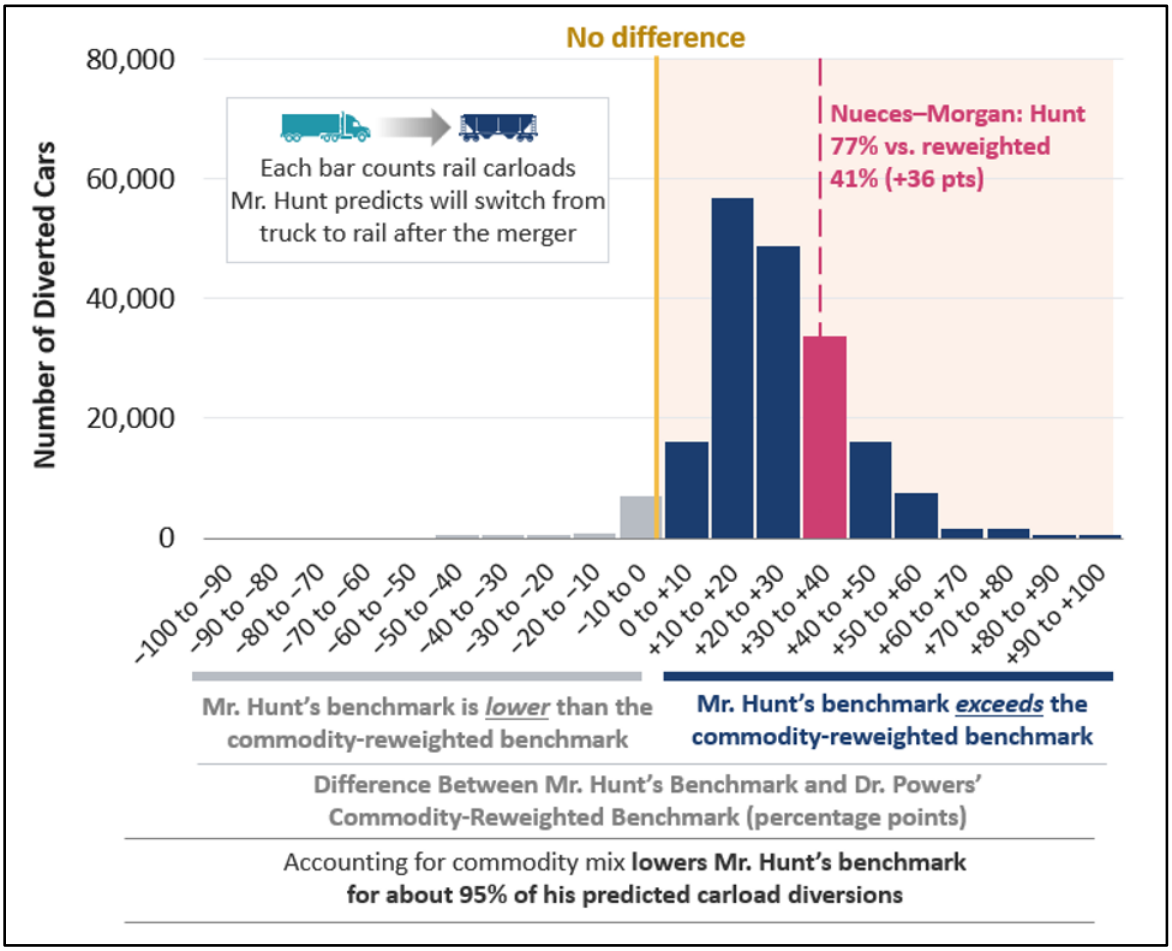
437 *See* Powers V.S. ¶ 95; Hunt Tr. at 641:3-18; 651:8-16.

438 *See* Powers V.S. ¶¶ 96, 99-101; [redacted] These materials identify [redacted]

Dr. Powers' Figure 29, reproduced below as Figure 42, accounting for commodity mix at a more granular level shows that Mr. Hunt's model artificially increases the benchmark rail modal share of the "lookalike" markets and thus inflates the overall diversions keyed to those benchmarks.

FIGURE 42

DR. POWERS FIGURE 29: MR. HUNT'S BENCHMARK IS GENERALLY GREATER THAN A BENCHMARK REWEIGHTED BY COMMODITY MIX IN DIVERSION MARKETS



[redacted] exclude [redacted] and note that [redacted]

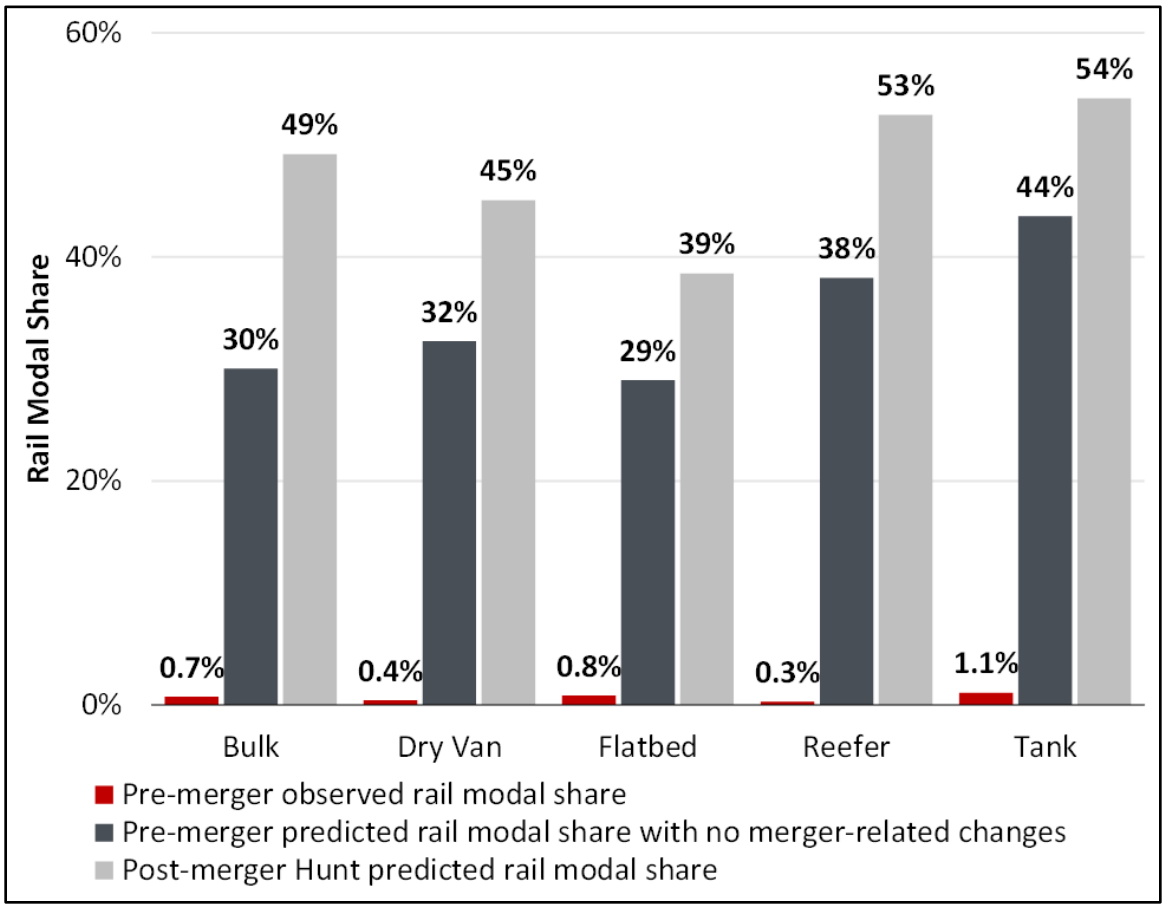
(b) Mr. Hunt's Truck-To-Carload Model Predicts Substantial Diversions Even When the Modeled Merger-Related Changes Are Removed

Similar to the truck-to-intermodal model, Mr. Hunt's truck-to-carload model predicts a substantial number of diversions even when stripping away merger-related improvements in price, transit time, and mileage. In fact, this failure of Mr. Hunt's model to predict diversions he claims are attributed to merger-related service improvements is even more pronounced for carloads. Dr. Powers' Figure 31, reproduced below as Figure 43, summarizes the results across truck types, comparing the average observed pre-merger rail modal shares in the diversion markets, the average rail modal shares predicted by Mr. Hunt's framework under a "no change" scenario where Mr. Hunt's modeled merger-related improvements are removed, and Mr. Hunt's post-merger predictions from his report. Across truck equipment types, the average observed rail modal shares in the diversion markets range from approximately 0-to-1%, while the "no-change" scenario predicts average rail modal shares of approximately 29-to-44%. Mr. Hunt's reported post-merger predictions for average shares range from approximately 39-to-54%. Thus, Mr. Hunt's truck-to-carload methodology predicts substantially higher rail modal shares than are observed in the real-world data even when the modeled merger-related changes are removed.[439]

[439] Powers V.S. ¶ 114.

FIGURE 43

DR. POWERS FIGURE 31: MR. HUNT'S TRUCK-TO-CARLOAD MODEL PREDICTS RAIL MODAL SHARES FAR ABOVE OBSERVED SHARES EVEN WITHOUT MODELED MERGER-RELATED CHANGES

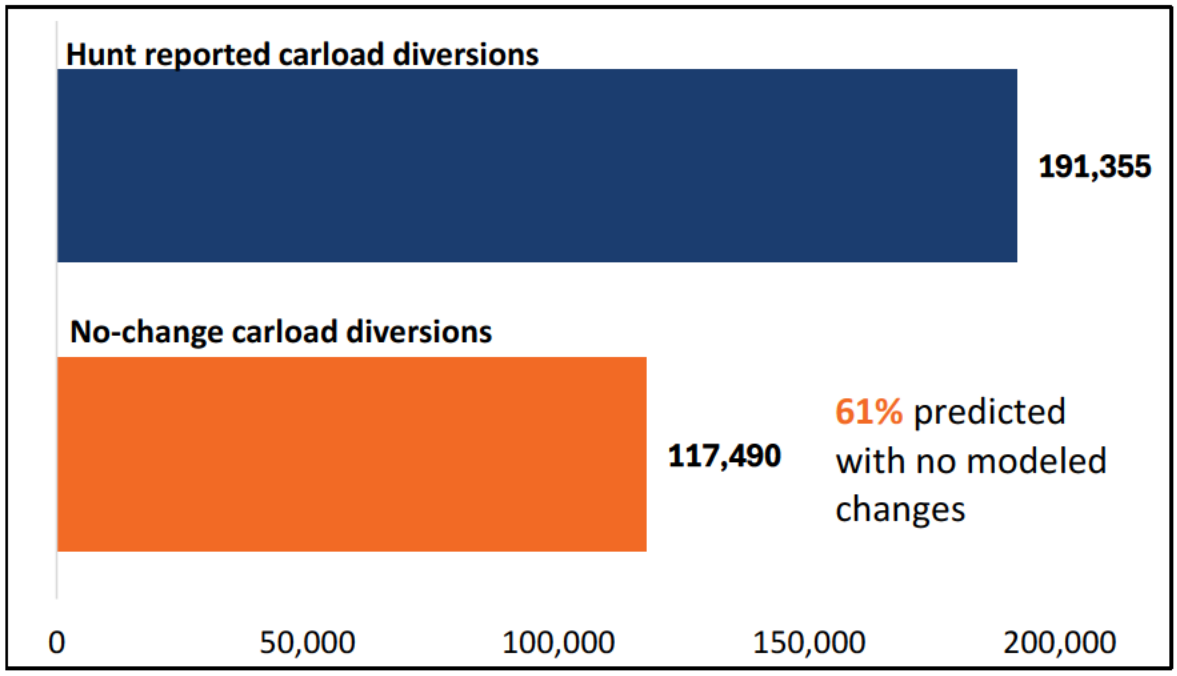


As shown in Dr. Power's Figure 32, reproduced below as Figure 44, approximately 117,000 (61%) of predicted truck-to-carload diversions still arise under a "no-change" scenario, where Mr. Hunt's modeled post-merger service improvements are removed.[440]

[440] *See* Powers V.S. ¶ 115.

FIGURE 44

DR. POWERS FIGURE 32: MR. HUNT'S TRUCK-TO-CARLOAD MODEL PREDICTS 61 PERCENT OF HIS TOTAL CARLOAD DIVERSIONS EVEN WITHOUT THE MODELED MERGER-RELATED CHANGES



These predicted diversions cannot be attributed to modeled merger-related improvements in price or service, because those changes have been removed. They arise instead from assigning "lookalike" market rail modal shares to diversion markets with substantially lower rail modal shares today. The Nueces-Morgan chemicals market provides an intuitive example. As discussed above, Mr. Hunt assigns that market a post-merger rail modal share of approximately 77%. Dr. Powers performed a diagnostic for this market in which he removed the modeled merger-related improvements and instead assigned the market using its pre-merger characteristics. Mr. Hunt's methodology still produces a benchmark rail modal share of approximately 63%.[441] Thus, even without the modeled changes associated with the merger, the framework predicts that nearly two-thirds of the market would move by rail.

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441 Powers V.S. ¶ 113.

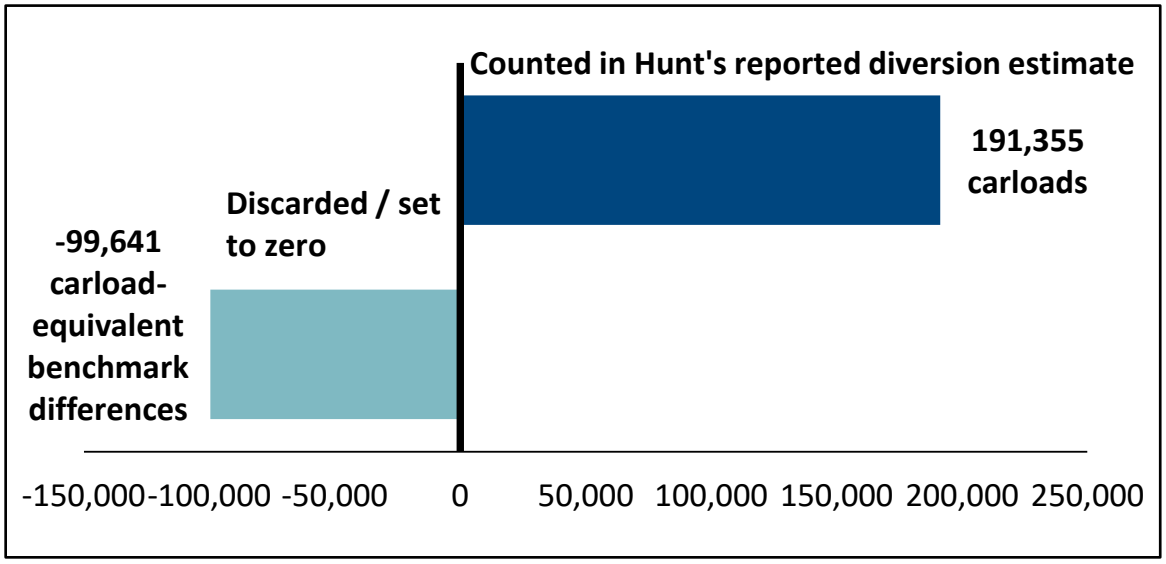
(c) Additional Tests Demonstrate That Mr. Hunt's Predicted Carload Diversions Are Not Linked to the Claimed Merger Improvements

In addition to the issues with the construction of Mr. Hunt's "lookalike" markets, the truck-to-carload model has numerous other methodological flaws.

First, the truck-to-carload model often predicts that the single-line post-merger share for a given lane will be *less than* the pre-merger interline share for that lane. For no principled reason, Mr. Hunt throws out these results and sets the expected diversions to zero in these lanes. If Mr. Hunt accounted for these negative diversions, it would reduce his carload diversions by over 50%, as shown in Dr. Powers' Figure 33, reproduced below as Figure 45.[442]

FIGURE 45

DR. POWERS FIGURE 33: HUNT COUNTS POSITIVE BENCHMARK DIFFERENCES BUT DISCARDS NEGATIVE DIFFERENCES



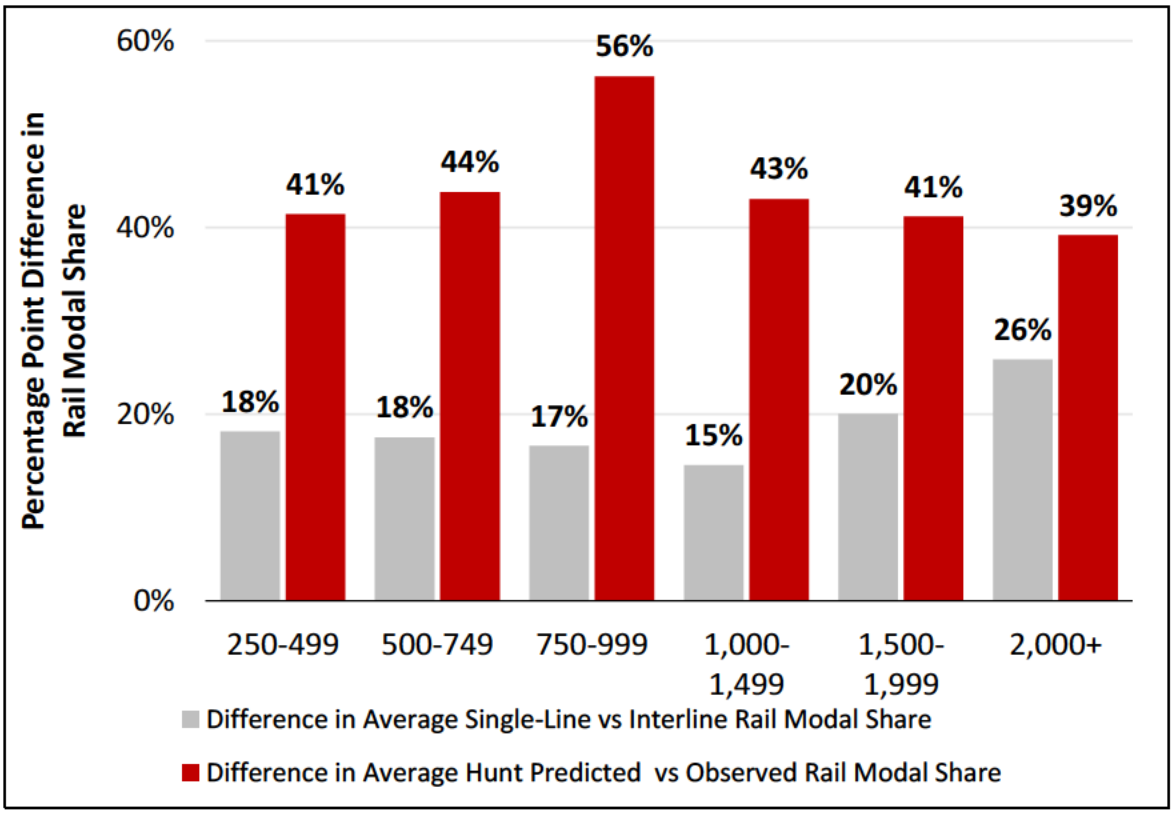
Second, Mr. Hunt predicts diversions that are vastly greater than existing differences between interline and single-line rail modal share. Dr. Powers' Figure 35, reproduced below as

442 *See* Powers V.S. ¶¶ 121-22.

Figure 46, shows that Mr. Hunt predicts rail modal share increases that are often double—and sometimes nearly triple—the existing differences between Mr. Hunt's "lookalike" interline and single-line markets.

FIGURE 46

DR. POWERS FIGURE 35: MR. HUNT'S PREDICTED CARLOAD DIVERSIONS SHOW RAIL MODAL SHARE INCREASES LARGER THAN THE AVERAGE SINGLE-LINE/INTERLINE DIFFERENCES IN EXHIBIT 3-1



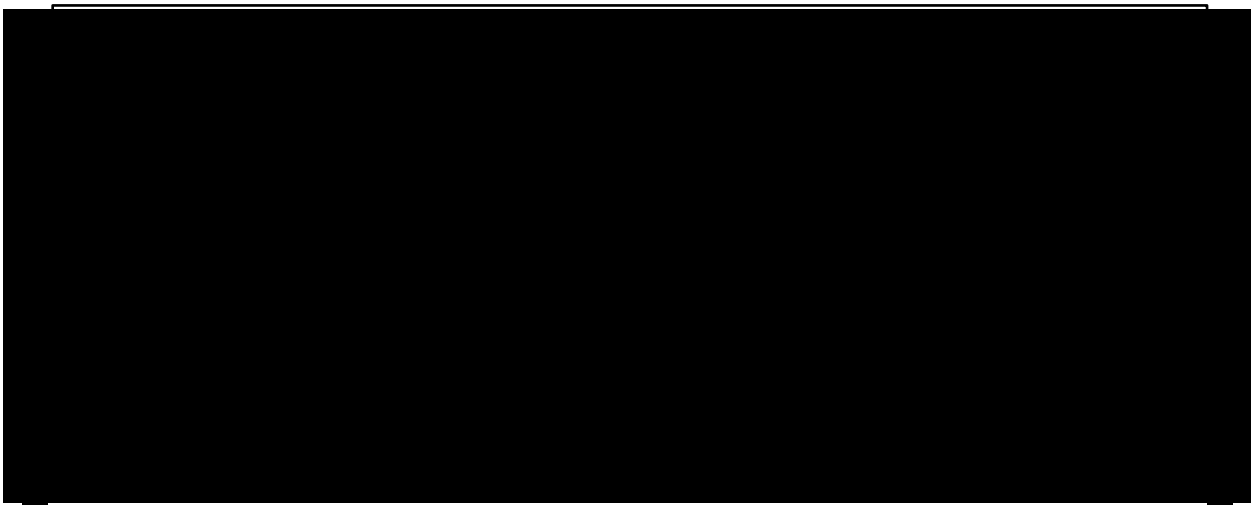
Third, across all markets, Mr. Hunt predicts diversions that outstrip the alleged price and service benefits of the merger. Dr. Powers' Figure 34, reproduced below as Figure 47, below shows that rail is often substantially cheaper than truck before the merger and dramatically slower. The shipper's decision to pay the truck premium therefore reflects service, facility, cadence, or other requirements that the model does not capture.[443] For example, converting a

[443] Powers V.S. ¶ 127.

shipper using trucks to move reefer containers today to rail would require special, costly equipment that the railroads may not have on hand.[444] But, according to Mr. Hunt, modest improvements in the price and transit time for rail will cause an outsize growth in truck-to-rail conversions.

FIGURE 47

DR. POWERS FIGURE 34: MODEST MODELED CHANGES ACCOMPANY LARGE PREDICTED INCREASES IN RAIL MODAL SHARE IN TRUCK-TO-CARLOAD DIVERSION MARKETS



Finally, perhaps because Mr. Hunt's models skate over critical details, the truck-to-carload diversions are concentrated in lanes with nonexistent or miniscule rail modal shares. More than 92% of Mr. Hunt's predicted carload diversions arise in markets with [redacted] and approximately 96% arise in markets with rail modal shares [redacted][445] As shown in Dr. Powers' Figure 17, reproduced below as Figure 48, the difference is even more stark when you look at UP and NS's share, with 96% of predicted diversions occurring in

444 *See, e.g.*, UP_0215514, at 525 [redacted]

445 *See* Powers V.S. ¶ 49.

markets with [redacted], and 99% in markets with a UP-NS share [redacted][446]

FIGURE 48

DR. POWERS FIGURE 17: MR. HUNT PREDICTS [redacted] TRUCK-TO-CARLOAD DIVERSIONS IN DIVERSION MARKETS WITH LITTLE OR NO EXISTING RAIL OR UP-NS TRAFFIC

[redacted]

3. Mr. Hunt's Rail-To-Rail Model Does Not Identify Merger-Related Diversions

Mr. Hunt estimates that the proposed merger would divert approximately 467,000 annual carloads and intermodal units from existing rail routings to UP-NS routes and increase UP-NS

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446 Powers V.S. ¶ 49.

revenue (on net) by approximately $610 million. Those diversions represent approximately 15% of Applicants' projected revenue increase.[447] Unlike his truck-to-rail analyses, which predict whether traffic would shift between transportation modes, his rail-to-rail analysis predicts how existing rail traffic would be reallocated among competing rail routes. He attributes the predicted shifts to changes in the relative attractiveness of UP-NS routes resulting from reductions in modeled "route impedance" (defined as rail mileage plus mileage-equivalent penalties assigned to particular junctions) and "junction frequency" (defined as the number of interchanges between railroad families on the route). Mr. Hunt then uses a route-choice model to predict how traffic would be distributed among available routes based on those two characteristics.[448]

Mr. Hunt acknowledges that his traffic diversion exercise is merely a comparison of two "modeled" outcomes: a "modeled baseline" and a "modeled post-merger condition."[449] Each of these "modeled" outcomes ignore countless real-world factors, such as traffic densities, commodity mix, facility access, service requirements, equipment availability, terminal performance, pricing, shipper relationships, and other market-specific conditions, all of which are highly relevant to whether a shipper will choose a UP-NS single-line option over trucks.[450] It should therefore come as no surprise that Hunt's modeled outcomes are, in fact, very poor predictors of actual rail traffic allocations, and thus equally poor at predicting rail traffic shifts.[451]

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447 *See* Powers V.S. ¶ 187 & n. 293.

448 *See* Powers V.S. ¶ 187 & n. 294.

449 Rev. App. 2-396 (Hunt Second Errata V.S. at 9).

450 Powers V.S. ¶¶ 32, 38, 200.

451 Powers V.S. ¶¶ 203-208.

(a) Mr. Hunt's Rail-to-Rail Model Is Over-Simplified and Omits Important Commercial and Operational Determinants of Shipper Choice

Mr. Hunt's rail-to-rail model, which looks at just two variables ("impedance" and junction counts) oversimplifies routing decisions therefore and cannot be relied upon to predict shipper decisions post-merger. It omits network characteristics such as track and terminal capacity, economies of density, routing constraints, and the commercial factors that Mr. Hunt himself recognizes are evaluated by "thousands of railroad marketing personnel and shipper logistics managers."[452] The rail-to-rail model measures a few, but not nearly all, of the factors that go into rail -to-rail competition.[453] It also treats the elimination of a junction as a reduction in friction, but it does not generally distinguish between a conventional interchange requiring additional handling and a coordinated movement involving run-through service or deep blocking.[454]

Even the factors that are purportedly being modeled are being oversimplified. For example, Mr. Hunt treats all eliminations of a junction as an automatic reduction in friction, but he does not distinguish between a conventional interchange requiring additional handling and a coordinated movement involving run-through service or deep blocking.[455] Mr. Hunt also assigns impedance penalties to interline routes and automatically removes those penalties when the merger eliminates an interchange between UP and NS. But Mr. Hunt does not establish that the merger would produce an operational improvement on each affected route corresponding to the

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452 Rev. App. 2-396 (Hunt Second Errata V.S. at 9).

453 *See* Powers V.S. ¶ 199-200.

454 *See* Powers V.S. ¶ 201.

455 *See* Powers V.S. ¶ 201.

magnitude of the modeled reduction in impedance.[456] And in the real world, eliminating an interchange in a corporate or ownership sense does not necessarily eliminate the physical work performed on a movement.[457] Indeed, some coordinated interline arrangements may involve less operational friction than a conventional interchange.[458]

In sum, Mr. Hunt's model artificially increases the predicted attractiveness of UP-NS routes post-merger by reducing their modeled service frictions, but he never establishes that the conditions responsible for a given route's historical performance would change. The model is incapable of accurately capturing a scenario where a UP-NS route historically has attracted little traffic because of schedules, capacity, rates, commercial commitments, customer preferences, or other conditions outside the model. Mr. Hunt's model therefore does not identify whether the modeled changes address the factors actually responsible for the historical routing choices from which his diversion predictions begin.[459]

(b) Mr. Hunt's Rail-to-Rail Model Does Not Reliably Reproduce Observed Routing Choices

Perhaps due to these omissions, Mr. Hunt's rail-to-rail model is unable to reproduce current routing choices of shippers in the real world. Mr. Hunt's model often assigns observed traffic the characteristics of routes it did not take, then predicts route choice using only impedance and junction frequency.[460] As a result, Mr. Hunt's model frequently fails to identify the actual highest-volume pre-merger route in a substantial share of markets and, in many cases,

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456 *See* Powers V.S. ¶ 209.

457 *See* Powers V.S. ¶ 210.

458 *See* Powers V.S. ¶ 211.

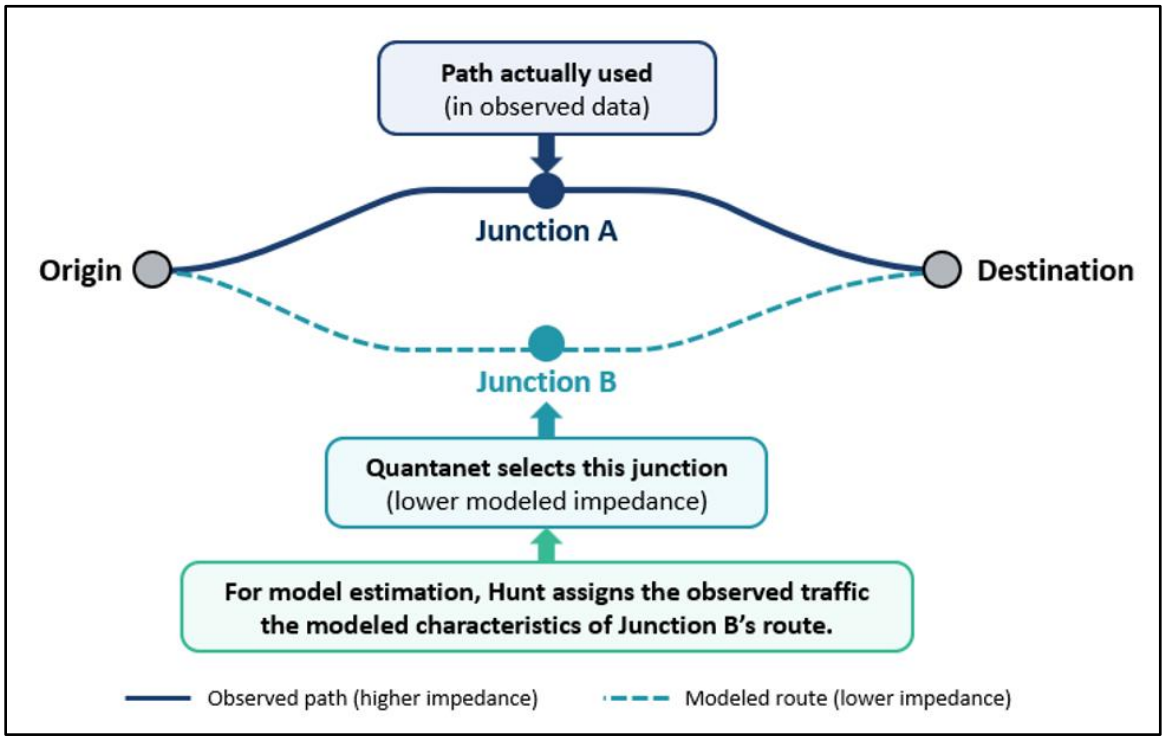
459 *See* Powers V.S. ¶ 202.

460 *See* Powers V.S. Figure 48.

assigns the highest predicted share to a route with no observed traffic.[461] This phenomenon is illustrated by Dr. Powers' Figure 48, reproduced below as Figure 49.

FIGURE 49

DR. POWERS FIGURE 48: MR. HUNT'S DATA CONSTRUCTION CAN ASSIGN OBSERVED TRAFFIC THE CHARACTERISTICS OF A ROUTE IT DID NOT ACTUALLY USE



The model's failure to reliably predict the routes shippers actually choose today reveals two problems. First, a model that cannot reliably predict the routes shippers choose today cannot be relied upon as evidence of how shippers will route traffic if the merger is approved. Second, because Mr. Hunt's diversion predictions are based on a comparison of the modeled "observed" traffic and the modeled post-merger route, where real-world traffic patterns do not match Mr. Hunt's modeled "observed" traffic, Mr. Hunt does not have a reliable baseline from which to estimate diversions.

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461 *See* Powers V.S. ¶¶ 192, 208.

(c) Mr. Hunt's Rail-to-Rail Model Demonstrates That Substantial Diversions Are Achievable Through Coordination Agreements

Mr. Hunt's rail-to-rail model assumes away non-merger methods of reducing genuine interchange friction and overstates the efficiencies of single-line service. Mr. Hunt testified in his deposition that he did not analyze how much of his predicted diversion could be achieved through merger alternatives such as interline coordination agreements.[462] But where density supports run-through trains, deep blocking, block swaps, or coordinated schedules, independent railroads can make an interchange operationally comparable to an intermediate handling on a single-line route. As Messrs. Elphick and Nelson explain, those measures are already used in the industry and are available to UP and NS without common control.[463]

Conversely, single-line routes do also incur dwell and can incur substantial dwell when cars must be classified, combined, inspected, or separated within a carrier's own network. Eliminating an interchange does not eliminate that work; it may merely move it to another yard.[464] Mr. Hunt's junction variable thus confuses corporate boundaries with operational work.[465]

Applicants may have legitimate reasons not to use deep blocking or run-through service in particular lanes, including yard constraints at Chattanooga, Birmingham, Elkhart, Livonia, and North Little Rock or the efficiency of rubber-tire interchange for low-density traffic.[466] But the

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462 Hunt Tr. at 699:8-700:18.

463 *See* Elphick & Nelson V.S. ¶¶ 645-46; *See* Powers V.S. ¶¶ 209-12.

464 *See* Elphick & Nelson V.S. ¶ 389 ("Applicants have not eliminated the physical work required to move [] traffic. Instead, they shift that work to other facilities, replace classifications with substantial block-swap activity, and concentrate additional trains and blocks at yards that already have limited capacity for extra work.").

465 *See* Powers V.S. ¶ 210.

466 *See* Elphick & Nelson V.S § VI (discussing capacity constrained yards).

merger does not make those constraints disappear. And if no such constraint exists, UP and NS can implement the improvement today. Either way, Applicants' reasoning is circular: they assume the growth needed to justify new operating patterns, then claim those patterns and the assumed growth as merger benefits.[467]

These fundamental flaws of Mr. Hunt's rail-to-rail model are demonstrated by Dr. Powers' Interline Coordination test. Dr. Powers' analysis shows that, if Applicants are right that a reduction in interchange friction would lead to diversions, then Applicants could pursue these diversions short of a merger. To perform this test, Dr. Powers takes Mr. Hunt's rail-to-rail diversion model, holds junction frequency (i.e., the presence of an interchange) constant, and assigns a 90-mile impedance to UP-NS handoffs, using the same reduced penalty Mr. Hunt applies to certain run-through haulage arrangements. Dr. Powers then compares that result with an "Impedance Improvement" scenario that also holds junction frequency unchanged but retains Mr. Hunt's assumption that UP-NS junction impedance falls to zero post-merger. The comparison therefore isolates the portion of modeled diversion associated with Mr. Hunt's assumed reduction in interchange impedance.[468] Dr. Powers finds that Mr. Hunt's own framework would predict that UP and NS could attract as much as 71% of their purported rail-to-rail diversions to certain train types through coordination short of a merger. Dr. Powers' Table 11, reproduced below as Figure 50, shows the potential for Merchandise, Intermodal, and Bulk traffic.[469]

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467 *See* Elphick & Nelson V.S. ¶¶ 12, 378, 387.

468 Powers V.S. ¶ 213.

469 Powers V.S. ¶ 214.

FIGURE 50

DR. POWERS TABLE 11: WITHIN MR. HUNT'S MODEL, MUCH OF THE DIVERSION ASSOCIATED WITH ELIMINATING UP-NS INTERCHANGE IMPEDANCE CAN BE ACHIEVED WITH INTERLINE SERVICE

		Interline Coordination Diversions [A]	Impedance Improvement Diversions [B]	Interline Coordination / Impedance Improvement [C] = [A]/[B]
Merchandise	[1]	35,241	50,102	70.3%
Intermodal	[2]	96,161	135,744	70.8%
Bulk	[3]	5,948	8,676	68.6%

4. The Unreliability of Mr. Hunt's Methodology Is Further Proven by Its Transition from the Original Application to the Amended Application

The unreliability of Mr. Hunt's methodology is further proven by the corrections Mr. Hunt was forced to make between the Original Application and the Amended Application. Mr. Hunt relies on historical differences in rail vs. truck shares in single-line vs. interline-only markets as support for his conclusion that the merger will divert large swaths of truck traffic to rail. In his original analysis, Mr. Hunt treated Rule 11 traffic as single-line and reported much higher rail modal shares in single-line vs. interline-only markets. After obtaining 100 percent traffic data and treating Rule 11 traffic as interline, that measured difference in rail modal shares between single-line vs. interline-only markets declined substantially.[470] Figures 53 and 54 of Mr. Powers's Verified Statement, reproduced below as Figures 51 and 52, compare the original and revised results. This correction is significant because Mr. Hunt relies on historical differences in modal shares of single-line vs. interline markets as evidence supporting the large traffic gains he attributes to the merger. The original analysis materially overstated the empirical

[470] Powers V.S. ¶¶ 265-66 & Figures 53 and 54.

support for Mr. Hunt's claimed single-line advantage, especially with respect to carload and long-haul intermodal traffic.

FIGURE 51

DR. POWERS FIGURE 53: CARLOAD SINGLE-LINE ADVANTAGE DEPENDS ON MR. HUNT'S RULE 11 TRAFFIC CLASSIFICATION

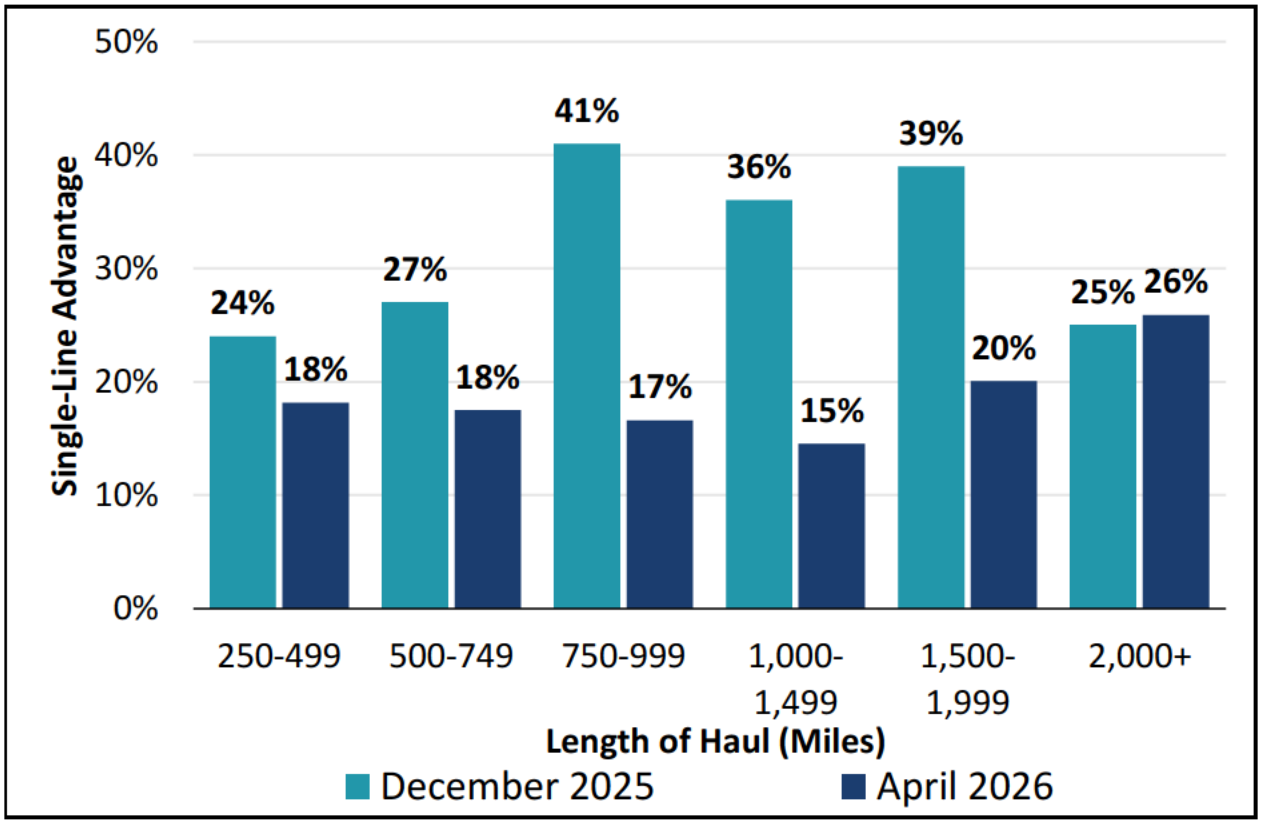
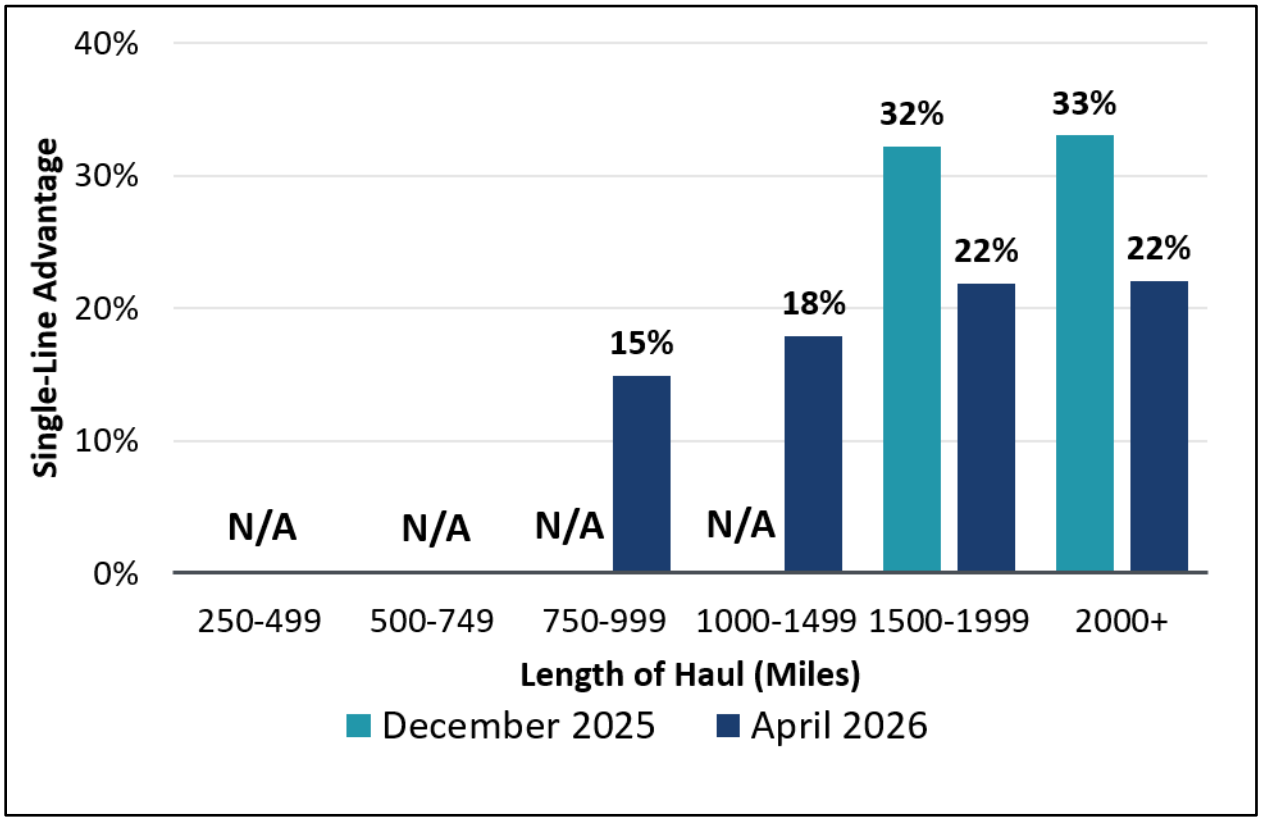


FIGURE 52

DR. POWERS FIGURE 54: INTERMODAL SINGLE-LINE ADVANTAGE DEPENDS ON MR. HUNT'S RULE 11 TRAFFIC CLASSIFICATION



D. Applicants' Traffic Diversion Analysis and Truck Cost Savings Calculation Do Not Establish Merger-Specific Public Benefits

Mr. Hunt's unreliable diversion estimates are the primary inputs for many of Applicants' claimed public benefits. Applicants' benefits therefore depend on the quantity and composition of traffic that Mr. Hunt predicts will divert. Those benefits estimates are just as unreliable as Mr. Hunt's diversion analyses. It is telling that Applicants' Supplement foreswears any expectation that their claimed traffic growth will actually be achieved.[471]

[471] UP-80/NS-78 at 67. Applicants' suggestion that their Transaction be credited with diversions that might be achieved by others as a result of competitive responses is laughable. *See id.* If BNSF-CSXT or CPKC-CSXT interline offerings could achieve the diversions that Applicants are forecasting, that would only prove that a merger is not necessary to accomplish those traffic gains.

Even if some traffic would divert to UP-NS as a result of the Transaction, Applicants have not shown that their resulting revenue and profits is a public benefit within the meaning of 49 U.S.C. section 11324(c). They assert that $1.757 billion in "normal year" net revenue gains to the merged UP-NS reflect strengthened competition because shippers would choose the combined system.[472] But revenue or profits earned by UP-NS is a private benefit. It does not measure the value delivered to shippers or the public.[473] A choice by a shipper to voluntarily switch to UP-NS post-merger could imply some incremental benefit if the post-merger UP-NS option is better than the shipper's otherwise preferred alternative. In that case, however, the relevant measure of the benefit would be the incremental improvement in value realized by the shipper—not UP-NS's revenue from the movement nor changes in shippers' transportation expenditures.[474]

Applicants' claimed truck-to-rail diversion analysis illustrates the problem. As Applicants point out, truck is already more expensive than rail yet chosen by shippers quite often. The reason has to do with the array of offsetting values that the truck option offers many shippers—convenience, reliability, speed, among many others. Applicants propose to measure the benefit of their truck-to-rail diversions as the difference between truck rates and rail rates, but this ignores the other advantages that truck has to offer, which will not go away just because of the UP-NS merger. Even assuming traffic diverts from truck-to-rail, the benefit to shippers of that diversion is the net of the incremental rate reduction and the incremental loss in value

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472 Rev. App. 1-500 (Janke Second Errata V.S. ¶ 14); Second Errata. App. 1-120 (Summary of Benefits Exhibit).

473 *Canadian Pacific Ry. – Control – Kansas City Southern*, Finance Docket No. 36500, (STB Decision No. 35 served Mar. 15, 2023) at 27 (noting "private profits realized by the Transaction are not public benefits").

474 Powers V.S. ¶¶ 244-53.

resulting from the shipper giving up the advantages of truck by switching to rail—not the full price of rail and not the entire difference between the truck and rail rates.[475] Mr. Hunt makes precisely this error by incorrectly treating the entire amount of transportation cost savings as a benefit to shippers, without accounting for the lower value that shippers generally place on rail service. As Dr. Powers and Mr. Brooks explain, the correct measure of benefit is the shipper's consumers surplus, not the total amount of dollars saved on shipping costs.[476]

Finally, any public benefit must be netted against the costs any diversions impose on others. Applicants ignore that, if by some chance they are right about the level of intermodal growth that is possible, massive third-party investments would be needed to support that growth. Railroads cannot produce Applicants' projected growth by timetable and pricing changes alone. Intermodal growth of the asserted magnitude would require containers, chassis, tractors, terminal capacity, hiring of drayage drivers, marketing resources, and shipper-side facilities. Diverting trucks to rail carload service would require not only suitable origins and destinations adjacent to rail, but investments in sidings, loading infrastructure and related equipment (not to mention the need for dependable shipment density). Applicants identify no source, timing, or cost for those investments.[477] UP made this same point in *CP/KCS*: the Board cannot evaluate net benefits without considering the cost of achieving them, and Applicants cannot claim all projected benefits while ignoring costs they would impose on others.[478]

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475 Powers V.S. ¶¶ 248-53; Brooks V.S. ¶¶ 149-52.

476 Powers V.S. ¶¶ 248-49; Brooks V.S. ¶¶ 149-52.

477 *See* Atlantic Systems Inc. Notice of Intent to Participate with Verified Statements (Atlantic Systems Inc-310718) (filed Jan. 13, 2026) at 2-4; Brooks V.S. ¶ 136.

478 *Canadian Pacific Ry.—Control—Kansas City Southern*, Union Pacific Railroad Company's Comments and Request for Conditions, Finance Docket No. 36500 (filed Feb. 28, 2022) at 67 ("In addition, the Board cannot find the transaction to be in the public interest because it cannot accurately evaluate the transaction's net benefits without considering the cost of achieving the projected benefits.

VI. THE OPERATING PLAN IS UNTETHERED TO THE REAL WORLD, SHOWING THAT APPLICANTS HAVE NO IDEA WHAT VERSION OF A TRANSCONTINENTAL NETWORK WILL ACTUALLY BE IMPLEMENTED OR WHETHER IT WILL BE FEASIBLE

Applicants' claimed service benefits, and the Board's ability to assess the post-merger risk of service disruptions, each depend upon the presentation of a "full-system operating plan" demonstrating how the Transaction would affect operations nationwide.[479] This requirement exists so that the Board can decide, before approving the Transaction, whether a merged UP-NS can actually function in the real world and whether Applicants' claimed service benefits are real—not so Applicants may secure approval with one model and determine afterward what railroad they will actually operate.

The Operating Plan that Applicants have presented is neither executable nor grounded in reality. An Operating Plan must do more than demonstrate that traffic can be moved through a computer model. It must be a realistic plan for how the combined UP-NS system will operate.[480] An executable Operating Plan must include achievable train schedules, allot sufficient time to perform assigned work, respect physical constraints of individual yards and routes, and allocate buffer to accommodate normal operating variability. Applicants' Operating Plan does not satisfy those basic requirements.

As discussed below, Applicants' Operating Plan does not support their public benefits case. Applicants' Base Plan bears no relation to the way traffic moves in the real world across the UP and NS systems today, and, therefore, cannot provide a reliable operational baseline against which to measure potential merger-related improvements. Their Optimized Plan then

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Here, Applicants seek credit for all the benefits they project, but they fail to acknowledge all the costs—or they plan to impose significant costs on others, which amounts to the same thing.").

479 49 C.F.R. § 1180.8(a)-(b).

480 Elphick & Nelson V.S. ¶¶ 12, 26.

layers on unrealistically over-optimized baseline train speeds, train lengths, block swaps, yard workloads, and traffic volumes that Applicants do not show they have any hope of executing reliably or with existing capital. And their Growth Plan piles on to this unreliable base and depends on Mr. Hunt's traffic diversions actually showing up to justify additional trains, which, as discussed above, Applicants have no reliable evidence is likely to occur.

FIGURE 53

APPLICANTS' OPERATING PLAN DOES NOT SUPPORT THEIR PUBLIC BENEFITS CASE



In short, the Operating Plan submitted with the Application reflects an infeasible design that poses significant risk of widespread service disruptions. It provides no basis from which the Board could conclude that Applicants can successfully combine their two distinct rail networks. To the contrary, if Applicants try to implement the Operating Plan they submitted, they risk significantly disrupting rail operations throughout North America.[481]

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[481] Elphick & Nelson ¶ 15.

What follows is a high-level overview of the problems in Applicants' Base Plan, Optimized Plan, and Growth Plan. Messrs. Elphick and Nelson dissect each of these plans in detail in Sections III, IV, and V, respectively, in their Verified Statement. Messrs. Elphick and Nelson further conduct a yard-level review of how the changes that Applicants propose in their Optimized Plan and Growth Plan would overrun key yards and discuss the results of that analysis in Section VI of their Verified Statement.

A. Applicants' Base Plan Is Unrealistic and Unreliable

Applicants start with a Base Plan based on a MultiRail model that bears no relation to the way traffic moves in the real world across the UP and NS systems today, and therefore, cannot provide a reliable operational baseline against which to measure potential merger-related improvements.[482] Mr. Elphick and Mr. Nelson catalog the pervasive errors and simplifying assumptions that disconnect the Base Plan from the real-world operation it purports to represent in their Verified Statement.[483] Some of the most notable issues include:

- [redacted][484]
- The Base Plan [redacted] roughly [redacted] of trains originating on the legacy UP system depart their first scheduled stop at 12:00 noon, which equates to an

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482 *See* Elphick & Nelson V.S. ¶¶ 12, 139-140.

483 *See* Elphick & Nelson V.S. ¶¶ 12, 83-84, 91-140.

484 *See* Elphick & Nelson V.S. ¶ 85.

impossible volume of trains in UP train yards at noon.[485] In reality, UP train yards depart [redacted][486]

- The Base Plan train schedules include erroneous or unrealistic transit times that [redacted] make it even more difficult to assess when a train will actually depart its origin, reach intermediate locations, complete work assignments, or arrive at its destinations.[487]
- The Base Plan assumes that approximately [redacted] of total intermediate handlings would have zero dwell time, which is facially implausible. Importantly, these zero-dwell events are not just pass-through movements, but work events where trains report picking up and setting out substantial volume.[488]
- [redacted] Concurrently, Applicants [redacted] which distorts which physical facility receives a train, and obscures the distribution of work events at major

485 *See* Elphick & Nelson V.S. ¶¶ 91-92.

486 *See* Elphick & Nelson V.S. ¶¶ 93-94.

487 *See* Elphick & Nelson V.S. ¶¶ 97-99.

488 *See* Elphick & Nelson V.S. ¶ 102; *see also* Barr Tr. at 337:2-21 [redacted]

gateways that will be most affected by the merger, including Chicago, Kansas City, St. Louis, Memphis, and New Orleans, among others.[489]

- [redacted][490]

These errors, and many others, result in a Base Plan that distorts train schedules in ways that do not resemble what traffic flows can actually be achieved under real-world conditions.[491] It also makes it impossible for the Board to assess whether claimed transit-time or service improvements in the Optimized and Growth Plans are achievable or the likelihood of potential service disruptions.[492]

B. Applicants' Optimized Plan Is Not Executable on Applicants' Current Systems Under Real World Conditions

Applicants' Optimized Plan inherits the fundamental defects of the Base Plan and then layers onto that unreliable foundation even more unrealistically over-optimized baseline train speeds, train lengths, block swaps, yard workloads, and traffic volumes that Applicants do not show they have any hope of executing reliably under real-world conditions. Applicants describe their Optimized Plan as one that would be executable on the combined UP and NS network immediately following authorization of common control, without any new capital investments.[493]

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489 *See* Elphick & Nelson V.S. ¶¶ 12, 111, 118.

490 *See* Elphick & Nelson V.S. ¶¶ 135-138.

491 *See* Elphick & Nelson V.S. ¶¶ 12, 139-140.

492 *See* Elphick & Nelson V.S. ¶ 140.

493 *See* Elphick & Nelson V.S. ¶ 150; Rev. App. 2-895 (Turner Second Errata V.S. ¶ 81).

That simply is not correct. Four recurring problems demonstrate that the service introduced in the Optimized Plan has been optimized beyond what the existing railroad can consistently perform.[494]

First, the schedules for the new train services in the Optimized Plan assume transit times that are substantially faster than Applicants' historical performance data support.[495] For example, the Optimized Plan assumes [redacted] of [redacted] miles per hour over most of the legacy NS network.[496] Even if a train could hit that maximum authorized speed on portions of the track, it could not maintain that speed throughout its journey, as trains routinely need to accelerate and decelerate, meet or pass other trains, comply with temporary restrictions, slowdowns and slow orders, navigate through track work, move through terminals and junctions, and contend with ordinary congestion.[497] Applicants do not explain why common control would increase the speed at which trains can travel along existing tracks, particularly between two yards on the same legacy system that receives no capital investment.[498]

Second, the Optimized Plan introduces many new trains that are too short and would lack the traffic density needed to support the service that Applicants advertise.[499] For example, several trains move hundreds of miles at designed [redacted] than [redacted] feet (and in one [redacted] than [redacted] feet), consuming track, locomotives, crew, and other resources that could be

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494 *See* Elphick & Nelson V.S. ¶ 151.

495 *See* Elphick & Nelson V.S. ¶ 153.

496 *See* Elphick & Nelson V.S. ¶ 153.

497 *See* Elphick & Nelson V.S. ¶¶ 153, 155.

498 *See* Elphick & Nelson V.S. ¶ 156.

499 *See* Elphick & Nelson V.S. ¶¶ 151, 163.

used on a much more efficient service.[500] In particular, the new transcontinental services that Applicants propose have overstated service benefits and generally lack sufficient density over much of their route.[501] Take for example Applicants' proposed new intermodal train pair between Southern California and the Southeast.[502] According to the Operating Plan, the eastbound service would depart Long Beach with sufficient density [redacted] feet), and pick up [redacted] feet along the way at Los Angeles, CA and Santa Teresa, New Mexico, but set out [redacted] feet in Greggton, Texas, leaving it with no more than [redacted] feet between Greggton and Atlanta, a distance of roughly [redacted] miles.[503] Trains designed to this length are at risk of ad hoc cancellation, as normal operating variability will routinely lead to commercially unsustainable volumes on the Greggton-Atlanta leg. Applicants do not explain how this new service will remain commercially viable over this stretch.[504] The westbound service similarly reports insufficient density over the entirety of its route, never rising above [redacted] feet, which is still insufficient to support a complete transcontinental mission.[505] These issues of maintaining sufficient density factors to some extent in each of the transcontinental services in the Operating Plan.[506]

Third, other trains in the Optimized Plan are planned at lengths that are exceptionally long—ranging from [redacted] feet—and cannot be accommodated reliably

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500 *See* Elphick & Nelson V.S. ¶ 166; Barr Tr. at 332:2-332:5 [redacted]

501 *See* Elphick & Nelson V.S. ¶ 183.

502 *See* Elphick & Nelson V.S. ¶¶ 200-210. Applicants propose the ZLBAT eastbound from Long Beach to Atlanta and the ZCTLB westbound from Charlotte to Long Beach.

503 *See* Elphick & Nelson V.S. ¶¶ 201-202 & Figure 24, 210.

504 *See* Elphick & Nelson V.S. ¶¶ 202, 210.

505 *See* Elphick & Nelson V.S. ¶¶ 203-204 & Figure 26, 210.

506 *See* Elphick & Nelson V.S. ¶ 327.

by the yards and routes over which they would operate.[507] Accommodating trains of this length requires careful coordination of schedules, switching assignments, crews, locomotives, and inspections to avoid interference with other operations, which Applicants have not done.[508] Running a train over the siding capacity has the potential to create widespread service disruptions if schedules are not adequately developed.[509] Accommodating excessive train lengths can complicate the operation of the train yards, consume time and resources, and have knock-on effects for other trains and neighboring facilities.[510] Planning a train at or near a facility's maximum track length also leaves no room for day-to-day variation, can result in cars left behind, and can cause additional strains on the rail yard.[511]

Fourth, Applicants characterize the Optimized Plan as simplifying operations at current UP-NS gateways, but removing an interchange does not eliminate the physical work needed to move blocks between trains. Many of Applicants' changes shift work rather than eliminate it. The Optimized Plan schedules work that cannot be completed within the allocated dwell; routes existing trains through longer, less efficient routes in order to pick up new work events; strains yard capacity by assigning trains that tie up multiple receiving, departure, or working tracks for

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507 *See* Elphick & Nelson V.S. ¶¶ 151, 169-174.

508 *See* Elphick & Nelson V.S. ¶¶ 169-174.

509 *See* Elphick & Nelson V.S. ¶ 175.

510 *See* Elphick & Nelson V.S. ¶170-174; *see also* Barr Tr. at 338:[redacted]

511 *See* Elphick & Nelson V.S. ¶¶ 37, 175.

extended periods; and concentrates additional activity at facilities already planned near Applicants' own stated capacity.[512]

As a result of these (and other) unrealistic assumptions, any supposed transit time savings or other service improvements that would be gained by moving from the Base Plan to the Optimized Plan are entirely specious.[513] The Optimized Plan is not an executable transportation plan.[514] If Applicants were to attempt to execute the Optimized Plan as written, severe service disruptions would likely follow.[515]

C. Applicants' Growth Plan Is Not Viable

Applicants' Growth Plan just further compounds the problems from the Base Plan and Optimized Plan and is not executable. The same defects carry over: no dwell time for crew changes, block setouts, block pick-ups, and other work events, trains too thin to justify their routes even with growth traffic, [redacted] over [redacted] feet that will exceed most sidings and will strain yards.[516] On top of that, the Applicants are claiming to run many key yards at or near their capacity by their own calculation:

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512 *See* Elphick & Nelson V.S. ¶¶ 176-180.

513 *See* Elphick & Nelson V.S. ¶¶ 161, 181.

514 *See* Elphick & Nelson V.S. ¶ 181.

515 *See* Elphick & Nelson V.S. ¶ 258.

516 *See* Elphick & Nelson V.S. ¶ 269.

FIGURE 54

APPLICANTS' KEY GROWTH PLAN YARDS ARE NEAR CAPACITY[517]



These problems demonstrate that Applicants will not be able to operate their new services as modeled in the Growth Plan.[518] Messrs. Elphick and Nelson address each new intermodal and manifest service in Section V.B of their Verified Statement and explain why each is not a reliable, executable operation.[519]

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517 *See* Elphick & Nelson V.S. ¶¶ 389-546 and Figures 133, 134.

518 *See* Elphick & Nelson V.S. ¶ 269.

519 *See* Elphick & Nelson V.S. § V.B.

And while Applicants describe their Growth Plan as one that reflects the traffic they expect to attract through merger-related service improvements,[520] Applicants have not shown that any executable version of these services would require common ownership.[521] If Applicants' projected traffic growth materializes, UP and NS have every incentive to run the service together through an interline arrangement.[522] Applicants identify no operational barrier to doing so, and any viable service's essential features—deeper blocks, coordinated train assignments, run-through movements—could be implemented by agreement.[523] To the extent a revised service is *not* supported by sufficient traffic, the merger would *not* make the service viable.[524]

Applicants' Growth Plan suffers from an additional problem: it depends on projected traffic density increases that are circular and may never materialize.[525] As Elphick & Nelson show, many of the new trains introduced in the Growth Plan are not commercially viable with existing traffic density; in some cases, their viability depends upon Applicants' being correct in predicting the merger will drive diversions to those lanes, and in other cases, they are not viable even with the assumed diversions.[526] If diversions accumulate slower than Applicants anticipate, arise in different lanes, or fail to materialize at all, the new trains in the Growth Plan simply are not viable.[527] Applicants' problem is circular: they require the projected diversions to create

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520 Rev. App. 2-863 (Turner Second Errata V.S. ¶ 29).

521 *See* Elphick & Nelson V.S. ¶ 270.

522 *See* Elphick & Nelson V.S. ¶ 268.

523 *See* Elphick & Nelson V.S. ¶¶ 268, 270.

524 *See* Elphick & Nelson V.S. ¶ 270.

525 *See* Elphick & Nelson V.S. ¶¶ 12, 378, 388.

526 *See* Elphick & Nelson V.S. ¶¶ 379-380, 386.

527 *See* Elphick & Nelson V.S. ¶¶ 381, 386.

sufficient density to offer the new "improved" service, but they require that new "improved" service to generate the diversions.[528]

Applicants use the service improvements attributed to the Optimized Plan to project additional traffic and then use that projected traffic to support the new trains and deeper blocks reflected in the Growth Plan. To the extent service improvements in the Optimized Plan are not achievable, then traffic diversions and corresponding new trains and deeper blocks in the Growth Plan are also not achievable. Relatedly, the revisions necessary to make the Growth Plan executable would alter the service that Applicants would need to support their projected diversions. To make the Growth Plan executable, Applicants would need to alter the service in ways that would likely add dwell, increase transit times, and require additional resources, thus undermining the premise of the Growth Plan that service improvements would drive diversions.[529]

VII. APPLICANTS' OTHER CLAIMED BENEFITS ARE VASTLY OVERSTATED AND DO NOT SUPPORT APPROVAL

Applicants project that combination of the UP and NS operations will result in $965 million in cost savings that they assert are "public benefits" because a combined UP/NS could use them to "compete more aggressively" and reinvest in "innovating and improving service quality for customers."[530] Applicants have performed [redacted] } and have made no public commitment to customers

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528 *See* Elphick & Nelson V.S. ¶¶ 12, 378.

529 *See* Elphick & Nelson V.S. ¶¶ 264-265.

530 Rev. App. 1-502 (Janke Second Errata V.S. ¶ 19); Rev. App. 1-516 (Janke Second Errata V.S. ¶ 60, Table 4).

that they will see lower rates.[531] These benefits are vastly overstated and do not support approval.

Applicants' projected $376 million in operating cost savings are speculative. Many are tied to Applicants' flawed Operating Plan and Traffic Analysis, while others are based on an unsupported assumption that applying UP's "best practices" and technology to the NS system will result in UP-like performance. To the extent any of Applicants claimed operating efficiencies could be in the public interest, Applicants do not show why a merger is needed to achieve them.

Applicants' $391 million in projected savings on "personnel costs" (i.e., job reductions) are not in the public interest at all, as they are inconsistent with Applicants' story that the transaction would spur growth in the rail industry and would mean the elimination of positions critical to carrying out their operations. And Applicants' $150 million in "technology" savings comes at the expense of a reduction in innovation.

None of Applicants' other benefits—the "non-quantifiable" benefits of single-line service, and the amorphous benefits to "American workers," "American taxpayers," and the economy as a whole—are not defined or well-supported by the record, as discussed in detail in other Sections of this report, and therefore should not be afforded any weight.[532]

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[531] *See* Janke Tr. at [redacted] Rynaski Tr. at [redacted] Israel Tr. at 22:2-7 ("Q. To your knowledge, has UP made a public statement or commitment about prices being reduced on newly formed single-line routes after the proposed acquisition of NS, assuming it goes through? A. I haven't seen any public commitment.").

[532] Rev. App. 1-497 (Janke Second Errata V.S. ¶ 7).

Finally, to the extent any of these benefits would accrue to the public—as opposed to lining the pockets of the merging parties—those public benefits must also be netted against the many public harms discussed throughout this Comment, including the opportunity cost of UP and NS focusing exclusively on coordinating their own operations, rather than the many other opportunities for collaboration that could occur if UP and NS were to remain independent.

A. There Is No Sound Foundation for Applicants' Operating Expense Benefits

Applicants' purported operating expense benefits rest on unrealistic and unsupported assumptions that UP's performance can be replicated on NS's network. Applicants have neither established that these projected savings are achievable nor have they established that any achievable savings require a merger. The Board should therefore decline to credit these claimed savings as merger-specific public benefits.

1. Many of Applicants' Operating Cost Savings Are Keyed to an Unsupported and Overoptimized Operating Plan and Equally Unsupported Traffic Analyses

Applicants claim that "the merger will create operational efficiencies" in the amount of $77.5 million annually "by allowing the combined company to optimize existing traffic flows, including by reductions to handling, train miles, locomotive unit miles, gross ton miles, and car days."[533] Applicants get to this estimate by applying the Board's 2023 Unified Rail Costing System ("URCS") unit costs to changes in each of these operating metrics between their Base Plan and Optimized Plan.[534]

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[533] Rev. App. 1-505 (Janke Second Errata V.S. ¶ 29).

[534] *See* Rev. App. 1-559 (Boyles/Mathur Second Errata V.S. ¶ 14).

These calculations are unreliable because, as discussed above in Section VI, Applicants' Operating Plan is not grounded in reality. Applicants' Base Plan bears no relation to the way traffic moves in the real world across the UP and NS systems today, and therefore, cannot provide a reliable operational baseline against which to measure potential merger-related improvements.[535] Applicants' Optimized and Growth Plans then layer on over-optimized train speeds, train lengths, block swaps, yard workloads, and traffic volumes that could not be executed under real-world conditions. For example, Applicants' Optimized Plan (i) assumes speeds that are much quicker than those that can be consistently achieved based on historical data, (ii) includes trains that are far too short and insufficiently dense to reflect an efficient or realistic plan, and (iii) includes trains that are longer than can be consistently accommodated by their current yard capacity.[536] As a result of these (and other) unrealistic assumptions, any supposed "operational efficiencies" that would be gained by moving from the Base Plan to the Optimized Plan are entirely specious.

Applicants' estimated $88 million in savings in operating costs attributed to "implementing best practices and technologies across the Mechanical (a.k.a. "rolling stock") and Engineering Departments," suffer from the same issue.[537] These savings stem from, among other things, plans to "consolidate freight car fleets" and "rationalize locomotive and car facilities at interchange locations,"[538] that appear to depend upon the same over-optimized MultiRail modeling.[539]

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535 *See* Elphick & Nelson V.S. ¶¶ 12, 139-40.

536 *See* Elphick & Nelson V.S. ¶ 151.

537 Rev. App. 1-506, 516 (Janke Second Errata V.S. ¶ 32; ¶ 60, Table 4).

538 Rev. App. 1-506 (Janke Second Errata V.S. ¶ 33).

539 *See* Elphick & Nelson V.S. ¶¶ 149-151.

2. Other Operating Cost Savings Are Based on an Aspiration of Achieving UP-Like Outcomes on the NS Network, Without Any Showing of Feasibility

Applicants' estimate that they can achieve $77 million in annual savings by implementing UP's "best practices and operating application technologies" across NS should similarly be afforded no weight.[540] Applicants simply assume that UP's metrics can be ported over to NS without any showing of feasibility.[541] Indeed, Mr. Janke admits that he did not talk to anyone at NS about whether these cost synergies would be feasible.[542]

As one example showing why this assertion is entitled to no weight [redacted][543] Applicants provide no analysis of why NS did not manage to achieve these gains on its own or why a merger was needed to accomplish them, perhaps because those long trains would overrun NS's network.[544] And when asked at his deposition, Mr. Janke testified that he did not know of any reason why NS couldn't implement these same kinds of practices now, absent a merger.[545]

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[540] *See* Rev. App. 1-508 (Janke Second Errata V.S. ¶ 39).

[541] *See* Rev. App 1-508 to -10 (Janke V.S. Second Errata ¶¶ 39-49).

[542] *See* Janke Tr. at 94:21-95:2.

[543] *See* Janke Workpaper "Synergies Transportation – Operating.xlsx," Tabs "Train Length" and "Train Length Synergy."

[544] *See* Elphick & Nelson V.S. ¶¶ 169-75, 254-55.

[545] Janke Tr. at 143:6-22 ("[Y]ou said . . . 'the train length will be able to increase as a result of implementing practices that allow Union Pacific to increase its train length.' So my follow-up question to that is, are you personally familiar with what those practices are. A. A couple of examples would be doing a work event while en route. Another example would be doubling out of a yard to build a bigger train. Q.

Similarly, Applicants simply assert that they will "use their combined expertise to improve NS's injury rate to match UP's, and improve UP's derailment rate to match NS's,"[546] resulting in an estimated synergy of $15.6 million,[547] without any evidence that either of those goals is achievable.[548] A defensible projection would identify the practice said to cause each difference, establish transferability, quantify implementation time and cost, and control for traffic mix, train miles, work hours, terminal configuration, geography, weather, asset condition, and reporting periods. Applicants do not make that showing.[549]

Applicants further assert that applying UP's "proprietary set of principles and processes" for procurement to NS's procurement spend would result in $100.5 million in annual savings.[550] To reach this number, Applicants [redacted][551] This calculation is arbitrary and simply assumes, counterfactually, that NS was not itself using its own techniques to analyze and reduce procurement spend on an annual basis. And even if this calculation were valid, it is not a merger-specific public benefit, as (a) if the benefit did exist, it

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And are you aware of any reason why NS couldn't be implementing those practices now, absent a merger. [Objection] A. I don't know.").

546 Rev. App. 1-508 (Janke Second Errata V.S. ¶ 40).

547 Rev. App. 2-807 to -08.

548 Clements V.S. ¶¶ 123-24.

549 Clements V.S. ¶¶ 123-26.

550 Rev. App. 1-511 (Janke Second Errata V.S. ¶ 51).

551 Rev. App. 1-511 (Janke V.S. Second Errata ¶ 51); *see also* Rev. App., Janke Workpaper "Synergies Transportation - Operating.xlsx," Tab "WAVE Capital Summary," Cell G17.

would be a private benefit, not a public one, and (b) there are many other ways short of a merger that NS could simply improve its procurement processes.[552]

3. There Is No Showing That the Claimed Operating Expense Savings Could Not Be Achieved Without a Merger Through Ordinary-Course, Arm's-Length Benchmarking and Best Practices

Even if certain of Applicants' operating expense savings and synergies could be achieved in the merger, Applicants have not shown that they could not also be achieved through some means short of a merger.[553] In particular, the $77 million in annual synergies attributed to sharing of "best practices," if achievable, could be pursued through arm's-length benchmarking, technology licensing, consulting, implementation assistance, and targeted agreements.[554]

Common ownership is not required for one railroad to deploy software developed by another. As Mr. Clements explains, CP used a crew-management tool developed by UP for years, and CPKC's current operating system was built on the foundation of an NS operating system to which CP acquired rights more than two decades ago.[555] Further, UP has itself sought to license NetControl to other railroads.[556] That willingness raises the question as to why NS could not obtain access through a licensing arrangement rather than a merger. If NS evaluated NetControl and chose not to license it, that decision would raise questions about whether

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552 *See* Clements V.S. ¶¶ 125-126.

553 *Major Merger Rules*, 5 S.T.B. at 559 (requiring applicants to address "whether the particular merger benefits upon which they are relying could be achieved by means short of merger").

554 *See* Clements V.S. ¶ 122.

555 *See* Clements V.S ¶ 119.

556 *See* Pat Foran, *How information technology helps connect the strategic dots at Union Pacific Railroad*, PROGRESSIVE RAILROADING (June 2013) (UP provided NetControl to FXE to support interline connections with that railroad).

imposing the system on NS through the merger would entail costs or operational disadvantages not fully disclosed in the Revised Application.

The same issue arises with other claimed operational improvements. Remote-control locomotive operation is mature, industry-wide technology that NS can deploy through its own operating, training, labor, and investment decisions.[557] Both UP and NS also already possess mobile-gating systems, UPGo and ExpressNS. Applicants' proposed projects to connect, integrate, expand, and implement identified systems can be specified and contracted without eliminating either railroad. Best practices likewise could be transferred through benchmarking, consulting, implementation assistance, and targeted agreements.[558]

Likewise, Applicants claim that the merger will reduce the number of intermodal boxes that are currently trucked or drayed at interchange locations from one ramp in a city to a second ramp and are placed on an outbound train, resulting in $26.4 million in annual savings.[559] But these are operational choices that UP and NS choose to make today for their own convenience, and this practice could be changed without the merger. Thus, their elimination is not a public benefit.

B. Applicants' Asserted "Personnel" and "Technology" Savings Affirmatively Undermine the Public Benefits Case for the Merger

UP has estimated that the total number of management positions at NS will shrink from 4,174 to 3,316 because of the merger.[560] This sharp 21% decline of NS management positions, with 13% expected to occur in the first year, is inconsistent with Applicants' growth claims. In

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557 *See* Clements V.S ¶ 121.

558 *See* Clements V.S ¶ 122.

559 *See* Rev. App. 1-505 (Janke Second Errata V.S. ¶ 30).

560 Rev. App. 1-529 (Perkes V.S. ¶ 10, Table 1).

particular, Applicants' planned 25% reduction in "non-operating" management, which would include Marketing and Sales personnel, appears incompatible with the explosive growth UP claims from the merger, which relies on the combined UP-NS selling shippers on switching from truck to the combined company's single-line services.

Applicants also claim $131 million in savings from reductions in "Agreement Personnel" (i.e., unionized workers).[561] Applicants provide that they will relocate employees to other opportunities, "which will also help protect Applicants' ability to handle anticipated traffic increases during the three-year period following the merger."[562] Put another way, absent the growth that Applicants anticipate from truck and rail diversions, the merger will lead to significant reductions in Agreement Personnel that are critical to carrying out operations that meet the needs of rail customers.[563]

Moreover, putting aside what these estimates say about Applicants' views of the feasibility of their growth plans, the Board should not regard further reductions in the UP and NS workforces—particularly train crews and other personnel that are needed to handle UP's and NS's pre-merger traffic levels—as a public benefit. The Board is familiar with the adverse consequences that have resulted from UP's and NS's efforts to run their operations in too lean a fashion.[564] In EP 770, the Board noted that UP and NS themselves identified labor shortages as the primary cause of their service problems and acknowledged that rebuilding sufficient workforces would take time.[565] The Board subsequently criticized NS's assurances about

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561 Rev. App. 1-120 (Janke Second Errata V.S. Appendix B, Summary of Benefits Exhibit).

562 Rev. App. 1-541 (Parkerson Second Errata V.S. ¶ 9).

563 Clements V.S. ¶ 129-130.

564 Clements V.S. ¶ 130.

565 *See Urgent Issues in Freight Rail Service—Railroad Reporting*, EP 770 (Sub-No. 1), (STB served May 6, 2022) at 3.

adequate staffing in light of its failure to handle post-pandemic demand despite earlier assurances to the contrary.[566] The Board's investigation of UP's embargoes provides a further caution. UP imposed more than 1,000 congestion embargoes in 2022—nearly ten times as many as any other railroad—and itself attributed its increased use of embargoes to crew shortages.[567] Against that history, Applicants cannot establish a public benefit merely by projecting lower labor costs.

Applicants' claimed $150 million in "technology savings" attributable to "rationalizing" and "consolidating" software development expenses and license agreements is also not in the public interest.[568] In CPKC's experience, it would be a mistake to equate decreased technology spending with public benefit. The relevant question is not simply whether the combined carrier saves money but whether combination achieves better safety, service, reliability, and cybersecurity outcomes.[569] Those estimates reflect Applicants' intention to pursue a single path of investment in technology solutions, as opposed to the but-for world where each firm would continue to invest separately in innovation. That loss of innovation optionality is a public harm, not a benefit.[570]

C. Applicants' Other Claimed Benefits Do Not Warrant Approval

We address the claimed "non-quantifiable" benefits from "faster, more reliable, more efficient single-line service" and the benefits to "American workers," "American taxpayers," and

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566 *See Urgent Issues in Freight Rail Service—Railroad Reporting*, EP 770 (Sub-No. 1), (STB served May 6, 2022) at 13.

567 *See Oversight Hearing Pertaining to Union Pacific Railroad Company's Embargoes*, EP 772, (STB served Apr. 17, 2024) at 1-2.

568 *See* Rev. App. 1-503 (Janke Second Errata V.S. ¶ 24).

569 Clements V.S. ¶ 127.

570 Clements V.S. ¶ 128.

the economy as a whole[571] in detail in other Sections of this Comment. (*See* Section II.D.5 & Section IV.) In short, all of these claimed benefits are based on the fundamentally flawed and unsupported premise that a combined UP-NS will yield a more capable network that will be materially better at growing rail traffic than the railroad industry as currently structured. That premise is false. The current U.S. rail network is strong, and there is no shortage of opportunities for Class I railroads to continue to invest in and grow their networks.[572]

D. UP-NS Dis-Synergies Must Be Deducted from Any Claimed Benefits

Finally, in addition to the many, serious harms to competition and the public discussed throughout this Comment, the inevitable result of the greater focus on the coordination of UP's and NS's operations will be to sacrifice the benefits that currently exist throughout the rail network through the many other opportunities for UP and NS to coordinate with other railroads. These tradeoff costs must be deducted from any actual benefits the Board may conclude would flow from a merger of UP-NS.[573]

VIII. THE UP-NS MERGER POSES SERIOUS RISKS OF SERVICE DISRUPTION

The Transaction would expose the Nation's rail network and economy to serious service risks, both during integration and for decades to come. Concentrating so much traffic and operational control in a single carrier would reduce resilience of the entire North American rail network and magnify the consequences of future UP service disruptions. The integration itself would pose an imminent threat of service failures of unprecedented scale, compounded by Applicants' troubled operating histories and an unusable Operating Plan. Their Service

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571 Rev. App. 1-497 (Janke Second Errata V.S. ¶ 7).

572 Clements V.S. ¶¶ 10-13.

573 *See* Elphick & Nelson V.S. ¶ 604.

Assurance Plan provides neither the capacity nor the concrete contingency measures needed to address those risks, and their proposal to concentrate traffic at critical gateways and corridors would create congestion and operational conflicts affecting connecting carriers, passenger services, and shippers far beyond the combined UP-NS network.

A. A UP-NS Network, from Implementation and for the Next 100-Plus Years, Would Pose Systemic Risks to the U.S. Economy

Approving the Transaction and handing UP control over the NS network and unmatched influence over the industry would pose a significant threat to the resilience and operational integrity of the Nation's rail system for the next century or more. Even after the integration process, service disruptions on the combined UP-NS line would be all but inevitable. The UP and NS networks have together seen at least five in the last five years alone. Precisely what the future holds is impossible to know, but in the decades to come a UP-NS network would almost certainly face disruptions from ordinary operational challenges, such as weather, unexpected communications outages, or labor disputes and other workforce shocks, as well as the more serious disruptions that are the product of more catastrophic risks, such as IT failures and cyber security incidents. The risk of such incidents will only increase in the coming decades. For example, between 1980 and 2024, the frequency of weather/climate-related disasters, resulting in losses in excess of $1 billion affecting the United States, has increased dramatically, with no sign this trend is slowing.[574] And with the advent of AI, the likelihood of a major cybersecurity incident continues to rise.

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574 *See* National Oceanic and Atmospheric Administration, *Billion-Dollar Weather and Climate Disasters*, https://www.ncei.noaa.gov/access/billions/state-summary/US (updated Jan. 10, 2025).

While these risks are to some extent inevitable, they will be exacerbated substantially by combining UP and NS. Under the Nation's current rail system, the diffusion of control among six Class I carriers ensures that there exists at least a degree of redundancy in the system. Service disruptions impacting any one of the six can still have a significant impact, but that impact is at least partially mitigated by the option to divert traffic to the other five Class I carriers. Of course, UP's plan to further "optimize" resourcing on NS's network will only reinforce the reduction in network resiliency resulting from the UP-NS merger.[575]

The Transaction, if approved, would place outsized control of the Nation's rail network in the hands of a single company. The Transaction would restructure the national freight infrastructure in a way that reduces redundancy, amplifies single-point failures, and creates systemic risks for shippers, passenger and commuter rails, and intra- and intermodal service providers.[576] A UP-NS failure would not stop at the merged carrier's property line. BNSF, CSXT, CPKC, short lines, ports, and passenger operators exchange traffic with it or use common gateways and terminals. They would confront missed interchanges, equipment imbalances, congestion from held or diverted traffic, and demands to absorb emergency volume.[577] This risk will be exacerbated still further if, as seems inevitable, the UP-NS merger leads to further responsive consolidation that leaves just two transcontinental rail carriers in the U.S. (*See* Section XIII.) The resulting concentration of so much of the Nation's transportation infrastructure in just two companies would create an unprecedented and unacceptable degree of systemic risks for the Nation's economy.

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575 Clements V.S. ¶¶ 60, 62-66.

576 Clements V.S. ¶¶ 51, 62, 84.

577 Clements V.S. ¶ 62, 84.

B. Implementation of the Transaction Poses Material Risks of Catastrophic Service Failures

The Transaction would expose shippers and the national rail network to integration risks of unprecedented scale. Applicants have a track record of poor service—both in the context of their prior merger integrations and their steady-state operations—and Applicants provide no reason to believe this time around, when the stakes are even higher, would be any different. Their Operating Plan provides no credible basis to conclude that the combined system could handle either existing traffic or the growth they project. With so much of the Nation's rail traffic dependent on the combined network, failures could spread well beyond Applicants' own lines, disrupting connecting carriers and the supply chains of shippers who have no practical alternative.

1. The Unprecedented Magnitude of This Integration Means There Is No Precedent for a "Smooth" Integration

UP and NS are not known for effective integration planning and execution. Indeed, a significant motivation behind the Board's adoption of the current Major Rail Consolidation Procedures was "the significant service disruptions" that occurred in the wake of Applicants' previous Class I mergers in the 1990s.[578] Among the most prominent examples of the botched integration efforts was the 1996 merger between UP and Southern Pacific Transportation Company (SP). The Board described the testimony on these issues at the hearing prior to the adoption of the Major Rail Consolidation Procedures, as follows:

> "Rail mergers are pursued to increase efficiency and to improve service. At least at the beginning, however, service disruptions have accompanied the implementation of recent large mergers, and many shippers have experienced substantial adverse impacts in connection with the last round of mergers, beginning with the

[578] *See* Major Merger Rules, 5 S.T.B. at 545.

> combination of the BN and SF systems, proceeding with the UP acquisition of the Southern Pacific (SP) system, and ending with the acquisition and division of Conrail by CSX and NS. The overwhelming testimony at our hearing indicated that the shipping public has still not recovered from those disruptions. Shippers described the problems that they faced, and that many continue to face, as a result of their inability to obtain reliable service. Railroad chief executive officers (CEOs) involved in the last round of mergers testified how difficult merger implementation can be, even with the best planning and with the experiences of prior mergers to guide them."[579]

NS's own experience integrating Conrail provides a further warning. After NS began operating its portion of Conrail in June 1999, integration difficulties produced congestion, longer terminal dwell, and slower movement across its system. NS acknowledged that these failures increased operating expenses and drove some customers to divert traffic to other transportation modes—the opposite of the truck-to-rail conversion Applicants promise here.[580]

Despite this fraught history, and despite the fact this Transaction would be the largest rail merger in history, Applicants dismiss such concerns, believing their modern operational methods will solve any such issues.[581] This is unfounded hubris. No matter how well-planned the integration, combining two massive complex transportation logistics companies such as UP and NS is bound to result in problems. And, as explained below, Applicants' plan here is notably poor and underdeveloped.

2. UP and NS Have Decidedly Poor Track Records, Both in the Merger Setting and During Steady-State Operations

Before even considering the Operating Plan and Service Assurance Plan, UP's and NS's operational track record does not inspire confidence. As illustrated by Figures 55 and 56 below,

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579 *Public Views on Major Rail Consolidations*, 4 S.T.B. at 549-550.

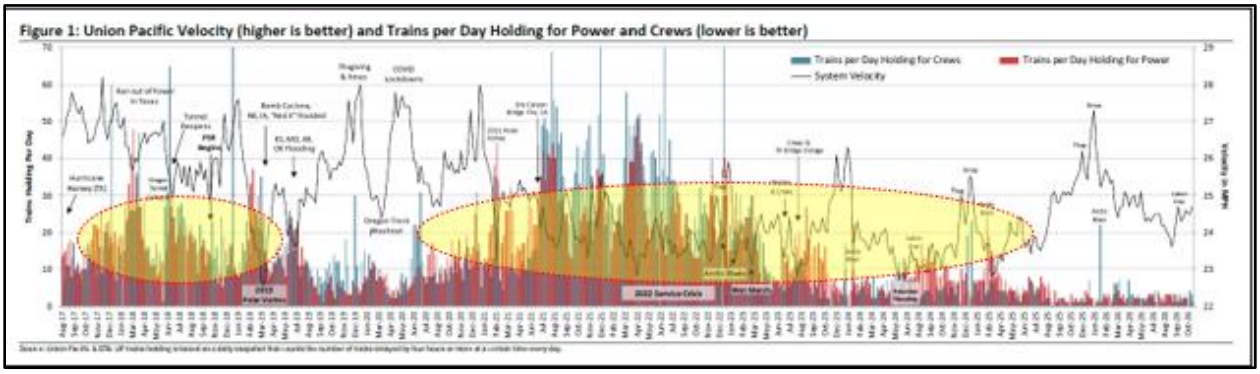
580 Norfolk Southern Corp., 2000 Q1 Form 10-Q, at 15.

581 Rev. App. 1-237 to -38 (Vena V.S. ¶¶ 63-66).

UP has had at most a three-year period of steady network performance under its belt, with repeated disruptions preceding that time frame:

FIGURE 55

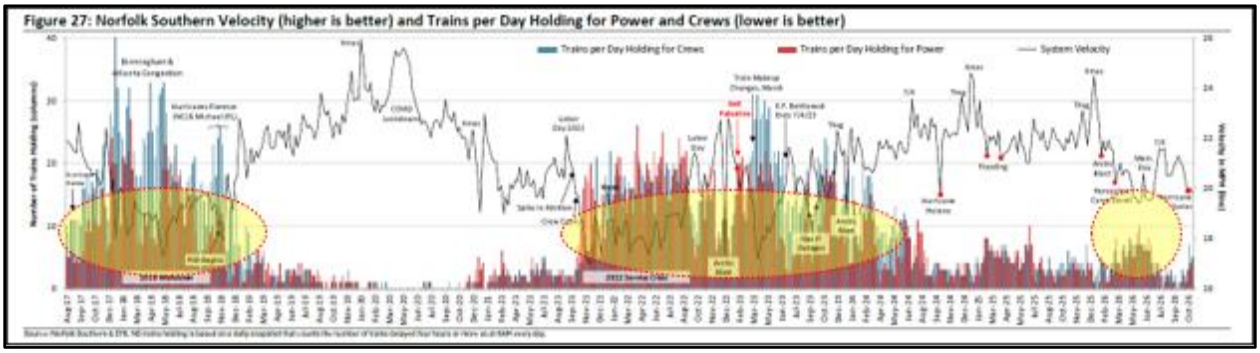
CLEMENTS FIGURE 4: UP NETWORK-WIDE VELOCITY SINCE 2017[582]



NS's pattern of service performance is no more reassuring (and as noted in Section III.A, was [redacted]

FIGURE 56

CLEMENTS FIGURE 5: NS NETWORK-WIDE VELOCITY SINCE 2017[583]



Jim Vena and UP have been dismissive of industry concerns that history could repeat itself with UP-NS, suggesting that technological and operational advances that have happened

582 Rick Paterson, *The State of the Rails*, 5 (Nov. 6, 2026).

583 Rick Paterson, *The State of the Rails*, 21 (Nov. 6, 2026).

over the past three decades will prevent UP-NS from experiencing the kind of service disruptions that resulted from mergers "that happened 30 years ago."[584] UP's internal documents [redacted][585] This sort of hubris is unwarranted. As Mr. Clements explains, UP's experience implementing NetControl does not provide any assurance that UP's absorption of NS will go smoothly. That was a decade-long upgrading of multiple UP systems carried out in baby steps. CPKC's experience is more relevant. CPKC's implementation of legacy-CP operating software and tools on the KCS's network in 2025 caused significant disruption, and KCS's network was orders of magnitude simpler than the NS network where UP plans to impose UP systems.[586]

Just one decade ago UP's then-Assistant VP of Network & Capital Planning, Tom Haley, was raising a somewhat different but equally germane alarm about impacts of reciprocal switching that could disrupt terminals across UP's network that were at or near capacity and reminding the Board of UP's own "[h]arsh experiences from the past [that] have demonstrated how quickly congestion in one terminal can spread and disrupt service in other parts of the

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584 *See* Union Pacific, Press Release, *Union Pacific Shares Vision, Sets Record Straight at Midwest Association of Rail Shippers Winter Meeting* (Jan. 15, 2026), https://www.up.com/press-releases/growth/setting-record-straight-260116 ("Opponents say mergers in the rail industry lead to service disruptions, citing as evidence a merger that happened 30 years ago. This argument ignores the massive technology investments and advances that have transformed railroad operations over the last three decades.").

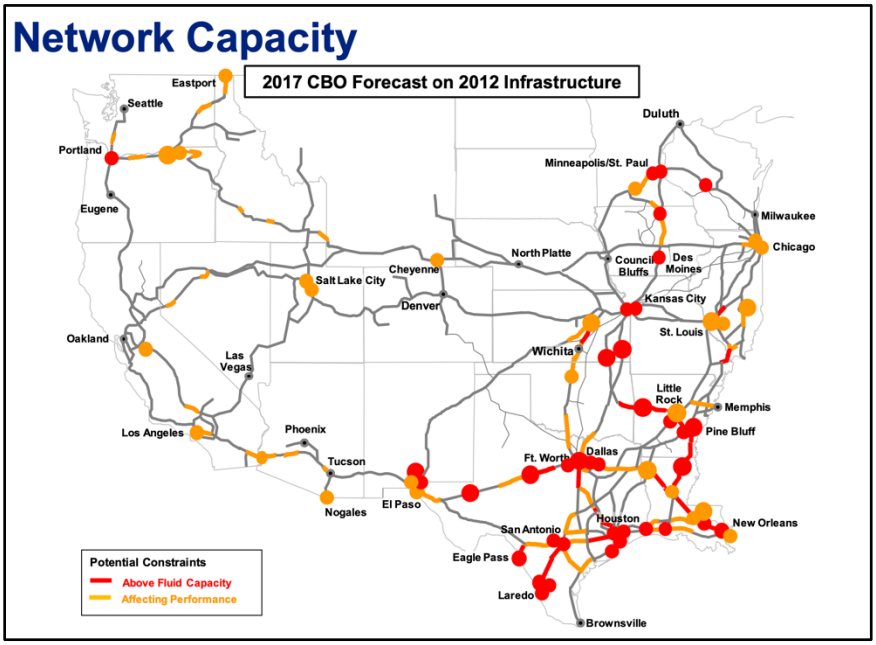
585 [redacted]

586 Clements V.S. at ¶¶ 70-79.

network."[587] Mr. Haley's 2014 portrayal of UP's anticipated "network capacity" in 2016 suggested an extremely fragile network that would collapse with any unplanned disruption.[588]

FIGURE 57

APPLICANTS' NETWORK HAS LONG OPERATED WITH LITTLE BUFFER[589]



Based on Mr. Haley's testimony and knowledge of the fragility of UP's network, UP warned of "service meltdowns." Specifically, it contended that shipper optionality associated with potential reciprocal switching and the resulting interchange obligations would mean that UP "could not predict precisely when or where meltdowns would occur—but they are a foreseeable

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587 *Reciprocal Switching,* UP Opening Comments and Evidence, Docket No. EP 711 (Sub-No. 1) (filed Oct. 26, 2016), Haley V.S. at 6.

588 Hearing Presentation of Tom Haley, UP Assistant VP Network & Capital Planning, Docket No. EP 711 (Sub-No. 1) (Mar. 26, 2014), at 6.

589 Hearing Presentation of Tom Haley, UP Assistant VP Network & Capital Planning, Docket No. EP 711 (Sub-No. 1) (Mar. 26, 2014), at 6.

consequence of promoting the use of forced switching, and once such disruptions occur, they can spread quickly, and they take a long time to bring back under control."[590]

Applicants' assurances also overlook concerns about whether Mr. Vena's management approach is suited to an integration of this complexity. An assessment [redacted][591] Those concerns bear directly on an integration whose success would depend on sustained coordination with employees, customers, and connecting carriers.

When it comes to perhaps the most significant operational change in recent memory, the adoption of PSR, neither UP nor NS has offered anything like a good model to follow. For example, in 2022 UP issued over 1,000 embargoes due to congestion on its network, which the Board found "was nearly ten times as many embargoes as any other railroad."[592] The Board eventually found that excessive cost-cutting had left UP with insufficient resources to keep up with demand.[593] And in the order closing the proceeding, the Board noted that, notwithstanding UP's improvements, the number of "congestion embargoes issued by UP in 2023 still exceeded the number issued by all the other Class I railroads combined."[594]

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590 *Reciprocal Switching*, UP Opening Comments and Evidence, Docket No. EP 711 (Sub-No. 1) (filed Oct. 26, 2016) at 45 (citing Haley V.S. at 16).

591 UP_2918062 at -077.

592 Oversight Hearing Pertaining to Union Pacific Rail Company's Embargoes, Docket No. EP 772 (STB served April 17, 2024) at 1.

593 *Id.* at 3-6.

594 *Id.* at 6.

3. The Operating Plan Upon Which All of Applicants' Planning and Capacity Analysis Is Based Will Not Work in the Real World, Putting The Whole Rail Network At Risk

As discussed above in Section VI, the Operating Plan that Applicants have presented will not work in the real world. Applicants' Base Plan model upon which Applicants build on for their Optimized and Growth Plans, and against which Applicants purport to measure merger-related improvements, contains pervasive errors and simplifying assumptions that make no sense in the real world. (*See* Section VI.A.) Applicants' Optimized Plan then layers on unrealistically over-optimized baseline train speeds, train lengths, block swaps, yard workloads, and traffic volumes that Applicants cannot achieve under real world conditions. (*See* Section VI.B.) Applicants' Growth Plan, which purports to include the traffic they expect to attract through merger-related service improvements is similarly fanciful and circular. (*See* Section VI.C.) And in any case, the Operating Plan was created solely for purposes of obtaining the Board's approval: it has not been validated internally, is not connected to Applicants' real post-merger commercial planning, and therefore does not reflect the trains Applicants actually expect to run. (*See* Section IV.B.)

Applicants' Operating Plan is a mess. The Board should have real concern that Applicants have no idea how they would run a combined UP-NS system if the merger is approved.

C. Applicants' Service Assurance Plan Is Too Generalized to Cure the Deficiencies in the Operating Plan or Protect Against Service Disruption

A Service Assurance Plan must identify the "precise steps" necessary to ensure that projected service levels are attainable, explain with "reasonable precision" how the operating efficiencies translate into public benefits, identify potential areas of degradation, and establish

concrete contingency plans based on actual resources, traffic flows, and density.[595] Applicants have not done that. Rather than present a plan that addresses the specific operational weaknesses in their Operating Plan, Applicants merely pay lip service to the need for excess capacity to prevent service disruptions, perform a crude calculation of a daily standing capacity at each train yard, and assert that because most—though not all—yards report average daily volumes below these calculated capacities, the Optimized and Growth Plans are feasible.[596] This overly simplistic calculation misses many pertinent factors that impact real-world train and yard performance.[597]

Applicants' Service Assurance Plan encompasses two components: (1) a change management process intended to mitigate the scope for adverse outcomes before Applicants implement merger-related service changes; and (2) contingency plans to address significant disruptions at specific locations.[598] These components will not cure the deficiencies in the Operating Plan or provide adequate assurance against service disruption.[599]

Applicants' proposal to monitor performance at key corridors and yards and subject operating changes to a change-management process before implementation is a sensible one, but those are also the kinds of reviews that should be completed *before* an operating plan is relied upon to establish merger benefits and assess service risk.[600] Applicants' proposal to validate and, where necessary, revise service changes following approval of the Transaction underscores that

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595 49 C.F.R. § 1180.10.

596 *See* Elphick & Nelson V.S. ¶¶ 548-554.

597 *See* Elphick & Nelson V.S. ¶¶ 549-553; *see also* Clements V.S. ¶¶ 85.

598 *See* Elphick & Nelson V.S. ¶ 548; Rev. App. 2-862 to -63 (Turner Second Errata V.S. ¶¶ 25-27).

599 *See* Elphick & Nelson V.S. ¶¶ 12, 548.

600 *See* Elphick & Nelson V.S. ¶¶ 12, 250-251, 594; Rev. App. 2-859 to -63, -67, -69 (Turner Second Errata V.S. ¶¶ 18-28, 35, 40).

the Operating Plan filed with the Board has not yet undergone the operational review necessary to establish executability.[601]

Applicants' contingency plan is too general and lacks the detail necessary to explain how the combined railroad would respond when particular yards become congested, trains exceed planned lengths, traffic develops differently than forecast, or ordinary disruptions propagate through the network.[602] Applicants' Operating Plan regularly places train yards over capacity.[603] Applicants' capacity calculations rely exclusively on average day performance throughout the year, ignoring daily volume variability.[604] Applicants thus have no plan for how they will adjust their operations to accommodate ordinary operating variability due to changes in customer demand throughout the week, seasonality, inclement weather, mechanical issues, crew and locomotive availability, delayed connecting trains, or other factors that cause real-world operations to routinely differ from the Operating Plan, aside from generalized assurances that they will maintain a "buffer" of operational capacity.[605] But the Operating Plan does not have a sufficient "buffer." And the contingency plans in Applicants' Service Assurance Plan do not solve their overcapacity issue; they simply shift traffic around in ways that would then overburden other facilities that are already at or near capacity.[606]

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601 *See* Elphick & Nelson V.S. ¶¶ 12, 250-253.

602 *See* Elphick & Nelson V.S. ¶¶ 12, 591.

603 *See* Elphick & Nelson V.S. ¶¶ 555-559.

604 *See* Elphick & Nelson V.S. ¶¶ 550-552, 560; *see* Barr Tr. at 325:8-12 [redacted]

605 *See* Elphick & Nelson V.S. ¶¶ 552, 554.

606 *See* Elphick & Nelson V.S. ¶¶ 554, 570-575.

1. Applicants' Claimed "Buffer" Is Insufficient to Prevent Disruption

Applicants claim that post-merger they will maintain a "buffer" of operational capacity and resources.[607] However, what they propose is insufficient to ensure service disruptions will not occur.[608]

Maintaining excess capacity beyond what is utilized is normal practice in the railroad (or any) industry that all major carriers employ to varying degrees.[609] Indeed, many of the buffer assets described in the Service Assurance Plan are already owned and employed by UP or NS. Despite having these assets, UP and NS have experienced service disruptions because insufficient resources left them with too little capacity to absorb fluctuations or recover from disruptions.[610] For example, in the first half of 2026, NS's network velocity fell from more than 24 mph to 19 mph, and NS's existing buffer did not stop a slide into "dangerous territory that could lead to a meltdown."[611] Similarly, Applicants ignore implications of their plans for extensive NS management layoffs, which could very likely disrupt Applicants' ability to effectively deploy buffer resources to NS's network in a timely manner.

Applicants have not demonstrated the buffer they propose will be adequate in either size or structure to address potential issues. This is particularly true because the "buffer" resources are, as Applicants seemingly acknowledge, designed to address *temporary* service issues that may occur.[612] However, the issues with the Operating Plan go beyond the occasional, episodic

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607 *See* Rev. App. 2-1011 to -1017 (Turner Second Errata V.S. ¶¶ 351-372).

608 *See* Elphick & Nelson V.S. ¶¶ 555-557, 570.

609 *See* Elphick & Nelson V.S. ¶ 556.

610 *See* Clements V.S. ¶¶ 63-66.

611 Bill Stephens, *Norfolk Southern Begins to Reverse Network Slowdown*, Trains (June 9, 2026), https://www.trains.com/pro/freight/class-i/norfolk-southern-begins-to-reverse-network-slowdown/.

612 *See, e.g.*, Rev. App. 2-1012 (Turner Second Errata V.S. ¶ 353) (describing Applicants' main lines' ability to absorb "temporary fluctuations"); *id.* at ¶ 355 (listing a hurricane-related disruption as example);

disruption.[613] Applicants' Operating Plan regularly places yards over-capacity.[614] For example, North Little Rock is modeled at 2,334 cars per day against a stated capacity of 2,350, leaving available capacity of only 16 cars per day; Livonia is modeled at 2,034 cars per day against a stated capacity of 2,040, leaving available capacity of only 6 cars per day; and Gateway Yard is modeled at 2,147 cars per day against a stated capacity of 2,160, leaving an available capacity of only 13 cars per day, though a close examination of Applicants' train plan suggests it might actually be *over* capacity by over 100 cars per day.[615]

As these examples demonstrate, once the Growth Plan is layered on, excess capacity is even more narrow or disappears entirely on select days of the week.[616] A yard that regularly exceeds capacity throughout the week will likely spend the subsequent days catching up or will need to rely on neighboring facilities to pick up the excess volume.[617] Yet, Applicants do not present a feasible plan to accommodate these regular spikes in volume.[618] To illustrate the scope of this problem, in Figure 133 of their Verified Statement, Elphick and Nelson mapped key facilities throughout the UP and NS networks, showing their average daily utilization as a percentage of their modeled capacity in the Growth Plan. This map, reproduced as Figure 58, below, reveals that [redacted]

id. at ¶ 357 ("The buffer can be used to absorb *temporary* increases in terminal activity without disrupting operations" (emphasis added)); *id.* at ¶ 361 ("Applicants also have a variety of tactical strategies they can employ to respond to short-term, unexpected surges in demand for train crews using their current workforce.").

613 *See* Elphick & Nelson V.S. §§ III-VI.

614 *See* Elphick & Nelson V.S. ¶¶ 555-557.

615 *See* Elphick & Nelson V.S. ¶¶ 557-558.

616 *See* Elphick & Nelson V.S. ¶ 559.

617 *See* Elphick & Nelson V.S. ¶ 560.

618 *See* Elphick & Nelson V.S. ¶¶ 554-557, 590.

[redacted][619]

FIGURE 58

ELPHICK & NELSON FIGURE 133: MAP OF AVERAGE DAILY UTILIZATION AT KEY MANIFEST YARDS, GROWTH PLAN



As shown in Figure 134 of the Elphick and Nelson Verified Statement, reproduced below as Figure 59, Applicants have the same problem with their intermodal network, where [redacted][620]

619 *See* Elphick & Nelson V.S. ¶¶ 571-572.

620 *See* Elphick & Nelson V.S. ¶ 573.

FIGURE 59

ELPHICK & NELSON FIGURE 134: MAP OF AVERAGE DAILY UTILIZATION AT KEY INTERMODAL TERMINALS



2. Applicants' Contingency Plans Do Not Address Most Facilities and Would Spread Rather than Solve Any Problems They Encounter

As a solution to capacity limitations at certain (but not most) facilities, Applicants' plans consider asking other facilities to do more work, shifting traffic elsewhere.[621] But that approach only works if the alternate yards have sufficient unused capacity at the same time the primary facility is disrupted and can physically perform the type of work being transferred; otherwise, those alternate yards will themselves be overtaxed.[622]

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621 *See* Rev. App. 1-1013, -023 (Turner Second Errata V.S. ¶¶ 358, 384).

622 *See* Elphick & Nelson V.S. ¶ 570.

A contingency plan that redirects traffic from an oversubscribed yard to another yard already operating near its own limit risks transferring the congestion rather than resolving it.[623] That problem is particularly serious on an integrated network because the same alternate facility may be expected to support more than one corridor or more than one contingency at the same time.[624] For example, [redacted]

[623] *See* Elphick & Nelson V.S. ¶ 574.

[624] *See* Elphick & Nelson V.S. ¶ 574.

FIGURE 60

APPLICANTS' PLANNED BACK UP YARDS HAVE LITTLE CAPACITY THEMSELVES



This problem is not limited to [redacted] A deeper look at the designated buffer resources for the [redacted] demonstrate that, contrary to Mr. Turner's assertions, [redacted][625]

Figures 135 and 136 of the Elphick and Nelson Verified Statement, reproduced below as Figures 61 and 62, show similar capacity issues at Chicago and St. Louis, respectively.

[625] *See* Elphick & Nelson V.S. ¶¶ 574-575.

FIGURE 61

ELPHICK & NELSON FIGURE 135: AVAILABLE CAPACITY IN MR. TURNER'S CONTINGENCY PLAN FOR CHICAGO



FIGURE 62

ELPHICK & NELSON FIGURE 136: AVAILABLE CAPACITY IN MR. TURNER'S CONTINGENCY PLAN FOR ST. LOUIS



Moreover, Applicants do not even have a dedicated contingency plan for the majority of the yards on their manifest network, including several of the critical yards identified above as being [redacted][626] Thus, Applicants have no solution at all if any of those facilities exceed their modeled daily capacity.

The result of these shifting workloads, and the service disruptions they cause, is a cascading outward expansion of service problems that risks extending well beyond the UP-NS network, much like the expansion of UP/SP service problems, which originated in Houston, but eventually rippled out to affect service across the western region from Southern California to Nebraska.

3. Applicants' Service Assurance Planning Completely Ignores the Effects of IT Cut-Over-Related "Fog"

A railroad operating plan comprises a complicated set of interdependent resource cycles, beyond a mere collection of schedules.[627] A change in one location affects yard inventories, crew starts, locomotive and car cycles, maintenance windows, interchange commitments, and customer systems elsewhere.[628] Those interactions unfold against traffic, weather, and infrastructure conditions that do not remain fixed.[629] That is the "fog of integration": even a detailed plan cannot predict every interaction once thousands of daily operating decisions begin changing at the same time.[630]

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626 *See* Elphick & Nelson V.S. ¶ 572.

627 Clements V.S. ¶ 72.

628 Clements V.S. ¶ 72.

629 Clements V.S. ¶¶ 59-60, 66.

630 Clements V.S. ¶ 72.

CPKC's experience with the integration of CP and KCS illustrates the overly optimistic nature of Applicants' service assurance planning. CP and KCS had many structural advantages over Applicants when going into their integration process: the organizations were smaller, the combination was fully end-to-end, and *CP/KCS* had a successful operational track record.[631] UP and NS would have to successfully integrate a network more than five times the size of CPKC's U.S. network.[632] Further, CPKC took its time when it came to integration of essential systems, waiting two years from the date the transaction closed to execute its IT systems cutover.[633] Despite all of this, unforeseen IT challenges and operational roadblocks resulted in service disruptions throughout CPKC's network.[634]

CPKC's experience with the integration process, which is in line with our understanding of what went so badly wrong in *UP/SP*, *Conrail*, and even *UP/CNW* before that, is that the key issues are not limited to potential capacity constraints, but also a loss of visibility and ability to see and understand clearly what steps are needed to make things better rather than worse.[635] Planning is not the same as assurance.[636] In *Conrail*, for example, the Board found that severe service problems persisted for a year or more despite substantial planning with the Board and FRA and carefully phased and delayed implementation.[637]

Applicants' Service Assurance Plan fails to appreciate this lesson. Taking IT as an example, the Service Assurance Plan focuses on the technology systems that will be used,

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631 Clements V.S. ¶ 74.

632 Clements V.S. ¶ 74.

633 Clements V.S. ¶ 69.

634 Clements V.S. ¶¶ 70-72, 74.

635 Clements V.S. ¶¶ 60-61, 71-74, 85.

636 Clements V.S. ¶¶ 61, 73, 88.

637 Clements V.S. ¶ 61.

describing the timeline for adoption of a unified set of technologies or touting UP's "state-of-the-art" NetControl transportation management software.[638] However, CPKC's experience shows that systems can be available and working as designed at cutover while data-integrity problems and differences in employee adoption impede operations.[639] Applicants have not identified which applications would follow each proposed integration path or provided sufficient application-by-application detail on target platforms, decision criteria, timing, data reconciliation, or acceptance and reversal procedures.[640] In this regard, Applicants' apparent plan to begin integrating crucial IT systems within a matter of months of the close of the transaction is overly optimistic and will likely result in operational disruption.

D. The Transaction Will Cause Congestion and Operational Inefficiencies at Key Rail Network Nodes

Applicants project that the Transaction will dramatically increase traffic density on a number of UP and NS routes. In particular, Applicants plan to add or reroute traffic through several already-complex gateways and corridors that serve not just UP and NS, but also CPKC and other railroads. As explained in the Verified Statement of CPKC's Chief Operating Officer, Mark Redd, and in Part II of CPKC's Comments in this proceeding, this increased traffic density will be particularly acute in five key areas:

- *The Kansas City Terminal*: Applicants propose dramatic changes in the way they operate at the vital Kansas City Gateway, the second largest rail terminal in the United States, and a critical artery for rail traffic moving through the watershed

638 *See* Rev. App. 2-943 to -952 (Turner Second Errata V.S. ¶¶ 164-195).

639 Clements V.S. ¶¶ 71-72.

640 Clements V.S. ¶¶ 79-80.

region.[641] Applicants plan to both increase the volume of traffic moving between UP and Legacy-NS via the Kansas City gateway and shift that traffic to a new route that would conflict directly and substantially with key routes upon which CPKC and others rely. They also propose to add the complexity of an additional Class I carrier serving Kansas City—CN—whose operations would be imposed on the precise geography where UP-NS would be adding congestion.[642]

- *Houston, TX-DeQuincy, LA Corridor*: CPKC, BNSF, and UP depend on efficient and fluid operations (i) through the Houston Terminal and between Houston, TX and Beaumont, TX (where Amtrak's *Sunset Limited* also operates), and (ii) from Beaumont, TX northeast toward DeQuincy, LA, or southeast toward Iowa Junction and Livonia, LA.[643] Applicants project that the merger will add six additional trains per day between Houston and DeQuincy and across the Neches River Bridge.[644] The resulting congestion, especially at Beaumont between the confluence of UP's Beaumont and Houston Subdivisions and CPKC's Neches River Bridge, could materially degrade the performance of CPKC and other trains operating on these lines. Applicants propose no new infrastructure to address their proposed traffic increases.[645]

- *Meridian, MS*: Were the Board to approve the merger, Meridian, MS would be a major crossroads in the UP transcontinental network. Applicants' internal merger

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641 *See* Redd V.S. ¶¶ 105-112; Elphick & Nelson V.S. ¶ 400.

642 Redd V.S. ¶ 102; CPKC Comments Vol. II § VIII.F.1.

643 Redd V.S. ¶ 118.

644 Redd V.S. ¶ 119.

645 Redd V.S. ¶ 116; CPKC Comments Vol. II § VIII.B.6

analyses [redacted][646] At the same time, Meridian is also vital to CPKC's operations, as well as those of shortlines MNBR and Meridian Southern Railway.[647] Applicants propose to add 8-10 new trains per day through Meridian, but almost no new infrastructure investments or operational changes to address the additional congestion that would result.[648] The impacts of the new operations Applicants contemplate could be severe, and would be borne disproportionately by CPKC, Amtrak, and others rather than by UP-NS.[649]

- *The Chicago Terminal*: As Applicants acknowledge, Chicago is "the busiest gateway in the United States."[650] Because Chicago is the principal interchange point connecting the major eastern, western, and Canadian railroads—and handles roughly one-third of U.S. rail freight—operational disruption affecting the Chicago gateway poses a serious threat to the health of rail operations across the entire Continent.[651]

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646 *See* [redacted]

647 Redd V.S. ¶ 126.

648 *See* Rev. App. 2-908 to -10 (Turner Second Errata V.S. ¶ 91).

649 *See* Redd V.S. ¶ 128; Comments Vol. II § VIII.D.1.

650 Rev. App. 2-678 (Gehringer & Barr Second Errata V.S. ¶ 153).

651 Redd V.S. ¶ 138; Creel V.S. ¶ 10.

Applicants plan massive changes to rail operations in Chicago.[652] The risks of disruption in the Chicago area are enormous and will be heightened by the fact that the interests of a post-merger UP in a well-functioning gateway will be greatly attenuated by their ostensibly non-merger deal to route trains via CN's EJ&E bypass route.[653]

- *The New Orleans Gateway*: Applicants plan significant but somewhat opaque changes to operations in the New Orleans gateway, including a partial shutdown of NS's Oliver Yard.[654] Applicants claim that they will improve fluidity on the Back Belt route connecting the Huey P. Long Bridge with NS's New Orleans-Birmingham line by discontinuing UP-NS interchange that occurs there and by shifting BNSF-NS interchange to Avondale Yard on the west side of the Mississippi River.[655] With the reconfiguration, CSXT and CPKC will continue to lack the rights necessary to interchange directly with one another.[656]

IX. THE TRANSACTION WILL, BY DESIGN, DISMANTLE THE INTERLINE RAIL NETWORK THAT HAS SERVED AMERICA WELL FOR 200 YEARS

The inevitable service disruptions resulting from UP-NS will not be the only cataclysmic outcome of this merger. By its very design, the Transaction would redirect an interconnected rail *network* built on neutral gateways and interline cooperation among independent railroads toward a UP-centered system whose operating and commercial priorities would displace existing

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652 Redd V.S. ¶ 139.

653 Redd V.S. ¶ 139; Creel V.S. ¶ 10; Comments Vol. II § VIII.I.1.

654 Redd V.S. ¶ 150.

655 Redd V.S. ¶ 146.

656 Redd V.S. ¶ 152; Comments Part II § VIII.C.1.

interline services. Robust interchange cooperation is in tension with UP's operating philosophy and with the future of the national rail network that UP contemplates. If this Transaction is approved, UP-NS would realign traffic and curtail coordination to favor its new end-to-end routes, degrading the services provided by others through interline cooperation with the legacy-UP or legacy-NS networks. Although UP-NS would still need to interchange some traffic, the services and facilities that support those operations will atrophy over time, causing the (gradual, if not immediate) degradation in interline services that customers have taken for granted for decades. The Transaction would also give UP unprecedented influence over the joint ventures and terminal railroads that would undermine the future of interline competition.

A. Make No Mistake: The Notion of UP Interchange with Other Rail Carriers Except When Essential to Complete a Move Will Be Incompatible with UP's Operating Philosophy

UP's own testimony in past proceedings confirms that robust interchange cooperation is in tension with UP's operating philosophy and the way UP has restructured its network over decades to effectuate its prior mergers. In its 2016 comments to the Board in *Reciprocal Switching*, UP emphasized that its historic mergers enabled it to pursue a "strategic vision of a network that would deliver the benefits of single-line service" and network density.[657] UP rationalized yards, restructured operations, and rebuilt its network around the efficiencies it believed came from reducing unnecessary handling and interchange.[658] UP's evidence in the *Reciprocal Switching* proceeding included a map showing an extraordinary array of yards that had been closed or reconfigured since 1980, following UP's acquisitions of Missouri Pacific and

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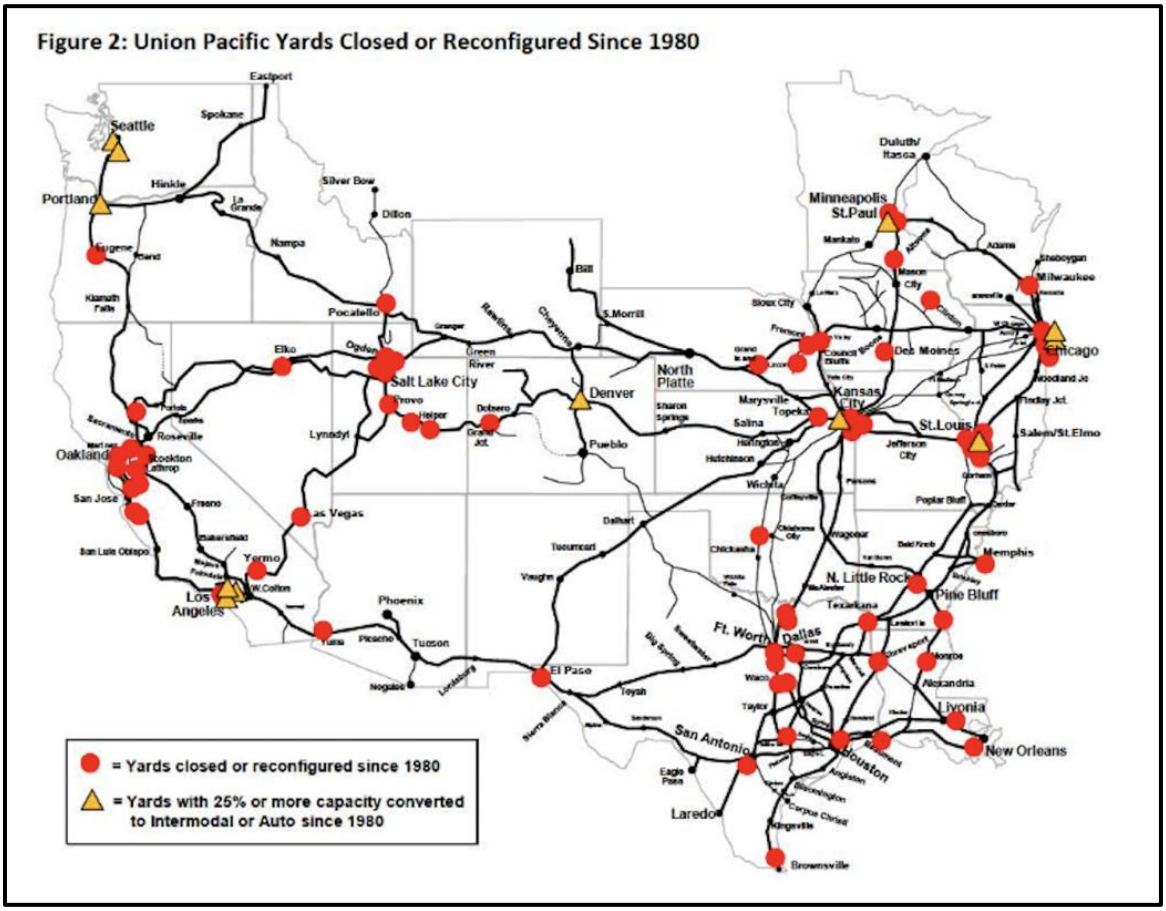
[657] *Reciprocal Switching*, Opening Comments and Evidence of Union Pacific R.R. Company, Ex Parte No. 711 (Sub-No. 1), (filed Oct. 26, 2016) ("UP Reciprocal Switching Opening Comments") (Haley V.S. at 2).

[658] *Id.*

Western Pacific in 1982, of Missouri-Kansas-Texas in 1988, of Chicago & North Western in 1995, and of Southern Pacific in 1996, illustrating how deeply UP redesigned its network around that philosophy.[659]

FIGURE 63

CLEMENTS FIGURE 3: UP GRAPHIC SHOWING DISINVESTMENT IN CAPABILITIES SUPPORTING INTERLINE TRAFFIC[660]



The key driver underlying these changes, according to UP, was UP's goal of driving increased "density." UP regards any continued obligations to interchange with other railroads as interfering with UP's efforts to build the densities it desires to support its operating plan changes.

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659 UP Reciprocal Switching Opening Comments at 14-16.

660 UP Reciprocal Switching Opening Comments at 16; *see* Clements V.S. ¶ 17 & Figure 3.

In UP's own words, "[c]hanging our operating plan in response to lower traffic densities would unravel the efficiencies we have been working so hard to build and would increase our operating costs."[661]

That testimony matters here. If UP believes interchange created by reciprocal switching would threaten its operating model, the Board should not expect post-merger UP to enthusiastically preserve, improve, or expand interline cooperation that competes with its own new single-line services. The UP-NS merger would give UP both the incentive and the network reach to steer traffic away from interchange wherever it can do so, as it already does today. This no doubt was what UP had in mind in 2000 when it warned the Board of a "future in which two huge transcontinental systems develop single-line services *in isolation from each other*."[662]

The concern is therefore not simply that UP might close a gateway. Applicants may promise to keep gateways open on "commercially reasonable" terms, but the operating reality is that a post-merger UP will regard the steps taken to disengage from meaningful interline cooperation as eminently "commercially reasonable." And UP will have powerful tools to make interline alternatives less attractive. It can do that through tactical steps like pricing, service design, blocking choices, terminal practices, access to data, or claims that competitive interchange imposes operational burdens, and it will do so over time through the investment decisions it makes (and no longer make), as Mr. Haley's 2016 testimony emphasizes.

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661 UP Reciprocal Switching Opening Comments (Haley V.S. at 7).

662 *STB Major Rail Consolidation Procedures,* UP Reply Comments, Ex Parte No 582 (Sub-No. 1) (filed Dec. 18, 2000) at 8.

B. UP-NS Will Degrade or Eliminate Existing Interline Services with Other Class I Railroads

Today, CPKC and other Class I carriers exchange traffic with NS at many important Mid-Continent gateways stretching from the Great Lakes to the Missouri Valley to the Gulf Coast and the Southeast. Those exchanges operate under commercial terms disciplined by UP's and NS's current independent economic interests in supporting interchange traffic. Removing NS as an independent Class I carrier eliminates that discipline at every gateway simultaneously. Once UP controls NS's Eastern network, no regulatory regime would be able to replicate that discipline in any comprehensive way.[663]

A combined UP-NS would enjoy an almost unlimited number of ways to degrade interline service and subvert shippers' effective access to other railroads. It could manipulate rates on interchanges to make their single-line service the only viable option. Indeed, UP has already employed this tactic. After UP and its lessee imposed an interchange fee on traffic moving to the newly rehabilitated Colorado Pacific line, no cars interchange with that carrier, and the Board found a "strong inference" that the arrangement "effectively foreclosed interchange."[664] UP-NS could reduce service levels at interchanges to force customers onto their single-line service. Regulators and customers alike would be unable to detect the full range of anticompetitive tactics that Applicants could deploy post-merger.[665]

UP-CSXT, BNSF-NS, and CPKC-NS movements will all but disappear in favor of the UP-NS single-line option,[666] except in those cases where there is no UP-NS single-line option

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663 Brooks V.S. ¶¶ 158, 167-71.

664 Majure V.S. Vol. 1 ¶ 88 & n.63.

665 Brooks V.S. ¶¶ 169, 171-75.

666 *See* Majure V.S. Vol. 1 ¶¶ 61-63 & Ex. 12; *see also* Brooks V.S. ¶¶ 14-15.

because of limitations of the legacy-UP in the West or legacy-NS network in the East.[667] [redacted]

[redacted][668]

The Transaction also would reduce UP's incentives to maintain cooperative products that compete with its new UP-NS routes.[669] UMAX, the UP-CSXT container program, is an obvious example of a program on the chopping block. Once UP owns NS, it will have both the ability and the incentive to steer traffic toward its own eastern network rather than sustain a product that strengthens CSXT.[670]

Indeed, CPKC has direct experience with such tactics.[671] Prior to October 2022, CP participated in the Equipment Management Pool ("EMP"), allowing intermodal customers to use EMP containers for shipments moving between the CP, UP, and NS networks. In September 2022, while CP's acquisition of KCS was pending, UP kicked CP out of the EMP program and replaced CP with CN because CP was poised to become a much stronger competitor to UP in

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667 Where one end of a movement is served only by a carrier other than UP or NS (for example, a BNSF- or CSXT-served facility), UP-NS cannot offer single-line service. Follow-on consolidation would not remove the foreclosure problem in those cases; it would replicate it. A combined BNSF-CSXT would have "similar opportunities to weaken competing interline services" wherever BNSF or CSXT is the sole carrier at one end, and a BNSF-CSXT deal "would not restore" the competition UP-NS eliminates. Majure V.S. Vol. 1 ¶¶ 262-65.

668 Majure V.S. Vol. 1 ¶¶ 66-70. Internal documents confirm that Applicants share this perspective. *See, e.g.*, UP_1412436, at -441 [redacted] NS_00181116, at -119 [redacted]).

669 Brooks V.S. ¶ 37.

670 *See* Majure V.S. Vol. 1 ¶ 69; UP_1412436, at -441 [redacted] *see also* NS_00130382, at -384 [redacted]

671 Brooks V.S. ¶¶ 38-46.

intermodal lanes to Mexico.[672] NS internal documents show [redacted][673]

Other harms to interline cooperation may be harder to detect but are just as disruptive. Today, UP builds deep blocks for both NS and CSXT, while NS builds blocks for both UP and BNSF. UP-NS would have incentives to prioritize traffic moving between the legacy-UP and legacy-NS networks. Because yard capacity and other operating resources are limited, that focus could draw resources away from UP-CSXT and BNSF-NS connections, reducing traffic density on those routes and producing a cycle of further service degradation.[674] The same incentive shift threatens cooperative arrangements with CPKC, including ethanol and frac-sand movements from CPKC origins to receivers on the NS network, chemicals shipments from the Gulf to NS points, grain and potash traffic from CPKC origins to NS destinations, and transcontinental intermodal service over the Meridian Speedway—arrangements that UP or NS support today because they lack their own longer-haul alternatives.[675] These harms need not take the form of formally terminating a service: changes to blocking, scheduling, resource allocation, or operating priority could gradually make competing interline options slower, less reliable, and less attractive to shippers.

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672 Brooks V.S. ¶¶ 46-47.

673 NS_00152716 at -721 [redacted] NS_00725605 at -612 (describing that [redacted]

674 Redd V.S. ¶¶ 52-53.

675 Brooks V.S. ¶¶ 47-48.

C. The Transaction Will Give UP Inordinate Control and Influence at Key Industry Ventures That Have Supported Interline Efficiency and Competition

The Transaction would threaten core industry ventures and facilities. These ventures support the core operations of an interline network, the supply of railcars, terminal capacity, and neutral access, all of which allow independent carriers to connect and compete. The Transaction would concentrate influence over each of these nodes in the railroad that would have the clearest incentive to disfavor the continued efficiencies of interline railroading and instead to favor a closed-loop UP-NS network that operates in isolation from other railroads whenever possible. The Transaction would result in: (i) outsized influence over the standard- and rule-setting functions of the Association of American Railroads ("AAR"); (ii) immediate majority control of TTX; (iii) concentrated voting power and practical influence over the Multilevel Pool and North American Boxcar Pool; (iv) a 50% ownership and board position at KCT; (v) new veto or blocking rights in Chicago and at BRC and IHB; and (vi) acknowledged control of TRRA absent an effective divestiture. That concentration would weaken the infrastructure of interline competition even where UP-NS does not possess formal day-to-day control.

1. AAR

AAR and its subsidiary Railinc are in many ways the central nervous system of America's interconnected rail network. Through AAR, Railinc, and industry committees, railroads develop and administer the common rules, standards, data systems, and financial mechanisms necessary to operate an interconnected national rail network. Those mechanisms include AAR Interchange Rules governing the acceptance and handling of equipment; standards governing car inspection, repair, and billing; industry processes for embargoes and other

restrictions on traffic; and Railinc's investments in systems that facilitate interline revenue settlements, car-hire payments, and other financial transactions among carriers.[676]

The Transaction would give UP-NS substantial influence over decisions directly affecting its remaining competitors. That influence could matter on seemingly technical issues with substantial competitive consequences. For example, the rules governing whether and on what terms cars must be accepted in interchange have an impact on the competitiveness of interline options. Equipment and inspection requirements can be used to increase another carrier's costs. And the administration of embargoes can restrict traffic flows when a railroad asserts congestion or other operational impairment. Even if UP-NS could not dictate any particular AAR decision by itself, its substantially greater scale, traffic, assets, personnel, and participation across AAR committees would give it a correspondingly greater ability to shape the rules of the road on which its direct competitors depend to participate in the national network.[677]

2. Railroad Equipment Pools

Industry equipment pools are essential to the efficiency of the interconnected North American rail network. By allowing empty equipment to move from destinations on one railroad to nearby loading points on another, these arrangements reduce empty mileage, shorten cycle times, and improve utilization across participating carriers. Indeed, as UP's own website describes, these equipment pools *already achieve* the potential equipment repositioning efficiencies that one might otherwise need a transcontinental merger to accomplish.[678] It is no surprise then that the Transaction would give UP greater influence over these pools while also

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676 Clements V.S. ¶¶ 27-28.

677 Clements V.S. ¶¶ 29-30.

678 Verified Statement of Michael Walczak, Vol. III ¶¶ 7, 28-31 and Figure 1.

reducing its incentives to support equipment-sharing with competing railroads. UP would have less of a need for that shared equipment and added interest in undermining the efficiencies available to its non-transcontinental rivals. It would also increase the risk of equipment withdrawals or other changes that undermine the pools' effectiveness.[679]

(a) TTX

TTX occupies a unique and indispensable position in the North American railroad industry. TTX's pooling model is a procompetitive arrangement that benefits the entire railroad industry, its customers, and the broader economy.[680] By providing shared access to modern, well-maintained fleets of essential railcar types, TTX enables railroads of all sizes to compete more effectively, serve customers more reliably, and invest more efficiently.[681] For CPKC, access to TTX's car supply is operationally essential.[682] Approximately [redacted] of its shipments in the flatcar types supplied by TTX rely on TTX equipment, and access to TTX equipment supports numerous lanes in which CPKC competes with UP.[683]

Applicants' original Application contemplated retaining 50% of TTX.[684] They now state that UP will reduce its ownership to "no[] greater than 49 percent," but only "at such time as they are able to do so on commercially reasonable terms."[685] That commitment has no firm deadline or identified buyer. Although TTX's Buy/Sell Agreement establishes a book-value price if TTX or an existing owner purchases the shares, UP could seek a third-party purchaser if

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679 Walczak V.S. ¶¶ 6-11, 33.

680 Walczak V.S. ¶¶ 12, 18.

681 Walczak V.S. ¶ 18.

682 Walczak V.S. ¶ 14-15.

683 Walczak V.S. ¶¶ 14, 22.

684 Orig. App. 1-336 (Novak V.S. ¶¶ 61-62).

685 Rev. App. 1-403 to -04 (Novak V.S. ¶ 75).

those options are declined, subject to a subjective "commercially reasonable" standard that UP itself would apply. Until a divestiture or other effective restriction occurs, post-merger UP would hold a 56.81% majority interest in TTX; even a diligent sale process could take most of a year, and an unsuccessful or less-than-diligent process could leave that majority in place indefinitely.[686]

Reducing the interest to 49% would not eliminate the competitive concern. A 50% interest can confer consequential veto power where the entity is not otherwise structured to prevent domination.[687] A 49% interest in a company with dispersed remaining ownership would leave UP able to block action unless the other owners act nearly unanimously. Any aligned vote by FXE, in which UP owns a 26% interest, would further strengthen that position.[688] The relevant question is practical influence over TTX's decisions, not the one-point difference between 49% and 50%.

In any cooperative arrangement, the participant with the most influence has the greatest ability to shape the rules in its own interest.[689] TTX decisions affect fleet acquisition, pool-participant entitlement, allocation and release of idle cars, and the availability of intermodal flatcars, centerbeams, bulkhead flats, autoracks, and boxcars.[690] A UP-dominated TTX could favor the merged system's demand for equipment, reduce the flexibility of free-running pools, or shift scarcity and cost to competing railroads and their customers.[691] Such cost-shifting would

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686 Walczak V.S. ¶¶ 62-65.

687 *See* Decision No. 21 at 17 n.17 (STB served May 28, 2026).

688 Walczak V.S. ¶ 55.

689 Walczak V.S. ¶ 59.

690 Walczak V.S. ¶ 46-51.

691 Walczak V.S. ¶¶ 35-38, 57-58.

effectively allow UP-NS to outsource the direct investments required by its own growth forecast.[692]

(b) The Multilevel Pool

The Multilevel Pool is a longstanding industry arrangement that makes the rail transportation of finished automobiles in so-called autorack cars commercially viable at continental scale. Nearly all autoracks serving North American automotive shipments are distributed through the pool, which enables empty railcars to be centrally directed to nearby loading points without regard to railroad network boundaries. TTX administers the arrangement, and CPKC depends on it to obtain the equipment needed to serve automotive customers across Canada, the United States, and Mexico.[693]

The Transaction would concentrate both formal voting power and practical influence over the Multilevel pool. Each signatory railroad currently designates one representative to the Executive Committee and has [redacted] the principal steering committee likewise gives [redacted] to each participating signatory. Unless UP's and NS's memberships are combined into one, the Transaction would place two previously independent votes under one railroad's control. The merged railroad would also combine UP's position as the largest terminating railroad for automotive traffic with NS's position as the largest originating railroad, magnifying its influence over fleet size, car contributions, distribution rules, and pool administration.[694]

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692 Walczak V.S. ¶¶ 38-39, 57-58.

693 Walczak V.S. ¶¶ 23-25.

694 Walczak V.S. ¶¶ 70-72.

(c) North American Boxcar Pool

The North American Boxcar Pool ("NABP") combines boxcars contributed by Class I, regional, and short line railroads, railcar lessors, and TTX into a centrally managed fleet. Cars can be loaded and reloaded where they are needed rather than returned empty to their owners, reducing empty mileage and cycle times, improving equipment availability for shippers of weather-sensitive commodities, and reducing the number of cars each participant must own.[695]

The Transaction would give UP extraordinary influence over the NABP because voting power is weighted by each participant's car contribution. UP and NS together would account for approximately [redacted] of the pooled fleet. Acting with FXE, in which UP holds an ownership interest and exercises influence, UP-NS would account for more than [redacted] The merged carrier could use that position to shape distribution, contribution, and pool compensation rules in a manner that suited its own needs rather than those of the network as a whole.[696]

3. Key Terminal Railroads Serving the Mid-Continent Gateways

(a) Kansas City: The Kansas City Terminal Railroad

Kansas City is a critical gateway for connections among BNSF, CPKC, MNA, UP, and NS. Today, KCT is jointly owned by UP, NS, CPKC, and BNSF, with no carrier holding more than 41.67% of the shares or more than five of the twelve carrier seats on the board.[697] Acquiring NS's interest would give UP 50% of the ownership and six-out-of-twelve board seats. Because a majority vote is required to approve any KCT action, UP could veto important actions affecting interchange between CPKC and BNSF and between UP and other carriers.[698] Indeed,

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695 Walczak V.S. ¶¶ 27-28.

696 Walczak V.S. ¶¶ 74-75.

697 Rev. App. 1-165.

698 Gameiro V.S. ¶ 122.

UP's Senior Manager of Facilities and Operational Analysis, David Hughes, acknowledges that [redacted][699]

Applicants nevertheless do not seek authority to control KCT, asserting that a 50% interest would not constitute control.[700] Board and ICC precedent reject that formalism. Control may arise from the power to block action even without majority ownership or authority over daily operations.[701] UP's 50% position would at minimum create the negative or restrictive control those decisions recognize.[702] Applicants' authorities are inapposite. They involved entities owned 50-50, where the other owner's equal position prevented either party from acting alone.[703] Here, the remaining interests would be dispersed, leaving UP as the single dominant shareholder. UP would hold six of KCT's twelve board seats, while BNSF and CPKC would hold three each. Neither remaining owner would individually match UP's position, and even together they could not command a majority. UP could use that blocking power to withhold approval of a critical infrastructure project until KCT changed its dispatching protocols or

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699 *See* UP_0344233 at -233.

700 *See* Rev. App. 1-81 to -86.

701 *See, e.g., Norfolk & Western Ry. & New York, Chicago & St. Louis R.R. Merger, Etc.*, 324 I.C.C. 1, 32-33 (1964) ("N&W/Nickel Plate") (30% owner with veto power "had at least a power to control"); *Greyhound Corp. – Control – Texas New Mexico & Oklahoma Coaches, Inc.*, 101 M.C.C. 655, 666-67 (1967) (citing N&W/Nickel Plate) (power to control does not depend on ownership of a majority of carrier's stock); *Transcontinental Bus Sys., Inc.* v. *Greyhound Corp.*, 104 M.C.C. 524, 526, 554 (1968) (control by 45% owner can arise from ability to influence carrier actions through "negative or restrictive control"); *Michigan Central Ry. – Acquisition & Operating Exemption – Lines of Norfolk Southern Ry.*, Finance Docket No. 35063 (STB served Dec. 10, 2007) at 7-8.

702 Gameiro V.S. ¶¶ 122-123.

703 *Cf.* Rev. App. 1-32 n.35; *CSX Corp. et al.—Control—Conrail Inc. et al.*, 3 S.T.B. 196, 349 (1998), *aff'd sub nom. Erie-Niagara Rail Steering Comm.* v. *STB*, 247 F.3d 437 (2d Cir. 2001) (Albany Port Railroad, with D&H holding the other 50%); *Burlington Northern, Inc.—Control & Merger—St. Louis-San Francisco Ry.*, 366 I.C.C. 862, 866-67 (1983), aff'd *sub nom. Brotherhood of Ry. & Airline Clerks* v. *Burlington Northern, Inc.*, 722 F.2d 380 (8th Cir. 1989) (Camas Prairie, with UP holding the other 50%).

operating rules to favor UP's planned operations, regardless of the effects on other carriers.[704] Nor does Applicants' reliance on KCT's General Manager to conduct day-to-day operations eliminate the concern. As Mr. Gameiro explains, the KCT bylaws [redacted] Indeed, Applicants themselves acknowledge that KCT's governance documents contain no mechanism for resolving shareholder or board deadlocks and that, "[i]n general, a deadlock would mean a continuation of the status quo."[705]

The Transaction will also render KCT much less important to UP even as it remains very important to the U.S. rail network in general because the Transaction will give UP other options through Kansas City with reduced interchange. UP could therefore use its *de facto* veto over important decisions at KCT to obstruct KCT remaining available and competitive on fair and neutral terms.[706]

Prior experience demonstrates UP's willingness to use control of terminal infrastructure to impair competing carriers' operations. After leasing KCT's North End Freight Line, UP reconfigured the route, removing the former connection to BNSF and leaving UP's Incline Track as the sole remaining connection. In 2024, UP denied CPKC and BNSF access to the Incline Track, forcing their interchange traffic onto a route requiring approximately twice the distance, running time, and crews.[707] As Mr. Gameiro explains, UP thereby made the interchange less safe, less reliable, and less efficient, even though UP was not a participant in that interchange.[708]

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704 Gameiro V.S. ¶ 122.

705 Gameiro V.S. ¶ 126; *see also* Applicants' First Submission in Response to Decision No. 21 (UP-68/NS-66) (filed July 22, 2026) at 42.

706 Gameiro V.S. ¶¶ 122-123.

707 Gameiro V.S. ¶¶ 44-52.

708 Gameiro V.S. ¶ 54.

Giving UP additional blocking power over KCT would expand its ability to impose such disadvantages on competing carriers.[709]

(b) Chicago: BRC and IHB

The Belt Railway of Chicago ("BRC") and its Clearing Yard are central components of the Chicago gateway. Clearing Yard is a central switching facility used by all of the Class I railroads to process some portion of the traffic flowing through Chicago.[710] CPKC and other carriers therefore depend on BRC for efficient interchange and access across the terminal.[711] By consolidating UP's and NS's ownership interests in BRC, Applicants would possess four of the twelve votes on the BRC Board.[712] Because BRC bylaws require a [redacted] post-transaction UP would need only [redacted] to withhold support to prevent approval. UP's expanded commercial relationship with CN, including their shared interest in the EJ&E bypass route, creates a material risk that their interests would align on decisions affecting investment in BRC. The merger would therefore materially increase UP's ability to block important BRC decisions with another owner's support.[713] The potential for UP, working with an ally, to downgrade the capabilities of BRC, and thereby disadvantage the means by which other railroads would compete with UP's single-line routes, is not far-fetched. UP has described its long-term desire to

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709 Gameiro V.S. ¶ 123.

710 Gameiro V.S. ¶ 100.

711 Gameiro V.S. ¶ 100.

712 Gameiro V.S. ¶ 101.

713 Gameiro V.S. ¶ 101; NS_00067289, at -297 [redacted] *see also* UP_0344233 at -233 [redacted]

send less traffic through the Chicago gateway, favoring other routes; Applicants have indicated their intention to remove significant volumes of UP-NS from Clearing Yard; and UP has entered into an agreement with CN whereby it would gain expanded access to CN's EJ&E bypass route.[714]

The Indiana Harbor Belt Railroad ("IHB") is likewise critical to CPKC and other railroads that connect with carriers or serve customers in the Chicago terminal.[715] The IHB plays a key role in moving freight through the Chicago complex. For example, IHB is a key terminal operator for CPKC—with automotive traffic moving through Gibson and some local manifest traffic flowing through the Norpaul / Blue Island yards.[716] IHB facilitates a critical route for CPKC south and east from Tower B12, near the east end of CPKC's Bensenville Yard and the south end of CPKC's Schiller Yard.[717]

The IHB governance structure requires NS and CSXT to agree on how Conrail's 51% interest in IHB is voted.[718] By acquiring NS, UP would acquire NS's role in that governance relationship and would be positioned to veto decisions affecting CPKC's use of IHB.[719]

Because UP would acquire greater control of IHB and BRC, while simultaneously becoming less dependent on them owing to UP's plans to route traffic to/from NS around Chicago and the further advantages of its new access to CN's EJ&E bypass route, UP would

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714 Gameiro V.S. ¶ 102.

715 Gameiro V.S. ¶ 107.

716 Gameiro V.S. ¶¶ 107-108.

717 Gameiro V.S. ¶ 107.

718 Gameiro V.S. ¶ 109.

719 Gameiro V.S. ¶¶ 109-113; *see* UP_0344233 at -233 [redacted] (emphasis added).

have both the ability and incentive to disadvantage carriers that still rely on IHB and BRC to support efficient interchange and other operations in the Chicago terminal. Applicants have a history of responding in an anticompetitive manner in these sorts of situations. When CPKC started using its Michigan trackage rights over NS to move crude oil into markets that NS also served, NS wrote:

> "Due in large part to the changes in the character of CP's use since the IHBIA and changes in the traffic flows and marketplace, it is no longer in NS's commercial interest to allow CP to exit Control Point 502 and use NS owned and controlled track to interchange with IHB at Gibson Yard for free without any limitations."[720]

The Transaction would create the same incentive shift on a much larger scale at BRC and IHB. The Board should not place the instruments of interline competition in Chicago under the influence of a merged UP, whose strategy would be to internalize East-West traffic on its own transcontinental network, route around Chicago, and reduce interchange with rivals. These structural harms reinforce the central conclusion: the transaction should be denied, not approved on the hope that future governance disputes can be policed after the fact.

(c) St. Louis: TRRA and Alton & Southern

St. Louis is likewise a vital gateway for BNSF, CN, CPKC, and CSXT.[721] Applicants concede that combining UP's and NS's interests would give the merged UP control of TRRA, the intermediate switching terminal railroad in St. Louis that owns both rail bridges across the Mississippi at St. Louis and serves all six Class I carriers.[722] Efficient operations at TRRA

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720 *Soo Line R.R. – Petition for Declaratory Order,* Finance Docket No. 36107, Norfolk Southern Railway Company's Reply to Soo Line Railroad Company Petition for Declaratory Order (filed Apr. 3, 2017) at 7.

721 Gameiro V.S. ¶ 129.

722 Gameiro V.S. ¶ 130; *see* Rev. App. 1-400 (Novak V.S. ¶ 64).

facilities are necessary for CPKC and other carriers to interchange traffic and reach their own lines and connecting carriers.[723] The Transaction would shift switching activity from TRRA to UP's wholly owned Alton & Southern. Eastbound manifest traffic that Alton & Southern currently hands to TRRA for blocking would instead be blocked at Alton & Southern's Gateway Yard, which would also absorb intermediate manifest switching now performed at NS's Luther Yard. Meanwhile, Applicants plan to operate longer trains through this terminal. CPKC already experiences delays from over-length trains moving between Alton & Southern and UP at Valley Junction and over TRRA track. As Mr. Gameiro details, those problems would only worsen as UP incorporates NS traffic. These changes would reduce Applicants' reliance on TRRA while increasing the operational burdens on other carriers that continue to depend on it.[724]

Applicants' control of TRRA in these circumstances would pose unacceptable risks to the future of that terminal railroad. Applicants have offered several possible arrangements to resolve the concerns over their control of TRRA,[725] but none of them would be sufficient to prevent UP from abusing its newfound influence over TRRA.[726] Even if UP reduces its power over TRRA on paper, UP's 100% ownership of Alton & Southern gives it ample ability (and its new transcontinental reach gives it the incentive) to subtly but meaningfully tilt access to shippers in the St. Louis/East St. Louis area in favor of the merged UP network.[727]

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723 Gameiro V.S. ¶ 129.

724 Gameiro V.S. ¶ 132.

725 *See* Applicants' First Submission in Response to Decision No. 21 (UP-68/NS-66) (filed July 22, 2026) at 13.

726 Gameiro V.S. ¶ 130.

727 Gameiro V.S. ¶ 130.

X. UP-NS WOULD HARM COMPETITION

Merging UP and NS would fundamentally reshape the competitive structure of the national rail network for the worse. The Transaction would concentrate market power in a single railroad that would dominate nearly all aspects of the national rail industry. UP would have unprecedented network scope and scale, gateway leverage, and control over industry joint ventures and essential rail inputs, including railcar purchasing, the allocation of pooled railcars through TTX and other pools, and all other sources of rail inputs. The Transaction would also diminish the independent decision making and competitive forces that presently give shippers optionality and negotiating power.[728]

The 2001 Major Merger Rules anticipated that a combination of this magnitude would have far-reaching implications for the national rail network. For that reason, the Rules require Applicants to bear the heavier burden of proving that a merger would serve the public interest. To make that showing, Applicants were required to examine how consolidation would affect competition across the national network, including in ways that conventional overlap screens miss. Applicants have not—and could not—make that showing.

Instead, Applicants attempt to frame UP-NS as a benign end-to-end merger that would create new single-line services without eliminating meaningful head-to-head competition. That framing ignores the many forms of competition that discipline rates and service even when UP and NS do not offer competing single-line service between the same endpoints. Applicants' experts, Dr. Israel and Dr. Bailey, do not grapple with the effects of the Transaction on those

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[728] A selection of evidentiary highlights showing how a combined UP-NS would use its unprecedented reach to weaken competition throughout the United States, including through the elimination of interline options and tactics like bundling that UP and NS already employ today can be found at Appendix D, hereto. To view these documents in their entirety, please refer to Volume VIII, which contains a copy of this Appendix D that is hyperlinked to the documents and testimony cited therein.

forms of competition (and it would be too late for them to attempt to do so on rebuttal), and the evidence Applicants do present, properly examined, demonstrates higher rates and shipper harm rather than the competitive benefits they claim.

A merged UP-NS would be substantially harder for shippers to avoid or credibly threaten to shift business elsewhere. That is why the additional competitive analysis contemplated by the Board's rules is essential here. (Section X.A.) Dr. Majure identifies three principal ways the Transaction is likely to harm competition. First, the Transaction would give UP-NS the ability and incentive to foreclose competition, especially where, today, UP and NS each have the incentive to support competing interline services on the other side a gateway. (Section X.B.) Second, the Transaction would weaken geographic competition and deprive shippers of bargaining strategies that support more competitive rates and service offerings. (Section X.C.) Third, the Transaction would eliminate competition between UP and NS for a greater portion of the interline movements and revenues in which they both participate. (Section X.D.) The Transaction would also harm competition in other ways, including by degrading competition in specific corridors, and reducing innovation. (Section X.E.) Further consolidation would only further magnify these problems, not solve them. (Section XIII.)

A. UP-NS Would Create an Unprecedented Degree of Concentration that Calls for an Analysis Different in Scope from Prior Transactions

The UP-NS transaction would not be an ordinary end-to-end merger, and it should not be evaluated as one. It would create a railroad of unprecedented scale and scope, yet Applicants' competitive analysis relies on the same narrow screens used for far smaller transactions. The Board's 2001 Major Merger Rules demand more. They require the Board to look beyond route-level overlaps to the full range of ways in which further consolidation can diminish competition. That broader inquiry is especially important here because a combined UP-NS would participate

in more than half of U.S. rail movements by revenue, making it extraordinarily difficult for many shippers to avoid UP or credibly threaten to do so.

1. Applicants' Competitive Analysis Falls Short of the Broader Inquiry the 2001 Major Merger Rules Require

The proposed Transaction is unprecedented in scale, scope, and likely systemic consequence. It would reduce the rail industry to five Class I networks, create a transcontinental UP with unmatched reach, and set in motion further consolidation toward the two-transcontinental-railroad structure that the Board identified as a matter of "substantial concern" when adopting the 2001 Major Merger Rules.[729] A transaction with such far-reaching implications demands scrutiny of how it would reshape competition across the national network. Identifying customers that would lose a directly overlapping rail service option at a particular origin or destination is necessary, but that limited analysis is plainly insufficient to assess the full range of competitive effects of a transaction of this magnitude.

The 2001 Major Merger Rules recognize the need to analyze every form of direct and indirect competition and impose a heavy burden on Applicants to justify any further consolidation.[730] The rules were adopted precisely because further consolidation among the remaining Class I railroads raised questions that could not be answered by rote application of older merger analysis templates. Applicants "bear a heavier burden to show that a major rail combination is consistent with the public interest."[731]

That burden extends beyond conventional horizontal overlaps. Applicants must address "potential harms" from "anticompetitive effects that would be difficult to mitigate through

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729 *See* Major Merger Rules, 5 S.T.B. at 545, 549.

730 *Id.* at 557, 609, 611; 49 C.F.R. Part 1180, Subpart A.

731 Major Merger Rules, 5 S.T.B. at 546.

appropriate conditions," including the "loss of geographic competition," and the Board committed to "strive to remedy every competitive harm" stemming from an approved transaction.[732] The 2001 Major Merger Rules themselves point to several forms of competition relevant here: (1) shippers' leverage from alternative sources and destinations even when they are sole-served on one end, (2) shippers' ability to shift production among facilities on different carriers' networks, (3) competition at interchange points, where eastern and western systems "do not simply meet end-to-end" but overlap, and (4) keeping major gateways open.[733] Dr. Majure analyzes those competitive relationships rather than assuming, as Applicants' do, that an end-to-end label resolves them.

Applicants cannot justify the competitive imbalance UP-NS would create by suggesting that other railroads could merge in response. The Board expressly recognized that its inquiry must encompass "not just the immediate proposal that may be before us, but others like it," and whether the resulting industry structure would preserve "at least the existing level of competitive options for shippers."[734] The Rules therefore require consideration of the cumulative and "crossover" effects of likely responsive transactions. Further consolidation itself is potential competitive harm *from this Transaction*, not an answer to the harms of this Transaction.[735]

As explained below, Applicants and their experts, including Dr. Bailey and Dr. Israel, fail to engage with the full range of anticompetitive effects of the Transaction.

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732 *Id.* at 557-62, 609, 611.

733 *Id.* at 555-57, 563.

734 *Id.* at 549.

735 *See also* Majure V.S. Vol. 1 ¶ 261-70; Creel V.S. ¶¶ 29-32 (explaining why UP-NS could compel responsive consolidation and why that consolidation would compound the loss of shipper options and independent innovation).

2. Post-Merger UP Would Be So Pervasive that Shippers Would Lack Credible Alternatives to Avoid It

Unlike prior major transactions, a UP-NS merger would not preserve or enhance competitive balance; it would instead create a carrier of unmatched scale and leverage. UP-NS would be, by a substantial margin, the largest Class I railroad in the U.S. rail industry.[736] As shown in Dr. Majure's Exhibit 1, reproduced below as Figure 64, even before accounting for Applicants' claimed merger-related diversions, a combined UP-NS would earn [redacted] of rail revenues for all U.S. movements, and [redacted] of revenue for intra-U.S. movements.[737]

FIGURE 64

DR. MAJURE EXHIBIT 1: UP AND NS COMBINED SHARE OF U.S. RAIL REVENUES [738]

[redacted]

[736] *See* Majure V.S. Vol. 1 ¶ 29-31.

[737] Majure V.S. Vol. 1 ¶ 31 & Ex. 1.

[738] Majure V.S. Vol. 1 ¶ 31 & Ex. 1.

More importantly, UP and NS would participate in [redacted] of all U.S. movements weighted by rail revenue, and [redacted] of intra-U.S. movements.[739] Among movements Applicants identified as the "major points on the parties' combined system, major corridor-commodity pairs, and major origin-commodity pairs / major destination-commodity pairs,"[740] their combined historic share reaches [redacted] as shown in Dr. Majure's Exhibit 2, reproduced below as Figure 65.[741] Applicants expect to increase their presence on these "major" movements in particular, which would make a combined UP-NS even more difficult for a U.S. shipper to threaten to avoid.[742]

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739 Majure V.S. Vol. 1 ¶ 32 & Ex. 2.

740 Rev. App. 2-13 (Bailey Second Errata V.S., ¶ 25.)

741 Majure V.S. Vol. 1 ¶ 32.

742 Majure V.S. Vol. 1 ¶ 32 & Ex. 2.

FIGURE 65

DR. MAJURE EXHIBIT 2: UP-NS WOULD PARTICIPATE IN A DOMINANT SHARE OF U.S. RAIL MOVEMENTS[743]



That reach extends across major commodity flows. As shown in Dr. Majure's Exhibit 3, reproduced below as Figure 66, a combined UP-NS would account for more than [redacted] of [redacted] revenues, [redacted] of [redacted] revenues, and [redacted] of [redacted] revenues.[744] Among smaller industries, UP-NS would account for [redacted] of [redacted] [redacted] of [redacted] and [redacted] of [redacted] revenue.[745] Using the Herfindahl-Hirschman Index ("HHI") thresholds from the U.S. Department of Justice's 2023 Merger Guidelines, [redacted] of

743 Majure V.S. Vol. 1 ¶ 32 & Ex. 2.

744 Majure V.S. Vol. 1 ¶ 37 & Ex. 3.

745 Majure V.S. Vol. 1 ¶ 37 & Ex. 3.

[redacted] STCC2 commodity categories [redacted][746] Those figures illustrate why national averages alone cannot capture the Transaction's effects. The Board should examine not only national shares, but also corridor, commodity, origin, destination, and geographic/customer-portfolio effects.

FIGURE 66

DR. MAJURE EXHIBIT 3: UP-NS SHARE FOR SELECT COMMODITIES (STCC2) BY AVERAGE ANNUAL REVENUE[747]



The difficulty shippers will have avoiding a combined UP-NS is also reflected in county-level data. Many counties are already only served by one Class I Railroad. Much of the West is

746 Majure V.S. Vol. 1 ¶ 38-39 & Ex. 4.

747 Majure V.S. Vol. 1 ¶ 37 & Ex. 3.

effectively sole-served by UP and much of the East is effectively sole-served by NS, but shippers in those regions still can benefit from competition across the Mid-Continent gateways.[748] Counties where the combined UP-NS would account for 100% of Class I rail revenue represent [redacted] of all U.S. rail revenue and [redacted] of all intra-U.S. rail revenue.[749] Counties where a combined UP-NS will account for at least 75% represent [redacted] of all U.S. rail revenue and [redacted] of intra-U.S. rail revenue.[750] A combined UP-NS would also participate in [redacted] of cross-Watershed interline movements weighted by Class I revenue, leaving shippers able to avoid the combined carrier on [redacted] of those movements.[751] Using Dr. Israel's estimates, there are over a thousand shippers which are currently sole-served by UP or NS, accounting for over [redacted] and UP-NS would have multiple ways to exploit that market power to harm the remaining competitive options those shippers possess today.[752]

These figures matter because a shipper's bargaining leverage depends not merely on whether another railroad exists somewhere, but on whether the shipper can credibly shift business away from the carrier with which it is negotiating.[753] Today, shippers can take advantage of multiple competing options across a gateway or use their bargaining leverage by threatening to shift volumes from a UP-served facility to an NS-served one. A UP-NS system participating in more than half of U.S. rail movements—and more than 70% of interline

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748 Majure V.S. Vol. 1 ¶¶ 43-47 & Exs. 7-8.

749 Majure V.S. Vol. 1 ¶ 47 & Ex. 9.

750 Majure V.S. Vol. 1 ¶ 47 & Ex. 9.

751 Majure V.S. Vol. 1 ¶ 50 & Ex. 10.

752 Majure V.S. Vol. 1 ¶ 212-17.

753 Majure V.S. Vol 1 ¶ 29.

movements—would make threats like those materially less credible for a large number of customers. The same scale would increase UP's leverage over connecting carriers at gateways, terminals, and shared facilities.[754]

Consider a large shipper, with multiple facilities spread across the U.S. Today, that shipper has credible options it can use in negotiations for better rates. It can threaten to shift its production between its facilities to gain some bargaining leverage with the railroads it contracts with. It can also offer to bundle its business across various facilities or corridors as an inducement to the railroad to lower rates on routes where the shipper might not have an alternative.[755] If UP and NS were to merge, that same shipper will find that most of its traffic has to be carried by the combined UP-NS. A lot of that shipper's options that today give it competitive rates would suddenly be off the table. A combined UP-NS would see the loss to that shipper as a gain in its own bargaining leverage against the shipper.[756] This problem is particularly acute for solely served shippers, who face extra leverage when it comes to negotiations, as Applicants recognize.[757]

The record in this proceeding demonstrates that UP knows it will be able to use its increased leverage over customers to its advantage. [redacted]

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[754] Clements V.S. ¶¶ 15, 26-30.

[755] Majure V.S. Vol. 1 ¶ 34; Lance Fritz Deposition Transcript ("Fritz Tr.") at 133:16-20 (Nov. 3, 2026) [redacted]

[756] Majure V.S. Vol. 1 ¶ 34.

[757] Fritz Tr. at 132:19-133:6 [redacted] (emphasis added)); *see* also UP_3141193, at -227.

[redacted][758] That increased leverage would reinforce UP's strategy of [redacted][759]

Smaller shippers that depend on UP and NS will be even more vulnerable, especially if they operate in one of the commodities where a combined UP-NS would be dominant.[760] While UP might be able to buy-off large shippers in exchange for their support for the Transaction, smaller shippers, who represent the bulk of shippers on the railroad, but just a small percentage of UP's and NS's revenues, will be left in the dust. [redacted][761] That evidence underscores why arrangements with selected large customers cannot establish that shippers generally would be protected.

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758 UP_3223324.

759 UP_0694815, at -859 [redacted] UP_1641198, at -198-199 [redacted] *see also* Section III.A.

760 Majure V.S. Vol. 1 ¶ 36.

761 *See* NS_00348022, at 030.

The resulting imbalance would affect shippers and the connecting carriers on which customers' alternatives depend. As the Board recognized, rail transportation is "a network of competing and complementary components," and further Class I consolidation may "affect the entire transportation system."[762] The mechanisms discussed below show how that concern would arise here.

B. The Transaction Would Weaken Interline Competition on Both Sides of Major Gateways

The American rail network depends on independent railroads both competing and cooperating to move traffic across interconnected networks. Thus, the first principal harm of the Transaction is the loss of competition among interline services that UP and NS currently support. Today, UP supports competition between NS and other eastern carriers, while NS supports competition between UP and other western carriers. Shippers benefit from that competition (between CSXT and NS in the East, and between BNSF and UP in the West), and they can reap those benefits because, under today's industry structure, they can pair the winning carrier in the East with UP, and the winning carrier in the West with NS, via interline connections at the efficient Mid-Continent gateways. In other words, shippers today can select the combination of eastern and western carriers that best meets their needs. This competition matters both when two carriers compete at each end of a movement and when one end is sole-served. A merger would replace UP's and NS's independent incentives with an incentive to favor the combined railroad's own single-line service.[763]

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762 Major Merger Rules, 5 S.T.B. at 550-51, 581.

763 Majure V.S. Vol. 1 ¶¶ 54-56, 61.

1. The Merger Would Replace Support for Competing Interline Routes with an Incentive to Favor UP Single-Line Service

The merger would change UP's and NS's incentives to support competing interline routes. Today, UP is indifferent to whether it interchanges with NS or CSX, and NS is indifferent to whether it interchanges with UP or BNSF. As an independent carrier, NS has incentives to cooperate with BNSF in ways that help BNSF compete against UP, and UP has incentives to cooperate with CSXT in ways that help CSXT compete against NS. Those cross-cutting incentives are a valuable feature of the existing interline network.[764] They encourage railroads to support routes that compete with their own rivals and thereby give customers additional practical options. [redacted][765]

After the merger, a combined UP-NS would retain the revenue from the entire movement over its single-line route, creating an incentive to favor UP-NS routings and disadvantage competing interline services on which it would share revenue with another carrier.[766] Where UP-NS controls an essential segment or input, it could act on that incentive through pricing, service, equipment, and interchange decisions that weaken shippers' alternatives and permit UP-NS to charge higher rates.[767]

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764 Majure V.S. Vol. 1 ¶¶ 55, 61.

765 NS_00134308, at -308 (emphasis added).

766 Majure V.S. Vol. 1 ¶ 61.

767 Majure V.S. Vol. 1 ¶ 61.

The UP-NS merger would eliminate those incentives to support BNSF-NS or UP-CSXT routings and replace them with a single, unified UP strategy.[768] (*See* Dr. Majure's Exhibit 12, reproduced below as Figure 67.) Applicants' internal business documents reveal that this is precisely UP's plan.[769] As a UP internal communication acknowledges, [redacted][770]

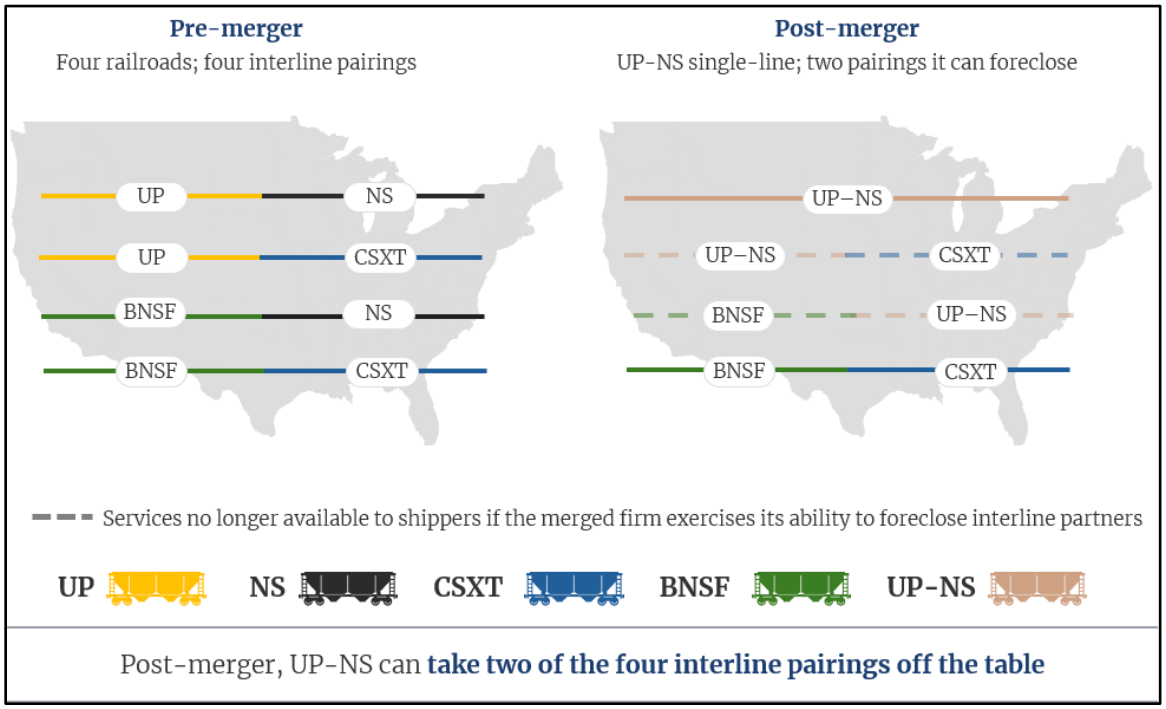
[768] Majure V.S. Vol. 1 ¶¶ 61-67.

[769] *See* UP_0082693, at cell T236 [redacted] *id.*, at Cell T239 [redacted] *See also* UP_0080839, at -850 [redacted] NS_00327432, at -446 [redacted] UP_1412436, at -441 [redacted]

[770] UP_0039326, at -326. [redacted]. *See also* Majure V.S. Vol. 1 ¶ 62.

FIGURE 67

DR. MAJURE EXHIBIT 12: ILLUSTRATION OF COMPETITION TODAY AND POST-MERGER WHEN UP-NS FORECLOSES INTERLINE PARTNERS[771]



As discussed in Section IX, a combined UP-NS would have ample ability to implement a strategy of driving traffic to the UP-NS single-line offering. Competing Class I railroads would depend on UP and NS for their portion of potential interline routings, but UP-NS would have strong incentives to withhold that cooperation so that traffic was forced to their single-line routes.

As Dr. Majure explains, the data confirm that this foreclosure would occur. UP and NS are already less likely to engage with interline partners when they can offer single-line service.[772] In corridors where UP can offer both interline and single-line service, approximately

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771 Majure V.S. Vol. 1 ¶ 63 & Ex. 12.

772 Majure V.S. Vol. 1 ¶¶ 80-82, 85-86.

[redacted] of the revenue generated by UP's movements comes from its single-line service.[773] The same is true of NS.[774] And while all Class I railroads show an incentive to favor their own single-line service, UP and NS stand out both for how much [redacted][775] When sole-served by the railroad, interline service accounts for [redacted] of the revenue on relevant movements UP participates in, and [redacted] of NS's revenue in their relevant [redacted] average for other Class I railroads.[776] These patterns reinforce the concern that the merger would weaken support for competing interline routes.

UP-NS's control of other key industry assets would magnify the problem. UP-NS's rivals would depend on UP-NS for trackage rights, dispatching, terminals, gateways, shared facilities, equipment programs, and other inputs necessary to offer competitive routes. Following the merger, a merged UP-NS would control a broader set of those assets while also having stronger incentives to favor its own end-to-end service. UP-NS would also acquire increased influence over shared industry resources, including terminal railroads and equipment pools. That influence would compound the competitive harm because rivals would be forced to rely on entities over which their most powerful competitor would have disproportionate control.[777] In many cases that will be enough to completely foreclose competition, particularly where UP-NS controls a necessary input for the shipper such as a sole-served origin or

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773 Majure V.S. Vol. 1 ¶ 82 & Ex. 16.

774 Majure V.S. Vol. 1 ¶ 82 & Ex. 16.

775 Majure V.S. Vol. 1 ¶ 86.

776 Majure V.S. Vol. 1 ¶ 86.

777 Clements V.S. ¶¶ 21, 26-30; Walczak V.S. ¶¶ 34-37, 71-72, 74-75.

destination. And where UP-NS is not able to preclude competition altogether, it could significantly weaken the shipper's options if it no longer partners effectively with those interline partners UP or NS support today. Thus, whether complete or partial, the merged UP-NS will gain power to insulate itself from competition and raise prices for shippers.[778]

CPKC depends on UP or NS cooperation in multiple locations where CPKC traffic competes with one or both Applicants, including the UP-dispatched Techny Line, NS-controlled Michigan trackage rights, and UP-controlled corridors in Texas, including Beaumont-Rosenberg and Victoria-Robstown.[779] Following the merger, UP would have both more opportunities and stronger incentives to use dispatching, capacity, access, or service decisions to make competing CPKC routes less attractive.[780] Similar concerns arise wherever BNSF or other carriers depend on shared gateways or controlled facilities which UP exercises, or would acquire, control or increased influence, as illustrated by UP's denial of CPKC and BNSF access to the Incline Track in Kansas City.[781] And UP's post-merger plans are just a continuation of UP's playbook of using its control over equipment sharing programs or shared junctions to foreclose competition.[782] UP has also used interchange fees to foreclose competition at a shared junction with Colorado Pacific Railroad.[783]

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778 Majure V.S. Vol. 1 ¶ 61.

779 Gameiro V.S. ¶¶ 7-10.

780 Gameiro V.S. ¶¶ 12-14.

781 Gameiro V.S. ¶¶ 51-52.

782 Majure V.S. Vol. 1 ¶¶ 87-89.

783 Majure Vol. 1 ¶ 88.

2. Shippers Benefit from Competition Even When One End of a Movement is Sole-Served

The Board should reject any suggestion that an end-to-end merger cannot harm competition because a carrier with monopoly power on one segment already captures the entire available profit from the movement. That notion is what came to be known as the "one-lump theory." It was a presumption that the Board expressly overruled in *CP/KCS*, and it does not reflect how railroads actually price or how shippers actually negotiate.[784] Rail customers can, and do, benefit from competition on one side of a gateway even if the other side is served by a single carrier.

Although Dr. Israel meticulously avoids the term "one-lump" in his statement,[785] and Applicants deny invoking it as a legal presumption,[786] Dr. Israel admits that he relies exactly on this logic.[787] The Board has previously determined that Dr. Israel's simplistic "one-monopoly

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[784] *Canadian Pacific Ry. – Control – Kansas City Southern*, Finance Docket No. 36500, (STB Decision No. 35 served March 14, 2023) at 44-48. *See also* Israel Tr. at 209:24-210:4 ("A. Right, because the one-lump theory, as we've been calling it, is no longer accepted as a theory because people have found that there are ways in which the price could be below the integrated price. I agree.").

[785] Majure V.S. Vol. 1 ¶ 108.

[786] Applicant's Response Regarding their Prima Facie Case (UP-94/NS-93) (filed August 26, 2026) at 16 ("Neither Applicants nor Dr. Israel rely on or argue for the application of a rebuttable presumption that the proposed transaction will result in no vertical foreclosure because it is end-to-end.").

[787] Majure V.S. Vol. 1 ¶ 108. *See also* Israel Tr. at 188:16-21("Q. Okay. Do you have another term you want to use for the longstanding response to such concerns? A. I don't have a short, easy – I mean, to me, as I said earlier, the relevant question is whether the premerger price is above the integrated level, but that's a mouthful. So if we want to say one monopoly lump, that's what I mean."); *id.* at 188:4-11 ("Q. Okay. And you, elsewhere, refer to that as the 'one monopoly rent idea'? … A. Yeah. Again, I think both those terms are a little loose when applied to vertical mergers, but I know that term has been – those terms are have been used in this industry."). *See also* Dr. Israel Second Errata V.S. ¶ 41 ("For these theories to hold, it would have to be the case that the carrier that solely serves one segment of the route can earn greater profits by merging with a carrier on the competitive segment of the route and foreclosing the remaining unintegrated carrier(s). A long-standing response to these concerns has been that the sole-serving carrier can charge the monopoly rate for the movement and earn the monopoly profit prior to a merger. If so, then the sole-serving carrier is already earning all the profits possible and cannot increase them by foreclosing an unintegrated carrier, meaning there should be no concern about foreclosure due to the merger.").

rent" assumptions are not a sound basis for evaluating mergers in the railroad industry.[788] Dr. Israel's dismissive treatment of vertical issues—such as the loss of interline competition—is purely theoretical and ignores how railroads actually behave in the marketplace.

The commercial explanation for why the "one-lump" presumption does not hold in the railroad industry is straightforward. A shipper may be captive to UP at its origin but able to choose between NS and CSXT east of a gateway—or captive to NS at its destination but able to choose between UP and BNSF in the West. Shippers routinely play carriers off one another when multiple options are available to provide transportation to or from a gateway, even when only one carrier can serve the origin or destination on the other side.[789] Competition for that portion of the movement can improve the shipper's rate and service even though another portion remains captive.

The one-lump doctrine hypothesized that in these situations the sole-serving carrier would capture all of the benefits of whatever competition was occurring across the gateway by collecting its "monopoly lump" of profit. But that is not the way railroads work today. Rule 11 pricing is one of the tools that shippers can use to ensure that the "monopolist" on the other side of the gateway is not privy to the competitive negotiations that are occurring in the East or West. Rule 11 allows a shipper to negotiate separately with each railroad participating in an interline movement without disclosing one carrier's rate to the other.[790] This practice therefore prevents a sole-serving carrier on one side from fully appropriating the benefits of competition on the other side. As Dr. Israel acknowledges, the share of UP's interline movements contracted under Rule

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788 *Canadian Pacific Ry. – Control – Kansas City Southern*, Finance Docket No. 36500, (STB Decision No. 35 served March 14, 2023) at 44-48.

789 Brooks V.S. ¶ 14.

790 Majure V.S. Vol. 1 ¶¶ 73-74.

11 has been growing over time, meaning shippers have been increasingly using Rule 11 contracts to secure competitive rates—a lever that will become less available to shippers on movements involving UP and NS if the proposed merger were consummated.[791] Dr. Israel's analysis does not account for these real-world dynamics.

CPKC participates in these kinds of negotiations routinely. In the frac sand realm, CPKC-served mines in Wisconsin, Iowa, and Illinois are direct substitutes for UP-served mines in Wisconsin.[792] In order to win the business, CPKC needs to sharpen its pencils on rates and offer fast and reliable cycle times in conjunction with the Eastern carrier—usually NS in this scenario, because it is the sole railroad reaching many of the important destinations in Pennsylvania, Ohio, and Southern Tier New York.[793] CPKC knows what will happen if UP and NS merge. UP will now have full visibility into both sides of this negotiation and control what it offers for movement over the legacy-NS portion of its merged network.[794] UP will have an array of tools to ensure that the "best" and maybe only option for this receiver is the UP-NS option even if that option is inferior to what the shipper could have constructed in the pre-merger world by taking advantage of competition in the West.[795]

These scenarios—where shippers have one option on one side of a gateway and two independent options on the other (so-called "monopoly-to-duopoly" scenarios, also sometimes referred to as the classic "rattail diagram" of the sort shown below) are especially important in the North American rail landscape. (*See* Figure 68, below.)

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791 Dr. Israel Second Errata V.S. ¶¶ 32-33; Majure V.S. Vol. 1 ¶¶ 73-75.

792 Brooks V.S. ¶¶ 23-25.

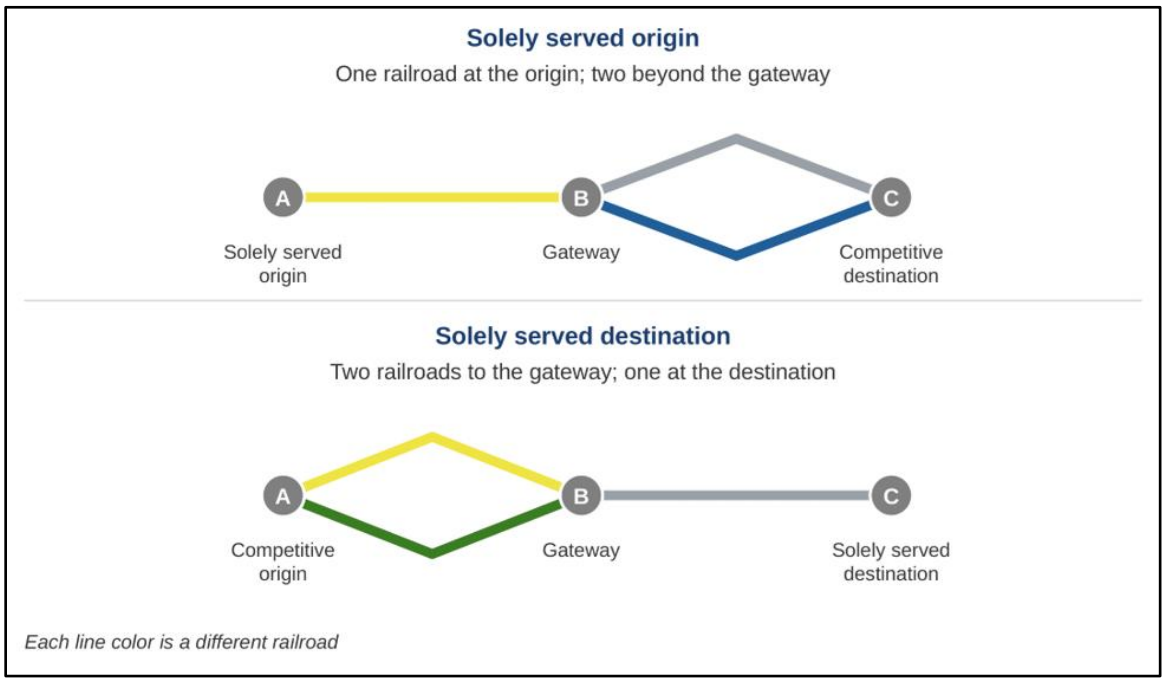
793 Brooks V.S. ¶ 19.

794 Brooks V.S. ¶ 19.

795 Brooks V.S. ¶¶ 19.

FIGURE 68

CLASSIC "RATTAIL" DIAGRAM DEPICTING MONOPOLY-TO-DUOPOLY INTERLINE SCENARIO



As Dr. Majure explains, and as shown in Dr. Majure's Exhibits 7 and 8, reproduced as Figures 69 and 70, below, many counties in the East and West are served by only one Class I railroad. In those cases, competition on the other side of the gateway can be the customers' only meaningful source of rail bargaining leverage. The merger would weaken that competition by giving the sole-serving carrier a financial stake in which railroad serves the other end.[796]

[796] Majure V.S. Vol. ¶¶ 43-46, 61, 73-76 & Exs. 7-8.

FIGURE 69

DR. MAJURE EXHIBIT 7: COUNTIES WHERE BNSF OR UP HAS AT LEAST A 75% SHARE OF CLASS I REVENUE, 2019-2024[797]



FIGURE 70

DR. MAJURE EXHIBIT 8: COUNTIES WHERE NS OR CSXT HAS AT LEAST A 75% SHARE OF CLASS I REVENUE, 2019-2024[798]



The same incentive would affect grain, ethanol, potash, chemicals, and other bulk commodities. It would also affect intermodal customers that currently can pair their preferred eastern and western carriers. Where two carriers serve each end, the Transaction could reduce four effective interline combinations to two practical alternatives: UP-NS and BNSF-CSXT.[799]

The four-to-two case illustrates why counting the railroads physically serving each endpoint is insufficient. Today, a shipper can shop from among at least four pairings: UP-NS, UP-CSXT, BNSF-NS, and BNSF-CSXT. After the merger, UP would have an incentive to undermine both UP-CSXT and BNSF-NS options to favor its own single-line routes. The endpoint count could remain the same even as meaningful routing choices and their competitive pressure would be diminished.

3. Empirical Evidence Confirms that Weaker Interline Competition Would Raise Rates

The empirical evidence confirms that when carriers are incentivized to favor their own single-line service over interline partners, shippers pay higher prices. Dr. Majure compares prices across corridors that are otherwise comparable, except that some resemble the "pre-merger" competitive structure applicable to routes spanning the Mid-Continent here (i.e., where there are interline routes but no single-line option is available) while others resemble the "post-merger" competitive structure (i.e., where both single-line service and interline service would be available).[800] Dr. Majure finds that where shippers are sole-served at one end and served by two railroads at the other, prices are 7% higher when one of the potential interline

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797 Majure V.S. Vol. 1 ¶ 44 & Ex. 7.

798 Majure V.S. Vol. 1 ¶ 45 & Ex. 8.

799 Majure V.S. Vol. 1 ¶ 63 & Ex. 12.

800 Majure V.S. Vol. 1 ¶¶ 91-92.

pairings is replaced by a single-line from origin to destination (i.e., where the railroad serving the sole-served end is the same as one of the two serving the destination).[801] Where shippers are served by two railroads at both ends, prices are 15% higher when one of the potential interline pairings is replaced by a single-line from origin to destination.[802]

4. Applicants' Analyses Do Not Rebut the Evidence of Competitive Harm

To support his opinion that, as a matter of economic theory, vertical mergers cannot be harmful but instead put downward pressure on prices as the result of costs savings and the elimination of double marginalization, Dr. Israel conducts a regression analysis to test whether prices on comparable routes are lower for single-line service relative to rates observed on interline traffic.[803] Dr. Israel claims his analysis shows that single-line service has prices that are 15%-29% lower than "comparable" interline service.[804] Dr. Israel's analysis is entitled to no weight. This empirical result that Dr. Israel puts forward comes from a fundamentally flawed regression design, and Dr. Israel's interpretation of it—that it provides a reliable measure of benefits from the proposed merger—is wrong and misleading.[805]

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801 Majure V.S. Vol. 1 ¶ 98.

802 Majure V.S. Vol. 1 ¶ 98. Dr. Majure conducts a second regression analysis in which he controls for a smaller set of control variables identified by Dr. Israel to make the routes comparable. While this analysis is potentially less predictive, as it does not control for additional observable characteristics (including route and commodity differences) that affect price, the results are similar: prices are [redacted] higher for corridors where shippers are sole-served at one end and served by two railroads at the other, and [redacted] higher for corridors where shippers are served by two railroads at both ends, when one interline pairing is replaced by a single-line carrier. *Id.*

803 Dr. Israel Second Errata V.S. ¶ 112.

804 Majure V.S. Vol. 1 ¶ 113.

805 Majure V.S. Vol. 1 ¶¶ 107-21.

Dr. Israel's regression analysis is designed to obtain the result Applicants wanted. Dr. Israel starts with data that indicate the *opposite* of what he sets out to prove—the raw data show that, on average, single-line service is higher priced than interline service.[806] Dr. Israel then manipulates that data for his regression analysis by adding what he describes as controls for "other factors that affect pricing" to flip the data in his favor. In particular, Dr. Israel employs a "distance control" that forces comparisons of single-line and interline pricing that are fundamentally different because his "distance control" does not account for the region of the country in which the shipment occurs and other meaningful differences in shipment characteristics that can drive price.[807] Dr. Majure explains why that comparison does not reliably measure the proposed merger's effect, reinforcing the need to scrutinize the assumptions underlying Dr. Israel's conclusions.[808]

More fundamentally, Dr. Israel's regression analysis does not support what he sets out to prove. Dr. Israel compares the relative prices of single-line and interline routes without adequately accounting for how a merger will change UP's incentives to support competing interline routes. Dr. Israel's finding of a price difference between interline and single-line movements could reflect lower single-line costs, higher interline prices caused by foreclosure, or

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806 Majure V.S. Vol. 1. ¶ 115 & Ex. 18.

807 Majure V.S. Vol. 1 ¶¶ 116-21.

808 Courts have rejected comparable shortcomings in Dr. Israel's work. In *United States* v. *American Airlines Group Inc*., 675 F. Supp. 3d 65, 102-03 (D. Mass. 2023), the court criticized his assumptions and reliance on benefits scenarios selected by the defendants and concluded that his opinions in that case were "entitled to no weight." In *FTC* v. *Kroger Co*., 2024 WL 5053016, at *14 (D. Or. Dec. 10, 2024), the court criticized an analysis that failed to account for geographic differences or predict the changes resulting from the transaction. *See* Majure V.S. Vol. 1 ¶¶ 116-21.

both. His comparison therefore does not establish that a merger creating a combined UP-NS would reduce the rates shippers pay.[809]

Moreover, any argument that the Transaction is likely to lower prices for shippers is not credible in light of UP's stated policy of raising prices whenever it has the opportunity to do so. As discussed in Section III, the record is replete with evidence that UP pursues higher margins than other railroads and favors price increases at the expense of volume growth. [redacted][810] UP's internal documents also indicate that [redacted] supporting Dr. Majure's conclusion that UP enjoys substantial market power.[811] And Mr. Vena's remarks at the SWARS Conference reflect a recognition that UP has the market power to raise price when it chooses to do so. Unless UP changes that strategy, extending it to NS traffic is more likely to raise rates than to produce the price reductions assumed to attract truck traffic. As Dr. Majure explains, although not expressly discussed in his testimony for Applicants, Dr. Israel quantified this effect in his backup materials.[812] Dr. Israel's results indicate that, after controlling for other factors, if UP is involved in a movement, shippers' rates increase by [redacted] relative to similar movements that involve NS. When he restricts his

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809 Majure V.S. Vol. 1 ¶¶ 369-75.

810 UP_1626615 at -615 [redacted] UP_1535760, at -763 [redacted] UP_0694815, at -858 [redacted] UP_1641198, at -198-199 [redacted]

811 UP_0209007, at -009 [redacted] UP_0282009, at -011 [redacted]

812 Majure V.S. Vol. 1 ¶ 130.

analysis to only UP-NS traffic, Dr. Israel finds that UP charges a rate [redacted] higher than NS on purportedly comparable movements, according to his regression.[813] The [redacted] premium is [redacted] the 15% "discount" he finds for single-line service instead of through rate service.[814] Thus, Dr. Israel finds that UP's ability to price higher [redacted] he identifies with single-lining.[815] (*See* Dr. Majure Exhibit 22, reproduced below as Figure 71.)

FIGURE 71

DR. MAJURE EXHIBIT 22: UP PREMIUM ON RATES PAID OVER NS[816]

[redacted]

If small rate cuts could generate the large, profitable traffic gains Applicants predict, then UP and NS would already have an incentive to pursue them. Applicants do not explain why the merger would make those gains credible or cause UP to abandon its pricing strategy.[817]

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813 Majure V.S. Vol. 1 ¶ 131.

814 Majure V.S. Vol. 1 ¶ 131.

815 Majure V.S. Vol. 1 ¶¶ 131-35.

816 Majure V.S. Vol. 1 ¶ 131 & Ex. 22.

817 Majure V.S. Vol. 1 ¶¶ 58, 138-42.

5. Applicants' Independent Route Screen Does Not Resolve the Competitive Harms

Dr. Majure's analysis demonstrates that Applicants' independent-route screen neither measures the merger's foreclosure effects nor provides a sound basis for dismissing other sources of competitive harm, including the competitive harms that screen identifies. The independent route analysis screen counts how many independent routings (i.e., routings with no carriers in common) would be eliminated as a result of the Transaction.[818] The motivating concern that the independent route analysis seeks to test is whether access to independent routes creates competition, and, therefore, a reduction in access to independent routes could be a way that competition is diminished as a result of the merger. Although a reduction in access to independent routes could be used to flag a potential route of competitive concern, an unchanged route count, by contrast, does not establish that shippers would retain the competitive alternatives they enjoy today.[819]

Nor does Dr. Israel's analysis rule out harm on the routes his screen methodology identifies as of potential concern. Dr. Israel identifies 74 corridors, accounting for approximately [redacted] annual carloads, in which the merger would reduce independent routing options from three to two or from two to one.[820] He nevertheless dismisses every identified route of concern based on theoretical alternative routings that no shipper used across the full six-year period covered by the 2019-2024 Six-Railroad Tapes Data. Without undertaking a corridor-specific inquiry into the commercial or operational viability of these theoretical alternatives, Dr. Israel assumes that the existence of tracks and a point of possible interchange are sufficient to

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818 Majure V.S. Vol 1. ¶¶ 438-41.

819 Majure V.S. Vol. 1 ¶¶ 439-45.

820 Majure V.S. Vol 1 ¶ 446.

validate the competitive effectiveness of those alternatives—even though no shipper has used those routes in at least six years. The existence of a physical connection, however, does not establish that a routing can meaningfully constrain the merged carrier's rates or service.[821]

Dr. Israel's treatment of these alternatives also conflicts with Applicants' central justification for the merger. For [redacted] of the dismissed corridors, representing [redacted] annual carloads, he assumes that previously unobserved interline services—including some requiring multiple interchanges or circuitous routings—would compete effectively with the proposed UP-NS single-line service.[822] Applicants thus assume that other carriers can readily prevent competitive harm via interline services while simultaneously invoking the supposed limitations of interline cooperation to justify their merger. If Applicants are correct here, it calls further into question why a merger is needed at all. The Board should reject Applicants' effort to dismiss the independent-route losses their own screen identifies and should separately assess the foreclosure and other harms that the screen cannot measure.

6. Open Gateway Commitments Like Those Implemented in *CP/KCS* Would Not Preserve the Competition at Risk

Applicants' anticipated commitment to keep gateways open on "commercially reasonable terms" does not resolve concerns from the merger's adverse impact on competition between eastern carriers and/or between western carriers on one or both sides of a Mid-Continent gateway. The concern here is not simply whether UP formally permits interchange to occur after the merger—as it would be obligated to do by statute for non-exempt traffic. Instead, the question is whether UP competing interline routes remain commercially viable enough to

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821 Majure V.S. Vol. 1 ¶¶ 163-67, 447-49.

822 Majure V.S. Vol. 1 ¶ 167.

discipline UP's rates and service. UP will be less motivated to support efficient interline options that compete against UP-NS's own single-line services. UP-NS could keep gateways physically open while the service offered through them becomes too expensive, slow, infrequent, or unreliable to meet shippers' needs. UP-NS could make an interline route unattractive without formally refusing to interline.

Nor can Applicants establish the adequacy of their gateway commitments by invoking *CP/KCS*. *CP/KCS* combined the sixth and seventh-largest Class I railroads to create an entity that was still the smallest Class I railroad and that added a new single-line service competitive option in an area of the country that already had multiple rail competitors.[823] Indeed, according to the Six-Railroad Tapes Data CPKC only had [redacted] of revenue on U.S. movements, while the proposed UP-NS would account for [redacted] of that revenue before any of the predicted traffic diversion.[824] The gateway protections in *CP/KCS* also operated in materially different circumstances.[825]

First, the competitive context is fundamentally different in this case. As discussed above, *CP/KCS* created a new single-line, north-south competitor to an area of the country in which several much larger Class I railroads already offered single-line routes.[826] As Mr. Creel explains, *CP/KCS* enabled CPKC to introduce services that compete with existing UP and BNSF single-line offerings.[827] The gateway commitments in that case, therefore, operated in a setting where

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823 Majure V.S. Vol. 1 ¶¶ 171-72, 179.

824 Majure V.S. Vol. 1 ¶ 172.

825 *Canadian Pacific Ry. – Control – Kansas City* Southern, Finance Docket No. 36500, (STB Decision No. 35 served Mar. 14, 2023) at 12; Majure V.S. Vol. 1 ¶¶ 171-81.

826 Further, CP's and KCS's networks connected at only one location—Kansas City—so there was no pre-merger opportunity for those carriers to compete for a longer haul via alternative interchange points in the way that occurs with UP and NS. *See* Majure V.S. Vol. 1 ¶¶ 176-77, 79 & Ex. 28.

827 Creel V.S. ¶ 28.

the transaction itself expanded competitive options for shippers. By contrast, the proposed UP-NS combination would eliminate an important source of interline competition by creating the only single-line railroad spanning all of the major Mid-Continent gateways. Rather than facilitating new competition, the transaction would concentrate control over critical interchange points in the hands of a single dominant carrier with the ability and incentive to divert traffic away from interline service.

Second, the two gateways primarily at issue in *CP/KCS*—Laredo and Robstown—could be bypassed by CPKC interline partners via other nearby gateways, including Eagle Pass (for UP and BNSF) and El Paso (for BNSF).[828] Those alternative gateways provided an important competitive, structural constraint on the merged CPKC because they limited its ability and incentive to disadvantage interline movements without risking diversion to nearby interchange points. Here, no comparable bypass exists. As a result, a behavioral commitment to maintain gateways on "commercially reasonable terms" would provide substantially less protection than it did in *CP/KCS* because of the lack of any structural protections preventing UP from making interline service less attractive through pricing, service, or operational decisions.[829]

Third, the Board's confidence in the *CP/KCS* commitments rested in part on an established history at those same gateways following KCS's acquisition of Tex Mex and TFM. Nearly two decades of experience showed that KCS had not effectively shut off interchange with either UP or BNSF at Laredo, for the same reason that CPKC lacked the incentive to do so going forward. That historical record gave the Board a concrete basis for concluding that the proposed commitments were consistent with actual operating practice. Further, John Brooks

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828 Majure V.S. Vol. 1 ¶¶ 174-75.

829 Majure V.S. Vol. 1 ¶¶ 174-75, 180-84.

acknowledged that CP/KCS would inherit KCS's existing commitment to keep the Laredo gateway open on commercially reasonable terms, and the Board confirmed that the combined company would remain bound by the commitments imposed in the KCS–Tex Mex proceeding.[830] There is no comparable history for the major Mid-Continent gateways implicated by this Transaction. To the contrary, the Board would be asked to rely solely on Applicants' assurances, without any comparable evidence, that it could be held to a commitment to continue to facilitate interline competition on "commercially reasonable" terms.

UP itself has explained why such a promise would be illusory. In *CP/KCS*, UP argued that it was "not aware of any mechanical definition of what it means for a rate to be 'commercially reasonable.'"[831] UP added that "commercially reasonable" is "not a concept UP uses in pricing traffic," and "[r]ailroads and customers operating in good faith may well disagree about whether a particular rate is appropriate."[832] Accordingly, UP argued that "Applicants' promise to charge commercially reasonable rates "would be meaningless," "illusory," and "unenforceable" unless the Board defined concrete maximum charges.[833] UP also warned that a merged carrier with control over a gateway could "have the ability and incentive" to "divert traffic from interline routes" by "raising rates and degrading service shippers seeking competitive alternatives" to the merged firm.[834] Those arguments apply with far greater force

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830 *Canadian Pacific Ry. – Control – Kansas City Southern*, Finance Docket No. 36500, (STB Decision No. 35 served Mar. 15, 2023) at 56 & n.83, 61& n.98.

831 Union Pacific Railroad Company's Comments and Request for Conditions, Verified Statement of Kenny Rocker and John Turner, *Canadian Pacific Ry. – Control – Kansas City Southern*, Finance Docket No. 36500 (filed Feb. 28, 2022) at 19.

832 Union Pacific Railroad Company's Comments and Request for Conditions, Verified Statement of Kenny Rocker and John Turner, *Canadian Pacific Ry. – Control – Kansas City Southern*, Finance Docket No. 36500 (filed Feb. 28, 2022) at 19.

833 *Id.*

834 *Id.* at 14.

here. [redacted][835]

A gateway condition that leaves UP free to define commercial reasonableness after the merger would invite dispute, delay, and uncertainty. It would place the burden on shippers and competing carriers to challenge conduct after harm has occurred. And it would not prevent UP from disadvantaging interline alternatives through non-rate mechanisms of discrimination, including service plans, blocking, scheduling, terminal priority, data quality, and capacity allocation. The Board should not treat such a promise as a substitute for preserving the actual competitive options that exist there today.

7. Though Not Offered as a Remedy for Vertical Harms, UP's Proposed "Committed Gateway Pricing" Would Make Matters Worse

Applicants' CGP proposal, even as expanded in their July 27 supplemental submission, is not a remedy for the vertical and interline harms described above. Applicants do not claim otherwise. They call the expansion a "voluntary" measure meant to "supplement" the merger's claimed benefits. They also argue that conditions going beyond offsetting specific merger-related harms, "whether to 'enhance competition' or otherwise," would exceed the Board's mandate.[836]

CGP does not recreate the bargaining leverage shippers now get from independent carriers on one or both sides of a gateway.[837] Applicants admit that CGP "does not eliminate

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835 UP_1410551, at 552.

836 UP-80/NS-78 at 14-15, 27; *see also* Rynaski Dep. 50:12-50:15 (UP Senior Vice President of Strategy testifying that [redacted]

837 Majure V.S. Vol. 1 ¶¶ 233-37, 280, 301-08.

both bottlenecks—it cannot."[838] Nor does it create a new carrier. CGP is only a cap on the rate for the UP/NS leg. It is available only to BNSF and CSXT, and only when those railroads quote a through rate. It covers only traffic interchanged at Chicago, St. Louis, Memphis or New Orleans.[839] CPKC and CN are excluded altogether.[840] Mr. Brooks reviews the many defects in the scope and content of Applicants' revised CGP proposal. Among other critical shortcomings, it would apply to approximately 3% of total interchange carloads.[841]

CGP also does not require UP to support efficient interline operations, and it does not stop UP from making non-UP routings less attractive through degraded service or access. Applicants offer no service benchmarks for CGP traffic, only a general nondiscrimination pledge.[842] And CGP would end with the oversight period, while the vertical harms would not.[843] Moreover, as discussed below in Section XI, CGP would affirmatively risk harming competition, and incentivizes behavior that would raise rates for shippers.[844]

C. The Transaction Would Eliminate Geographic Competition and Weaken Bargaining Across Shippers' Facilities

The Transaction would eliminate geographic competition and the bargaining leverage it provides across a shipper's facilities and movements. Shippers can compare alternative sources, destinations, production sites, and distribution locations. They can shift production, expand facilities, or direct new investment toward locations served by railroads offering better rates and

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838 UP-80/NS-78 at 16.

839 Dr. Israel Supp. V.S. ¶¶ 10, 12, 17.

840 UP-80/NS-78 at 30-31; Israel Supp. V.S. ¶ 40 n.29.

841 Brooks V.S. ¶ 182 & Figure 13.

842 UP-80/NS-78 at 14-15.

843 UP-80/NS-78 at 37.

844 Israel Supp. V.S. ¶¶ 9, 46.

service. Those choices put UP and NS in competition even when they do not both serve a particular facility.[845]

A shipper may have facilities served only by UP and other facilities served only by NS. Today, their separate ownership allows the shipper to use production choices and offers of broader business relationships in dealing with UP and NS as separate entities to obtain more competitive terms from each. The merger would bring those captive facilities into a single negotiation with UP-NS, increasing the shipper's dependence and weakening its ability to play the carriers against one another. UP-NS could also use favorable terms on captive traffic to obtain commitments on traffic for which the shipper still has alternatives.[846]

The potential reach of this harm is substantial even under UP's own criteria. [redacted][848]

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845 Majure V.S. Vol. 1 ¶¶ 193, 195-99.

846 Majure V.S. Vol. 1 ¶¶ 193, 197-204; Brooks V.S. ¶¶ 60-63.

847 Majure V.S. Vol. 1 ¶¶ 209-10 & Ex. 32 (UP_0082882, at 914); *see also* UP_0082459 [redacted]

848 Majure V.S. Vol. 1 ¶¶ 210-11 & Ex. 32 (UP_0082882, at 914); *see also* UP_3141193, at -227 [redacted]

FIGURE 72

DR MAJURE EXHIBIT 33: [redacted][849]



This analysis of potential competitive harm is consistent with that advocated in this proceeding by the Joint Shipper Associations, which argued that "[t]he combined captive origins and destinations on UP and NS would give the merged entity a far greater concentration of closed industries."[850]

As the map shown in Dr. Majure's Exhibit 34, reproduced below as Figure 73, [redacted] UP stations and [redacted] NS stations meet UP's criteria for harmful effects from a combined UP-NS. Each yellow dot on the map represents a station where there is at least one shipper served only by UP that has one or more other facilities at captive stations only by NS, and each

[849] UP_0082882, at 914

[850] Joint Shipper Associations' Motion For Summary Denial (ACC-6 / ACD-6 / AFPM-6 / NITL-3 / TFI-6) (filed Aug. 6, 2026) at 30.

black dot on the map represents a station where there is at least one shipper served only by NS that has one or more other facilities at captive stations served only by UP.

FIGURE 73

DR. MAJURE EXHIBIT 34: MAP OF STATIONS MEETING [redacted] METRIC FOR INCREASING UP-NS'S BARGAINING LEVERAGE OVER SHIPPERS[851]



Potential examples of customers with captive facilities on both UP and NS—or facilities for which UP or NS is a strongly preferred option—include chemical and plastics producers with Gulf Coast and eastern facilities and automobile manufacturers such as General Motors ("GM") with separately served plants in NS-served territory and UP-served territory. GM, for example, operates certain important manufacturing facilities that are captive to UP and others that are

[851] Majure V.S. Vol. 1 ¶ 212-13 & Ex. 34.

captive to NS. After the merger, UP will thus control a substantially larger portion of GM's rail transportation requirements. Even if today GM has limited ability to credibly threaten to shift production from one plant to another in response to rail pricing, the Transaction will take away that limited bargaining leverage. Other potential examples include chemical and plastics producers with both Gulf Coast facilities and eastern facilities and other automobile manufacturers with separately served plants.[852]

The same dynamic applies as well to competition among railroads to attract new shipper facilities to their networks. Suitable locations are not infinite, and the combination of UP and NS will reduce the available independent alternatives meaningfully. [redacted]

[852] Brooks V.S. ¶¶ 49-59.

FIGURE 74[853]



The Applicants' internal documents illustrate how a carrier's broader network can affect a customer's choices on individual lanes.

[855] After the merger, more of these customers' rail requirements would be controlled by a single carrier.[856]

UP's own internal documents recognize that a merger can increase a railroad's bargaining power over a shipper with some facilities served only by one merging railroad and other facilities

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853 UP_0198167, at -186.

854 UP_0209007, at -011.

855 NS_00170988, at -988; NS_00785443, at -443.

856 Majure V.S. Vol. 1 ¶¶ 193, 197-99, 212-19; Brooks V.S. ¶¶ 49-59.

served only by the other. That evidence confirms why the Board must examine the shipper's options across its facilities, rather than look only for the loss of a carrier at an individual plant. Combining those relationships under UP-NS would reduce the shipper's ability to use independent railroads to obtain better terms.[857]

Dr. Majure conducted a more thorough analysis of this issue focused specifically on shippers of chemicals. He found that a greater dependence on individual railroads is associated with higher rates, controlling for route, commodity, and other observable factors. Applying the merger-related change in dependence to the shippers studied yields approximately [redacted] in additional annual spending. Two illustrative extrapolations to other shippers yield approximately [redacted] and [redacted] annually. These estimates show the potential magnitude of a category of competitive harm that Applicants do not evaluate at all.[858]

UP already engages in these practices pre-merger. Mr. Rocker confirmed at his deposition that [redacted][859] As Mr. Rocker explained, [redacted][860] This practice is also reflected in UP's documents. For example, [redacted]

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857 Majure V.S. Vol. 1 ¶¶ 207-11, 217-19.

858 Majure V.S. Vol. 1 ¶¶ 220-27, Exs. 35-36.

859 Rocker Tr. at 236:1-236:12 [redacted]

860 Rocker Tr. at 326:12-16.

[redacted].[861] Another document [redacted].[862] And in [redacted].[863]

NS employs bundling and other similar practices as well. NS executives testified in this proceeding that [redacted].[864] NS's documents likewise [redacted].[865]

These examples show why bundling must be examined in the context of the merger. Shippers can benefit today by negotiating across their locations and using the independence of UP and NS to obtain better terms. Common ownership would shift that leverage toward UP-NS.[866] The exposure is especially significant for rail-dependent industries whose facilities and sourcing decisions depend on rail rates and service. Examining whether another railroad serves an individual plant does not fully capture the leverage created by separately owned railroads

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861 UP_0209007, at -011.

862 UP_0479165, at -166.

863 *See* UP_0083983, at -104.

864 Tureman Tr. at 445:6-11; *see id.* at 450:7-15(testifying that [redacted]

865 NS_00171221, at -222 [redacted] NS_00171223, at -225 [redacted] NS_00785443, at -443 [redacted] NS_00170988, at -988-989 (describing NS [redacted]

866 Majure V.S. Vol. 1 ¶ 210-30.

serving different plants belonging to the same customer. The merger would combine those relationships even where no facility loses a physical rail connection.[867]

Notwithstanding the prevalence of bundling in contract negotiations between UP and NS and their respective customers, Applicants' experts do not analyze how combining UP and NS would change these negotiations. Dr. Bailey testified that she was "not aware one way or the other" whether shippers and railroads negotiate over multiple segments at once.[868] Dr. Israel acknowledged that he had not addressed the asserted bundling harm in his verified statements and was considering whether to respond (which, if offered, would represent an analysis of competition that would be too late for UP to submit on rebuttal.[869] His skepticism does not substitute for examining the actual negotiations and evidence of lost bargaining leverage.

D. The Transaction Would Eliminate Competition Between UP and NS for the Longer Haul

The Transaction would eliminate competition between UP and NS to carry a greater portion of an interline movement. Where their networks offer several possible interchange points, some gateways give UP a longer haul while others give NS a longer haul, creating incentives for each railroad to offer better rates to secure the additional revenue and profit.[870]

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867 Majure V.S. Vol. 1 ¶¶ 193, 197-99, 217-19.

868 Bailey Tr. at 199:22-200:03 ("Q. Next topic: Are you aware whether shippers and railroads negotiate with one another considering multiple segments at one time? . . . A. I think I'm not aware of one way or the other. That's not an analysis I did in my report.").

869 Israel Tr. at 65:9-66:1 ("Q. Is there any part of your verified statements that address the bundling concerns that are described on Page 30 of the Joint Shipper Association submission? A. I don't think this sort of bundling statement as it's made here is addressed explicitly in my verified statements thus far. These bundling -- these sort of bundling theories have a history in economics. Economists generally find it difficult to find a bundling theory like this that holds up as a matter of economics. So it's not something I addressed in my verified statements, but given that comments are coming in on this basis, you know, perhaps it's something I would reply to, and so it's something that I'm -- that I've been considering.").

870 Majure V.S. Vol 1 ¶¶ 238-43, 247.

The carriers thus complement one another at the endpoints but compete for the larger portion of the movement available to it through the selection of a different gateway—the "middle" of the movement—to shippers' benefit even when both endpoints are sole-served.[871] For example, traffic on the diagonal lanes between Houston and the Northeast or Mid-Atlantic can involve different allocations of the haul between western and eastern carriers depending on whether traffic moves through New Orleans, East St. Louis, Chicago, or other gateways. Bargaining over this allocation—even when it occurs in the background—involves a competitive check that would no longer exist when UP-NS sets end-to-end pricing. Following the merger, UP's and NS's competing commercial incentives would disappear. A single management team would determine the end-to-end routing and pricing strategy for the combined network, eliminating the bargaining that currently occurs between independent railroads and replacing it with unilateral decision-making.[872]

Competition for the middle of the movement is a practical reality that Applicants themselves acknowledge, citing the ICC's recognition that "[r]ailroads compete with each other for the longest haul and maximum revenue on traffic."[873] Further, Applicants' own documents [redacted][874] Yet neither Applicants nor their experts analyze how the Transaction would eliminate that competition or affect the rates shippers pay.

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871 Majure V.S. Vol. 1 ¶¶ 241-47.

872 Majure V.S. Vol. 1 ¶¶ 244-47, 253, 256; Brooks V.S. ¶¶ 64-67.

873 Applicants' Response Regarding Their Prima Facie Case (UP-94/NS-93) (filed August 26, 2026), at p. 29 ("As the Interstate Commerce Commission recognized, 'Railroads compete with each other for the longest haul and maximum revenue on traffic.'").

874 *See* NS_00330522, at -524 [redacted] *See also* NS_00623988 (discussing negotiations over divisions).

Dr. Israel, for example, acknowledges that gateway selection can determine the length of haul and division of revenues, and that these matters are negotiated between carriers. But he does not analyze the effect of eliminating that bargaining through the merger.[875]

Dr. Majure's analysis of observed gateway choices confirms the practical significance of those options. While UP and NS have posted publicly available routing guidelines on their websites that outline the pre-arranged handoff points for general merchandise movements that are served by both UP and NS, the data show that UP and NS [redacted] deviate from the publicly posted guidance, resulting in significant differences in the portion of the route that each carrier handles.[876] For example, more than [redacted] of UP-NS interline general merchandise carloads between the Livonia, Louisiana region and the Mid-Atlantic region depart from the designated New Orleans interchange; [redacted] of those deviating carloads instead interchange at [redacted] giving UP the longer haul.[877] The broader analysis identifies [redacted] region pairs with more than [redacted] moving through an interchange different from the published guidance.[878] Those

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875 Israel Tr. at 239:17-240:10; 243:5-15 ("A. Certainly the gateway generally can determine -- determines the longer haul. In lots of cases, that can determine the revenue split but not always. . . . A. I'm just thinking about the words 'compete with each other.' It certainly can be a topic of negotiation between them. . . . Q. And in your analysis, do you analyze at all how the loss of this kind of competition between UP and NS to carry the longer portion of a route impacts the rates that negotiate -- or impacts the rates that negotiated shippers will pay after the transaction? A. I don't -- I mean, I discuss why the ability to single line -- I don't know if I discuss it in those terms."). *See also* Bailey Tr. at 197:23 ("Which gateway UP and NS used to interchange traffic can affect which railroad carries the longer portion of the haul, right? … A. "That's not something I looked at in my report.").

876 Majure V.S. Vol. 1 ¶ 252.

877 Majure V.S. Vol. 1 ¶ 250.

878 Majure V.S. Vol. 1 ¶ 252.

patterns are consistent with competition over gateway choice and demonstrate the substantial traffic for which the allocation of the haul is at issue.[879]

Applicants' experts do not analyze the loss of that competition or its effect on shipper rates. Dr. Bailey's "within-corridor" screen focuses on segments that UP and NS both serve without accounting for competition over a middle segment that each bundles with its own endpoint service. Dr. Israel's framework likewise assumes away competition over which carrier receives the longer haul. Applicants therefore do not evaluate the loss of this existing competitive constraint.[880]

Applicants' commitments would not replace this competition. Keeping a gateway formally open does not preserve the incentive of two independent carriers to bid against one another for the longer haul when those carriers become a single company. The loss affects shippers, including those with sole-served endpoints, whose leverage now depends on choosing among alternative interchange points.[881]

E. The Transaction Would Also Harm Competition in Specific Corridors and Reduce Independent Innovation, and a Duopoly Would Further Magnify that Problem

In addition to the three principal harms discussed above, the Transaction will harm competition in countless other ways. It would undermine the interline network by weakening UP's incentives to support—and invest in—services involving competing carriers. (*See* Sections IX.A-B). It would also give UP disproportionate influence over industry institutions, railcar pools, and terminal railroads on which other carriers depend to compete effectively. (*See* Section

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879 Majure V.S. Vol. 1 ¶ 252-53.

880 Majure V.S. Vol. 1 ¶¶ 257-59.

881 Majure V.S. Vol. 1 ¶ 260.

IX.C.) We discuss two additional harms here: UP and NS also constrain one another through overlapping corridor services and independent decisions about investment, service, and innovation. These additional losses reinforce the need for a broader inquiry than Applicants' conventional overlap analysis.

1. The Transaction Would Eliminate Corridor Competition and Impair Competing Services

Competitive harm would arise in specific corridors and gateways where the Transaction would eliminate direct competition or increase UP's ability and incentive to impair competing services. As Dr. Majure explains, UP and NS operate the two best routes between Kansas City and St. Louis; combining them would eliminate their existing rivalry in that corridor.[882] Elsewhere, including the Gulf Coast, Meridian Speedway, and Chicago-Detroit corridor, the merger would weaken the independent interline options available to shippers by giving UP-NS stronger incentives to favor its own single-line service and disadvantage competing carriers that depend on its cooperation, infrastructure, or operating rights.[883]

The Transaction would also increase Applicants' ability to impair competition through control of critical terminals and gateway facilities. Dr. Majure identifies risks to competition at New Orleans, Kansas City, St. Louis, and Chicago, as well as the potential loss of an independent intermodal option in Dallas-Fort Worth if UP acquires control of the Wylie Intermodal Terminal.[884] These are practical mechanisms through which the merger could diminish shippers' alternatives, raise competing carriers' costs, and degrade their service without formally closing a gateway. While CPKC's requested conditions seek to preserve or replace

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882 Majure V.S. Vol. 2 ¶¶ 69-71; Brooks V.S. ¶ 222.

883 Majure V.S. Vol. 2 ¶¶ 32-34, 48-51, 80-85.

884 Majure V.S. Vol. 2 ¶¶ 46-47, 52-61, 67, 73-75.

some of those competitive constraints, those conditions would only partially mitigate the merger's harms, which Volume II of CPKC's Comment examines in detail for the affected corridors and gateways.[885]

2. The Transaction Would Reduce Independent Innovation, with Further Losses from a Duopoly

Independent railroads also compete through innovation. They develop different commercial strategies, technologies, service products, operating practices, and customer-facing tools.[886] A successful experiment by one carrier can pressure rivals to respond.[887] Consolidation then reduces the number of independent decision makers that can take those risks. The Transaction would eliminate NS as an independent source of innovation and diminish the competitive pressure that encourages railroads to develop better services and operating practices.[888]

The problem would be magnified in a duopoly. With only two transcontinental systems, the industry would have fewer independent laboratories for new service products and fewer incentives to disrupt profitable status quo arrangements.[889] The result would be less experimentation, less customer-specific problem solving, and fewer independent checks on a dominant carrier's operating philosophy.[890]

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885 Majure V.S. Vol. 2 ¶¶ 28-31.

886 Clements V.S. ¶¶ 45, 128; Fox V.S. ¶¶ 60, 63-66.

887 Clements V.S. ¶ 45.

888 Clements V.S. ¶ 128.

889 Clements V.S. ¶ 45; Creel V.S. ¶¶ 29-32 (explaining why UP-NS could compel responsive consolidation and why that consolidation would compound the loss of shipper options and independent innovation).

890 Clements V.S. ¶¶ 45, 128.

XI. APPLICANTS' PROPOSED COMPETITIVE ENHANCEMENTS OR "COMMITMENTS" DO NOT MEASURE UP TO THE REQUIREMENTS OF THE 2001 MAJOR MERGER RULES

The 2001 Major Merger Rules require more than promises of private efficiencies or generalized claims that a larger railroad will compete better against trucks. The Board explained that the "new rules reflect an intention on our part to offset, through conditions for competitive enhancements, those merger-related harms that cannot be directly or effectively mitigated."[891] The "amount of new or enhanced competition that would be needed . . . would depend on the potential for and likely extent of service problems risked and the degree to which existing competitive alternatives could not be feasibly and effectively preserved."[892] Where a major merger threatens competition, Applicants must provide meaningful competitive enhancements sufficient to offset the harms, including harms that may elude quantitative measurement or may be impossible to remedy effectively. Applicants' proposals fail that standard. Applicants' only proposed "competitive enhancement," CGP, is narrow, temporary, and likely anticompetitive. Neither the ICCTA's general regulatory backstops nor Applicants' proposed Targeted Access and Alternative Dispute Resolution Programs substitute for preserving competition. In light of UP's track record in this and other prior proceedings, the Board should have serious doubts that any "commitments" that depend upon UP's voluntary compliance, or any conditions that require ongoing monitoring and enforcement with the Board, will accomplish their intended goals.

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891 Major Merger Rules, 5 S.T.B. at 547.

892 *Id*. at 550; *see also* 49 C.F.R. § 1180.1(d).

A. The Only Proposed "Intramodal" Competitive Enhancement—Committed Gateway Pricing (or "CGP")—Would *Harm* Rather than "Enhance" Competition

The Board made clear in enacting the 2001 Major Merger Rules that future applicants must "provide a plan for enhancing competition," and that plan would be "extremely important" to the Board's determination of whether to approve or reject a future transaction.[893] The Board's rules addressing "enhanced competition" contemplate that Applicants would propose concrete measures expanding rail-to-rail competitive opportunities for shippers. The Board identified measures such as "the granting of trackage rights, the establishment of shared or joint access areas, the removal of 'paper' and 'steel' barriers, and other techniques that would enhance railroad-to-railroad competition."[894]

Apart from Applicants' general position that the Transaction itself will "enhance competition," the only specific measure Applicants suggest may qualify as a competitive enhancement is CGP. In their July 27 submission, Applicants tried to rebrand CGP as creating "new haulage-like opportunities," but the underlying substance remains that UP-NS would not admit any new railroad to access its sole-served customers. CGP is no more than a program for the setting of rates *for transportation provided by UP-NS*.[895] CGP governs only the prices that post-merger UP will charge for a narrow subset of East-West manifest carload movements (excluding intermodal, automotive, and vast swaths of other traffic). It does not provide shippers with access to another rail carrier. Applicants themselves say that CGP and its other commitments "do not define the merger," referring to them as "narrow ancillary

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893 Major Merger Rules, 5 S.T.B at 554.

894 Major Merger Rules, 5 S.T.B at 554.

895 UP-80/NS-78 at 184.

commitments."[896] That concession confirms that CGP is not a meaningful answer to the merger's structural harms. CGP is a price-cap regulatory program, not a competitive enhancement. CGP's alleged benefits are extremely small when compared to the likely harm to shippers, and by Applicants' own admission, it creates incentives to raise rates for shippers who currently utilize UP-NS.[897]

1. There Is Abundant Need for Offsetting Enhancements Given the Serious and Fundamentally Irremediable Consequences of the UP-NS Combination

The need for meaningful competitive enhancements is substantial. As discussed in detail in Section X above, the Transaction would increase concentration, eliminate independent decision making, reduce gateway optionality, impair interline competition, expand UP's control over essential assets, and create a radically unbalanced rail marketplace. Many of these harms are structural and would be difficult or impossible to cure after consummation. The 2001 Major Merger Rules recognize that the quantity and quality of competitive enhancements required depend on the potential merger-related harm, the amount of likely service disruption, and the scope of the merger-related public benefits that can realistically be expected.[898]

Applicants' purported "commitments" (i.e., CGP, the Targeted Access and Alternative Dispute Resolution Programs, and their vague open-gateway pledge) fall far short of what is required under the 2001 Major Merger Rules. Those commitments do not restore an independent NS, preserve the full range of geographic and interline competition the merger will disrupt, or constrain the merged carrier's control over essential assets and gateway routing. They are

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896 UP-80/NS-78 at 27.

897 Majure V.S. Vol. 1 ¶ 280.

898 Major Merger Rules, 5 S.T.B. at 547.

narrow and mostly temporary remedies for selected symptoms, not an offset for the Transaction's structural consequences. A meaningful enhancement must be broad enough and permanent enough to address those structural harms and *expand* and not merely replace lost rail-to-rail competition. What Applicants offer does not come close to passing that bar.

2. CGP Is Not a Competitive Enhancement

CGP is too narrow in scope, limited in time, and weak in substance to qualify as a competitive enhancement sufficient to offset the numerous ways the Transaction will harm competition and the U.S. railroad system as a whole. CGP reaches only a sliver of the traffic affected by the merger. Its specific limitations—and the structural harms it leaves unaddressed—are set out below.

CGP applies to only a narrow slice of rail traffic.[899] CGP applies only to movements involving a UP-NS sole-served facility that connects through one of four gateways—Chicago, St. Louis, Memphis, and New Orleans—to a facility served by BNSF or CSX. It does not apply to traffic connecting to a facility served by CPKC or CN. And it excludes intermodal, automotive, TIH/PIH, dimensional-load, SIT, and railroad-owned-facility traffic.[900] [redacted]

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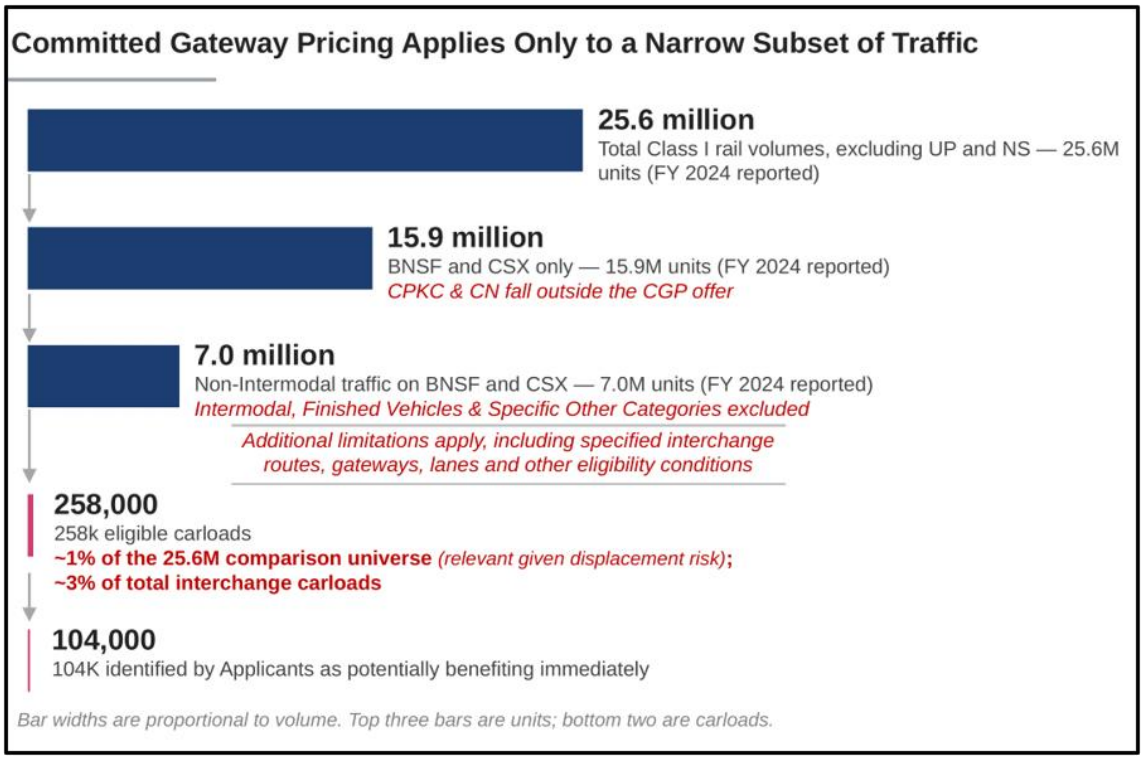
[899] *See* Brooks V.S. ¶¶ 182-183 & Figure 13, reproduced as Figure 75 below.

[900] *See* Rev. App. 1-30 to -36; *see also* Novak Tr. at 187:5-21 ("Q. Why was intermodal traffic excluded? A. I believe, as I state in my statement, that we did exclude different types of traffic due to unique pricing or other considerations around that type of traffic. Q. What are the unique pricing or other considerations that support excluding intermodal traffic from CGP? A. I don't know. Q. Okay. What are the unique pricing or other considerations that support excluding storage-in-transit traffic from CGP? A. I don't know."); *id.* at 328:19-330:1 ("Q. Okay. Do you believe that there would be benefits to shippers from offering committed gateway pricing with CPKC? . . . A. I can't speak to that, as I don't know for sure. . . . [redacted] *id.* at 191:20-192:4 [redacted]

[redacted] }[901]

FIGURE 75

BROOKS FIGURE 13: LIMITED APPLICABILITY OF CGP PROGRAM



CGP is also temporary and expires at the end of the Board's oversight period. Applicants themselves characterize it as a "regulatory price control," say that the harms it addresses are "transitory," and warn that price caps "distort market signals."[902] Thus, even Applicants' own account treats CGP as a short-term regulatory intervention rather than a durable competitive enhancement.

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[901] NS_00330522 at -522 ([redacted]).

[902] UP-80/NS-78 at 37-40.

The benefits that Applicants claim will arise from CGP are small. Dr. Israel estimates that the total net benefit of CGP will be $86.5 million in the first year and then only $44.0 million in each year CGP continues. All told, over the five years of CGP, the total benefit to shippers, as calculated by Dr. Israel, is $262.5 million.[903] As Dr. Majure explains, there are numerous problems with the way Dr. Israel calculates the total net benefit of CGP.[904] But even taking those estimates at face value, that benefit is essentially a rounding error. Total revenue for UP and NS combined was $179.9 billion over 2021-2025.[905] Even if shippers fully benefitted from CGP as estimated by Dr. Israel, that benefit would be equivalent to just 0.15% of that amount.[906]

It is also undisputed that CGP will harm some shippers. Dr. Israel's net benefit estimate is an aggregation, meaning some shippers benefit and some are harmed, according to his model.[907] According to Dr. Israel's estimates, [redacted] of shippers are harmed, while [redacted] of shippers will benefit.[908] The remaining [redacted] of shippers are unaffected.[909] Dr. Israel's estimates show UP has the potential to increase rates on NS shippers amounting to [redacted] billion in extra costs for shippers each year, before any theoretical CGP-related reduction in cost.[910]

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903 Majure V.S. Vol. 1 ¶ 283.

904 Majure V.S. Vol. 1 ¶ 281-82.

905 Majure V.S. Vol. 1 ¶ 284.

906 Majure V.S. Vol. 1 ¶ 284.

907 Majure V.S. Vol. 1 ¶ 285.

908 Majure V.S. Vol. 1 ¶ 290.

909 Majure V.S. Vol. 1 ¶ 290. Dr. Majure demonstrates that the benefits are highly concentrated among a handful of shippers. Approximately [redacted] million out of the $44.0 million yearly net benefit [redacted] of CGP goes to only [redacted] shippers. *See* Majure V.S. Vol. 1 ¶¶ 291-92 & Ex. 45.

910 Majure V.S. Vol. 1 ¶ 284.

The reason that Dr. Israel finds harm for some shippers is that CGP creates a balance of effects: a combined UP-NS has an incentive to raise prices on shippers whose rates determine the CGP price because any increase in these shippers' rates increases CGP prices and therefore UP-NS's profit. Dr. Israel acknowledged that using the incumbent carrier's pricing as the basis for the gateway rate "can potentially create an incentive for the incumbent carrier to compete less aggressively and transact at rates higher than would otherwise occur absent the gateway rate mechanism."[911] Dr. Israel's supplemental statement confirms the concern: because the CGP rate is calculated from an "input" set of routes not eligible for CGP, "it is advantageous for UP/NS to set rates on routes in the input set to increase the CGP price," and "[t]he benefit of increasing the CGP price creates incentives to raise rates on some routes in the input set."[912] CGP also sets CGP rates at the 70th percentile of purportedly comparable rates, which means that, at least for some shippers, rates would be higher than what UP-NS would otherwise charge. Applicants paper over this problem by suggesting that in cases where the CGP rate is high, shippers will simply revert to traditional UP interline service.[913] But this "fix" begs the question whether traditional interline solutions would realistically be available (and in these situations CGP would be doing nothing to preserve them). A mechanism that predicts price increases for a meaningful volume of traffic cannot be seriously considered as a competitive enhancement.

Applicants offered no rigorous analysis supporting the 70th percentile rate choice or demonstrating that it serves the competition-enhancing purposes of 49 C.F.R. § 1180.1(d).[914] They acknowledge that they "did not perform any modeling or analysis to determine whether the

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911 Rev. App. 2-256 (Israel Second Errata V.S. ¶ 167).

912 *See* UP-80/NS-78 at 276-77 (Israel Supplemental V.S. ¶¶ 46-47).

913 Rev. App. 1-380 (Novak V.S. ¶ 15.)

914 UP-80/NS-78 at 42.

70th percentile produces results that would more precisely serve the purposes expressed in 49 C.F.R. § 1180.1(d)" than other levels.[915] [redacted] [916] [redacted] [917] And Applicants' economic expert, Dr. Israel, likewise admitted that he did not test whether the 50th percentile or another CGP ceiling would produce greater shipper benefits.[918]

In addition, as Dr. Majure demonstrates, Dr. Israel also does not account for other harms in his modeling of CGP that would lower his predicted net benefits and will cause a net harm to specific shippers. For example, Dr. Majure finds that the negative impact of UP-NS's post-merger leverage over *just* chemical shippers [redacted] completely outweighs the per-year benefit of CGP ($44.0 million per year after the first year in Dr. Israel's estimation).[919] Dr. Israel also incorrectly assumes that railroads maximize profits movement by movement and assumes that railroads will not change their behavior in response to CGP. In so doing, he omits several ways in which CGP would alter railroads' incentives, bargaining strategies, investment decisions, and treatment of eligible traffic.[920]

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915 UP-80/NS-78 at 42-43.

916 *See* Novak Tr. at 79:[redacted] *id.* at 172:12-173:5 [redacted] *id.* at 176:5-15 [redacted]

917 McClellan Tr. at 258:9-260:18 (testifying that [redacted]

918 Israel Tr. at 57:6-11.

919 Majure V.S. Vol. 1 ¶ 288 & Ex. 37.

920 Majure V.S. Vol. 1 ¶ 301-08.

More fundamentally, CGP does not restore the independent NS network or the geographic competition that Applicants would eliminate. Applicants deny that the merger will produce material geographic-competition loss and say CGP is directed principally at transitional service disruptions.[921] A temporary pricing formula cannot replace an independent carrier, preserve geographic alternatives, or prevent a larger UP-NS from using its scale and network control to favor single-line movements. CGP also does not solve the size and duopoly problem, restore shipper optionality or gateway-routing choices, preserve interline competition, or limit UP/NS's control over essential assets. Applicants' own description confirms the mismatch: CGP "does not eliminate both bottlenecks—it cannot."[922] A mechanism aimed at one price component on selected interline movements cannot offset the loss of competition throughout the merged system.

CGP also is not intended to enable competition with the merged carrier's single-line service. Applicants propose no service benchmarks comparing CGP movements with comparable UP-NS traffic; instead, they offer only a nondiscrimination promise.[923] Applicants further concede that CGP "as originally proposed" would not have enabled shippers to reduce or avoid use of the merged carrier during service disruptions.[924] Quite simply, CGP does not generate any new rail-to-rail competitor or permit shippers to avoid reliance on the merged carrier.

Unlike CGP, Applicants' Targeted Access Program bears some of the hallmarks of a mechanism that could generate expanded rail-to-rail competition. Access by an additional

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921 UP-80/NS-78 at 37-39.

922 UP-80/NS-78 at 16.

923 UP-80/NS-78 at 45.

924 UP-80/NS-78 at 51.

carrier to a sole-served customer, where the new carrier is capable of competing for a material portion of the customer's traffic in a manner independent of its incumbent carrier, could add to the customer's competitive rail transportation options. Unfortunately for Applicants, the Targeted Access Program does not meaningfully add to any shipper's competitive options—it is at best a discipline for poor service that, because of its explicitly temporary duration, would be incapable of meaningfully expanding a shipper's array of competitive rail options.[925]

3. Enhanced Competition Means More Rail-to-Rail Competition, Not Asserted Gains from Trucks

Applicants' claimed ability to compete more effectively against trucks is not the competitive enhancement envisioned by the 2001 Major Merger Rules. As discussed in Section II.A above, Chairman Linda Morgan noted in her testimony to Congress that her "view of these rules is that if anybody brings an application to us and they want it approved, they had better have some sort of enhanced *intramodal* competition."[926] Truck competition is *intermodal* competition. The focus on intramodal competition makes sense. If a shipper is using truck service, it already has numerous non-rail options. Adding a single rail option to a truck-served movement may be a claimed service benefit, but it is not a substitute for enhancing competition among railroads.

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925 *See* Brooks V.S. ¶¶ 188-193.

926 S. Hrg. 107-1031, Before the Subcommittee on Surface Transportation and Merchant Marine of the Committee on Commerce, Science, and Transportation, 107th Cong., 1st Sess. (June 28, 2001) (Statement of Hon. Linda J. Morgan, Chairman, accompanied by Commissioners Wayne Burkes and William Clyburn) (emphasis added). *See also* Major Merger Rules, 5 S.T.B at 554 (identifying measures such as "the granting of trackage rights, the establishment of shared or joint access areas, the removal of 'paper' and 'steel' barriers, and other techniques that would enhance *railroad-to-railroad competition*.") (emphasis added).

Applicants now say that the merger will "sharpen rail-to-rail and rail-to-truck competition" and invoke the Board's statement that mergers may "enhance competition by creating a stronger competitor."[927] But those statements describe Applicants' asserted single-line and scale benefits; they do not establish that the merger will preserve or create independent rail-to-rail alternatives where it eliminates NS and redirects interline traffic to the merged carrier. More pointedly, the Board's prior statement in *CP/KCS*, a fundamentally different merger than the one proposed here, that a transaction could create a stronger competitor against BNSF, UP, and CN does not convert the loss of an independent Class I railroad or gateway optionality into an enhancement of rail-to-rail competition.[928]

This distinction is critical. Applicants cannot offset the loss of rail-to-rail rivalry, gateway optionality, and independent decision making by asserting that UP-NS may attract some traffic from highways. Even if those diversion claims were credited—which they should not be for reasons addressed above in Section V—they would not solve or offset the competitive harms within the rail network.

B. Neither The ICCTA's General Regulatory Backstops Nor Applicants' Targeted Access and Alternative Dispute Resolution Programs Will Protect Shippers from Merger-Created Market Power

Applicants next try to substitute new forms of regulation for competition. Applicants argue that Congress gave the Board "an established and robust set of tools to address public harms in the rail industry"—including regulation of rates, service, and carrier practices; enforcement of the common-carrier obligation; and the power to prescribe through routes, terminal trackage rights, and reciprocal switching. Applicants say those tools reflect "Congress's

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927 UP-80/NS-78 at 8, 25-26.

928 Majure V.S. Vol. 1 ¶¶ 179-81.

balance between allowing the market to govern in the first instance and preserving regulation as a backstop."[929] Applicants then offer arbitration-based remedies. The Targeted Access Program would provide expedited confidential arbitration and six months of temporary reciprocal switching subject to broad affirmative defenses, including operational infeasibility. CGP nondiscrimination disputes would likewise be addressed through an after-the-fact Board petition or AAA arbitration.[930] The Targeted Access Program also requires eligible shippers to endure substantial service deterioration before relief becomes available. Performance must deteriorate over a 12-week measurement period sufficiently to breach both the pre-merger baseline and an absolute performance threshold, after which Applicants receive an additional 30 days to cure and may contest access through arbitration.[931] Even if access is ultimately granted, its temporary duration may limit a competing carrier's willingness to commit equipment, develop service, or offer attractive rates. The theoretical right to temporary switching thus does not ensure a commercially useful alternative.[932]

Applicants' proposed Alternative Dispute Resolution Program for Common Carrier Rates ("Rate ADR") fares no better. The program is optional, applies only to non-exempt commodities moving under tariff (not to contract service or exempt commodities) and ends with the oversight period.[933] A shipper may obtain relief only if the arbitrator finds both that the carrier has market dominance and that it failed to provide reasonable rates, and "a carrier does not have market

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929 UP-80/NS-78 at 153.

930 UP-80/NS-78 at 23-24.

931 UP-80/NS-78 at 189, 191-93, App. A, Definitions ¶¶ 5-6 & §§ 2.2-2.3, 3.1-3.5, 6.2.

932 *See* Brooks V.S. ¶¶ 188-193.

933 UP-80/NS-78 at 195, 199-201.

dominance for any rate with a revenue-to-variable cost (R/VS) ratio below 180%."[934] Monetary relief is capped at $4 million over two years, and no reparation or rate prescription may be set below 180% of variable cost.[935] In addition, shippers participating in the program would relinquish one of the potential tools for challenging future UP-NS rates—the revenue adequacy test. Rate ADR, in short, is a streamlined version of the Board's existing rate-reasonableness backstop, not a substitute for the competition the merger would eliminate.[936]

Those programs do not restore the competition the merger would eliminate. They instead require shippers to identify harm after the fact and pursue confidential, party-specific proceedings that lack the Board's public oversight, transparency, and precedential force. The limitations described above underscore why these programs cannot substitute for preserved competition. Using regulation as a substitute for the competition lost through the merger is contrary to 49 U.S.C. § 10101(1), which makes it federal policy "to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail." The Board should decide whether this merger is in the public interest based on the competitive structure it would create, not on the prospect of administering disputes one at a time after that structure has been irreversibly changed.

XII. THERE IS NO VIABLE REMEDY TO THE PUBLIC INTEREST HARMS AND RISKS POSED BY THE TRANSACTION

There is no patchwork of conditions that could transform this Transaction into one that is in the public interest. The fundamental problem with this Transaction is structural. Applicants' proposal would permanently transform what is currently a competitive market structure into one

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934 UP-80/NS-78 at 198.

935 UP-80/NS-78 at 199.

936 *See* Brooks V.S. ¶¶ 194-196.

that is dominated by UP. UP would be effectively un-regulable. No collection of switching rights, access commitments, behavioral restrictions, or promises of future Board oversight can recreate the competitive dynamics that exist today while UP and NS remain independent.

As discussed in Section XI, Applicants' CGP and Targeted Access Program do nothing to remedy the harms of the Transaction. Their proposed gateway commitments cover only self-defined "eligible" traffic, leave enforcement principally to individualized Board complaint proceedings, and provide no meaningful operational protection.

A. Any Cluster of Commitments and Conditions Could Not Address the Full Scope of the Transaction's Harm to the Long-Term Public Interest

The Board's public-interest inquiry is not limited to whether discrete harms can be offset for particular shippers, lanes, or facilities; the Board must also consider the Transaction's effects on "over-all transportation policy."[937] The Board recently reaffirmed that point in a decision explaining that a limited shipper-specific commitment did not moot broader public-interest concerns because "[t]he Board's public interest inquiry is not limited to the impact of the transaction on a complaining shipper but rather concerns the impact on rail transportation as a whole."[938] That principle applies with even greater force in this proceeding, the first proposed merger evaluated under the Major Merger Rules. Commitments directed to particular lanes, gateways, facilities, or shippers cannot resolve the broader structural consequences of combining two Class I railroads. Nor could they address harm to the long-term resilience of the national rail system.

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937 *See McLean Trucking Co.* v. *United States*, 321 U.S. 67, 87 (1944).

938 *Kansas & Oklahoma R.R. – Lease & Operation Exemption With Interchange Commitment – Union Pacific R.R.*, Finance Docket No. 36849 (STB served Mar. 20, 2026) at 10.

There is no set of conditions—however sweeping, however carefully enforced—that can cure the competitive harm of eliminating NS as an independent Class I railroad. That loss is structural, permanent, and irremediable. Today, NS has independent economic incentives to pursue traffic, participate in interline routes, innovate, invest in its network, and cooperate with other railroads, even when doing so places its services in competition with UP.[939] Following the Proposed Transaction, UP would control NS's eastern network and internalize the benefits of keeping traffic on the combined UP-NS system. UP would therefore have both greater ability and greater incentive to favor its single-line routes over competing interline services—even when they are more efficient and attractive to the customer.[940] UP could degrade or de-emphasize key interchange gateways; use rates and divisions to steer traffic to its own network; restrict competing carriers' operating rights; deprioritize investment and maintenance on lines important to competing services; exercise increased influence over terminals and joint facilities; and impair competitive alternatives through discriminatory service or by diverting resources to other operating priorities.[941]

No regulatory regime can recreate the incentives of an independent competitor. An independent railroad does not need a Board order to seek new business, develop a competing route, invest to improve service, innovate, or work with another carrier to take traffic from UP. Conditions operate differently. The Board would need to anticipate particular forms of anticompetitive conduct, prescribe rules or performance standards, monitor compliance, identify violations, and provide effective remedies after a problem emerges. However thoughtfully

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939 *See, e.g.*, Majure V.S. Vol. 1 ¶¶ 11(a), 18, 54-55, 64-65, 68-70, 241-243.

940 Majure V.S. Vol. 1 ¶¶ 11(b), 56, 61, 90, 100.

941 Brooks V.S. ¶¶ 158, 167-177; *see also* Majure V.S. Vol. 1 ¶¶ 61, 69-70, 87, 99, 183, 262.

designed, that regulatory scheme remains an imperfect substitute for the decentralized competitive discipline imposed by an independent Class I railroad with its own network, customers, management, capital, and profit incentives.[942]

Moreover, a conditions-based approach would also impose continuing regulatory burdens that may themselves be inconsistent with the public interest. A sprawling framework of access commitments, service obligations, gateway protections, commercial exceptions, and reporting requirements would require ongoing monitoring, interpretation, and enforcement. Such a regime will be resource-intensive and rife with disputes over scope, implementation, compliance, and future constraints or impediments. This is not an adequate substitute for preserving existing competition. The public interest is far better served by preventing the loss of competition than by approving the Transaction and attempting to manage its consequences through long-term regulatory conditions and oversight.

B. Forcing the Rail Network to Rely on Regulation, Rather than Competition, to Police UP's Post-Transaction Behavior Would Be Contrary to Statute

Congress has instructed the Board "to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail."[943] Congress likewise directed the Board "to minimize the need for Federal regulatory control over the rail transportation system,"[944] while fostering "sound economic conditions in transportation" and "effective competition and coordination between rail carriers and other

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942 Brooks V.S. ¶¶158; *see also* Majure V.S. Vol. 1 ¶¶ 337, 339-41.

943 49 U.S.C. § 10101(1).

944 49 U.S.C. § 10101(2).

modes."[945] Those commands cannot be reconciled with approving a merger that diminishes the competitive constraints operating today on the assumption that the Board can replace those constraints with continuing regulatory supervision tomorrow. Indeed, the central thrust of the Staggers Act and ICCTA was to rely on competition and market forces wherever possible—not to permit consolidation and then recreate competitive outcomes through regulatory command.

That principle is particularly important in the major-merger context because the Board's own regulations expressly incorporate Congress's policy directive into the public-interest inquiry.[946] Approving a transaction that significantly undermines existing competition and then attempting to replace that competition through ongoing regulatory intervention and increased oversight would be in direct conflict with that directive. If the Transaction's harms can be addressed only by ongoing regulation of UP's rates, service, access terms, gateways, or routing practices—as is the case here—that is evidence that the Transaction is contrary to the public interest, not a reason to approve it subject to conditions.

C. Applicants' Commitment to "Keep Gateways Open on Commercially Reasonable Terms" Is Inadequate to Preserve Competitive Access

Applicants suggest that their commitment to "keep gateways open on commercially reasonable terms" is enough to maintain the competition that their merger would otherwise destroy.[947] It is not. As discussed in Sections IX and X, a combined UP-NS would have both broader incentives and many more tools to make competing interline routes unattractive. Gateway conditions can prescribe rates, service standards, monitoring, and remedies, but they cannot replicate the competitive dynamics created by an independent NS. The impossibility of

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945 49 U.S.C. § 10101(5).

946 49 C.F.R. § 1180.1(b).

947 Rev. App. 1-348 to -50 (Rocker & Elkins Second Errata V.S. ¶¶ 164-172).

designing enforceable obligations sufficient to preserve today's competitive optionality is itself a reason the Proposed Transaction should not proceed.[948]

A gateway can remain formally open while the traffic through it becomes commercially irrelevant. A combined UP-NS would retain an endless array of ordinary-course commercial and operational levers that could make competing interline routes progressively less attractive without ever violating the literal terms of a gateway condition. It could, for example, price movements over the gateway at levels it characterizes as "commercially reasonable," while offering more attractive rates for traffic kept on its own network; bundle rates, services, equipment, or other commercial terms in ways that favor single-line UP-NS movements; or otherwise structure its offerings so that shippers have little economic reason to select an interline alternative. And the problem could become self-reinforcing. As traffic migrates away from an interline route, UP-NS could rationally reduce service frequency, equipment, staffing, or other resources devoted to that route in response to declining density—changes that might each be commercially reasonable viewed in isolation, but that would further degrade the interline option, induce additional traffic losses, and justify still further service reductions. Policing such a downward spiral would require the Board to distinguish continually between legitimate commercial responses and conduct that, in the aggregate, undermines the competitive alternative the condition was supposed to preserve. That is a fundamentally different—and far more difficult—task than simply requiring UP-NS to keep a gateway technically "open." A condition can preserve the existence of an interchange; it cannot readily preserve the incentives, economics, service quality, and competitive vitality that make that interchange a meaningful constraint in the first place.

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[948] Brooks V.S. ¶¶ 158, 167-171, 173-174.

UP itself has previously explained why an open-gateway condition cannot be assumed to preserve meaningful competition. In opposing *CP/KCS*, UP warned that after a railroad acquires a competing single-line route, it has both the ability and incentive to disadvantage interline traffic without formally closing the gateway—including by increasing rate factors or reducing operational and service cooperation for traffic moving over competing railroads. UP characterized CP's proposed protection as "illusory," objecting that a promise to keep gateways open on "commercially reasonable" terms is not "a concrete, enforceable commitment."[949] Yet UP now asks the Board to take comfort from essentially the same proposition, that a combined UP-NS will keep gateways open on "commercially reasonable terms," while framing its commitment as modeled on the "robust and readily enforceable open gateway requirement" imposed in *CP/KCS*.[950]

In any case, there are material differences between *CP/KCS* and a potential combination of UP and NS that make *CP/KCS* a poor precedent for how an open gateway commitment would play out here. The combination of CP and KCS created a new single-line competitive option to compete more effectively against UP, BNSF, and CN. Because of the far more modest size of the resulting railroad, CPKC has less incentive to foreclose and less ability to do so. To name one prominent difference, Mexican regulation and other factors prevent KCS, and now CPKC, from having the ability to foreclose Laredo traffic heading to Mexico. In addition, the far

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[949] *Canadian Pacific Ry. – Control – Kansas City Southern*, Union Pacific Railroad Company's Final Brief, Finance Docket No. 36500 (filed October 21, 2022), at 14-15.

[950] UP_0020437 at -457 ("The Great Connection: Creating America's First Transcontinental Railroad, Union Pacific and Norfolk Southern Application to the Surface Transportation Board," at 21, available at: https://www.railwayage.com/wp-content/uploads/2025/12/20251219_The_Great_Connection_White_Paper.pdf).

smaller sizes of CP and KCS mean that CPKC has a far smaller scope for potentially inefficient diversions and no meaningful potential for such diversions at other gateways.[951]

Because UP had (and continues to have) single-line routes blanketing CPKC territory, CPKC did not acquire a new ability to undermine a route that UP needed to compete. *CP/KCS* instead created a new single-line option to better compete with existing single-line options.[952] UP admits as much. In a press release on this merger, Mr. Rocker, UP's Executive Vice President-Marketing and Sales, admitted that the *CP/KCS* combination made UP "fight hard to compete."[953]

D. A Transcontinental UP Will Be Even Less Cooperative and Less Readily "Supervised" by the Board than Today's UP Has Been

Any condition the Board might impose will only be as effective as UP's compliance, which experience has shown is far from guaranteed. In the railroad industry, apart from outright divestitures, even structural conditions like trackage rights and local shipper access via reciprocal switching establish an ongoing relationship of dependence on the merged carrier. CPKC has considerable experience with such relationships involving UP and NS.[954] UP's incentives after the merger would run strongly in favor of steering traffic to its own single-line network, minimizing support for rival interline routes, and interpreting commitments in the manner most favorable to its commercial objectives. Conditions that would require the affected shippers and

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951 Brooks V.S. ¶¶163-166.

952 Brooks V.S. ¶ 163.

953 *See* Kenny Rocker, "I've Heard Enough—This Merger Doesn't Kill Competition. It Unlocks It," June 8, 2026.

954 Gameiro V.S. at ¶¶ 7-11.

rivals to detect violations, shoulder the burden of proving UP's subtle discrimination, and litigate to obtain relief after they have already been harmed would be inadequate.

UP has a lengthy history of disputes concerning compliance with regulatory obligations and commitments, including commitments arising from prior transactions. The Board has repeatedly had to intervene to enforce or clarify competitive access rights intended to preserve competition. These enforcement efforts never occur in real time and, as CPKC and its customers have experienced, competition delayed is competition denied. For example, BNSF, the primary beneficiary of the competitive conditions imposed in *UP/SP*, has repeatedly been forced to return to the Board to secure the rights those conditions were meant to guarantee.[955] As another example, UP imposed an 8,000-foot train-length limit on CPKC's use of the Brownsville Subdivision even though most sidings exceeded 10,000 feet and CPKC's longer trains had not caused operational problems. This arbitrary and unnecessary action forced CPKC to remove cars from numerous Mexico-bound and Mexico-originating trains.[956] After *CP/KCS*, UP also challenged CPKC's continued use of its South End haulage rights. Although that challenge ultimately failed, UP's withholding of those rights impaired CPKC's ability to serve customers

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[955] *See, e.g., Union Pac. Corp. – Control & Merger – S. Pac. Rail Corp.*, Finance Docket No. 32760 (STB Decision No. 109 served January 31, 2018) at 11 (granting BNSF's petition for enforcement and ordering UP to permit BNSF to serve Mission Rail Park, because UP's position "would contravene the intent and purpose of the new facilities condition" and could allow UP to "thwart BNSF's access simply by delaying its own initiation of service"); *BNSF Ry. – Terminal Trackage Rights – Kans. City S. Ry. & Union Pac. R.R.*, Finance Docket No. 32760 (Sub-No. 46), (STB Decision No. 8 served February 21, 2020) at 1-4 (decision in a multi-year proceeding over BNSF's conditions of use and compensation for terminal trackage rights); *Union Pac. Corp. – Control & Merger – S. Pac. Rail Corp. [General Oversight]*, Finance Docket No. 32760 (Sub-No. 21), (STB Decision No. 20 served December 20, 2011) at 1-2 (oversight proceeding in which the Board modified and clarified the BNSF conditions, culminating in the Restated and Amended BNSF Settlement Agreement, UP/SP-393/BNSF-100 (filed Mar. 1, 2002)); *Union Pac. Corp. – Control & Merger – S. Pac. Rail Corp. [Houston/Gulf Coast Oversight]*, Finance Docket No. 32760 (Sub-No. 26), (STB Decision No. 10 served December 21, 1998) at 8 (imposing a "clear route through Houston").

[956] Gameiro V.S. ¶¶ 29, 31, 33-34.

during the 2023 and 2024 fall grain and soybean harvests, denying those customers the benefits of competition for two years.[957] And in 2024, UP denied CPKC access to KCT's Incline Track after purporting to terminate a 1981 trackage-rights agreement unilaterally, forcing CPKC to use an alternative route that is approximately twice as long, requires twice the running time and crews, and adds traffic to already-congested KCT infrastructure.[958] These episodes demonstrate that formally granted rights do not provide a timely or effective competitive remedy when UP retains the practical ability to obstruct their use.

The Board has also had to monitor UP's conduct outside the merger context, and that experience provides little assurance that oversight alone can secure compliance. In 2022, UP issued more than 1,000 congestion-related embargoes, prompting the Board to convene a hearing into their effects on customers and the national rail network. When directed to submit supporting information and documents, UP initially provided only a seven-slide presentation that addressed some topics in general terms and ignored others.[959] UP subsequently failed to produce employment plans expressly requested by the Board and waited nearly a year to explain discrepancies between its hearing testimony and its production.[960] The Board admonished UP for its "repeated and extended failure to provide the Board with information in a timely and responsive manner," which the Board said "bordered on contumacious."[961] If obtaining information from today's UP requires such sustained effort, the Board should have little

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957 Gameiro V.S ¶¶ 41-42.

958 Gameiro V.S ¶¶ 44, 47-52, 54.

959 Oversight Hearing Pertaining to Union Pacific Railroad Company's Embargoes, EP 772, at 1 (STB served Apr. 17, 2024).

960 Oversight Hearing Pertaining to Union Pacific Railroad Company's Embargoes, EP 772, at 2 (STB served Apr. 17, 2024).

961 Oversight Hearing Pertaining to Union Pacific Railroad Company's Embargoes, EP 772, at 3 (STB served Apr. 17, 2024).

confidence that it could readily monitor and enforce conditions governing a much larger transcontinental railroad.

With respect to trackage rights, UP has repeatedly employed the tactics of (a) denial and refusal to follow the agreements, and (b) delaying efforts required to adhere to the agreements.[962] An abbreviated list of examples includes: UP's exploitation of its contractual and operational leverage over KCS and CPKC with respect to Robstown-Beaumont trackage rights; UP's refusal to honor CPKC's ICC-imposed South End haulage rights; UP's sudden and arbitrary refusal to allow CPKC to continue its longstanding use of the "Incline Track" in Kansas City to interchange with BNSF; and UP's ongoing stalls in East St. Louis for installing protection against UP dispatch discrimination and reallocating maintenance costs in East St. Louis.[963]

UP's conduct in this very proceeding raises serious concerns that UP would not comply with any conditions voluntarily. In Decision No. 21, the Board expressed concern with Applicants' conduct and submissions, finding that the Revised Application lacked sufficient clarity and detail, that workpaper and submission deficiencies were "concerning in their frequency and magnitude," and that the Board was "troubled" by comments regarding Applicants' purported unwillingness to engage in discovery.[964] Concerns about UP's respect for regulatory were amplified by public remarks attributed to UP's CEO, Jim Vena, suggesting that Applicants' adherence to the statutory public-interest standard is conditional on the Board adopting UP's view of the statutory review timeline,[965] and UP's cavalier attitude to Mr. Vena's

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962 Gameiro V.S. ¶ 12.

963 Gameiro V.S. ¶¶ 16-66.

964 Decision No. 21 at 12, 19 (STB served May 28, 2026).

965 *See* David Lassen, *UP CEO Says Railroads Will Deliver Merger Information to Regulators in Two Parts (Updated)*, Yahoo Finance (June 16, 2026) (quoting Vena as stating, "we don't have to follow the statute, either, that talks about the public interest").

comments (claimed to be "dynamic" statements intended as humor) made to shippers about the consequences for them if they have the temerity to oppose UP's proposed merger.[966]

These examples underscore the practical difficulty of relying on conditions to constrain UP. The proposed Transaction would magnify that problem greatly. A combined UP-NS would possess a substantially larger network, touch more gateways, control more potential routings, and participate in more shipper and short-line relationships than UP does today. Its operational and commercial decisions would therefore affect a broader portion of the national rail system. The more essential UP becomes to shippers, connecting carriers, terminal railroads, and shared industry institutions, the more opportunities UP will have to abuse its position of power over the North American rail system, and the less practical it becomes for shippers and other industry participants to rely on ordinary commercial leverage or slow regulatory remedies to ensure compliance. At the same time, many forms of competitive discrimination would be difficult for outsiders—and ultimately the Board—to identify.

E. Background Regulation, Including the Revised Competitive Access Regime Proposed in EP 788, Would Not Avoid Merger-Related Harms

Applicants cannot avoid scrutiny by pointing to the possibility that the Board may expand reciprocal switching or other forms of competitive access. The Board is presently considering in EP 788 whether to repeal Part 1144 so that it can address requests for reciprocal switching, through routes, and through rates under the governing statutory standards on a case-by-case

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[966] *See* UP, *Customers Deserve a Debate Based on Facts*, https://www.up.com/about-us/contact-us/play ("Vena is known for being a dynamic speaker. Following his remarks at the Midwest Association of Rail Shippers, Trains described the meeting as the 'Vena Comedy Club,' while Progressive Railroading highlighted his 'off-the-cuff comments' at IANA."). *See also* Letter to Board (CPKC-64) (filed October 30, 2026) at 1-7.

basis.[967] But whatever the Board ultimately decides in that proceeding, background competitive access regulation is no substitute for preserving competition in the first place.

Were the Board to partially or fully repeal 49 C.F.R. part 1144, the revised competitive access framework, the change could open up the potential for competitive access remedies in some fact-specific, case-by-case circumstances where present regulations would not authorize them. However, there is no doubt that attempts to deploy such regulatory tools would be hotly contested, the meaning of the statutory language would remain open to considerable debate, and its application in individual cases would require considerable fact-finding and litigation. Such a regime, no matter the ultimate shape it took after decades of case-by-case application, could never overcome the public interest harms created by the Transaction.

Nor does UP's cynical embrace of some expansion in competitive access remedies during the pendency of this merger proceeding reflect meaningful openness to such remedies. UP has not endorsed a meaningful, broadly available remedy; its comments on EP 788 reflect numerous qualifications and limitations that would substantially constrain any practical use of reciprocal switching. For example, UP implores the Board to prescribe a reciprocal switching agreement only when doing so would "demonstrably improve" service.[968] UP asserts that reciprocal switching "necessarily introduces service delay and increases service costs," and urges limits based on "cumulative effects" on UP from multiple requests for access.[969] Those caveats among

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[967] *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788 (STB served Jan. 7, 2026).

[968] Comments of Union Pacific R.R., *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, Docket No. EP 788 (filed Mar. 10, 2026) at 1.

[969] Comments of Union Pacific R.R., *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, Docket No. EP 788 (filed Mar. 10, 2026) at 1-2.

many others would make reciprocal switching a narrow and heavily contested remedy in each and every instance where it was sought, not a practical answer to merger-created harms.

In any event, the proposed regulatory regime could not address the particular harms at issue here. Many shippers served only by UP or NS are geographically remote from alternative rail options, lack practical access to another carrier, or have service requirements for which UP's network would offer differentiated advantages that reciprocal switching could not replicate. The Board therefore should assess this Transaction against the competitive conditions that actually exist—not against a hypothetical future regulatory regime that might provide some shippers with some additional access under some circumstances.

F. The Board Has Recognized the Practical Obstacles to Addressing Future Adverse Consequences Arising from Long-Past Consolidation

Finally, experience demonstrates why the Board cannot safely approve a permanent restructuring of the rail network on the faulty premise that unforeseen harms can be repaired later. The Board confronted that reality recently in *Norfolk Southern Corp. & Norfolk Southern Ry. – Acquisition of Control – Norfolk & Portsmouth Belt Line R.R.*[970] There, the Board recognized the practical and legal difficulties of addressing consequences traceable to the 1982 combination of Norfolk & Western and Southern Railway decades after the relevant consolidation occurred.[971] Although supplemental conditioning authority may have been available, it is used "sparingly and cautiously after a transaction has been consummated due to the reliance interests involved."[972] Once networks have been integrated, facilities rationalized,

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970 Finance Docket No. 36836 (STB served Apr. 6, 2026)

971 *Norfolk S. Corp. & Norfolk S. Ry. – Acquisition of Control – Norfolk & Portsmouth Belt Line R.R.,* FD 36836 (STB served Apr. 6, 2026) at 26.

972 *BNSF Ry. – Petition for Review – UP/SP Merger Conditions*, Finance Docket No. 32760 (Sub-No. 52) (STB served May 26, 2026) at 4.

traffic patterns changed, employees and assets disposed of or redeployed, and commercial relationships reorganized around the combined system, restoring the pre-merger competitive structure is impossible. Oversight proceedings and targeted conditions can address particular manifestations of a problem; they cannot unscramble a railroad.

The same is true here. Once a transaction of this magnitude is approved and consummated, the industry will inevitably reorganize around it, and the Board's ability to unwind or materially reshape the resulting landscape will be largely gone. That is precisely why the Board's Major Merger Rules demand a searching assessment of competitive effects, service risks, and claimed benefits *before* a major consolidation occurs. The Board need not—and should not—accept irreversible competitive harm today in reliance on the possibility that future Boards may devise regulatory workarounds tomorrow.

And make no mistake: if, despite the serious structural harms described above, the Board were to allow the Transaction to proceed, UP could be expected to fight tooth and nail any future attempts by the Board to constrain UP's freedom of action through regulation. UP has already laid the groundwork for that argument, arguing to the Board in its Second Supplemental Submission that post-merger conditions must be used "sparingly" and that administrative finality, due process, and limits on retroactivity constrain the Board's ability to impose later conditions.[973]

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[973] UP-80/NS-78 at 151-54.

XIII. THE UP-NS MERGER WILL INEVITABLY CAUSE FURTHER DOWNSTREAM CONSOLIDATION CULMINATING IN A NATIONWIDE DUOPOLY, WHICH WOULD NOT BE IN THE PUBLIC INTEREST

Approval of UP-NS would not merely permit further consolidation; it would create powerful defensive and first-mover incentives for the remaining Class I railroads to pursue combinations of their own, perhaps not immediately but eventually. Applicants would have the Board treat the prospect of a nationwide rail duopoly as a curiosity of no present concern—a distant, speculative "more competition" event that lies outside the scope of this proceeding.[974] That framing cannot be sustained. As the record developed in these Comments demonstrates, approval of UP-NS will not merely permit a follow-on transcontinental merger; it will make one economically inevitable, and it will do so on terms that the Board will be practically and legally powerless to correct after the fact. The consequence of that end state—a two-firm Class I structure spanning the continent—is not "more competition." The resulting merger(s)-to-duopoly would establish a market structure that decades of antitrust doctrine identify as the very paradigm of anticompetitive harm.[975]

This section explains why: (a) approval of UP-NS would create powerful pressure toward downstream consolidation; (b) a two-system end state would be contrary to the public interest as compared with the status quo; and (c) the Board should address that foreseeable harm before approving the Transaction rather than relying on conditions to attempt to reconstruct competition after the fact.

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974 Rev. App 1-14.

975 *See FTC* v. *H.J. Heinz Co.*, 246 F.3d 708, 725 (D.C. Cir. 2001).

A. Why There Will Be Downstream Consolidation

The starting premise of Applicants' public-interest case is that competitive resistance to this Transaction is proof of its competitive virtue: UP's CEO has suggested that opposition from CPKC and other carriers only confirms that UP-NS will produce a superior product and more vigorous competition.[976] That rhetoric mistakes the nature of CPKC's objection. CPKC's concern is not that a combined UP-NS will out-compete it in a fair fight; it is that the combined firm's scale, single-line reach, and gateway control—amplified by UP's past habits of delaying and obstructing competition through a wide variety of means—would allow the merged UP to weaken competing interline options, increase UP's leverage over shippers, and dictate the terms on which remaining Class I railroads can compete.[977]

Once that reality is understood, the incentives that follow are straightforward and—as Applicants themselves have acknowledged in prior proceedings [redacted] well recognized within the industry. Every remaining Class I would face the same choice: absorb the competitive disadvantages of remaining independent against a coast-to-coast UP-NS, or find a partner and seek comparable reach and scale. Any follow-on merger would be defensive—intended to mitigate UP-NS's leverage over interchange, routings, and shipper relationships—while each carrier would also have an incentive to act before the pool of viable partners narrowed.[978]

[redacted]

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976 UP_2110992 at -993 (statement from Jim Vena).

977 Majure V.S. Vol. 1 ¶¶ 11-12, 40, 54-56, 61, 68.

978 Clements V.S. ¶¶ 31-38; Majure V.S. Vol. 1 ¶¶ 261-63, 269-70.

[redacted]

[redacted][979]

This is not a theoretical worry.[980] [redacted]

[redacted]

[redacted][981]

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979 Clements V.S. ¶¶ 34-36; *see also* Creel V.S. ¶¶ 7, 29-30 .

980 A selection of evidentiary highlights showing Applicants' prior consideration of Class I consolidation and the further consolidation that is likely to follow can be found at Appendix E, hereto. To view these documents in their entirety, please refer to Volume IX, which contains a copy of this Appendix E that is hyperlinked to the documents and testimony cited therein.

981 UP-STB-D13_0000623, at -636.

FIGURE 76[982]



The predictability of this outcome is further confirmed by UP's Director of Corporate Strategy, David Welch, who testified that [redacted] against the combined UP-NS.[983] Likewise, NS CEO, Mark George testified that [redacted][984] And NS's Chief Strategy Officer, Mike McClellan, [redacted]

982 UP-STB-D13_0000623, at -636.

983 Welch Tr. at 230:9-231:4.

984 George Tr. at 259:9-11.

[redacted][985] Applicants' own executives understand [redacted]

[redacted][986]

This is no surprise. UP has been predicting this outcome of further consolidation since 2000, when it warned the Board that the next major merger would force the Board to "choose between a future in which two huge transcontinental systems develop single-line services in isolation from each other and a future in which all remaining railroads strive to develop more efficient services over remaining interline routes."[987] UP's analyses of potential industry consolidation over the years have consistently reached the same conclusion.[988]

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985 NS_00131930.

986 *See* NS_STB_00001421 [redacted] Lehlbach Tr. at 327:4-329:14 (testifying that, [redacted] Fritz Tr. at 24:3-17 (Q: "You mentioned 'downstream effects' of a proposed combination. Can you explain what you meant by that?" A: "Yeah. If two Class 1s merged, that could create instability in the industry and prompt further consolidation and mergers." "Q: And as CEO, it would have been within your responsibilities to consider potential downstream mergers involving Union Pacific?" A: "That's correct."); UP_0039403 at -409-10 [redacted] UP_0041683 at -690 [redacted] NS_00131930 [redacted]

987 *Major Rail Consolidation Procedures*, Ex Parte No. 582 (Sub-No. 1) Reply Comments of Union Pacific on Proposed Merger Rules (filed Dec. 18, 2000) at 8.

988 UP_0039403 at -410 ("[redacted]").

Dr. Majure's economic analysis explains the competitive pressure that would drive further consolidation in response to approval of UP-NS. A combined UP-NS would have the incentive and ability to favor its own single-line services and weaken competing services offered with BNSF and CSXT. BNSF and CSXT would thus have reason to anticipate degraded service, slower equipment returns, diminished pricing ability, and other impediments to competition wherever UP-NS controls one end of the movement. A combination of their own would help close that competitive gap, but only by leveling the competitive playing field further down rather than up for shippers.[989]

Applicants have asked the Board to approve UP-NS on a theory with no limiting principle: if end-to-end combinations are presumed beneficial and foreclosure concerns may be dismissed without a fact-specific inquiry, the same reasoning would apply to other Class I combinations.[990] Approval on that premise would make follow-on consolidation more likely by encouraging BNSF and CSXT to try to restore competitive parity, replicate UP-NS's single-line reach, and strengthen their bargaining position against shippers.[991]

B. Follow-On Consolidation Would Be Necessary to Counter Post-Merger UP, But the Outcome Would Not Be in the Public Interest

While further consolidation might restore some "balance" among the remaining railroads, it would not restore the competitive conditions that exist today. A two-system structure would expose shippers to higher prices, fewer independent alternatives, increased risk of tacit

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989 Majure V.S. Vol. 1 ¶¶ 261-65, 268, 270.

990 UP-80/NS-78 at 273 ("A second end-to-end merger would yield benefits for the same reason that the UP/NS merger yields benefits, as described in my April 24, 2026 verified statement.")

991 Majure V.S. Vol. 1 ¶¶ 269-70.

coordination, and a regulatory environment less capable of recreating competition through conditions after the fact.[992]

The initial combination of UP-NS would result in a power imbalance. Dr. Majure calculates that UP and NS together would earn [redacted] of rail revenues on all U.S. movements and [redacted] of rail revenues on movements both originating and terminating in the United States, *before* accounting for Applicants' projected diversions. He separately finds that UP and NS participate as an originating, terminating, or bridge carrier in [redacted] of the "major" movements identified by Applicants, weighted by rail revenues.[993]

Stopping consolidation at UP-NS would leave the industry at its most unbalanced point: a single UP Colossus that would dominate the industry and have outsized power and control over key inputs the remaining Class I railroads need to compete. While a subsequent merger of BNSF and CSXT might even out their power imbalance with the merged UP-NS, it would not do so in a way that would benefit shippers. For example, Dr. Majure shows in his Exhibits 7 and 8 that many counties in the western and eastern U.S., respectively, are almost entirely served by UP or NS. (*See* Section X.) A subsequent merger of BNSF and CSXT would not do anything to help shippers in those counties. It would only extend the foreclosure problem to the additional counties and shippers that would be sole-served by BNSF and CSXT.[994]

Nor would a second transcontinental merger restore the competitive conditions that exist today. Dr. Majure compares prices in corridors served by two railroads on each side of a gateway under three structures: the present four-railroad structure, a post-UP-NS structure with

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992 Majure V.S. Vol. 1 ¶¶ 261, 264-68; Clements V.S. ¶¶ 39-40, 46-50.

993 Majure V.S. Vol. 1 ¶¶ 31-32.

994 Majure V.S. Vol. 1 ¶¶ 262-63, 265 & Exs. 7-8

three railroads and one single-line transcontinental carrier, and a follow-on structure with two integrated single-line transcontinental carriers. His results show that shippers would pay more under the two-system structure than under the present structure in which four independent railroads compete for portions of the movement.[995]

A duopoly of transcontinental railroads would also magnify systemic operating risks. Two carriers, and only two carriers, would be responsible for an even more overwhelming share of the Nation's Class I freight movements. A disruption on one transcontinental network would affect not only that carrier's customers but all connecting railroads, short lines, ports, and passenger operators through missed interchanges, equipment imbalances, congestion, and emergency traffic diversions. And with fewer independent carriers remaining, there would be fewer alternative networks to pick up the slack with available crews, locomotives, yard slots, and line capacity to absorb affected traffic.[996]

The harms would extend beyond shipper rates and service. Consolidation into two systems would reduce competition for specialized railroad inputs and concentrate purchasing decisions among fewer buyers, potentially weakening supplier investment, redundancy, and resilience. It would also reduce the number of independent railroads experimenting with new products, operating practices, technologies, and partnerships.[997]

Transition to a duopoly structure would also further diminish the effectiveness of the ordinary regulatory tools the Board relies upon to protect shippers from the abuse of market power and, in appropriate cases, inject new competitive access to restore competition. The

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995 Majure V.S. Vol. 1 ¶¶ 264, 266 & Ex. 43

996 Clements V.S. ¶¶ 38, 40, 51, 60, 62.

997 Clements V.S. ¶¶ 41-45.

Board's available remedies would lose much of their force. Consider reciprocal switching. Competitive access remedies depend on another carrier having both the capability (in terms of route network with available capacity) and the incentive to compete for the affected traffic. In a duopoly, each carrier would weigh the prospect of winning traffic against the risk of retaliation and a widening price war. With the same two systems confronting one another across numerous markets, both could rationally prefer restrained access to an escalating exchange of traffic.[998] Overriding those incentives would require a substantially more intrusive and muscular regulatory regime capable of micro-managing access, gateway and terminal governance, performance, capacity, rates, and service—and even then, regulation could only imperfectly reproduce the decisions and incentives of independent competitors.[999]

It is well-established in the world of competition law that "[t]he combination of a concentrated market and barriers to entry is a recipe for price coordination," and that "[w]here rivals are few, firms will be able to coordinate their behavior, either by overt collusion or implicit understanding, in order to restrict output and achieve profits above competitive levels."[1000] In *Heinz*, the D.C. Circuit reviewed the antitrust jurisprudence addressing mergers in consolidated industries and confirmed the "ordinary presumption of collusion in a merger to duopoly."[1001] The court observed that "[a]s far as we can determine, no court has ever approved a merger to duopoly under similar circumstances."[1002] The court emphasized that "[t]acit coordination is feared by antitrust policy even more than express collusion, for tacit coordination, even when

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998 Clements V.S. ¶¶ 46-50.

999 Clements V.S. ¶ 50.

1000 *Heinz*, 246 F.3d at 724-725.

1001 *Id*. at 725.

1002 *Id*. at 717.

observed, cannot easily be controlled directly by the antitrust laws."[1003] Thus, blocking "the creation or reinforcement by merger of such oligopolistic market structures in which tacit coordination can occur" is "a central object of merger policy."[1004]

The rail industry that would emerge from a UP-NS-triggered cascade would present an additional risk of tacit coordination and fits the *Heinz* template with unusual precision. Each system could observe the other's pricing and gateway conduct, anticipate retaliation across their networks, and have less incentive to compete aggressively for traffic concentrated on the rival's network. That risk would be in addition to the higher prices reflected in Dr. Majure's empirical analysis and would not require an express agreement.[1005] Barriers to entry in the rail industry, moreover, are essentially absolute: nobody could realistically build a new Class I railroad of comparable scale, so the ordinary market backstop of new entry against oligopolistic pricing is unavailable.

The same coordinated-effects analysis explains why post-hoc regulatory intervention would be a poor substitute for prevention. A remedy that depends on one of two nationwide systems competing aggressively would confront the structural disincentives described above.

[1003] *Id.* at 725.

[1004] *Id. Heinz* involved the proposed merger of the second and third largest manufacturers of baby food, who sought to become a stronger rival against Gerber, the entrenched and dominant number one firm. Some critics of the D.C. Circuit's decision observe that blocking the merger was bad policy, because it allowed Gerber to remain unchallenged in its number one position. *See* Bureau of Economics, Federal Trade Commission, *The Evolution of the Baby Food Industry 2000-2008* (April 2009) at 16-17, available at: https://www.ftc.gov/sites/default/files/documents/reports/evolution-baby-food-industry-2000-2008/wp297_0.pdf ("In looking at market shares today (when baby yogurt is excluded), the lost shares of Nature's Goodness appear to have been diverted to Gerber, and not Beech-Nut. Beech-Nut's market share today is still at 12%, whereas, Gerber's share grew to 80%. If the merger were permitted, the market share of the Beech-Nut brand (as owned by Heinz) would have been 26% in 2000. It's difficult to speculate how that market share would have evolved over the years."). In CPKC's view, this debate only underscores why the Board should avoid such a quandary here. It should not allow UP-NS to cement itself as a dominant transcontinental rail colossus.

[1005] Majure V.S. Vol. 1 ¶¶ 266-67 & n.279; Clements V.S. ¶¶ 48-49.

Each system would know that an aggressive action at one gateway could provoke a response elsewhere on the rival's network, weakening the incentive to support reciprocal switching, new interchanges, or sharp rate initiatives.[1006]

C. Blocking This Transaction Now Is the Only Way to Avoid the Harm from a Downstream Duopoly

Recognizing that a follow-on merger is likely, the Board might be tempted to approve UP-NS today while reserving the ability to police the downstream consequences tomorrow—through further conditions, springing remedies, or heightened scrutiny of the next transaction. Later conditions will not reconstruct the independent competitors eliminated through consolidation, and conventional remedies would become less effective as the number of unaffiliated carriers declined.[1007] Allowing UP-NS to consummate without conditions addressing a foreseeable duopoly world may jeopardize the Board's ability ever to impose meaningful conditions on them. And the prospect of new conditions being imposed only in the event of a subsequent transaction may also be seen by subsequent merging parties as imposing a tax solely on their transaction, discouraging the follow-on consolidation in a way that allows UP-NS's new power to remain unchecked. UP-NS should not be permitted to use the timing of this transaction to secure a durable first-mover advantage that entrenches the new market power it would attain, and then to invoke settled reliance interests to defeat any later corrective action.

The most compelling evidence that this concern is real comes from UP itself. In *EP 711*, UP argued, in unusually plain terms, that it had "invested tens of billions of dollars to rationalize and upgrade our network in reliance on the decisions approving the mergers that created today's

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[1006] Clements V.S. ¶¶ 46, 48-50; Majure V.S. Vol. 1 ¶ 267.

[1007] Clements V.S. ¶¶ 39, 46-50.

Union Pacific," and that "[t]he Board cannot now repudiate those decisions by adopting rules that would effectively impose additional, costly, retroactive conditions on past mergers."[1008] UP further argued that "[t]he Board has long recognized that 'absent some failure of a condition that we imposed or some specific reservation of jurisdiction through oversight or otherwise, it would generally not be appropriate for [the Board] to impose new conditions on our approval of a transaction that has already been consummated.'"[1009] UP cited the Board's decisions in *Major Merger Rules*, 5 S.T.B. at 583, and *Canadian National Railway, Grand Trunk Corp. & Grand Trunk Western R.R.—Control—Illinois Central Corp*., 6 S.T.B. 492, 496 (2002), for the proposition that "[o]nce the period for administrative reconsideration has passed, carriers that have decided to move forward with their transaction are entitled to rely on the assumption that the basic terms and conditions of administratively final decisions are not likely to be altered."[1010] Applicants repeat this general refrain in this proceeding, telling the Board that "fundamental principles of due process limit the Board's authority to apply new conditions retroactively."[1011] The Board itself has recently echoed this approach, explaining that "[a]lthough it may be appropriate to use supplemental conditioning authority to ensure the public interest is served, the Board uses this authority sparingly and cautiously after a transaction has been consummated due to the reliance interests involved."[1012] Nor should the Board attempt to solve the downstream

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[1008] *Reciprocal Switching*, Ex Parte Docket No. 711 (Sub-No. 1), UP Reply Comments and Evidence (filed Jan. 13, 2017) at 11.

[1009] *Id.*

[1010] *Id.* at 12 (citing Major Merger Rules, 5 S.T.B. at 583) and (*CN/IC*, 6 S.T.B. at 496).

[1011] UP-80/NS-78 at 152.

[1012] *BNSF Ry. – Petition for Review – UP/SP Merger Conditions*, Finance Docket No. 32760 (Sub-No. 52) (STB served May 26, 2026) at 4.

consequences of UP-NS by imposing conditions that spring into effect only if and when further consolidation occurs.

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The right disposition is straightforward. Applicants bear the burden of proving that this Transaction serves the public interest. Applicants have not carried that burden. They instead propose a transaction whose analytical premise offers no limiting principle, whose foreseeable consequence is powerful pressure toward two transcontinental systems, and whose downstream harms would be impossible to remedy after consummation.[1013] The Board should deny the Transaction.

If, contrary to the foregoing, the Board were to conclude that there is a compelling public-interest need for further rail consolidation, it would be imperative for the Board to impose on UP-NS today a set of conditions carefully designed to at least partially mitigate the enduring harms to competition.

[1013] Majure V.S. Vol. 1 ¶¶ 261-70; Clements V.S. ¶¶ 14, 24-26, 31-40, 46-50.

APPENDIX A

EVIDENTIARY HIGHLIGHTS SHOWING UP AND NS FAVOR MAXIMIZING PRICE AND MARGINS AT THE EXPENSE OF VOLUME GROWTH AND SERVICE STABILITY

Pages 1-24 of this Appendix contain excerpts from Applicants' internal documents, earnings transcripts, and testimony provided in this proceeding that show Applicants prioritize prices, margins, and profits over traffic growth and service stability. UP, and to a lesser extent NS, has pursued revenue growth principally through price increases. Extending UP's strategy across the combined network would expose more shippers to a commercial approach focused on extracting higher rates, undermining Applicants' promises of substantial traffic growth. Applicants' decade-long focus on adopting PSR has likewise led both UP and NS to pursue strategies that resulted in reductions in capacity, service challenges, and stagnated growth.

UP and NS documents are organized chronologically. Deposition testimony is organized alphabetically by deponent. To view these documents in their entirety, please refer to Volume V, which contains a copy of this index that is appended and hyperlinked to the documents and testimony cited therein.

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_0849200 quoted material at -201	3/1/2019	Unified Plan 2020 Weekly Update	[redacted]
UP_1396743	5/15/2019	Terminal Curtailment Tracker	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_0676353 quoted material at -391	11/13/2019	Union Pacific Finance Committee Meeting Appendix	[redacted]
UP_0799414 quoted material at -414	9/1/2020	Operations Review	[redacted]
UP_0024849 quoted material at -863, -895-896	12/16/2020	Carload Strategy Session Materials	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_0883548 quoted material at -556, -562	1/15/2021	Carload Strategy Initiative Steering Committee Update	[redacted]
UP_0347936 quoted material at -936-937	2/4/2021	Jennifer Hamann (Executive Vice President and Chief Financial Officer) Ted Talk	[redacted]
UP_0467081 quoted material at -089	4/22/2021	2021 First Quarter Earnings Release	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_1563143 quoted material at -153, -160	10/4/2021	Operating Committee Presentation (2022 AOP) Presentation by Kenny Rocker (UP Executive Vice President of Marketing & Sales) and Jacque Bendon (VP M&S Industrial)	[redacted]
UP_0025175 quoted material at -176, -180, -182	1/11/2023	Marketing & Sales Update Presentation by Kenny Rocker (UP Executive Vice President of Marketing & Sales)	[redacted]
UP_0692552 quoted material at -552	7/15/2023	UP Strategy/Action Plan Document	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_1118754 quoted material at -758	9/18/2023	Emails between Kenny Rocker (UP Executive Vice President of Marketing & Sales), Jacqueline Bendon (UP Vice President of Marketing and Sales), Dan McLaughlin (UP Assistant Vice President of Marketing & Sales Operation) and others at UP Re: Forest Products Price Analysis	[redacted]
UP_1240242 quoted material at -244, -248, -276	12/14/2023	Board of Directors M&S Presentation	[redacted]
UP_1535760 quoted material at -761-763	4/2/2024	Email Re: April CEO Written Status Updates (March 2024 SSOE and M&S Deep Dive Notes)	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_1624930 quoted material at -933	7/3/2024	Email Re: July CEO Written Status Updates (June 2024 SSOE Notes)	[redacted]
UP_0208474 quoted material at -480, -482, -484-485	7/11/2024	Marketing & Sales SSOE Deep Dive	[redacted]
UP_0273668 quoted material at -671-672	7/29/2024	Email Re: Aug CEO Written Status Updates (July 2024 SSOE and M&S Deep Dive Notes)	[redacted]
UP_0405407 quoted material at -409	8/8/2024	Commercial Update Presentation by Kenny Rocker (UP Executive Vice President of Marketing & Sales)	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_0243518 quoted material at -520	9/6/2024	Emails between Josh Perkes (UP Senior Vice President and Chief Human Resources Officer), Maqui Parkerson (UP Vice President Labor Relations) and others at UP re: Sep CEO Written Status Updates	[redacted]
UP_0239440 quoted material at -442-443	10/1/2024	Email Re: Oct CEO Written Status Updates (September 2024 SSOE Notes)	[redacted]
UP_0024673 quoted material at -680, -682, 689-691	11/14/2024	M&S Town Hall Presentation (2026 AOP)	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_0024657 quoted material at -661	12/9/2024	Delivering Price Presentation by Kenny Rocker (UP Executive Vice President of Marketing & Sales)	[redacted]
UP_0273131 quoted material at -132, -134	12/9/2024	Email Re: Dec CEO Written Status Updates (November 2024 SSOE Notes)	[redacted]
UP_2230903 quoted material at -908	12/17/2024	Marketing & Sales Update Presentation by Dan McLaughlin (UP Assistant Vice President of Marketing & Sales Operation)	[redacted]
UP_0024260 quoted material at -268	12/19/2024	M&S Deep Dive Presentation and Pre-Read	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_0024720 quoted material at -722-723	12/19/2024	December CEO Brief Presentation by Kenny Rocker (UP Executive Vice President of Marketing & Sales)	[redacted]
UP_0209007 quoted material at -009-011	1/2025	CEO Brief Presentation by Kenny Rocker (UP Executive Vice President of Marketing & Sales)	[redacted]
UP_1842473 quoted material at -473-474	1/10/2025	Email Re: Jan 2025 SSOE Themes and Follow Up Items	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_1641317 quoted material at -330-332	2/24/2025	CEO Briefing for Senior Staff	[redacted]
UP_2213153 quoted material at -155	3/2025	M&S Price Component Info Session	[redacted]
UP_0282009 quoted material at -011	3/6/2025	Emails between Maqui Parkerson (UP Vice President Labor Relations), Josh Perkes (UP Senior Vice President and Chief Human Recourses Officer) and others at UP Re: Mar CEO Written Status Updates	[redacted]
UP_0024786 quoted material at -790, -812, -819	3/31/2025–4/1/2025	M&S and Operations Offsite Presentation	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_1641198 quoted material at -198-199	4/11/2025	Email Re: April SSO Themes and Follow Up	[redacted]
UP_0025313 quoted material at -318, -320	10/2025	October CEO Brief Presentation by Kenny Rocker (UP Executive Vice President of Marketing & Sales)	[redacted]
UP_0407674 quoted material at -678, -681-688	12/15/2025	M&S Strategy and 2026 Outlook Presentation	[redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_00110997 quoted material at -997, -005, -012, -016	1/28/2019	Investor Day Marketing Presentation Script	[redacted]
NS_00099838 quoted material at -845, -847	3/6/2019	Draft Industrial Products Strategic Price Playbook	[redacted]
NS_00132618 quoted material at -621-622	5/2020	What Can We Learn from CN's Growth Strategy by Mike McClellan (NS Strategy)	[redacted]
NS_00140466 quoted material at -467-468	5/1/2020–5/9/2020	Email Chain between Alan Shaw (NS Executive Vice President & Chief Marketing Officer) and Tom Schnautz (Vice President Advanced Train Control) re: NS path forward	[redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_00205551 quoted material at -559	09/2020	Cost-Efficient Market Differentiation	[redacted]
NS_00295414 quoted material at -427, -431	03/2022	FP&A Integrated Intermodal Strategy Memo	[redacted]
NS_00350730 quoted material at -737	06/17/2022	NS Thoroughbred Operating Plan: Service Productivity Growth	[redacted]
NS_00688226 quoted material at -236	12/6/2022	Investor Day Presentation - Draft with Y. Thomas (Vice President Intermodal and Automotive Operations) Comments	[redacted]
NS_00219377 quoted material at -410	01/2023	Intermodal 2030 Growth Plan	Stating that [redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_00151071 quoted material at -078-079	01/2023	Service Metrics for Growth - Intermodal	Noting that [redacted]
NS_00117307 quoted material at -311	01/2024	January 2024 Board Notes	[redacted]
NS_00346346 quoted material at -351	04/18/2024	Norfolk Southern "A Better Way" Presentation	[redacted]
NS_00131581 quoted material at -589	06/2024	Norfolk Southern Business Overview	[redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_00130381 & NS_00130382 quoted material at -382	08/2024	Email to A. Hatch from M. McClellan (Senior Vice President & Chief Strategy Officer) & McClellan's Thoughts on Intermodal	[redacted]
NS_00102691	12/2024	Voltz - IM Auto Track Utilization Study Fall 2024 UPDATED.xlsx	[redacted]
NS_00130615 quoted material at -615	12/17/2024	Internal Memorandum on 2025-2026 Marketing Change Priorities	[redacted]
NS_00171517 quoted material at -520	01/2025	Internal Intermodal Q&A Briefing Document	[redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_00318428 quoted material at -455	01/28/2025	NS 2024 Results and Recap, 2025 Budget and Guidance Strategy Review: Board of Directors Meeting Presentation	[redacted]
NS_00102449 quoted material at -460	03/2025	YardMAX Capacity Study: Birmingham	Indicating that [redacted]
NS_00318316 quoted material at -319-320	03/2025	NS Strategy – March Board of Directors Meeting	[redacted]
NS_00549755 quoted material at -760-761	08/2025	Operations – Jim Vena Conversation NS Presentation	[redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_00333009 quoted material at -009	08/21/2025	Email to Yannik Thomas (NS Vice President Intermodal and Automotive Operations) and others at NS from William Deshazor Re: McClellan Network Slides	[redacted]
NS_00883695 quoted material at -752	12/3/2024-8/26/2025	Yannik Thomas (NS Vice President Intermodal and Automotive Operations) Notes on NS Hump Yards	[redacted]
NS_00207297 quoted material at -304	9/17/2025	Commercial UP/NS Organization Presentation for Meeting with CEOs Jim Vena and Mark George	[redacted]
NS_00130615 quoted material at -615	12/17/2024	Internal Memorandum on 2025-2026 Marketing Change Priorities	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Dan McLaughlin (UP Assistant Vice President of Marketing & Sales Operations), Tr. at 279:13-280:11	[redacted]
Deposition of Grant Janke (UP Assistant Vice President, Capital Planning & Finance), Tr. at 92:5-12	[redacted]
Deposition of Grant Janke (UP Assistant Vice President, Capital Planning & Finance), Tr. at 342:17-23	"Q. [Y]ou were not aware of any commitment that Union Pacific will actually pass on any such cost savings to customers, correct? A. I am not aware of any commitment."
Deposition of Jennifer Hamann (UP CFO), Tr. at 32:14-33:4; 42:23-43:14	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Jennifer Hamann (UP CFO), Tr. at 109:15-22; 110:14-18; 111:4-9	"Q. If volume is not a record but operating income is a record, how do you achieve a record without -- how do you achieve an operating income record without achieving a volume record? A. There could be a number of factors. It could be the business mix and certainly the efficiency with which we are handling the volume. . . . . Q. Well, do you recall that price was a factor in driving the company's record operating income for the first quarter of 2026? A. It, among other things, would have been a factor, yes. . . . . Q. So sitting here right now, you think it was efficiency, mix of business, and pricing that drove the record operating income of the first quarter of 2026? A. From my recollection, that would be the three drivers, or three of the main drivers, yes."
Deposition of Jennifer Hamann (UP CFO), Tr. at 142:11-23; 145:6-9; 150:8-19	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Jennifer Hamann (UP CFO), Tr. at 153:4-154:1	[redacted]
Deposition of Jennifer Hamann (UP CFO), Tr. at 154:21-155:24	[redacted]
Deposition of Jim Vena (UP CEO), Tr. at 116:4-21	[redacted]
Deposition of Jim Vena (UP CEO), Tr. at 196:5-15.	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Jim Vena (UP CEO), Tr. at 241:10-242:1	[redacted]
Deposition of Kenny Rocker (UP Executive Vice President of Marketing & Sales), Tr. at 46:5-9	"Q. Books just closed on third quarter of '26, correct? A. Yes. Q. It was a record quarter for UP, correct? A. That's correct."
Deposition of Kenny Rocker (UP Executive Vice President of Marketing & Sales), Tr. at 62:11-15; 63:4-6	"Q. On Page 6, you say the premium revenue increased 21 percent, right? A. Let me take a look at it. Q. Sure. Second paragraph. A. Yeah, I see that. . . . Q. Increasing revenue 21 percent is a great quarter. A. It is a record quarter."
Deposition of Kenny Rocker (UP Executive Vice President of Marketing & Sales), Tr. at 119:16-120:9	[redacted]
Deposition of Kenny Rocker (UP Executive Vice President of Marketing & Sales), Tr. at 125:21-126:4	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Mike McClellan (NS Chief Strategy Officer), Tr. at 480:13-481:7; 484:17-23	[redacted]
Deposition of Shawn Tureman (NS Vice President of Automotive & Intermodal Marketing), Tr. at 439:14-20	[redacted]
Deposition of Todd Rynaski (UP Senior Vice President of Strategy), Tr. at 193:13-194:2	[redacted]
Deposition of Todd Rynaski (UP Senior Vice President of Strategy), Tr. at [redacted]	[redacted]

Earnings Transcripts	
Transcript	**Key Testimony**
Union Pacific Corp., 2023 Stephens Investment Conference, Transcript (Nov. 14, 2023) (Remarks of Jim Vena) quoted material at 9	"I don't care what level of railcars we have come in in the revenue. . . . . We're going to be the best margin railroad in North America."
Norfolk Southern Corp., Q4 2023 Earnings Call, Transcript (Jan. 26, 2024) (Remarks of Ed Elkins) (Dep. Ex. 203) quoted material at 9, 10	"We're committed to driving value through price and this commitment is demonstrated through quarterly record set. . . ." "[W]e still expect to generate pricing above rail inflation in 2024."
Union Pacific Corp., Union Pacific Live Investor Roadshow, Transcript (Sept. 19, 2024) (Remarks of Kenny Rocker) quoted material at 29	"[W]e have always been very price disciplined. Meaning, you know, the last to lower, the first to increase. . . ."
Union Pacific Corp., Q4 2024 Earnings Call, Transcript (Jan. 23, 2025) (Remarks of Kenny Rocker) (Dep. Ex. 30) quoted material at 6	"[W]e had a strong fourth quarter. . . . . This also reflected strong core pricing gains as a result of our deliberate focus on maximizing price."
Union Pacific Corp., Q1 2025 Earnings Call, Transcript (Apr. 24, 2025) (Remarks of Jennifer Hamann) quoted material at 4	"Core pricing was very strong and reached the highest quarterly level in the past ten years."

Earnings Transcripts	
Transcript	**Key Testimony**
Union Pacific Corp., Q4 2025 Earnings Call, Transcript (Jan. 27, 2026) (Remarks of Jim Vena and Kenny Rocker) (Dep. Ex. 565) quoted material at 17, 19, 21	"[W]e're going to. . . maximize the price based on the service that we have. . . ." (Remarks of Kenny Rocker "[I]ncrease price for the value we're giving. . . ." (Remarks of Jim Vena) "Service drives price." (Remarks of Jim Vena and Kenny Rocker)
Union Pacific Corp., NYSE European Investor Conference (June 16, 2026) (Remarks of Jim Vena and Jennifer Hamman) quoted material at 16, 18	"Like, absolutely our key goal is to increase price, because inflation is happening to us, right?" (Remarks of Jim Vena) "We said coming into this year that we'd be able to yield price/dollars on an absolute basis that exceed our inflation dollars and we will." (Remarks of Jennifer Hamann)
Union Pacific Corp., Q2 2026 Earnings Call, Transcript (Jul. 23, 2026) (Remarks of Jennifer Hamann and Jim Vena) (Dep. Ex. 469) quoted material at 5, 23	"[O]ur quarterly pricing dollars continue to exceed inflation dollars. . . ." (Remarks of Jennifer Hamann) "If we can price higher because of it, which we have, then we're going to do that." (Remarks of Jim Vena)
Union Pacific Corp., Q3 2026 Earnings Call, Transcript (Oct. 22, 2026) (Remarks of Kenny Rocker) (Dep. Ex. 568) quoted material at 5, 13, 17	"We delivered a record revenue quarter. . . . That's a result of our team at Union Pacific. . . pricing to the value of our service product. . . ." "[W]e're going to keep pricing to what the market can support." Looking forward to "a better environment for stronger pricing" in 2027.

APPENDIX B

EVIDENTIARY HIGHLIGHTS SHOWING INTERLINE COLLABORATION WITHOUT A MERGER, INCLUDING ACROSS THE WATERSHED

Pages 1-15 of this Appendix contain excerpts from Applicants' internal documents, earnings transcripts, and testimony provided in this proceeding that show UP and NS can—and already do—win traffic from trucks through effective interline collaboration. Some of Applicants' most efficient routes involve interchanges with other railroads, and interline service has helped both carriers achieve substantial intermodal growth in recent years. Their own experience contradicts the claim that a merger is necessary to achieve the growth they project. The documents reveal that UP and NS have plenty of opportunities for growth—including in the Watershed region—through collaborations that have been put on hold during the pendency of this merger proceeding.

UP and NS documents are organized chronologically. Deposition testimony is organized alphabetically by deponent. To view these documents in their entirety, please refer to Volume VI, which contains a copy of this index that is appended and hyperlinked to the documents and testimony cited therein.

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_1535472 quoted material at -482	8/26/2020	UP – CSX Executive Interline Meeting	[redacted]
UP_0473399 quoted material at row 7	6/18/2021	UP / NS Interline Business Development Opportunity Scorecard	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_0198210 quoted material at -213	11/16/2023	Short Line & Interline Marketing Presentation	[redacted]
UP_1440003 quoted material at -004	2/2024	Class I Collaboration Opportunities Presentation	[redacted]
UP_0703627 quoted material at -627	3/11/2024	Email from Lisa Knight to Jim Vena (UP CEO), Jeff Pincock (UP VP Strategy & Corporate Development), Rebecca Gregory (UP SVP Administration), Dan McLaughlin (UP AVP Marketing & Sales Operations), and others at UP Re: Watershed Opportunities	In February 2024, at Mr. Vena's request, UP's Corporate Development and Strategy teams worked with UP's Operations and M&S teams to [redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_0990304 quoted material at -304-305	8/2024	External Interview with Tony Hatch – Questions and Draft Responses	[redacted]
UP_3208295 quoted material at row 57	7/16/2025	VJV Priority Projects	[redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_00137875 quoted material at -877	1/2020	Norfolk Southern Intermodal - "IM8MM" Document by Mike McClellan (NS Strategy)	[redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_00823382 quoted material at -389	6/26/2020	UP-NS Executive Interline Meeting	[redacted]
NS_00136603 quoted material at -609	2/20/2022	Outline of Norfolk Southern Argument Document by Mike McClellan (NS Strategy)	Described the Meridian Speedway as [redacted]
NS_00143201 quoted material at -202	6/16/2023	Project Buckeye: NW Ohio Opportunity Presentation	[redacted]
NS_00100868 quoted material at -885	10/24/2023	Business Conditions Update Presentation	[redacted]
NS_00103605 quoted material at -654	11/16/2023	Market Conditions Update: Domestic Intermodal Presentation	[redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_00131279 quoted material at -283	12/17/2024	NS-P COO Discussion Brief Presentation	[redacted]
NS_00130790 quoted material at -790-791	12/20/2024-1/6/2025	Emails from Yannik Thomas (NS VP of Intermodal and Automotive Operations) and John Orr (NS COO) to Hunsdon Cary (VP Premium) at UP Re: Shreveport interchange proposal	[redacted]
NS_00130721 quoted material at -721	3/7/2025-3/31/2025	Internal NS Emails Re: BNSF + NS Announce Streamlined Steel-Wheel Service	[redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_00128364 quoted material at -368, -382	8/26/2025	Interchange Fact Catalog	[redacted]
NS_00095664 quoted material at -664	6/18/2026	Access to Key Western and Southern Markets Now Rolling - Union Pacific and Norfolk Southern One-Pager	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Dan McLaughlin (UP Assistant Vice President of Marketing & Sales Operations), Tr. at 194:8-12	[redacted]
Deposition of David Hunt (Oliver Wymann) Day 2, Tr. at 699:8-18	"Q. Okay. You're not comparing how the world looks post merger to how a world could look if certain railroads increase their interline service verse what they did in 2023, correct? A. I was not asked to look at any scenarios like that. Q. Okay. So the answer is no, you did not look at any other scenarios like that, correct? A. That is correct."

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Ed Elkins (NS Executive Vice President and Chief Commercial Officer), Tr. at 46:20-25; 47:12-16	[redacted]
Deposition of Ed Elkins (NS Executive Vice President and Chief Commercial Officer), Tr. at 54:15-22	[redacted]
Deposition of Ed Elkins (NS Executive Vice President and Chief Commercial Officer), Tr. at 73:25-74:7	[redacted]
Deposition of Ed Elkins (NS Executive Vice President and Chief Commercial Officer), Tr. at 74:8-75:11	[redacted]
Deposition of Ed Elkins (NS Executive Vice President and Chief Commercial Officer), Tr. at 122:10-23	[redacted]
Deposition of Ed Elkins (NS Executive Vice President and Chief Commercial Officer), Tr. at 123:20-24	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Ed Elkins (NS Executive Vice President and Chief Commercial Officer), Tr. at 130:23-131:21	[redacted]
Deposition of Ed Elkins (NS Executive Vice President and Chief Commercial Officer), Tr. at 131:24-132:23	[redacted] Q. In their view, it delivers greater market reach, correct? A. Correct. Q. And more efficient transportation? A. That's the intent, yes. Q. And this leverages UP's existing network to connect customers with key western and southern markets and Norfolk Southern's intermodal facilities in the Louisville area, correct? A. Yes. Q. And this service that Union Pacific and Norfolk Southern announced is independent of the merger, correct? A. Yes."
Deposition of Ed Elkins (NS Executive Vice President and Chief Commercial Officer), Tr. at 163:2-15	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Elizabeth Bailey (Charles River Associates), Tr. at 162:7-163:1	"Q. So fair to say that you never assessed whether UP/NS could improve their interline operations without a merger? A. That wasn't my assignment in this matter. Q. For example, you never quantified how much of the service benefits they could achieve without a merger, right? A. That wasn't my assignment in this matter. Q. You didn't look at whether UP/NS could construct deeper blocks to achieve more efficient operations, right? A. That wasn't my assignment in this matter."
Deposition of Eric Gehringer (UP Executive Vice President of Operations), Tr. at 304:16-24	"Q. Okay. So as you understand it, as the point that I am getting to, is a train will come from the west and will stop at Shreveport. CPKC will haul it from Shreveport to Meridian, and then it would go from Meridian to Atlanta, correct? A. Correct. Q. Okay. And that's similar to how you send trains today across the Meridian Speedway, correct? A. It is."
Deposition of Jim Vena (UP CEO), Tr. at 88:2-18	[redacted]
Deposition of John Orr (Former NS Executive Vice President and Chief Operating Officer), Tr. at 211:8-212:23	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Kenny Rocker (UP, Executive Vice President, Marketing & Sales), Tr. at 177:15-22	[redacted]
Deposition of Kenny Rocker (UP, Executive Vice President, Marketing & Sales), Tr. at 314:15-315:8; 319:18-320:8	[redacted]
Deposition of Kenny Rocker (UP, Executive Vice President, Marketing & Sales), Tr. at 334:3-20	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Mark George (NS CEO), Tr. at 27:10-27:14	[redacted]
Deposition of Mark George (NS CEO), Tr. at 111:21-113:1	[redacted]
Deposition of Mike McClellan (NS Strategy), Tr. at 63:5-22; 65:10-66:4; 67:11-18	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Mike McClellan (NS Strategy), Tr. at 346:22-348:11	[redacted]
Deposition of Shawn Tureman (NS Intermodal), Tr. at 105:6-11; 107:1-108:7; 109:1-5	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Shawn Tureman (NS Intermodal), Tr. at 330:4-23	[redacted]
Deposition of Shawn Tureman (NS Intermodal), Tr. at 375:15-376:1; 377:5-378:4	[redacted]
Deposition of Shawn Tureman (NS Intermodal), Tr. at 437:8-23	[redacted]
Deposition of Shawn Tureman (NS Intermodal), Tr. at 443:17-444:5; 444:21-24	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Yannik Thomas (NS Vice President of Network Design and Optimization), Tr. at 103:12-16	[redacted]
Deposition of Yannik Thomas (NS Vice President of Network Design and Optimization), Tr. at 222:3-10; 225:10-12	[redacted]
Deposition of Yannik Thomas (NS Vice President of Network Design and Optimization), Tr. at 226:9-227:8	[redacted]

Earnings Transcripts	
Transcript	**Key Testimony**
Union Pacific Corp., Q3 2024 Earnings Call, Transcript (Oct. 24, 2024) (Remarks of Eric Gehringer) Tr. at 10	"We work closely with CSX and the NS to ensure that our interchange points remain fluid."

News Releases		
Title	**Date**	**Summary**
"CN, UP, and GMXT Announce New Transformational Mexico-US-Canada Intermodal Service," UP Press Release	4/24/2023	Falcon, which joins three independent railroads—GMXT, UP, and CN—was announced as a "best-in-class Mexico-US-Canada service with a seamless rail connection in Chicago."
"New Union Pacific and Norfolk Southern intermodal gateway expands market access," NS News Release	9/15/2025	"Enhancements to the newly expanded Kansas City Intermodal Terminal and Norfolk Southern investments in Louisville allow us to compete with trucks, removing thousands from the nation's congested highways." (remarks of Kenny Rocker, UP Executive Vice President of Marketing & Sales)

APPENDIX C

EVIDENTIARY HIGHLIGHTS SHOWING FORECLOSURE OF COMPETITION THROUGH BUNDLING, ELIMINATION OF INTERLINE SERVICES, AND OTHER STRATEGIES

Pages 1-10 of this Appendix contain excerpts from Applicants' internal documents and testimony provided in this proceeding that show how a combined UP–NS would use its unprecedented reach to weaken competition throughout the United States. UP and NS are already considering how to "leverage" their combined scale and increased bargaining power to compel shippers to route traffic over their network. That strategy—which includes tactics like bundling that UP and NS already employ today—threatens the geographic competition and bargaining strategies on which many shippers depend to secure competitive rates and service offerings. The documents also reveal UP's and NS's plans to pull back support for interline collaboration with BNSF and CSX.

UP and NS documents are organized chronologically. Deposition testimony is organized alphabetically by deponent. To view these documents in their entirety, please refer to Volume VII, which contains a copy of this index that is appended and hyperlinked to the documents and testimony cited therein.

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_0039326 quoted material at -326	6/12/2020	Emails between Jon Panzer (former UP SVP of Intermodal Operations) and Grant Janke (UP Assistant VP Network Capital Planning & Finance) Re: Question	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_2168208 quoted material at -213	4/13/2021	M&S Refined CPKC Merger Impact Analysis	UP analysis of [redacted]
UP_0087174 quoted material at -208	4/27/2021	Merger Update	[redacted]
UP_0082459 quoted material at -508, -536	5/24/2021	Merger Analysis Update	[redacted]
UP_0083983 quoted material at -104	6/21/2021	Merger Update	UP analysis of CP/KCS combination found [redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_0479165 quoted material at -166	8/8/2022	Volkswagen Bid Strategy	UP deck outlining a [redacted]
UP_0208474 quoted material at -486	7/11/2024	Marketing & Sales SSOE Deep Dive	UP discussed competing with [redacted]
UP_0209007 quoted material at -011	1/24/2025	January CEO Brief Presentation by Kenny Rocker (UP Executive Vice President, Marketing & Sales)	[redacted]
UP_1412436 quoted material at -441	6/2/2025	Revenue Synergies	Demonstrating UP's expectation that UP-NS will [redacted]
NS_00171223 quoted material at -225	8/8/2025	Mercedes RFP Strategy	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_0080839 quoted material at -850	8/14/2025	Project Opal Update – Revenue Synergy Deep Dive	Showing plans to [redacted]
UP_1389882 quoted material at -882	9/16/2025	Email from Susan Brown (UP General Director of Commercial Strategy, Planning & Communications) to Jim Vena (UP CEO) Re: VJV request – Top 100 customer overlap	[redacted]
UP_0344233 quoted material at -233	1/17/2026	Email from David Hughes (UP Senior Manager of Facilities and Operational Analysis) to Grant Janke (UP Assistant Vice President, Capital Planning & Finance), Katherine Novak (UP General Director of Interline Operations), and others at UP Re: OPAL fact-check (Urgent media)	UP Senior Manager of Facilities and Operational Analysis, David Hughes, acknowledging that [redacted]
UP_0082693 quoted material at rows OPP-097815, OPP-097816	4/15/2026	Revenue Synergy Data Mapping	Describing [redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_0023295 quoted material at -305-306	4/27/2026	Project Opal – IMO Weekly Meeting	[redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_00785443 quoted material at -443	9/12/2019	FCA Eastern RFQ Response – Flexibility Proposal Presentation by Abigail Rollins (NS Account Manager – FCA Finished Vehicles)	Offering FCA [redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_00130382 quoted material at -384	8/26/2024	Mike McClellan (NS Chief Strategy Officer) Notes	[redacted]
NS_00725643 quoted material at -643	8/5/2025	Major Business Changes/Losses slide	[redacted]
NS_00171221 quoted material at -222	8/8/2025	Chat between Shawn Tureman (NS Intermodal), Robert Legge (NS Marketing Director, International Intermodal and Automotive), and others at UP	[redacted]
NS_00170988 quoted material at -988-989	10/24/2025	Stellantis Bid Overview	[redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_00327432 quoted material at -446	2/13/2026	M&S Revenue Synergy Planning	In describing what counts as a revenue synergy, lists [redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Lance Fritz (Former UP CEO), Tr. at 133:16-20	[redacted]
Deposition of Lance Fritz (Former UP CEO), Tr. at 132:19-133:6	[redacted]
Deposition of Eric Gehringer (UP Executive Vice President of Operations), Tr. at 305:12-22	"A. . . . . We believe in a merged entity that we will be more successful in negotiating even faster, for example, speeds across the Meridian Speedway with CPKC, that at this point, for whatever reason, NS hasn't pursued or hasn't pursued successfully. Q. So your view, though, is that as the merged entity, you will be able to -- in negotiations be successful in getting things with CPKC that NS had not been able to date. Is that -- am I understanding that right? A. You are understanding that correctly."

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of John Turner (UP Senior Vice President Operations – Northern Region), Tr. at 71:13-72:13	[redacted]
Deposition of John Turner (UP Senior Vice President Operations – Northern Region), Tr. at 93:9-93:20	[redacted]
Deposition of Kenny Rocker (UP Executive Vice President of Marketing & Sales), Tr. at 235:4-236:12	[redacted]
Deposition of Kenny Rocker (UP Executive Vice President of Marketing & Sales), Tr. at 326:8-16	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Mark George (NS CEO), Tr. at 125:7-126:3	[redacted]
Deposition of Mark Israel (Econic Partners), Tr. at 65:7-66:1	"Q. I guess I'm asking a more specific question. Is there any part of your verified statements that address the bundling concerns that are described on Page 30 of the Joint Shipper Associations submission? A. I don't think this sort of bundling statement as it's made here is addressed explicitly in my verified statements thus far. These bundling -- these sort of bundling theories have a history in economics. Economists generally find it difficult to find a bundling theory like this that holds up as a matter of economics. So it's not something I addressed in my verified statements, but given that comments are coming in on this basis, you know, perhaps it's something I would reply to, and so it's something that I'm -- that I've been considering."
Deposition of Mark Israel (Econic Partners), Tr. at 206:11-16; 208:5-19	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Shawn Tureman (NS Intermodal), Tr. at 445:6-15; 450:7-15.	[redacted]
Deposition of Shawn Tureman (NS Intermodal), Tr. at 451:3-11	[redacted]
Deposition of Todd Rynaski (UP Senior Vice President of Strategy), Tr. at 277:16-279:10	[redacted]

APPENDIX D

EVIDENTIARY HIGHLIGHTS SHOWING BARRIERS TO APPLICANTS ACHIEVING THEIR FORECASTED TRAFFIC DIVERSIONS, INCLUDING THE DIFFICULTY OF WINNING NEW BUSINESS, FROM TRUCK

Pages 1-8 of this Appendix contain excerpts from Applicants' internal documents and testimony provided in this proceeding that expose the substantial barriers to achieving Applicants' inflated diversion estimates. UP and NS themselves recognize that winning freight from trucks requires detailed, shipper-specific solutions that account for each customer's operational needs. Mr. Hunt's novel and unsupported methodology disregards those practical constraints and assumes diversions that Applicants' own evidence shows are unlikely to materialize.

UP and NS documents are organized chronologically. Deposition testimony is organized alphabetically by deponent. To view these documents in their entirety, please refer to Volume VIII, which contains a copy of this index that is appended and hyperlinked to the documents and testimony cited therein.

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_1193830 quoted material at -866, -868	5/18/2021	Operations Staff Meeting Intermodal	[redacted]
UP_0024575 quoted material at -583-584	2024	Leadership Conference 2024 – Growing New Business Presentation by Kenny Rocker (UP Executive Vice President, Marketing & Sales)	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_0557218 quoted material at -220	3/8/2024	Email from J. Perkes (UP Senior Vice President and Chief Human Resources Officer) to K. Freedman re: Friday Thoughts 3-8-24	[redacted]
UP_0041291 quoted material at -299	5/12/2025	Project Opal Update - Revenue Synergy Deep Dive	[redacted]
UP_1412436 quoted material at -443	6/2/2025	Revenue Synergies	[redacted]
UP_0034282 quoted material at -285	6/5/2025	Revenue Synergies	[redacted]
UP_0037972 quoted material at -979	4/29/2026	Sales Playbook	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_0082695 quoted material at OPP-097884	4/29/2026	Revenue Synergy Data Mapping	[redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_00161228 quoted material at -229	9/22/2020	Proposed New Strategy: Cost-Efficient Market Differentiation	[redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_00348266 quoted material at -267	12/18/2024	Email from Shawn Tureman (NS VP Automotive & Intermodal Marketing) and Kathleen Smith (VP Industrial Products) to Ed Elkins (NS EVP and Chief Commercial Officer) re: Marketing Change Imperatives	[redacted]
NS_00121378 quoted material at -197	11/10/2025	UP / NS Interline Meeting Presentation	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Dan McLaughlin (UP AVP M&S Operations), Tr. at 267:2-5	[redacted]
Deposition of Dan McLaughlin (UP AVP M&S Operations), Tr. at 271:22-272:2	[redacted]
Deposition of Dan McLaughlin (UP AVP M&S Operations), Tr. at 272:22-274:6	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of David Hunt (Oliver Wymann) Day 1, Tr. at 182:16-23	"Q. Shippers selecting freight modes consider numerous factors in their decisionmaking, correct? A. Correct. Q. Shippers selecting carriers consider numerous factors in their decisionmaking, correct? A. Correct."
Deposition of David Hunt (Oliver Wymann) Day 1, Tr. at 198:22-199:7	"Q. Not all commodities are created equal in terms of where truck has a comparative advantage over rail, fair? A. There are more truck-centric commodities and more rail-centric commodities, yes."
Deposition of David Hunt (Oliver Wymann) Day 1, Tr. at 227:17-228:1	". . . [P]rice is an important factor, but there are other factors. Reliability is a factor. The transit time. I mean, the shipper will look at the total logistics cost of that movement. So there are many factors they consider."
Deposition of Joshua Perkes (UP Senior Vice President and Chief Human Resources Officer), Tr. at 143:13-21; 144:4-14	"Q. And you mentioned specifically that there had been some customers that shipped both rail to truck, and you were trying to get more -- get them to use UP more, is that right, or to get -- or to use Loup -- Loup or UP more? A. Yes. I stated that customers that shipped both truck freight and rail freight, that we worked with them to convert some of their truck freight to rail freight; Q. So you said that you worked to convert [customers] more to rail. . . . I'm asking you how did you go about doing that? A. My responsibility was for the entire company, but our sales team would have conversations with customers about their shipping needs and proposed shipping needs that included rail. And if that was something the customers found favorable, they would consider transitioning their business to our product."
Deposition of Joshua Perkes (UP Senior Vice President and Chief Human Resources Officer), Tr. at 146:14-17; 146:21-24	"Q. The proposal you make to the customer; is it -- is it specific -- very specific to that customer's needs? A. Yes. Q. … [T]here wasn't one single solution that would win all of the customers? A. Correct."

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Joshua Perkes (UP Senior Vice President and Chief Human Resources Officer), Tr. at 152:6-13	"Q. Before you said that -- that winning truck-to-rail diversions for Loup was a very individual -- individualistic process, and there wasn't a one-size-fits-all solution. Was that right? A. I didn't say it quite that way, but I did agree that each conversion involves specific solutions for specific customers."
Deposition of Joshua Perkes (UP Senior Vice President and Chief Human Resources Officer), Tr. at 153:23-154:12	"Q. Have you also tried to win business from other railroads? A. We compete with business from all modes of traffic, and we've -- in my career, I have certainly attempted to provide a service that was competitive, where the customers chose us instead of their alternative options. Q. And what are some of the factors that makes an offer competitive? A. I think it depends on every customer and their priorities. It -- it's impossible to describe all the factors that are important to every customer."
Deposition of Michael McClellan (NS Strategy), Tr. at 162:6-163:15	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Michael McClellan (NS Strategy), Tr. at 177:20-178:9; 185:7-22	[redacted]
Deposition of Michael McClellan (NS Strategy), Tr. at 279:21-280:21	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Shawn Tureman (NS Intermodal), Tr. at 354:10-355:1; 355:16-356:3	[redacted]

APPENDIX E

EVIDENTIARY HIGHLIGHTS SHOWING APPLICANTS' PRIOR CONSIDERATIONS OF CLASS I CONSOLIDATION, INCLUDING THE INEVITABILITY OF A TRANSCONTINENTAL DUOPOLY

Pages 1-13 of this Appendix contain excerpts from Applicants' internal documents, earnings transcripts, and testimony provided in this proceeding and prior proceedings that show UP and NS recognize that their merger would likely trigger further consolidation culminating in a heavily regulated rail duopoly. Their failure to justify the downstream consolidation that they themselves anticipate provides an independent basis to deny the merger under the Board's Major Merger Rules.

UP and NS documents are organized chronologically. Deposition testimony is organized alphabetically by deponent. To view these documents in their entirety, please refer to Volume IX, which contains a copy of this index that is appended and hyperlinked to the documents and testimony cited therein.

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_0082759 quoted material at -762	6/2015	Strategic Off Site – Planning Update Presentation by Diane Duren (UP Executive Vice President & Corporate Secretary)	[redacted]
UP_1861236 quoted material at -242	2/3/2016	February 2016 Board of Directors Merger Defense Update Presentation by Diane Duren (UP Executive Vice President & Corporate Secretary)	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_0039326 quoted material at -326	6/12/2020	Emails between Grant Janke (UP Assistant Vice President, Capital Planning & Finance) and Jon Panzer (UP Senior Vice President Intermodal Operations) Re: Question	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_1685681 quoted material at -732, -737, -741-743	7/8/2020	Strategic Planning Review – Senior Staff Presentation Strategic Planning Group: Jon Panzer, Mike Staffenbeal, Jamie Peters, Darrin Craner	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_1389796 quoted material at -867	7/23/2020	UP Second Quarter 2020 Earnings Release Q&A	[redacted]
UP_1832132 quoted material at -164	5/13/2021	UP May 2021 Board of Directors – Merger Analysis Presentation	[redacted]
UP_1410551 quoted material at -552	9/30/2022	Union Pacific Presentation – Finance Docket No. 36500 Presentation by John Turner (Senior VP, Harriman Dispatch Center & Network Planning, and Michael L. Rosenthal, Outside Counsel)	[redacted]
UP-STB-D13-0000623 quoted material at -636	3/26/2024	UP Concessions Working Session – Project Opal	[redacted]

Union Pacific Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
UP_0041683 quoted material at -690	2/26/2025	2025 Merger Analysis	[redacted]
UP_0039385 quoted material at -392	5/20/2025	2025 Board Materials	[redacted]
UP_1451364 quoted material at -366, -373	5/21/2025	2000 Moratorium on Rail Mergers – Project Opal	[redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_00571615 quoted material at -615-616	5/11/2021-5/12/2021	Emails between Mark George (NS CEO), James Squires (former NS CEO), and Michael McClellan (NS Chief Strategy Officer) Re: The Future State of the Industry	[redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_00880515 quoted material at -540	N/A (circulated 4/29/2021)	North American Railroad Acquisition Opportunities	[redacted]
NS_00131930 quoted material at -930	7/6/2021	UP v BNSF: Who is the better fit?	[redacted]
NS_00132403 quoted material at -403	7/7/2021	Emails between Michael McClellan (NS Chief Strategy Officer) and others at NS Re: Confidential: UP v BNSF Thoughts	[redacted]
NS_00181116 quoted material at -117	1/12/2025	Letter from Michael McClellan (NS Chief Strategy Officer) to Mark George (NS CEO) and Jason Zampi (NS CFO) Re: M&A in the Class I Rail Space	[redacted]

Norfolk Southern Internal Documents			
Bates	**Date**	**Document Name**	**Summary**
NS_STB_00001421 quoted material at -422	6/10/2025	Emails between Yannik Thomas (NS VP of Network Design and Optimization), Matt Bonk (NS Assistant VP of Financial Planning & Analysis), and others at NS Re: "Thoughts on Pegasus"	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of David Lehlbach (NS Strategic Planning AVP), Tr. at 324:13-24	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of David Lehlbach (NS Strategic Planning AVP), Tr. at 328:20-329:10	[redacted]
Deposition of David Welch (UP General Director of Corporate Strategy), Tr. at 214:14-19; 215:20-216:4	[redacted]
Deposition of Lance Fritz (UP CEO), Tr. at 24:6-24	[redacted]
Deposition of Lance Fritz (UP CEO), Tr. at 158:20-159:2	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Mark George (NS CEO), Tr. at 152:12-153:11	[redacted]
Deposition of Mark George (NS CEO), Tr. at 246:15-20	[redacted]
Deposition of Michael R. McClellan (NS Chief Strategy Officer), Tr. at 138:23-139:9; 142:4-16	[redacted]
Deposition of Michael R. McClellan (NS Chief Strategy Officer), Tr. at 243:6-15	[redacted]

Deposition Testimony	
Transcript	**Key Testimony**
Deposition of Michael R. McClellan (NS Chief Strategy Officer), Tr. at 489:14-21; 490:10-20; 493:15-494:9	[redacted]
Deposition of Todd Rynaski (UP Senior Vice President of Strategy), Tr. at 257:16-258:11	[redacted]
Deposition of Yannik Thomas (NS Vice President of Network Design & Optimization), Tr. at 98:4-15	[redacted]

Earnings Transcripts	
Transcript	**Key Testimony**
Union Pacific Corp. Q4 2015 Earnings Call, Corrected Transcript (Jan. 21, 2016) (Remarks of Lance Fritz), at 20	"Ken, we do not support mergers or consolidation in the current environment. . . . [The Surface Transportation Board] also have to consider downstream impacts, whether one merger triggers a string of consolidations."

UP Filings in *Major Rail Consolidation Procedures*, Ex Parte No. 582 (Sub-No. 1)		
Filing	**Date**	**UP's Position**
Union Pacific's Comments and Initial Proposals, at 2-5, 18	5/16/2000	"UP questions whether additional Class I consolidations will ever be in the public interest, even though mergers have provided important benefits in the past." "With far fewer railroads interacting, the opportunities for cooperation to achieve benefits traditionally ascribed to mergers are brighter than ever. . . . . Most important, additional Class I mergers would likely result in only two major railroads north of the Mexican border. . . . . Any combination among the six largest remaining railroads in North America would. . . drive. . . the "end game" in rail consolidations." "[A]pplicants and other parties should address whether a single railroad serving Florida, the Northeast, Western Canada, and California would be manageable and responsive to its shippers." "Mergers should not be credited with benefits that are practicably achievable through other means that would not cause irreversible changes in the structure of the railroad industry. Indeed, mergers may impair benefits achievable through alternative arrangements."

UP Filings in *Major Rail Consolidation Procedures*, Ex Parte No. 582 (Sub-No. 1)		
Filing	**Date**	**UP's Position**
UP's Opening Comments on Proposed Merger Rules, at 3-4, 18	11/17/2000	"[T]he next major merger is likely to lead to creation of two transcontinental railroads. Before approving another major rail merger, the Board should determine whether this final round of railroad consolidations is desirable." "[T]he Board should make clear that only benefits that require a merger will be considered benefits of the merger."
UP's Reply Comments on Proposed Merger Rules, at 8, 22	12/18/2000	Warning the Board that the next major merger would force the Board to "choose between a future in which two huge transcontinental systems develop single-line services in isolation from each other and a future in which all remaining railroads strive to develop more efficient services over remaining interline routes." "Existing alliances or joint ventures might be damaged or even destroyed by a proposed merger. . . . . A combination might also eliminate multi-carrier cooperative opportunities that otherwise would have been pursued."