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 II OF IX

REQUESTS FOR CONDITIONS

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I. THE BOARD SHOULD REJECT THE PROPOSED TRANSACTION OUTRIGHT; ANY APPROVAL WOULD REQUIRE SWEEPING AND PERMANENT COMPETITIVE AND SERVICE PROTECTIONS

As detailed in Comment Volume I, the Board should reject the Proposed Transaction. No set of conditions—however sweeping, however carefully constructed—can cure the structural, permanent loss of NS as one of six Class I railroads. Today, NS has its own incentives to pursue traffic, develop interline routes, innovate, invest, and cooperate with other railroads—even when those efforts directly compete with UP. Acquiring NS would give UP greater ability and incentive to steer traffic to its combined system at the expense of competing routes and customer choice. The prospect of further consolidation and a downstream rail duopoly compound those concerns.

The Proposed Transaction threatens to concentrate control over captive customer facilities, routes, gateways, terminals, and other infrastructure on which competing carriers and their customers depend. UP could use rates and divisions, operating restrictions, discriminatory service, and investment or resource decisions to weaken competing interline services. Conditions can constrain particular abuses of that power. But they cannot recreate the incentives of an independent NS that discipline UP. An independent railroad does not need a Board order to seek new business, develop a competing route, invest toward improving service, innovate, or work with another carrier to take traffic from UP. To be effective, a conditioning regime would have to anticipate particular forms of anticompetitive conduct, prescribe rules or performance standards, monitor compliance, identify violations, and provide effective remedies after—or, at best, as—a problem emerges. However thoughtfully 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. Competition dynamically responds to changes in demand, costs, service, and innovation, while

regulatory standards can become outdated and require repeated adjustment. Even more extensive conditions would therefore leave the Board supervising commercial relationships that independent carriers now adapt through competition.[1]

The sheer breadth of the conditions needed to even arguably approach offsetting the Proposed Transaction's competitive harms is itself evidence that the Board should reject the merger. The merged carrier's incentives to foreclose competition for customers in favor of its new single-line service would extend virtually across the country. Many of the problems that the requested remedies target are foreseeable today. Others might arise months or even years after the merger, requiring the Board to monitor, address, and remedy them. Even partial mitigation would require an extraordinary and permanent regulatory regime. Protecting access and service across the combined system would demand enforceable operating rights, nondiscrimination and capacity obligations, location-specific monitoring, expedited dispute resolution, and additional remedies for harms that might emerge after approval. Those conditions would apply in markets virtually across the country where UP and NS operate. The requested conditions are designed to be administrable on their own terms, but their breadth underscores the problem: they would require continuing supervision of relationships now disciplined by an independent competitor. Ordinary, time-limited merger oversight would not suffice. The Board should not approve a structurally anticompetitive transaction on the theory that perpetual regulation of a kind that has not existed at least since the Staggers Act can somehow substitute for the market discipline supplied today by an independent NS.

That continuing burden would also consume finite Board resources and impose public costs that must be weighed against Applicants' claimed benefits. It would also run counter to

[1] Verified Statement of W. Robert Majure, Vol. I ¶¶ 337-45 ("Majure V.S.").

Congress's stated policy of relying on competition to the maximum extent possible and minimizing federal regulatory control.[2] Permanent supervision of rates, routing, access, service, and investment could mitigate particular harms, but it could never replace NS's independent competitive judgment. On this record, those costs would exceed any net public benefit and would undermine public policy.

Applicants' position on future conditioning compounds these concerns. They argue that the Board's authority to impose additional conditions after consummation is constrained and that any reservation permitting future springing conditions must specify their objectives, circumstances, and scope in advance.[3] CPKC does not accept those asserted limits. Applicants' position nevertheless underscores the danger of approving this transaction on the assumption that later proceedings can remedy harms that cannot yet be fully identified, including the consequences of further consolidation it could induce. Imposing necessary protections only on applicants in a subsequent merger could compound the competitive imbalance, leaving the merged UP-NS with the advantages of consolidation while shifting to its competitors the burden of addressing cumulative harms that this transaction helped create. The Board should reject the transaction rather than rely on the uncertain availability and effectiveness of later remedies.

If the Board were to conclude that approval is nevertheless warranted, the conditions below and in CPKC's accompanying Responsive Applications would be necessary to even partially mitigate discrete merger-related competitive harms. They would help to preserve or create independent competitive options, protect shipper choice and reliable service, and constrain foreclosure through control of critical routes and facilities. The proposed remedies are generally

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2 49 U.S.C. § 10101(1)-(2).

3 Applicants' Second Response to Decision No. 21, UP-80/NS-78, Supp. 150-55 (July 27, 2026).

nonexclusive and additive; they would preserve existing service by Applicants and other carriers. Seeking those protections does not concede that conditions can cure the transaction's structural harms.[4] Indeed, no set of conditions could do so.

Applicants' voluntary and springing conditions and their settlement with CN do not supply those protections. Section II explains the Board's authority to impose broad remedial conditions under the 2001 Major Merger Rules. Section III explains the limits of Applicants' gateway, access, and rate programs; Section IV addresses their inadequate treatment of customer-level competitive harm and remedy-carrier selection; and Sections V through VIII identify the additional service, contractual, shared-equipment, and geographic protections that would be required.

Even partial mitigation of the Proposed Transaction's competitive harms would require, at a minimum, the following conditions:

1. Permanent and enforceable gateway conditions that preserve shipper routing optionality beyond the scope of Applicants' voluntary commitments (Section III);

2. Customer-specific access protections limiting each customer's post-merger sole-service exposure to the larger of its two legacy portfolios, together with protections against Applicants using commercial leverage on one legacy network to penalize or foreclose competing-carrier service on the other (Section IV);

3. A permanent service-assurance framework incorporating a standing, Applicants-funded, Board-appointed monitor for prompt resolution of implementation and compliance disputes, customer-centered performance measures developed through the Board's subsequent technical process, effective preventive and corrective remedies, and retained authority to address unanticipated harms (Section V);

4. Customer-contract release, conforming-amendment, and anti-retaliation protections preventing contractual restraints or reprisals from defeating Board-authorized competitive access (Section VI);

5. Permanent conditions preserving neutral governance and nondiscriminatory equipment access, protecting TTX's pooled fleets, and requiring advance notice and an opportunity

[4] Verified Statement of James Clements ¶¶ 20, 22, 46-50 ("Clements V.S."); Majure V.S. Vol. II ¶¶ 11, 28-31.

for Board review of material reductions in Applicants' contributions to the Multilevel Pool or North American Boxcar Pool (Section VII); and

6. Geographic conditions protecting competitive routes, customer access, and shared gateways and terminals, (Section VIII).

Where a responsive application is required, CPKC has filed one seeking the necessary authority.[5] The requested conditions and accompanying applications would operate together, building wherever practicable on existing routes, facilities, and operations to preserve or create competitive options without displacing existing service or guaranteeing CPKC traffic. The fact that CPKC's conditions are tailored and administrable should not be mistaken for a concession that they cure the Proposed Transaction's harm. They are the bare minimum necessary to achieve even partial mitigation of the enduring harms to competition that would result from a UP–NS colossus imposing its unbridled will over American manufacturers, farmers, and other shippers forever.

II. THE MAJOR MERGER RULES AUTHORIZE BROAD COMPETITION-ENHANCING CONDITIONS

The Board has broad statutory authority to condition a rail merger to ensure that it serves the public interest.[6] Section 11324(c) expressly authorizes conditions including grants of trackage rights and access to other facilities, but it does not confine the Board to those remedies. The Board, and the Interstate Commerce Commission ("ICC") before it, have long recognized that the public interest governs both the need for conditions and their form.[7] That authority extends to preserving or enhancing service and competitive opportunities and mitigating a

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[5] *See* Finance Docket No. 36873 Sub-Nos. 42-50.

[6] *See* 49 U.S.C. § 11324(b)-(c).

[7] *See, e.g.*, *Union Pac. Corp. – Control & Merger – S. Pac. Rail Corp.*, 1 S.T.B. 233, 367 (1996) ("*UP/SP*").

consolidation's anticompetitive effects.[8] The Major Merger Rules require consideration of geographic and product competition, preservation of routing and market options, and enhancement of competition to offset harms that cannot otherwise be mitigated.[9] They authorize operationally feasible conditions that produce net public benefits.[10]

The Board has repeatedly used that authority to preserve competitive alternatives and protect service. In *UP/SP*, it imposed extensive BNSF trackage-rights and related access conditions.[11] The United States Court of Appeals for the D.C. Circuit likewise has recognized the Board's "broad authority to impose protective conditions to govern mergers."[12] In *CSX/NS–Conrail*, the Board imposed conditions to preserve and enhance service and competitive opportunities.[13] Most recently, it imposed gateway, reciprocal-switching, reporting, and oversight conditions in *CP/KCS* despite that transaction's virtually end-to-end character.[14] The Board reviewed that transaction under the pre-2001 rules pursuant to the KCS waiver and expressly distinguished the current rules' requirement that major mergers affirmatively enhance competition.[15] Those more demanding rules govern this proceeding.[16] *CP/KCS*'s conditions

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8 *CSX Corp., Norfolk S. Corp. – Control & Operating Leases/Agreements – Conrail Inc.*, 3 S.T.B. 196, 250 (1998) ("*CSX/NS-Conrail*").

9 49 C.F.R. § 1180.1(c)(2)(i), (iv).

10 *Id.* § 1180.1(d).

11 *UP/SP*, 1 S.T.B. at 411-25.

12 *Grainbelt Corp.* v. *STB*, 109 F.3d 794, 796 (D.C. Cir. 1997); *see Lamoille Valley R.R.* v. *ICC*, 711 F.2d 295, 319 (D.C. Cir. 1983) (recognizing the "vertical foreclosure effect" at gateways in end-to-end combinations (quoting *Union Pac. Corp. – Control – Mo. Pac.*, 366 I.C.C. 462, 529 (1982))).

13 *See CSX/NS-Conrail*, 3 S.T.B. at 250, 269-98.

14 *See Canadian Pac. Ry. – Control – Kan. City S.,* Finance Docket No. 36500 (STB Decision No. 35 served Mar. 15, 2023) at 67-83, 85 ("*CP/KCS*").

15 *Id.* at 10, 18 & n.25.

16 49 C.F.R. § 1180.1(c)(2)(i); *see Major Rail Consolidation Procs.*, 5 S.T.B. 539, 547, 552-53 (2001).

therefore supply no ceiling on the protections warranted by the much greater and permanent competitive harms at issue here.

In explaining the contours of the Major Merger Rules, the Board's 2001 rulemaking expressly rejected limiting competitive enhancements to remedies for individually identified harms. Recognizing that "it is increasingly difficult to remedy certain competitive harms directly and proportionately," the Board explained that conditions for enhancing "competition need not be limited to remedying specific competitive or other harms that are threatened by the merger."[17] Appropriate tailoring does not demand mathematical precision, and thus the Board may impose conditions to enhance competition to offset merger harms without demanding a proportional or tailored one-to-one correspondence between every enhancement and a discrete loss.[18] And while the Board will still look for a nexus to the merger, that does not require each competitive improvement it orders to replicate a particular lost service or eliminate only a precisely quantified increment of harm.[19]

If the Board were to approve the Proposed Transaction, it should exercise the full measure of its conditioning authority to address the permanent and structural changes that would arise from the merger. Conditions are particularly appropriate where the transaction changes the merged carrier's incentives and control over routes, gateways, terminals, joint facilities, and other infrastructure on which competing railroads and their customers depend. As this Board has established, the question is not whether a condition benefits CPKC as a competitor, but whether

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17 *Major Rail Consolidation Procs.*, 5 S.T.B. at 554; *see* 49 C.F.R. § 1180.1(c), (c)(2)(iv), (d).

18 *See* 49 C.F.R. § 1180.1(c), (c)(2)(iv), (d); *cf. United States* v. *E. I. du Pont de Nemours & Co.*, 366 U.S. 316, 334 (1961) (resolving remedial doubts in the Government's favor after an antitrust violation had been established).

19 *See Major Rail Consolidation Procs.*, 5 S.T.B. at 554, 569-70.

it preserves or enhances competition, protects adequate and reliable transportation, or otherwise serves the public interest.[20]

CPKC's requested conditions meet that test. The proposed remedial packages are tied to the Proposed Transaction and designed to enhance competition and serve the public interest. The sections below identify those harms and the operating, commercial, and economic evidence supporting the requested relief. Where CPKC seeks to address paper barriers or access limitations that existed before the Proposed Transaction, it seeks to address not preexisting conditions for their own sake, but the incremental competitive consequences of combining UP and NS. To that end, UP's acquisition of NS would eliminate one of two independent eastern connections and allow the merged carrier to capture both the western and eastern revenues from traffic diverted from competing interline services. That change would increase the merged carrier's incentive to use existing restrictions to foreclose those services, even where the contractual or access barriers remain unchanged.[21] Where the Proposed Transaction makes an existing restriction a more potent instrument of foreclosure, conditioning approval on its modification addresses merger-related harm. And, while the condition-specific showing supports each of CPKC's requests, it does not define the outer limit of the Board's authority to enhance competition and offset the transaction's broader harms.

III. APPLICANTS' PROPOSED PROGRAMS CANNOT SUBSTITUTE FOR INDEPENDENT COMPETITION

If the Board were inclined to approve the Proposed Transaction despite its failure to serve the public interest, it should impose permanent and enforceable commercial and operational

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[20] *See Norfolk S. Corp. – Control – Norfolk & W. Ry.*, 366 I.C.C. 173, 235 (1982) ("[The] overriding concern in the imposition of conditions is the public interest."); *see also CP/KCS*, Decision No. 35 at 67-83.

[21] *See* Majure V.S. Vol. I ¶ 61; *id.* Vol. II ¶¶ 8, 10-11.

protections to mitigate, at least in part, the resulting loss of service alternatives for shippers. Applicants' voluntary gateway commitments, Committed Gateway Pricing Program ("CGP"), Targeted Access Program ("TAP"), and Rate ADR Program fall short of that requirement. Together, they leave material gaps in coverage, pricing, service, and enforcement, and cannot substitute for NS's independent competitive discipline. Indeed, even the regulatory conditions that UP agreed to accept under the Merger Agreement before it could walk away from the deal contemplate stronger relief than Applicants voluntarily offer here.[22]

Should the Board approve the Proposed Transaction, preserving commercially effective interline options would require, at a minimum, the enduring gateway obligations, expanded CGP, and service protections described below.

A. Permanent Structural Harm Requires Protections That Outlast Merger Oversight

Applicants' CGP, TAP, and Rate ADR proposals share a fundamental defect: each is designed to expire, while the elimination of NS as an independent competitor would be permanent. Whatever benefits these programs might provide while operative, their expiration would leave customers exposed to the enduring changes in commercial incentives, bargaining relationships, and routing choices caused by the merger.[23] Completing operational integration does not restore an independent railroad. Ending formal oversight does not restore the competition that railroad supplied. Programs that withdraw protection without requiring a

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[22] *Compare* Rev. App. 4-75 to -76, 4-182 to -83 (Merger Agreement § 5.8, Schedule 5.8), *with* Applicants' Second Response to Decision No. 21 (UP-80/NS-78) (filed July 27, 2026) at Supp. 204-05, Att. 1 (providing, for example, CN haulage and trackage rights rather than divestiture of the Kansas City-St. Louis track).

[23] Verified Statement of John Brooks ¶¶ 158, 180, 190, 194 ("Brooks V.S."); Majure V.S. Vol. I ¶¶ 186, 289; *id.* Vol. II ¶ 12(b).

finding that the underlying harm has ended cannot provide an adequate answer to the transaction's structural consequences.

Applicants propose to have CGP expire at the end of oversight unless extended by the Board.[24] Applicants defend that sunset by characterizing the relevant harms as largely transitory and suggesting that shippers can respond to lost geographic competition by expanding or building facilities or finding new suppliers and customers.[25] Those possibilities do not establish that affected shippers can replace the lost competition, much less that they can do so before oversight ends. The loss of NS as an independent Class I competitor is structural and permanent, not transitory. Nor does requiring shippers to reorganize their businesses restore NS's independent incentive to compete for their traffic. Applicants' willingness to consider an extension if shippers produce evidence of continuing harm does not cure that defect. Rather, it makes continued protection depend on further proceedings after the merger has eliminated the independent competitor.

Applicants' price-control rationale likewise fails to justify the proposed expiration date. They invoke concerns that prolonged price caps could distort investment and market signals, but acknowledge that Dr. Israel's model neither selects CGP's termination date nor evaluates the public-interest consequences of extending it.[26] That model compares benefits to traffic receiving CGP rates with potential rate increases on traffic used to calculate the ceiling; it does not compare terminating CGP with continuing it.[27] Concerns about a remedy's design may warrant adjustments supported by evidence, but they do not establish that withdrawing protection at the

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24 *See* UP-80/NS-78 at Supp. 37, 39-41.

25 UP-80/NS-78 at Supp. 37-39.

26 *See* UP-80/NS-78 at Supp. 39-41.

27 *See* UP-80/NS-78 at Supp. 39-40.

end of oversight would better serve the public interest while the underlying competitive harm persists.

Applicants likewise propose to have TAP expire three years after the effective date of Board approval, and individual switching relief would last only six months before terminating automatically.[28] They describe TAP as protection against unforeseen service disruptions during merger implementation.[29] But that description fails to address TAP's adequacy as protection against enduring competitive harm from the loss of NS as an independent competitor. The merged carrier's ability and incentive to disadvantage competing interline service would not disappear when integration ends. And short-lived access cannot supply the certainty customers need to evaluate competing bids and make contractual and routing commitments, or competing carriers need to develop service and allocate equipment.[30] An access option scheduled to disappear cannot provide durable competitive discipline.

Applicants' proposed Rate ADR Program might never take effect and, if activated, would end with oversight or earlier if the merged carrier opts into the Board's Small Rate Case Arbitration Program.[31] The Rate ADR Program can become operative only upon a Board finding that anticipated merger benefits have not materialized in a timely manner.[32] But the timely arrival of benefits does not establish the absence of competitive harm: efficiencies can coexist with increased market power that is harmful to competition. A contingent opportunity to challenge particular rates during oversight therefore cannot supply continuing protection against

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28 *See* UP-80/NS-78 at Supp. 9, 24, 128, 195, App. A § 13.1.

29 UP-80/NS-78 at Supp. 9.

30 Brooks V.S. ¶¶ 190, 192-93.

31 *See* UP-80/NS-78 at Supp. 9-10, 201, App. B §§ 12.1-12.2.

32 UP-80/NS-78 at Supp. 9-10.

the permanent loss of independent competition. Substitution of another rate-dispute mechanism would not itself restore that competition.

Applicants' permanent gateway commitments underscore the weakness of the proposed sunsets of these programs. To address the structural change of losing NS as an independent Class I carrier, Applicants have committed to keep existing major gateways open on commercially reasonable terms in perpetuity, including through subsequent mergers.[33] Applicants thus recognize that protecting routing options can require obligations that survive both integration and oversight. Their gateway commitments and supplemental programs might serve different functions, but that difference does not justify allowing additional protections against enduring competitive harm from the loss of NS as an independent competitor to disappear. Nor would a permanent obligation to keep gateways open establish the adequacy of temporary measures offered to address harms that the gateway obligation does not resolve. Automatic expiration of these proposed programs would withdraw the remedy while leaving the structural change intact. Permanence alone would not cure the programs' other shortcomings, but temporary protection certainly cannot adequately address permanent competitive harm.

B. Effective Gateway Competition Requires Enforceable Gateway Commitments and an Expanded CGP

Effective gateway protection requires both enforceable gateway obligations and an expanded CGP. Indeed, Dr. Israel's estimates of CGP's effect call into question its adequacy: Applicants' proposed CGP would yield just $44 million in annual net shipper benefits after the

[33] *See* Rev. App. 1-348, 1-350 (Rocker & Elkins Second Errata V.S. ¶¶ 164, 169); UP-80/NS-78 at Supp. 155-56.

initial period—approximately 1.3% of the $3.5 billion in annual shipper savings Applicants separately attribute to truck-to-rail diversions.[34]

To make the program commercially effective, the Board should require Applicants to significantly expand its framework to offer commercially reasonable rates and divisions and preserve the operational access, service, and connections needed for viable interline offerings, backed by expedited enforcement. Those obligations should apply independently of CGP eligibility. An expanded CGP would supplement them with a defined mechanism for pricing Applicants' portion of covered movements. CGP's eligibility limits should not narrow the independent gateway, service, or enforcement obligations described below.

1. Commercially Effective Interline Options Require More Than Physically Open Gateways

Applicants' general open-gateway commitments and CGP perform different functions. Applicants frame the open-gateway commitments as addressing commercially reasonable gateway access and assert that CGP provides a pricing mechanism for a narrower set of eligible movements.[35] Even under Applicants' own framework, the availability of CGP does not establish that the broader gateway commitments will preserve commercially effective interline options.[36] To preserve and enhance competition, CGP's exclusions should not limit those independent obligations.

Applicants' proposed CGP framework covers only self-defined "eligible" traffic, leaves enforcement principally to individualized Board complaint proceedings, and provides no

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[34] *See* UP-80/NS-78 at Supp. 77 & nn.113-14, 270 (Israel Supp. V.S. Figure 9).

[35] *See* UP-80/NS-78 at Supp. 155-56, 252-55.

[36] *See* UP-80/NS-78 at Supp. 155-56, 252-55; *see also* Rynaski Dep. Tr. at 49:15-50:15 (UP Senior Vice President of Strategy testifying that [redacted]).

meaningful operational protection. The risk extends to the infrastructure needed for interchange. UP itself has explained that its pursuit of single-line service led it to remove or downsize yards and eliminate interchange locations, and it later invoked that reconfiguration as a reason to oppose expanded reciprocal switching.[37] Gateway protections must therefore preserve the practical capacity and connections needed for competitive interline service as Applicants' network evolves. Keeping an interchange point physically open is insufficient if rates, divisions, operating practices, or service make the route commercially unusable. The competitive value of an interchange point includes the ability to negotiate separately for the portions of an interline movement.[38]

For example, CPKC-served frac-sand mines in Wisconsin and Iowa compete with UP-served mines in Wisconsin to supply receivers served by NS in Pennsylvania, Ohio, and New York.[39] A receiver can combine an NS rate with a separately negotiated western-carrier rate, preserving competition for that portion of the movement even when its receiving facility is sole-served.[40] After the merger, UP would control the legacy-NS rate while competing with CPKC for the western portion, increasing its ability and incentive to favor the combined system.[41] Ethanol shipments likewise illustrate why a nominal alternative eastern carrier may not preserve customer optionality. [redacted]

[redacted]

[redacted]

37 Clements V.S. ¶¶ 16-18 & Figure 3.

38 Brooks V.S. ¶¶ 16-18, 169, 172-73; Majure V.S. Vol. I ¶¶ 73-77.

39 Brooks V.S. ¶¶ 19, 23-24.

40 Brooks V.S. ¶¶ 17-19, 24; Majure V.S. Vol. I ¶¶ 55, 73-74.

41 Brooks V.S. ¶¶ 19-20, 24; Majure V.S. Vol. I ¶¶ 46, 55, 61.

[redacted][42] Competition among western carriers for the haul to Chicago therefore remains the principal competitive constraint for that traffic.[43] UP has a large footprint in the western markets originating this traffic, so combining UP's origin network with NS's destination access would give the merged carrier an incentive to favor UP-served origins straight to NS-served destinations, threatening both the CPKC interline alternative and customers' sourcing choices.[44]

As these examples demonstrate, interline collaboration lets shippers benefit from different combinations of connecting carriers and permits those combinations to evolve as better service options emerge.[45] The competitive options at risk therefore include customers' ability to select among alternative suppliers and supply locations, as well as their ability to negotiate among carriers.[46] The result of the Proposed Transaction is thus a massive loss in customer optionality that cannot be effectively remedied. Preserving commercially effective gateway choice is the minimum necessary to even partially protect shipper flexibility in selecting both routes and partners.

CPKC's experience illustrates how pricing can defeat a routing alternative without closing a gateway. In 2025, CPKC proposed [redacted]

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42 Brooks V.S. ¶ 27.

43 Brooks V.S. ¶ 27.

44 Brooks V.S. ¶¶ 28-29.

45 Verified Statement of Andrew Fox ¶¶ 20, 22-23 ("Fox V.S.").

46 Brooks V.S. ¶¶ 17-20, 23-27.

[redacted][47] That experience supports measuring gateway protection by whether the rate and service permit a commercially usable interline offering.

Gateway choice also creates competition between UP and NS themselves for a greater portion of a movement. For traffic between Texas and the Northeast or Mid-Atlantic, UP can seek a longer haul through St. Louis or Chicago, while NS can seek a longer haul through New Orleans. Each independent carrier has an incentive to offer terms that attract the additional business to its own route. After the merger, the combined carrier would receive the revenues from both portions regardless of which of those gateways it uses, eliminating that source of competitive pressure.[48] Keeping the gateways physically open would not recreate the independent incentives that give customers negotiating leverage today.

Dr. Majure presents a hypothetical example illustrating why a post-merger rebate does not necessarily mean that the customer benefits.[49] Before the merger, the customer's least expensive option is BNSF-NS service at an illustrative price of $7. After the merger, UP-NS raises the charge for the former NS segment, increasing the competing interline price to $8, while offering a rebate for using UP-NS end to end. The customer switches to UP-NS at $7.50, paying more than before the merger despite the rebate. The connecting route remains available, but its ability to constrain the merged carrier's price has weakened.

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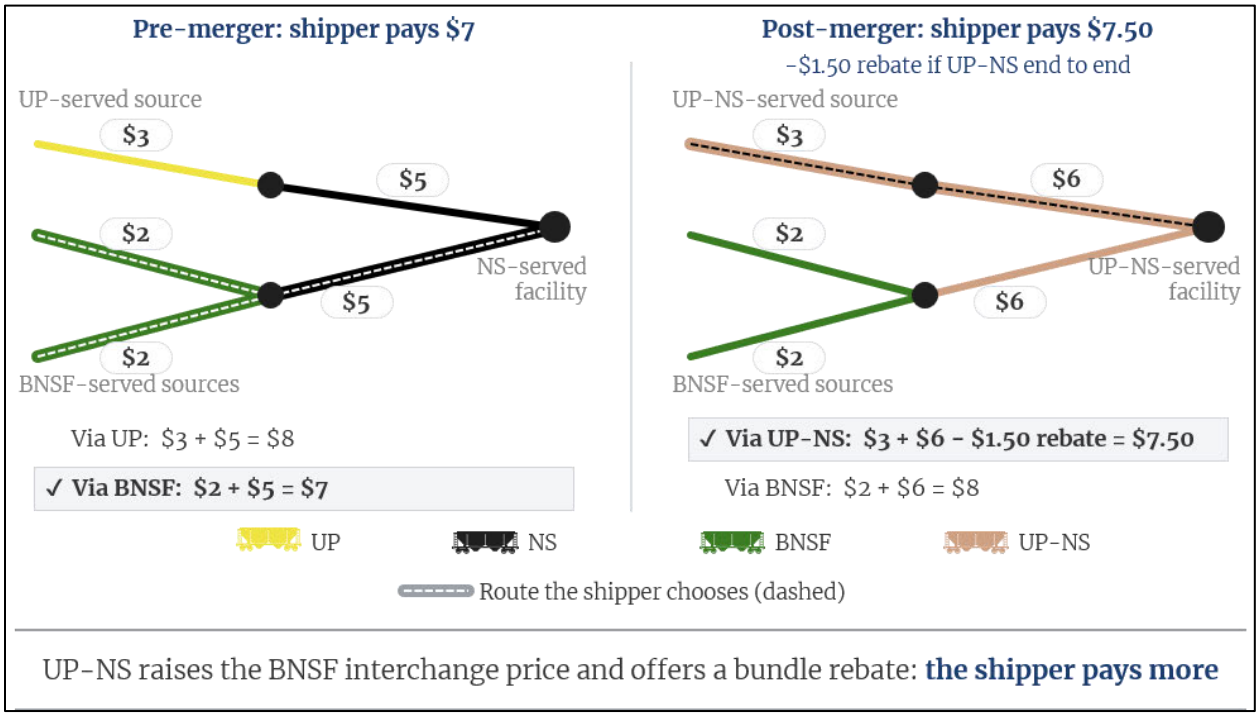
47 Brooks V.S. ¶ 42.

48 Brooks V.S. ¶¶ 66-67.

49 Majure V.S. Vol. I ¶¶ 203-04 & Ex. 32.

Dr. Majure's Hypothetical Illustration of How a Connecting Segment Can Raise Prices on Customers Despite a Rebate[50]



To address that competitive harm, the Board should build on the two baseline principles underlying the gateway conditions it imposed in *CP/KCS*. First, the combined carrier must offer commercially reasonable rates and divisions capable of supporting viable interline options.[51] Second, the gateway obligation must protect operational as well as financial access.[52] The requested gateway protections advance the 2001 Major Merger Rules' objectives of preserving gateway options and enhancing competition through operationally feasible conditions that produce net public benefits.[53]

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50 Majure V.S. Vol. I Ex. 31.

51 *See CP/KCS*, Decision No. 35 at 71-74 & n.118.

52 *See CP/KCS*, Decision No. 35 at 71.

53 49 C.F.R. § 1180.1(c)(2)(i), (iv), (d).

Those principles are necessary starting points, but the *CP/KCS* conditions do not establish that the same protections would suffice here. *CP/KCS* did not give CPKC control of a route that UP or BNSF needed to compete. UP's acquisition of NS, by contrast, would change the incentives of the indispensable carrier on the other side of an east–west gateway to support competing interline options.[54] That difference supports the additional pricing, service, and enforcement protections requested below, even though they cannot recreate NS's independent competitive incentives.

The Board should therefore require Applicants to quote commercially reasonable gateway rates and divisions sufficient to support a competitively viable end-to-end interline offering and to provide service capable of supporting competitive interline offerings. Any eligible connecting carrier, including a Class II or Class III carrier, should be entitled to request and use Applicants' CGP offer in developing an interline transportation offering and to challenge compliance with the obligations owed to that carrier. An affected shipper should also be entitled to invoke the protection directly. Applicants' service obligation should protect the handling and connections needed for a competitive interline offering. The approval order should make these entitlements effective on their stated terms without a new merits proceeding for each eligible request, with expedited recourse under Section V.B for disputes and determinations expressly reserved to the Board.[55]

2. Effective Competition Requires CGP Coverage of the Relevant Carriers, Traffic, Facilities, and Gateways

Applicants have broadened their proposed CGP framework by removing the requirement that both the origin and destination be sole-served and extending coverage to bulk unit-train

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[54] Brooks V.S. ¶¶ 162-68.

[55] Brooks V.S. ¶¶ 198-200.

traffic.[56] To promote effective gateway competition, however, the Board should significantly expand that framework to cover the corridors, traffic, facilities, and gateways required for effective competition.

As proposed, Applicants' CGP framework applies only to movements interchanged at Chicago, St. Louis, Memphis, or New Orleans, leaving Kansas City, Meridian, and other key gateways outside its coverage.[57] Even at the four covered gateways, Applicants' CGP framework applies only to interchanges with BNSF and CSX.[58] Even if CPKC were eligible, the gateway limitation would exclude Mexico-Southeast traffic interchanged with NS at Meridian, preventing CPKC from quoting a CGP rate for the legacy-NS portion of that competing interline route.[59] It also carves out intermodal traffic, finished vehicles, TIH/PIH materials, dimensional loads, and shipments to and from storage-in-transit facilities.[60] The competitive harm arises when Applicants control a segment needed for a competing interline service and have an incentive to divert traffic toward routes using more of their combined network, including single-line service where that network reaches both endpoints, so that Applicants retain a greater share of the transportation revenue.[61] That incentive can lead Applicants to favor a longer haul on their own network even where an alternative interline route would offer the shipper lower costs

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56 *See* UP-80/NS-78 at Supp. 13-21.

57 *See* UP-80/NS-78 at Supp. 31.

58 *See* UP-80/NS-78 at Supp. 31 (excluding connecting carriers other than BNSF and CSX, including CN and CPKC).

59 Brooks V.S. ¶ 183.

60 *See* UP-80/NS-78 at Supp. 33-35.

61 Majure V.S. Vol. I ¶ 46.

or shorter transit times.[62] Moreover, that incentive can arise regardless of the identity or class of the connecting carrier.

Excluding a carrier from CGP therefore leaves interline customers exposed to the same foreclosure risk that the program's broader coverage should address. The frac-sand example above illustrates the consequences: CPKC-served mines compete with UP-served mines to supply NS-served receivers in the east.[63] Increasing prices or degrading service on the CPKC-NS interline could divert traffic toward UP-served mines, harming both the excluded suppliers and purchasers that benefit from competition among those suppliers.[64] Extending CGP to eligible independent Class I, Class II, and Class III connecting carriers would help protect those shipper options against foreclosure through Applicants' control of the connecting segment.[65]

Applicants' own economic analysis sponsored by Dr. Israel reinforces the case for broader coverage. Dr. Israel estimates that extending CGP to CN and CPKC would more than double annual shipper benefits from $44.0 million to $100.4 million.[66] Including intermodal shipments increases annual shipper benefits to $81.6 million.[67] And expanding CGP to cover shipments that interchange at gateways beyond the four included in Applicants' proposal increases shipper benefits to $46 million annually.[68] Those comparisons undermine Applicants' selected exclusions even on their own assumptions.[69] They do not establish that expansion will

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62 Brooks V.S. ¶¶ 40-44, 167; *see also* Majure V.S. Vol. II ¶ 17.

63 Brooks V.S. ¶¶ 19, 23-24.

64 *See* Majure V.S. Vol. I ¶ 61.

65 Majure V.S. Vol. II ¶¶ 14-15.

66 UP-80/NS-78 at Supp. 270-72 (Israel Supp. V.S. ¶¶ 34-35(ii), (iv)-(v) & Figure 9).

67 UP-80/NS-78 at Supp. 270-72 (Israel Supp. V.S. ¶¶ 34-35(ii), (iv)-(v) & Figure 9).

68 UP-80/NS-78 at Supp. 270-72 (Israel Supp. V.S. ¶¶ 34-35(ii), (iv)-(v) & Figure 9).

69 Majure V.S. Vol. I ¶¶ 334-36.

deliver those net benefits because the model offsets losses to some shippers against gains to others and omits strategic responses that could reduce or eliminate the asserted gains.[70] Connecting carriers may raise their own charges to capture some or all of a reduction in Applicants' CGP charge, rather than passing the full reduction through to shippers.[71] Wider coverage should therefore accompany the pricing, service, and enforcement safeguards described below.

To address the competitive harms of the Proposed Transaction, the Board should extend CGP to cover movements involving any Class I, Class II, or Class III connecting carrier independent of Applicants, including CPKC, CN, and qualifying regional and shortline carriers. CGP should cover every commodity and equipment type. An eligible Class II or Class III carrier should be entitled to request and use a CGP offer covering Applicants' portion of the movement without requiring participation by another Class I carrier. The condition should cover traffic originating or terminating at a facility served by Applicants, directly or through a connecting Class II or Class III carrier. Eligibility should not depend on the facility being sole-served, the traffic having moved over the same route before consummation, or the movement having previously been interchanged with a particular carrier.

The condition should expressly remove exclusions for storage-in-transit facilities, facilities owned by rail carriers or their affiliates, transload facilities, intermodal traffic, finished vehicles, TIH/PIH materials, dimensional loads, and any unit-train traffic not already covered by Applicants' expanded definition. These exclusions reach commercially significant interline services, including intermodal and finished-vehicle traffic that are important components of

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70 Majure V.S. Vol. I ¶¶ 285-86, 296, 301-13.

71 Majure V.S. Vol. I ¶¶ 309-12.

CPKC's existing interline business with UP and NS.[72] Leaving those movements outside CGP would preserve avenues for Applicants to steer traffic away from competing interline services. Moreover, CGP itself can increase Applicants' incentive to shift traffic or production from protected routes toward unprotected alternatives.[73] Broader coverage would reduce the opportunities to exploit those gaps, although it would have to operate together with the pricing and service safeguards discussed below.[74]

Existing facilities, new facilities, and qualifying build-ins and build-outs also should be eligible on the same terms. Access to an equipment type or commodity under CGP should not be defeated by a separate facility, ownership, or traffic-history exclusion. Shippers' sources, destinations, and service needs change with market conditions; limiting protection to historical facilities or routings would deny it when a new competing interline option becomes commercially useful. Prospective eligibility would preserve the ability to develop those alternatives, rather than confining protection to the traffic patterns existing when the merger closes.[75]

Covered movements should be eligible through any gateway or interchange point at which either Applicant interchanges with a Class I, Class II, or Class III carrier independent of Applicants immediately before consummation, disregarding merger-related closures or reductions in interchange. Gateways and interchange points subsequently established by agreement or Board order should also qualify. Applicants should not exclude an otherwise eligible connection because the connecting carrier is a regional or shortline railroad, or eliminate

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72 Brooks V.S. ¶ 183.

73 Majure V.S. Vol. I ¶¶ 303-04.

74 Majure V.S. Vol. II ¶¶ 14-18.

75 *See* Majure V.S. Vol. I ¶¶ 339-40.

eligibility by changing a route, terminal designation, billing arrangement, or allocation of affiliate responsibilities.

An affected shipper or eligible connecting carrier should be entitled to request and obtain a CGP offer through any otherwise eligible gateway or interchange point, including the nearest efficient interchange to the relevant origin or destination. That entitlement should not depend on proof that Applicants have impaired an existing route, that the traffic previously used the requested interchange, or that the requested routing preserves Applicants' historical length of haul. Applicants should not require use of a more distant interchange merely to retain a longer haul.

CGP should govern Applicants' portion of a covered movement, including the U.S. portion of international traffic. Generally applicable safety requirements, lawful commodity restrictions, and objectively necessary equipment specifications should remain applicable on a nondiscriminatory basis. A claimed operational impediment should require a particularized explanation and consideration of a practicable alternative, rather than categorically restoring an exclusion.

Any additional operating authority or physical connection should be resolved through the applicable access condition, agreement, or Board order without delaying otherwise feasible CGP movements.

3. An Effective CGP Rate Formula Requires Evidentiary Support and Responsiveness to the Market

Applicants proposed setting the merged carrier's revenue requirement under CGP at the 70th percentile of rates for similar shipments.[76] They offered no rigorous analysis supporting

[76] *See* UP-80/NS-78 at Supp. 41-42.

that choice or demonstrating that it serves the competition-enhancing purposes of 49 C.F.R. § 1180.1(d).[77] Indeed, they acknowledge that they "did not perform any modeling or analysis to determine whether the 70th percentile produces results that would more precisely serve the purposes expressed in 49 C.F.R. § 1180.1(d)" than other levels.[78] And their economic expert, Dr. Israel, likewise admitted that [redacted][79] Applicants' explanation—that "there is no established standard for determining how much enhanced competition is necessary"—is the flaw in their rationale for the merger in that it does not supply the missing evidentiary and analytical support for Applicants' preferred rate level.[80] Section 1180.1(c)(2)(i) places on Applicants the burden of explaining how their proposed remedies will mitigate and offset competitive harm. The absence of a fixed numerical standard is a reason to support the chosen level with evidence, not a license to choose it without any.

Setting the CGP ceiling at the 70th percentile would tend to make interline offers less competitive than rates an independent partner willing to win the traffic could offer. An above-median benchmark does not replicate that partner's ability to offer below-median rates for attractive traffic opportunities.[81] Indeed, Katherine Novak, who sponsored the verified statement describing the CGP framework, has acknowledged that [redacted]

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77 *Cf.* UP-80/NS-78 at Supp. 42.

78 UP-80/NS-78 at Supp. 42-43.

79 Israel Dep. Tr. at 57:2-57:11.

80 *See* UP-80/NS-78 at Supp. 42-43.

81 Brooks V.S. ¶ 187.

[redacted][82] Applicants' proposed CGP pricing framework therefore requires modification to ensure that a formally compliant offer remains commercially usable.

The formula also creates risks beyond the movements receiving CGP rates. Applicants can raise the ceiling by increasing rates on comparison traffic, shifting compensation between stated rates and rebates or discounts on other shipments, or ceasing service on low-rate comparison movements.[83] Indeed, Applicants acknowledge potential upward pressure on rates for the movements used to calculate the ceiling, and Dr. Israel's model expressly considers the merged carrier's incentive to increase those rates in subsequent years.[84] Those changes could both burden unprotected shippers and weaken the interline alternative that CGP is supposed to preserve. A lower percentile alone would not remove these incentives because it would still be applied to an input set that Applicants can influence. The Board should therefore evaluate the formula's effects on both covered and comparison traffic and require safeguards against inflating the benchmark through contract terms or changes in the comparison set.

Applicants describe the I-5 Agreement as the model and "inspiration" for CGP, and they expressly identify the 50th percentile as the benchmark used in that agreement.[85] In explaining their selection of a higher percentile for CGP, Applicants distinguish the I-5 Agreement because it "involved a reciprocal exchange of rights between UP and BNSF."[86] That distinction does not justify the higher 70th percentile benchmark Applicants seek to impose here. Reciprocity may explain the commercial terms UP and BNSF negotiated, but it does not determine the protection

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82 *See* Novak Dep. Tr. at 209:1-17, 211:12-24, 321:1-10.

83 Majure V.S. Vol. I ¶¶ 286, 302, 305-06.

84 *See* UP-80/NS-78 at Supp. 39-40, 279 (Israel Supp. V.S. ¶ 52).

85 Rev. App. 2-250 to -51 (Israel Second Errata V.S. ¶¶ 154-56); *see* Rev. App. 1-377 to -78 (Novak V.S. ¶ 11); UP-80/NS-78 at Supp. 15-16, 42-43.

86 UP-80/NS-78 at Supp. 43.

shippers need against the competitive consequences of this merger. Applicants' own expert states that the I-5 Agreement "was not intended . . . to remedy specific competitive harms arising from the transaction."[87]

CGP, by contrast, is offered as a condition of approving a transaction that would eliminate NS as an independent carrier. Its adequacy should therefore be assessed against the competitive conditions that transaction would create, including whether competing interline routes can effectively constrain the merged carrier. A remedy for lost competition should not be priced less favorably to shippers than a bargained-for arrangement that was not designed as a remedy at all. The absence of reciprocal concessions to Applicants does not itself justify a higher ceiling for shippers dependent on those routes. Nor does Applicants' general invocation of demand-based differential pricing establish that the 70th percentile is necessary to preserve adequate compensation or investment incentives.[88]

The Board should require a ceiling no higher than the 50th percentile of comparable rates and should consider a lower ceiling in light of the substantially greater market power UP will hold after acquiring NS. Holding the comparison rates fixed, a ceiling no higher than the 50th percentile would provide greater protection to shippers using CGP than Applicants' proposed 70th-percentile ceiling.[89] The initial ceiling selected by the Board should be a maximum, not a safe harbor. Where evidence supports the conclusion that the rate-setting percentile would not produce a commercially usable offer for a particular category of traffic, the Board should retain authority to prescribe a lower level.[90]

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87 Rev. App. 2-250 (Israel Second Errata V.S. ¶ 155).

88 *See* UP-80/NS-78 at Supp. 42-43.

89 Majure V.S. Vol. II ¶ 16.

90 Majure V.S. Vol. II ¶ 16.

Applicants' proposed CGP framework also uses 23 broad commodity categories, four distance ranges, and a 12-month lookback period for rate calibration, with annual adjustment by the AAR All Inclusive Index Less Fuel.[91] That approach is too coarse to track market conditions. For example, "Industrial Chemicals" and "Metals & Ores I" span movements with materially different cost and demand characteristics. A 500-to-999-mile band ignores pricing differences between shorter and longer moves. An annual reset also lags market conditions that often change quarterly or sooner. Interline carriers adjust rates and divisions in response to individual bids and changing conditions, while Applicants would remain free to reprice their competing single-line offering. An adjustment after the customer's procurement cycle has closed may come too late to preserve the traffic opportunity. The Board should require finer commodity segmentation, narrower mileage bands, and a mechanism for timely adjustment of CGP rates when changing market conditions would otherwise render an interline offer commercially unusable.[92] Those refinements would improve the comparability and responsiveness of the benchmark. They should operate alongside, rather than replace, the separate safeguards against Applicants' inflation of the rates and compensation used to calculate it.[93]

The approved methodology should account for effective compensation, including rebates, discounts, and linked commercial terms, and prohibit manipulation of contract terms or the comparison set to inflate the ceiling. Applicants should disclose to the Board the methodology, inputs, calculations, and changes in comparison-set composition needed to detect circumvention.

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91 *See* Rev. App. 1-385 to -90 (Novak V.S. ¶¶ 26-42).

92 Brooks V.S. ¶¶ 184-86.

93 *See* Majure V.S. Vol. I ¶¶ 302, 305-06; *id.* Vol. II ¶ 16.

The Board should retain authority to require corrected offers. Eligible carriers should receive information sufficient to verify and challenge their offers through a protected review process that keeps unrelated competitively sensitive benchmark information from carrier commercial decisionmakers. These protections respond both to the means of inflating CGP prices identified by Dr. Majure and to his concern that sharing pricing information could facilitate coordination.[94] Missing comparison data should trigger the approved fallback rather than a refusal to quote. No percentile should be presumed to supply a sufficient margin for every traffic category.

4. Effective Gateway Access Requires the Nearest Efficient Interchange and Protection Against Route Impairment

Some important gateway concerns cannot be addressed by capping the rate at a single UP/NS interchange point. UP could realign its network to favor UP/NS single-line service and reduce support for a competing interline route or discontinue that service as its traffic density falls. Effective gateway protection must preserve meaningful choice among eligible interchanges, both in the ordinary CGP quotation process and when merger-related operating changes impair an existing route. The conditions below establish a general right to select an otherwise eligible interchange and additional protection against route impairment.[95]

The risk of routing decisions that disserve customers is concrete. NS CEO Mark George described [redacted][96] And [redacted]

[94] Majure V.S. Vol. I ¶¶ 305-06, 313; *id.* Vol. II ¶ 16.

[95] Brooks V.S. ¶¶ 169-76.

[96] George Dep. Tr. at 119:9-120:4.

[redacted][97] Yannik Thomas,

[redacted][98] That independent response by NS to protect a competitive interline route and serve customers' best interests would disappear were UP to swallow NS.

To protect against those anticompetitive incentives, the Board should modify the proposed CGP framework to permit a shipper or eligible connecting carrier to obtain a rate covering Applicants' movement between a covered facility and the nearest efficient eligible interchange with a carrier independent of Applicants. A capped rate could remain commercially ineffective if Applicants could require an interchange that makes the competing interline route longer, slower, or more costly while preserving Applicants' longer haul. Shippers today can obtain competing bids by offering independent UP and NS different lengths of haul through different gateways. Each carrier can reduce its rate to secure more of the movement, allowing the shipper to select the more attractive overall offering. The Proposed Transaction would eliminate that rivalry because Applicants would receive the revenues from both legacy portions regardless of the interchange selected.[99] Effective CGP protection must therefore address gateway choice as well as the rate quoted at a gateway selected by Applicants.[100]

Efficiency should be assessed in light of the complete interline movement, including rail-route distance, available connections, operational feasibility, transit time, capacity, reliability, transportation cost, and competitive usefulness. Geographic proximity alone should not control,

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97 NS_00260406, at -409-410.

98 Y. Thomas Dep. Tr. at 217:13-218:5, 225:5-12.

99 Majure V.S. Vol. I ¶¶ 240-45.

100 Majure V.S. Vol. II ¶ 17.

and Applicants' interest in retaining a longer haul should not determine the interchange. Routine requests should proceed through the CGP quotation process, with disputed eligibility or compliance subject to expedited Board resolution under Section V.B.

A carrier participating in the proposed interline service should be permitted to request and use Applicants' CGP offer even where another eligible carrier performs the interchange with Applicants, subject to the necessary operating and commercial arrangements among the participating carriers. Applicants' CGP charge should cover their actual portion of the selected movement, including necessary local switching, under the approved methodology. Additional charges or routing restrictions should not defeat use of the selected interchange.[101]

If Applicants' post-merger routing or operating changes impair an existing interline route, the Board should be able to require an effective alternative gateway and the associated pricing and operating arrangements necessary to preserve commercially usable interline service, with interim protection under Sections III.B.6 and V. This additional protection should supplement the general gateway-selection right; impairment should not be a prerequisite to requesting or using CGP at an otherwise eligible interchange.

CPKC's Southeast-Mexico Express ("SMX") service with CSX demonstrates the commercial value of preserving effective interline routes and connecting-carrier options. CPKC and CSXT developed the service through a direct interchange near Myrtlewood, Alabama, supported by investments in track, bridges, signals, and other infrastructure.[102] In May 2026,

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[101] *See* NS_00330522, at -526 (memo from Michael McClellan regarding the development of the CGP program [redacted]).

[102] Brooks V.S. ¶¶ 98-99.

they introduced a dedicated train and expanded the service, reducing transit times by approximately 20 to 45 percent.[103] SMX now provides two-day service between Atlanta and Dallas, three-day service from Monterrey to Atlanta, and four-day service from central Mexico to Atlanta.[104] Those improvements demonstrate how independent carriers can combine their networks and invest in their connections to develop commercially effective services that benefit customers. The gateway conditions should preserve the ability to develop and use such alternatives wherever the authorized rights and necessary operating and commercial arrangements make them available. Applicants' interest in retaining a longer haul should not prevent customers from obtaining the benefits of an operationally feasible competing interline service.

5. Nondiscrimination Alone Cannot Replace an Independent Minimum Level of Commercially Effective Service

Applicants have committed that traffic moving under CGP will receive no discrimination in promptness, quality of service, or efficiency relative to comparable UP-NS traffic.[105] That promise is not enough: a commitment to treat CGP traffic no less favorably than similarly situated Applicant traffic and, where relevant, traffic handled for other participating carriers is a necessary floor, but it is not a sufficient remedy. Because UP will design its post-merger operating plan to favor its own single-line service, comparable UP-NS traffic on interline routes may be minimal or nonexistent.[106] Indeed, Applicants expressly decline to benchmark CGP against single-line service and describe CGP as a new option for customers using interline

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103 Brooks V.S. ¶ 100.

104 Brooks V.S. ¶ 101; *see* CPKC, *CPKC, CSX Upgrade Southeast Mexico Express with Dedicated Train, Faster Transit Times* (May 6, 2026), https://www.cpkcr.com/en/media/SMX-May2026.

105 *See* UP-80/NS-78 at Supp. 43-45.

106 Brooks V.S. ¶ 175.

service.[107] Without comparable UP-NS interline traffic, there may be no practical benchmark for assessing whether CGP traffic receives nondiscriminatory service. Even where some comparable traffic remains, treating all traffic on an interline route alike would not reveal whether UP-NS has degraded that route's service to favor its competing single-line offering. Applicants' proposed benchmark could therefore become hollow.[108]

The commitment also requires concrete implementation. When asked about mechanisms to ensure nondiscriminatory treatment, Katherine Novak, who sponsored the verified statement describing the CGP framework, testified that [redacted][109] The Board should specify the service standards, reporting, and enforcement obligations needed to make the commitment effective.

The need for an independent service floor is reinforced by CGP's own incentives. Dr. Israel expressly [redacted][110] That acknowledged limitation supports enforceable protection of interline service and investment rather than allowing the protection itself to expire. A rate cap can encourage Applicants to steer traffic toward ineligible routes and reduce incentives to invest in interchanges serving capped traffic.[111] Expanding CGP can increase the incentive to steer traffic away from low-rate interline options through degraded service, supporting standards prescribed independently of

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107 *See* UP-80/NS-78 at Supp. 43-44.

108 Brooks V.S. ¶ 175.

109 Novak Dep. Tr. at 316:17-317:10, 318:18-22.

110 UP-80/NS-78 at Supp. 279 (Israel Supp. V.S. ¶ 53).

111 Majure V.S. Vol. I ¶¶ 303-04, 307-08.

Applicants.[112] Enforceable service standards are therefore needed to prevent a price-compliant offer from becoming commercially unusable through degraded service or connections.

Compliance with the proposed comparative obligation should not excuse a failure to meet an independent service floor applicable to the movement. Applicants' handling of interline movements through these gateways should be subject to the comprehensive service-assurance framework in Section V. Applicants should provide movement- and gateway-level information sufficient to test both nondiscrimination and compliance with the service floor. Systemwide averages should not substitute for the data needed to identify impairment of a particular gateway, carrier, customer, or service.

6. Effective Gateway Protections Require Expedited Enforcement

Delay in enforcing a gateway condition can cause competitive harm that a later favorable decision cannot repair. Customers make routing decisions through procurement cycles and multiyear contracts. If an interline offering becomes unavailable or commercially unattractive during a bid cycle, the customer may commit its traffic to Applicants before a dispute is resolved. The resulting loss of traffic can deprive the competing service of the density needed to support train starts, blocking, equipment, and continued commercial development, making the service difficult to restore even after relief is obtained.[113] The cost and delay of seeking relief may lead shippers and connecting carriers to move their business elsewhere rather than pursue enforcement.[114] Connecting carriers should therefore be able to enforce obligations owed to them, and timely interim protection should preserve a competing option before delay makes it commercially unavailable.

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112 Majure V.S. Vol. II ¶ 18.

113 Brooks V.S. ¶¶ 176-77.

114 Majure V.S. Vol. II ¶ 19.

To ensure effective enforcement, an affected shipper or connecting carrier, including CPKC and any participating Class II or Class III carrier, should be entitled to give written notice identifying an alleged violation and requested relief and to seek expedited Board resolution of eligibility or compliance under Section V.B, including interim relief preserving threatened routing options and service. Available relief should include corrected or interim CGP offers, restored service or access, corrected operating requirements, authorized refunds or adjustments, specific performance, and reporting. Persistent failures should permit additional access or operating relief within the Board's authority and subject to the necessary findings and implementation requirements.

Although no remedy could substitute for the independent commercial incentives lost when UP acquires NS, an expanded CGP, together with independent gateway, service, and enforcement obligations, would at least offer a chance to reduce, even partially, Applicants' ability to use their combined network to impair competing interline service. The Board has authority under 49 U.S.C. § 11324(b)-(c) to impose conditions addressing merger-related competitive harm and has imposed enforceable gateway protections in prior transactions.[115] To address the harms demonstrated in this record, CPKC requests gateway conditions providing:

- permanent protection extending beyond formal merger oversight;
- coverage for all independent connecting carriers and the traffic and facilities described above;
- the ability to obtain a CGP offer through any otherwise eligible gateway or interchange, including the nearest efficient interchange;
- commercially effective interline pricing, supported by enforceable CGP pricing safeguards;

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[115] *See CP/KCS*, Decision No. 35 at 71-72, 74, 77-83 & nn.116, 118; *CSX/NS-Conrail*, 3 S.T.B. at 255.

- nondiscrimination and independent minimum service standards, backed by continuing monitoring and reporting; and
- expedited Board enforcement and effective interim relief.

Anything less would permit UP to use its expanded control of routes, terminals, and interchange points to foreclose competitive alternatives at the gateways on which the shipping public depends today.

C. Applicants' Targeted Access Program Does Not Substitute for Permanent Gateway and Competitive-Access Protections

The duration defect addressed in Section III.A is only one limitation of Applicants' proposed TAP. Applicants contend that TAP directly addresses transitional service disruptions and therefore leaves "less justification" for competition-enhancing conditions.[116] That contention overstates what TAP would accomplish. The program offers short-term reciprocal switching to certain customers after specified service failures, subject to restrictive eligibility requirements, cure procedures, and affirmative defenses that together drastically limit the available relief. Those substantive limits leave gaps that require the competitive-access and service protections requested below.[117]

First, TAP's coverage excludes substantial categories of traffic and customers. The program applies to common-carrier carload traffic at facilities that are sole-served by the merged carrier and located within a terminal area; it excludes contract, intermodal, and unit-train traffic.[118] Those exclusions leave affected customers without access under TAP, regardless of the severity of their service deterioration or the availability of a competing carrier capable of

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116 UP-80/NS-78 at Supp. 51-52.

117 Brooks V.S. ¶¶ 188-93; Majure V.S. Vol. I ¶¶ 186, 236.

118 UP-80/NS-78 at Supp. 189-90, 193-94, App. A, Definitions ¶¶ 5-6, 12, 14 & §§ 7.1(a)-(c), 9.2.

providing a useful alternative.[119] Nor does TAP provide an access right merely because the merger diminishes a customer's bargaining leverage or makes a competing interline route commercially unattractive.[120]

Second, even eligible traffic must suffer service deterioration sufficient to cross restrictive performance thresholds.[121] TAP measures facility-level performance over a 12-week period and requires the relevant metric both to decline from its pre-merger baseline and to fail an absolute standard.[122] A customer can thus suffer a material loss of reliability before TAP supplies an alternative.[123] Maintaining gateway competition should not depend on customers first enduring that deterioration.

Third, a qualifying failure does not ensure prompt access. Under TAP, the merged carrier has a full 30 days to cure and may also contest switching through arbitration. The arbitrator has up to 90 calendar days after institution of the arbitration to issue a decision, unless the parties mutually agree to additional time.[124] UP-NS may defeat switching by proving, among other defenses, that it would materially degrade system fluidity, require significant capital investment, or otherwise unduly impair service to existing customers.[125] Those defenses could foreclose relief where congestion or insufficient capacity makes an alternative especially important. Although customers retain their right to seek relief from the Board, TAP itself does

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119 Brooks V.S. ¶ 191.

120 Brooks V.S. ¶¶ 189-91.

121 Brooks V.S. ¶ 191.

122 UP-80/NS-78 at Supp. 189, 191, App. A, Definitions ¶¶ 5-6 & §§ 2.2-2.3.

123 Brooks V.S. ¶ 191.

124 UP-80/NS-78 at Supp. 191-93, App. A §§ 3.1-3.5, 6.2.

125 UP-80/NS-78 at Supp. 193, App. A § 7.1(f).

not expressly assure interim switching while the dispute proceeds.[126] TAP thus places the risk on the customer: it must first endure a qualifying service deterioration and may then face a contested remedial process, with no assurance that alternative service will become available in time to meet its transportation needs.

Fourth, TAP leaves the customer dependent on Applicants for the local service that may be failing.[127] Applicants acknowledge that TAP would not enable customers to avoid the merged carrier because UP–NS would continue providing first-mile or last-mile service.[128] Such a remedy—one that is triggered by failed service yet dependent on that same deficient service—is self-defeating. Changing the line-haul carrier may therefore fail to resolve inadequate switching or delivery at the customer facility.[129] TAP supplies no express fallback to independent local operation if Applicants' switching remains ineffective. The service crisis following *UP/SP* illustrates why an independent local operation fallback may be necessary. To address that emergency, the Board authorized additional carrier access to Houston-area shippers, directed UP to release affected shippers from contracts restricting alternative service, and authorized Tex Mex to use an alternative route south of Houston to mitigate congestion.[130] That experience reinforces the need for enforceable switching standards and, at the locations addressed in CPKC's proposed conditions, direct-access relief upon the specified failure triggers.

Applicants' reliance on TAP also fails to address the broader requirements of the 2001 Major Merger Rules. Those rules address both transitional service disruptions and competitive

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126 UP-80/NS-78 at Supp. 192-93, 195, App. A §§ 3.5, 6.2, 12.1.

127 Brooks V.S. ¶ 191.

128 UP-80/NS-78 at Supp. 51; Clements V.S. ¶¶ 92, 94-95.

129 Brooks V.S. ¶ 191.

130 *Joint Petition for Service Order*, 2 S.T.B. 725, 725-26 (1997).

harms, including losses of geographic competition that may be difficult to remedy directly. They require Applicants to explain how existing competitive and market options would be preserved and how the transaction and proposed conditions would enhance competition to offset otherwise unmitigated harms.[131] A mechanism triggered by specified service failures does not itself preserve customer bargaining leverage or competing interline options. TAP's substantive limitations therefore independently defeat Applicants' claim that it reduces the need for competition-enhancing conditions.

If the Board were to approve the Proposed Transaction, it should therefore impose the permanent gateway protections described in Section III.B, the service-assurance framework in Section V, and the tailored competitive-access conditions requested below. Those protections should not depend on eligibility for or activation of TAP. TAP does not justify withholding access needed to remedy structural competitive harm until a customer first experiences a qualifying service failure.

D. Applicants' Rate ADR Program Cannot Replace Independent Competition

Beyond the activation and duration limits addressed in Section III.A, Applicants' proposed Rate ADR Program would offer only a limited procedure for challenging particular rates. It generally covers non-exempt commodities moving under tariffs and excludes contract service and exempt commodities unless otherwise agreed.[132] The customer must establish both market dominance and an unreasonable rate; the proposal retains the 180% revenue-to-variable-cost threshold, calculated using unadjusted URCS.[133] A rate increase following the loss of competition therefore would not, without more, establish a right to relief. The proposal also

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131 49 C.F.R. § 1180.1(c)(2)(i), (iv), (d).

132 *See* UP-80/NS-78 at Supp. 199, App. B § 8.1.

133 *See* UP-80/NS-78 at Supp. 198-99, App. B §§ 6.2-6.4.

excludes specific analytical tools: the arbitrator may not use the Limit Price Test to determine market dominance or the revenue adequacy constraint to assess rate reasonableness.[134] Those restrictions further limit the grounds on which an eligible shipper can obtain relief; they do not recreate the commercial discipline that independent competition supplies.

Applicants' proposed procedural framework further requires at least 30 days' advance notice and allows 180 days after institution for a decision, subject to an agreed extension.[135] Each party bears its own costs and half the arbitration fees and expenses.[136] The indexed monetary cap covers both reparations and prospective relief, and any rate prescription ends when that cap is exhausted. The proposal then restores a safe harbor at the challenged rate, adjusted as specified, for the remainder of the two-year period; a new common-carrier rate exceeding that adjusted challenged rate would be subject to challenge under the program.[137] Relief is capped, rate prescriptions cannot exceed two years, and the arbitrator cannot award injunctive or equitable relief apart from a rate prescription.[138] Those limits leave the program unable to restore the independent pricing, service, and investment decisions lost with NS. Rate adjudication may provide relief in an eligible dispute, but it cannot substitute for the permanent gateway, access, and service protections requested here.

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134 UP-80/NS-78 at Supp. 198-99, App. B §§ 6.3-6.4.

135 *See* UP-80/NS-78 at Supp. 197-98, App. B §§ 4.2, 5.1.

136 UP-80/NS-78 at Supp. 200, App. B § 10.1.

137 UP-80/NS-78 at Supp. 199-200, App. B §§ 8.4-8.5.

138 UP-80/NS-78 at Supp. 200, App. B § 8.8; *see also* Brooks V.S. ¶ 196 (comparing Applicants' restricted program with Canadian final-offer arbitration, under which parties submit final offers and the arbitrator selects one).

IV. PRESERVING COMPETITION REQUIRES LIMITS ON THE MERGED CARRIER'S COMBINED PORTFOLIO OF CAPTIVE SHIPPER FACILITIES

The Proposed Transaction would bring under common control UP's and NS's previously independent sole-service relationships with many of the same customers, substantially enlarging the merged carrier's captive-facility portfolio.[139] That portfolio leverage is distinct from the loss of a carrier at an individual 2-to-1 or 3-to-2 facility.[140] A customer with some facilities sole-served by UP and others sole-served by NS can now negotiate separately and, where commercially available, shift production, sourcing, investment, or traffic between facilities to discipline either carrier. The merger would place those sole-service positions under common control, increasing customer dependence and UP-NS's leverage over rates, service terms, and routing throughout the customer's portfolio.[141] UP's 2021 modeling identified the scale of the overlap: of the combinations analyzed, NS [redacted]}[142]

[139] Majure V.S. Vol. I ¶¶ 190-92, 209-11; Brooks V.S. ¶¶ 49-50, 56-59.

[140] Majure V.S. Vol. I ¶¶ 190-199; Brooks V.S. ¶¶ 49-59.

[141] Majure V.S. Vol. I ¶¶ 193-99; Brooks V.S. ¶¶ 56-59.

[142] UP_0087139, at -173.

[redacted]



[redacted]

Later, when evaluating the proposed combination with NS in September 2025, UP's senior executives determined that [redacted][143]

Dr. Majure's analysis further illustrates the geographic breadth of the overlapping sole-service positions. Using observed traffic to identify sole-served stations, he identifies [redacted] stations—[redacted] associated with UP and [redacted] with NS—used by shippers that relied on both UP-sole-served and NS-sole-served non-intermodal traffic in 2024. The Proposed Transaction would bring those previously independent service positions under common control. These findings illustrate the scope of the potential portfolio harm: combining previously independent service relationships would increase the merged carrier's bargaining leverage over

[143] UP_1389882, at -882-83.

affected shippers, potentially influencing terms across their businesses, including traffic otherwise available to competing carriers.[144]

Facilities Used by Shippers with Sole-Served UP and NS Stations[145]



The resulting customer dependence on the merged carrier extends beyond the number of a customer's sole-served facilities. UP would also acquire control over access to geographic regions, alternative sources of supply, and destinations served by NS, while increasing the share

144 Majure V.S. Vol. I ¶¶ 212-15, Ex. 34.

145 Majure V.S. Vol. I Ex. 34.

of the customer's transportation business for which UP is indispensable.[146] Where commercially available, a customer's ability to shift production, sourcing, or traffic between facilities can provide additional bargaining leverage. But the broader harm also arises from bringing previously independent rail relationships and routing options under a single carrier's control.[147]

The expanded captive portfolio would give a combined UP-NS more opportunities to condition favorable terms at one location on use of its system elsewhere, or threaten broader losses if the customer chooses a competing route, than UP or NS would have individually.[148] UP's internal commercial planning documents [redacted]

[146] Brooks V.S. ¶¶ 49-50, 59.

[147] Brooks V.S. ¶¶ 49-50, 56-59.

[148] Majure V.S. Vol. I ¶¶ 198-201.



[149]

Dr. Majure's analysis of chemical shippers finds that greater concentration of a shipper's business on particular railroads is associated with higher rates across its portfolio, after controlling for other observable factors including route, chemical type, and macroeconomic effects.[150] That evidence supports evaluating the loss of independent relationships across the customer's business, rather than examining each movement in isolation.

UP could also threaten less favorable rates or service at a legacy UP facility if the customer awards traffic at a legacy NS facility to a competing carrier, or vice versa. Such conduct could impair competing carriers' ability to win business even where the customer retains

149 UP_0106714, at -734; *see also* Pfeifer Tr. at 238:8-239:18).

150 Majure V.S. Vol. I ¶ 225.

a nominal routing alternative.[151] As Mr. Brooks explains, [redacted].[152] [redacted][153] Similarly, GM today obtains independent NS service at its Wentzville assembly plant while relying on UP elsewhere in its automotive network; the merger would place the Wentzville access under UP's control.[154] ExxonMobil provides another example: UP solely serves several of its facilities, including Baytown and Mont Belvieu, Texas, while NS solely serves its Gibbstown, New Jersey facility. The merger would bring those previously independent relationships under UP's control.[155] That leverage would also make it more difficult for CPKC, BNSF, and CSXT to compete for individual lanes.[156]

The same bargaining mechanism can also operate within a single customer's supply requirements. In Dr. Majure's hypothetical example, a plant requires 150 units, but the lowest-priced, BNSF-served source can supply only 100. Before the merger, the plant obtains those 100 units through BNSF and the remaining 50 through NS. After the merger, UP-NS can use control over the indispensable 50 units to demand the business previously handled by BNSF. In the

151 Majure V.S. Vol. I ¶¶ 198-201.

152 Brooks V.S. ¶ 53.

153 Brooks V.S. ¶ 53.

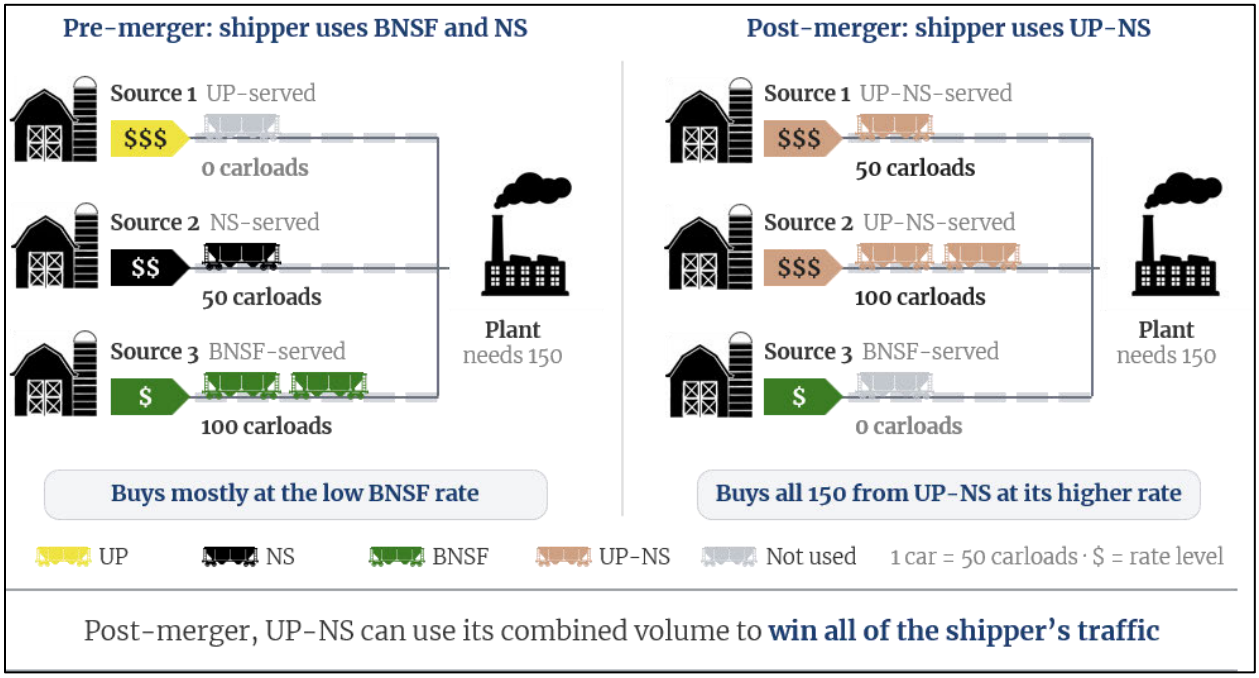
154 Brooks V.S. ¶ 51.

155 Brooks V.S. ¶ 58.

156 Majure V.S. Vol. I ¶¶ 198-201, 215; Brooks V.S. ¶¶ 61-63.

illustration, all 150 units move through UP-NS at its higher rate. Control over only part of the customer's requirements thus supplies leverage over traffic that otherwise faces competition.[157]

Dr. Majure's Hypothetical Illustration of How Control over Required Supply Increases Bargaining Leverage[158]



The concern is particularly acute for customers with captive or operationally preferred facilities on both legacy networks, including multi-facility chemical, plastics, and automotive customers.[159] Westlake illustrates the potential leverage: CPKC and BNSF compete for traffic at Lake Charles/Mossville, while UP's exclusive access to several other Westlake facilities gives it a broader captive relationship that it could use in negotiations over that competitive traffic.[160] And those impacts are likely to fall especially heavily on smaller shippers with fewer practical means to respond to the loss of independent competition. Smaller shippers lack the portfolio of

157 Majure V.S. Vol. I ¶¶ 199-202 & Ex. 31.

158 Majure V.S. Vol. I, Ex. 31.

159 Majure V.S. Vol. I ¶¶ 198-99, 221-25; Brooks V.S. ¶¶ 51-63.

160 Brooks V.S. ¶ 61.

origins, destinations, and facilities that larger shippers use to bargain down rates, and therefore depend more heavily on the indirect, commodity-level competition the merger would weaken.[161]

Underscoring these concerns, Applicants' commercial witnesses acknowledge that [redacted]. NS's Chief Commercial Officer, Ed Elkins, testified that [redacted], while UP's General Director for Business Planning, Jacob Thomas, acknowledged [redacted][162] And UP's Executive Vice President of Marketing and Sales, Kenny Rocker, likewise acknowledged that [redacted] and further explained that bundling lanes means [redacted][163] UP's internal documents likewise [redacted][164]

[161] *See* Majure V.S. Vol. I ¶ 36.

[162] Ed Elkins Deposition Transcript at 185:5-186:4 (Sep. 9, 2026); Jacob Thomas Deposition Transcript at 167:1-19 (Aug. 21, 2026).

[163] Kenny Rocker Deposition Transcript at 235:4-11, 326:8-18 (Oct. 29, 2026); *see also id.* at 236:1-12 (acknowledging that bundling is [redacted]); UP_1103039, at -041 (email from Rocker [redacted]).

[164] UP_2168208, at -213.

[redacted]



[redacted][165]

That strategy illustrates how control over captive business can be used to protect traffic that otherwise faces competition. Together with UP's customer-overlap analysis, that evidence shows how common control could extend cross-location bargaining to business now negotiated by independent carriers and use captive facilities on both networks to influence routing elsewhere.[166]

The competitive harms reach smaller shippers, too: smaller shippers may have fewer opportunities to shift production, sourcing, or traffic across facilities and therefore fewer practical means to respond to a loss of independent competition. They may also depend more

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165 *Id.*

166 Majure V.S. Vol. I ¶¶ 198-202, 210-11.

heavily on the indirect, commodity-level competition the merger would weaken.[167] The Proposed Transaction would thus eliminate an important competitive constraint for affected customers whose facilities or routing alternatives span the two legacy networks.[168]

The Board should address that harm through two complementary, permanent conditions. First, it should require commercially and operationally effective independent-carrier access at enough customer-designated facilities to ensure that, for each customer or commonly controlled customer group, the merged carrier's number of sole-served facilities does not exceed the greater of UP's or NS's separate pre-merger number of facilities solely served for that customer. Second, it should prohibit Applicants from using rates, service commitments, or other commercial terms at facilities or on lanes served by one legacy carrier to penalize a customer's use of an independent carrier at facilities or on lanes served by the other, or to foreclose effective competition for that business, while preserving legitimate discounts reflecting volume, costs, or operating efficiencies.

Applicants' programs do not provide either customer-level protection. Their 2-to-1 and 3-to-2 proposal addresses carrier losses at individual facilities, while their gateway commitments, CGP, TAP, and Rate ADR Program neither cap the combined captive portfolio nor prohibit cross-network penalties or foreclosure. As discussed in Section III, those commitments and programs cannot substitute for permanent protections against the additional leverage created by combining the two legacy portfolios. The relief below is therefore necessary to mitigate those competitive harms at least partially if the Board approves the Proposed Transaction.

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167 *See* Majure V.S. Vol. I ¶ 36.

168 Majure V.S. Vol. I ¶¶ 193-202.

A. Independent-Carrier Access Must Limit Each Customer's Combined Sole-Served Portfolio to the Larger Legacy Portfolio

Applicants' framework for 2-to-1 and 3-to-2 facilities does not address the number of facilities captive to either UP or NS before the merger. Those facilities do not gain or lose a nominal Class I option on the day of consummation. But combining the two portfolios would expand the merged carrier's bargaining leverage over shippers whose supply chains span both networks—a harm that ordinary 2-to-1 and 3-to-2 facility remedies do not address.[169] The Proposed Transaction should not enlarge UP's post-merger portfolio of sole-served customer facilities beyond the greater of UP's or NS's pre-merger counts of sole-served facilities for each customer.

To preserve and promote competition, the Board should impose a permanent structural condition ensuring that for each customer or commonly controlled customer group, the number of facilities that may remain sole-served by the combined UP–NS after consummation does not exceed the greater of:

1. the number of that customer's facilities sole-served by legacy UP immediately before consummation; or
2. the number of that customer's facilities sole-served by legacy NS immediately before consummation.

Thus, if legacy UP sole-serves eight facilities of a customer and legacy NS sole-serves five, the combined carrier should be permitted to retain sole service at no more than eight of the customer's facilities. To ensure the merged carrier's portfolio of captive shipper facilities does not increase, at least five of those customer facilities should receive commercially and operationally effective access to an independent carrier. The customer should be entitled under the merger condition to select the facilities that receive such access and the form of access at

[169] Majure V.S. Vol. I ¶¶ 190-99, 233-37; *id.* Vol. II ¶ 20.

each facility, without initiating a separate proceeding under 49 U.S.C. § 11102. The cap would constrain the merger-created increase in captive-facility exposure without requiring the Board to eliminate every preexisting sole-service position.[170] This relief complements remedies addressing 2-to-1 and 3-to-2 facilities and is independently required. A facility that experiences a direct 2-to-1 or 3-to-2 reduction should not count toward satisfaction of this separate customer-level obligation unless the affected customer elects otherwise.

The Board's bottleneck-rate precedent limiting shippers' ability to compel separately challengeable rates for bottleneck segments does not categorically foreclose an access condition tailored to merger-created competitive harm.[171] In *UP/SP*, the Board denied bottleneck relief because the shipper's preexisting captivity would not be exacerbated by the merger, but it expressly recognized its authority to impose relief through merger conditioning even where ordinary statutory provisions would otherwise preclude it.[172] Here, the merger's expansion of Applicants' portfolio of captive shipper facilities—and the resulting increase in their ability to use that portfolio to impair competition—provides a compelling basis for exercising that conditioning authority. If there were ever a merger justifying the Board's exercise of its conditioning authority to address that type of competitive harm, it is surely this one.

CPKC's requested condition addresses the incremental leverage created by combining previously separate sole-served shipper facility portfolios, without requiring proof that a customer can shift production or traffic between particular facilities. Combining those portfolios would increase the customer's dependence on the merged carrier and thus UP-NS's leverage in

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170 Majure V.S. Vol. II ¶ 21.

171 *See generally Cent. Power & Light Co.* v. *S. Pac. Transp.*, 1 S.T.B. 1059, 1063-68, 1072-75 (1996), *modified in part*, 2 S.T.B. 235, 237-45 (1997).

172 *UP/SP*, 1 S.T.B. at 472.

negotiations over the customer's broader portfolio.[173] The merger would eliminate the independent competitive constraint created by keeping UP's and NS's portfolios separate.[174] Shifting production is one source of portfolio bargaining, but it is not the only one: competition for new facilities and the use of captive traffic to influence contestable business elsewhere in a customer's portfolio can also be used in customer negotiations.[175] Although the condition would introduce competitive access at previously captive facilities, its specific purpose is to offset the merger-created loss of competition across the customer's portfolio. The Board has authority to grant that relief under 49 U.S.C. § 11324(c), consistent with the Major Merger Rules' provisions preserving competitive options and enhancing competition to offset otherwise unmitigated competitive harms threatened by the Proposed Transaction.[176]

Under an expedited schedule established by the Board, Applicants should be required to identify each customer or commonly controlled customer group with facilities sole-served by both legacy UP and legacy NS, disclose the relevant facilities and supporting Service Carrier/Reciprocal Switch ("SCRS") methodology or other serving-carrier data, calculate the applicable portfolio limit and number of facilities requiring independent-carrier access, and notify the affected customer. The customer should then be permitted to designate the facilities at which competitive access would provide the greatest commercial value and identify its preferred remedy carrier or carriers. Applicants should not be allowed to satisfy the condition by selecting the facilities least useful to the customer or easiest for the merged carrier to surrender.

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173 Majure V.S. Vol. I ¶¶ 193-99.

174 Majure V.S. Vol. I ¶¶ 191-97; Brooks V.S. ¶¶ 56-59.

175 Majure V.S. Vol. I ¶¶ 191, 194, 196-99.

176 49 C.F.R. § 1180.1(c)(2)(i), (iv), (d). *See UP/SP*, 1 S.T.B. at 472.

A customer's designation should control unless Applicants establish that the selected remedy is operationally unworkable. In that event, Applicants should be required to propose an equivalent alternative that provides the customer with comparable competitive value. The Board should resolve any dispute on an expedited basis, taking account of the customer's routing needs, traffic volumes, origins and destinations, network fit, operational feasibility, and the quality of the competitive alternative.

Each designated facility should receive access to one or more independent carriers through reciprocal switching, haulage, trackage rights, ratemaking authority, or another mechanism sufficient to create a commercially usable option. The customer should be permitted to identify its preferred carrier or carriers, and interested carriers should be permitted to demonstrate their network fit and operational capability. The Board should approve the carrier and mechanism based on customer preference, the markets and gateways the customer needs to reach, operating feasibility, service quality, and the completeness of the proposed implementation arrangements.

The Board should establish an expedited process for the initial portfolio-access determinations, coordinated with the 90-day negotiation and expedited Board-resolution procedures in Section V.B for terms requiring agreement between CPKC and Applicants. The initial determinations, including the material commercial and operating terms necessary to make the access enforceable and commercially usable, should be completed no later than 60 days before consummation. Those determinations should resolve the covered customers and facilities, applicable legacy facility counts and portfolio limits, number and identity of facilities receiving access, remedy carrier or carriers, access mechanism, and material commercial and operating terms necessary to make the access enforceable and commercially usable. The process should

establish deadlines for customer designations, carrier proposals, Applicants' objections, supporting submissions, and Board resolution of disputes. Unresolved issues concerning one customer or facility should not delay determination or implementation of undisputed access elsewhere. For this purpose, a facility should be treated as sole-served where it is physically served only by Applicants or by a short line whose only commercially usable Class I connection for the relevant traffic is with Applicants, and the customer lacks another commercially usable Class I routing option. Applicants' SCRS methodology may provide the initial identification tool, but it should not be conclusive where a nominal second carrier does not provide practical access.

Given the Proposed Transaction's structural changes, the condition should bind Applicants and their successors for so long as UP and NS remain under common control. The Board should resolve disputes over portfolio-access determinations and processes on an expedited basis under the Section V framework.

B. Effective Competition Requires Protection Against Portfolio Practices That Penalize Competitive Routing or Foreclose Rivals

The Board should prohibit Applicants from using rates, discounts, rebates, service commitments, or other commercial terms at facilities or on lanes served by legacy UP to penalize a customer's use of an independent carrier at facilities or on lanes served by legacy NS, or to foreclose effective competition for that business, and vice versa. The condition should address the additional leverage created by bringing the two legacy portfolios under common control.[177]

Prohibited conduct should include withdrawing, worsening, or threatening to withdraw or worsen rates, service levels, equipment commitments, capacity allocations, renewal rights, or

[177] *See* Majure V.S. Vol. I ¶¶ 193-204.

other commercial terms to penalize the customer's competitive routing choice on the other legacy network. The condition should also reach arrangements that make surrender of those competitive options necessary to obtain commercially usable terms. It should apply to the practical operation of the arrangement, including aggregate volume or revenue requirements, traffic-share commitments, exclusivity provisions, cross-defaults, rebate recapture, and discretionary service decisions, where those mechanisms produce the prohibited result.

The condition should permit agreements covering multiple facilities or lanes and legitimate discounts reflecting volume, costs, or operating efficiencies. An arrangement should not violate the condition merely because it combines traffic from both legacy networks or makes Applicants' offering more attractive. The Board should instead examine whether the arrangement penalizes the customer's use of a competing carrier or forecloses effective competition, including the consequences for business retained with Applicants when the customer awards other traffic to a competitor.

For a challenged arrangement within this condition's scope, Applicants should identify the objective commercial basis for any adverse change in terms on retained business, including relevant changes in volume, costs, operations, or service requirements. A demonstrated commercial consequence of reduced traffic should be distinguished from a penalty imposed to deter competitive routing. Labeling an arrangement a volume discount, obtaining customer consent, or offering nominally separate terms should not by itself establish compliance. Applicants should bear the burden of demonstrating that the challenged arrangement complies with the condition.

The relevant legacy network should be determined by the facilities, lanes, and service positions of UP and NS immediately before consummation. Subsequent changes in routing,

contracting entity, or account assignment should not permit evasion. For jointly served facilities or movements involving both legacy networks, the inquiry should identify the distinct legacy service positions linked by the challenged arrangement; the mere presence of both networks in a movement should not make every related commercial term subject to this prohibition.

The condition should apply to existing, renewed, amended, replacement, and post-merger arrangements to the extent they produce the prohibited result after consummation. Applicants should amend or waive contractual provisions as necessary to eliminate that result. The condition should survive formal merger oversight unless modified by the Board, with disputes subject to Section V's expedited determination and interim-protection procedures.

Separately, Section VI.A should protect customers' exercise of Board-authorized competitive access throughout the combined network, regardless of whether the affected facilities or lanes are associated with the same or different legacy carriers. The allowance for legitimate commercial arrangements in this subsection should not limit that independent protection or permit Applicants to recreate restrictions removed under Section VI.A.

C. Applicants' Proposed Protections Do Not Address the Distinct Customer-Level Harm

Applicants' proposed 2-to-1 and 3-to-2 relief covers facilities open to both UP and NS and to no other or only one other Class I railroad when the Merger Agreement was executed.[178] Even complete relief there would leave Applicants able to use their combined portfolio of other sole-served facilities to influence routing at nominally competitive locations.

Independent gateway obligations and an expanded CGP can protect competing interline options for particular movements, but they do not cap the merged carrier's combined portfolio of

[178] *See* Rev. App. 1-393 to -95 (Novak V.S. ¶¶ 52-54); *see also* UP-80/NS-78 at Supp. 52-54.

sole-served facilities or constrain the use of one legacy network's leverage to penalize competitive routing or foreclose competition on the other. TAP turns on service failures, and Rate ADR addresses eligible individual rate disputes; neither supplies those customer-level protections. *See* Sections III.B–D. The conditions in this Section therefore must operate alongside the independent gateway obligations and any CGP, TAP, or Rate ADR relief, without depending on eligibility for or activation of those programs.

The customer-specific access cap and cross-network conduct prohibition should therefore supplement Applicants' facility-specific relief.

D. Effective Access Relief Requires a Customer-Informed, Carrier-Neutral Selection Process

Under the UP-CN settlement, Applicants will recommend CN for identified 2-to-1 and 3-to-2 facilities; CN receives a right of first refusal for additional locations; operational and commercial feasibility depends on agreement between UP and CN; and CN may decline access, in its sole discretion, if it concludes that the anticipated revenue does not justify the necessary investment under its ordinary-course standards.[179] A customer's preference for another carrier has effect only if UP accommodates that request.[180]

That arrangement is not a sufficient remedy. By allowing Applicants to select their preferred settlement partner and negotiate the scope and terms of its access, it gives them substantial influence over the replacement competition. The resulting risk is that the resulting service will impose only the competitive constraint Applicants are willing to accommodate. A carrier's nominal presence does not establish an effective alternative for particular movements;

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[179] *See* Binding Settlement Memorandum of Understanding Regarding Proposed UP/NS Transaction, Att. 1 to UP-80/NS-78, at Supp. 203-04, "2-to-1 Locations" ¶ 1(a)-(c), "3-to-2 Locations" ¶ 1(a)-(c) (July 22, 2026).

[180] *Id.* at Supp. 203-04, "2-to-1 Locations" ¶ 1(a)-(b), "3-to-2 Locations" ¶ 1(a)-(b).

its network and the restrictions governing its service matter.[181] The proposed Kansas City-St. Louis arrangement illustrates the concern: CN would receive limited rights over track that UP would continue to control, leaving UP with the ability and incentive to foreclose competing Class I carriers, while CN would receive no access to NS-line customers in the corridor.[182]

The Board should not allow Applicants' preference for CN, on terms preserving UP's control, to displace an independent assessment of which carriers and access arrangements would most effectively replace the competition lost through the merger. The public-interest inquiry demands more. Not all Class I railroads are interchangeable in offering competitive service. Whether another carrier can replace the lost competitive option depends on the movements it can actually serve, its available routing options, and the cost and quality of its service.[183] CN could theoretically serve as an effective replacement carrier at some locations. At others, CPKC, BNSF, CSXT, or more than one carrier may provide a materially better substitute for the option eliminated by the merger. The appropriate carrier and access mechanism therefore require a facility- and corridor-specific determination.

The Board should therefore make a facility-specific determination of the appropriate remedy carrier and access mechanism. Affected customers should receive notice and an opportunity to identify the carrier, routes, markets, and service capabilities they require. Interested railroads should be permitted to demonstrate their suitability and operating plan. The Board should then approve the carrier—or carriers—and determine whether reciprocal switching, haulage, trackage rights, ratemaking authority, or another mechanism will provide

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181 *See* Majure V.S. Vol. I ¶¶ 217-19.

182 *See* Majure V.S. Vol. II ¶ 65 & n.133.

183 *See* Majure V.S. Vol. I ¶¶ 217-19.

commercially and operationally effective access. CN should remain eligible, but it should receive no presumption, exclusivity, or right of first refusal in the Board's determination.

Indeed, Applicants themselves proposed a more neutral process before entering the CN settlement. They suggested that railroads interested in serving affected facilities submit comments or responsive applications demonstrating their suitability, after which the Board would identify one or more acceptable carriers and direct Applicants to negotiate the necessary access arrangements.[184] That Board-supervised process is more consistent with the public interest than a bilateral arrangement that privileges CN before the affected customers, competing carriers, and the Board have evaluated the facility-specific alternatives.

Board precedent supports effective and tailored access, not automatic deference to the applicants' preferred carrier. In *UP/SP*, the Board relied on an integrated package of trackage rights, haulage rights, and related protections that it found would enable BNSF to provide competitive service to 2-to-1 customers.[185] The significance of that precedent is not merely that one railroad served as the principal replacement carrier; it is that the Board evaluated and imposed a comprehensive operating package designed to make that carrier an effective competitor. In the same decision, the Board also allowed Dow to nominate the carrier that would preserve its build-out option, subject to Board approval.[186] That relief likewise supports tailoring the carrier and access mechanism to the particular competitive needs of the affected facilities and shippers, rather than giving a single carrier presumptive priority at every affected location.

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184 UP-80/NS-78 at Supp. 56-57.

185 *See UP/SP*, 1 S.T.B. at 403-04, 409-10, 419-20.

186 *Id.* at 473.

Accordingly, Applicants' 2-to-1 / 3-to-2 proposal and CN settlement should supplement—not displace—the systemwide conditions described above. Where a facility-specific remedy is required, the Board should select the carrier and access mechanism through a transparent, carrier-neutral process; require complete and enforceable implementation arrangements before or contemporaneously with consummation; and retain jurisdiction to substitute or expand the remedy if the selected carrier does not provide the effective competition anticipated.

V. EFFECTIVE COMPETITION AND RELIABLE SERVICE REQUIRE AN ENFORCEABLE SERVICE-ASSURANCE FRAMEWORK

If the Board were inclined to approve the Proposed Transaction, it would need a permanent framework to make the competitive rights and operating protections imposed as conditions effective in practice. That framework should combine a standing, Board-appointed monitor, prompt Board intervention, and enforceable service standards responsive to customers' needs and changing operations.[187] The Board should establish the substantive protections and available remedies in its approval order, then direct a process to select and refine the measures used to administer them. Establishing and maintaining those protections across the affected network would be extraordinarily complex and burdensome. Neither a monitor nor a set of performance measures could ultimately restore the competitive discipline supplied by an independent NS or fully remedy the merger's broader competitive harms.[188]

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187 Verified Statement of Mark Redd ¶¶ 98-103 ("Redd V.S.").

188 *See* Majure V.S. Vol. I ¶¶ 338-45; *id.* Vol. II ¶ 11.

A. Existing Service Protections and Dispute-Resolution Processes Cannot Adequately Protect Competition

The Proposed Transaction would increase UP's incentive and ability to impair CPKC competition through its control of infrastructure, including facilities now controlled independently by NS.[189] The Board's rules require Applicants to address increased market power and preserve competitive and market options.[190] Separately, the combined network's unprecedented scale and complexity would create continuing operational risks, allowing local disruption to spread and become more difficult to control.[191] The framework should therefore protect covered services against both discriminatory treatment and operational impairment, including impairment arising without discriminatory intent.

Satisfactory systemwide service or successful integration would not establish that a competing interline option remains effective. Delayed interchange, inferior connection windows, or changes in classification and handling could make that option commercially unusable while Applicants' own single-line services perform well. Service impairment could also force an earlier interchange that gives Applicants a longer haul but provides a less useful route for the customer. Protection must follow the particular route, gateway, connection, and complete customer movement. Aggregate performance or the availability of another gateway should not excuse failure to meet the protected service's requirements.

Applicants' proposed Service Assurance Plan ("SAP") does not establish that they can prevent the operational problems the merger threatens. Its reliance on modeled daily yard volumes and standing capacity fails to account adequately for train-arrival timing, track

189 Verified Statement of Adolph Gameiro ¶ 14 ("Gameiro V.S.").

190 *See* 49 C.F.R. § 1180.1(c)(2)(i).

191 Redd V.S. ¶¶ 9-11, 14.

availability, required work, and ordinary variation.[192] [redacted] also prevents evaluation of the corridor-performance, yard-dwell, and on-time-origination benchmarks on which the SAP relies.[193] Even under Applicants' methodology, North Little Rock, Gateway Yard, and Livonia would have remaining capacity of only 16, 13, and 6 cars per day, respectively, while several facilities expected to absorb displaced traffic are themselves at or near capacity.[194] The SAP does not supply executable train- and block-level contingency plans identifying the traffic to be rerouted, where displaced work would be performed, and the capacity available under the conditions requiring diversion.[195]

Capacity alone would not answer those concerns. CPKC's integration experience illustrates how degraded data integrity can impair operations even when systems are available and working as designed.[196] Applicants' plans do not demonstrate a feasible reversal after traffic growth, facility consolidation, and repositioning of resources around an integrated plan.[197] Their operating choices can also disrupt connecting carriers' interline services.[198] A workable integration plan would therefore remain distinct from the enduring service rights needed to constrain Applicants' incentive to impair competing interline options.

Applicants' proposed Damages ADR Program likewise cannot provide the necessary operating protection. It is limited to the three-year integration period and qualifying non-exempt common-carrier traffic; it requires proof of uncured substantial service deterioration, merger

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192 Verified Statement of Raymond Elphick and Brian Nelson ¶¶ 392-93 ("Elphick & Nelson V.S.").

193 Elphick & Nelson V.S. ¶ 100.

194 Elphick & Nelson V.S. ¶¶ 557, 570-75, 590.

195 Elphick & Nelson V.S. ¶¶ 591-93, 607.

196 Clements V.S. ¶¶ 70-74.

197 Elphick & Nelson V.S. ¶ 594.

198 Elphick & Nelson V.S. ¶¶ 600-05; *see also* Brooks V.S. ¶¶ 82-83.

implementation as its proximate cause, and direct damages after a 30-day cure opportunity. Relief is capped at $2 million and excludes injunctive or equitable relief.[199] Compensation for certain past losses cannot compel the dispatching, interchange, or capacity correction needed to preserve a competing service.

TAP's temporary switching remedy, eligibility exclusions, cure process, and arbitration defenses similarly cannot secure enduring protection, as explained in Section III.C.[200] Applicants' gateway commitments also lack an independent service floor and prompt operating corrections.[201] Moving CGP cars in the same trains as other traffic does not ensure equal treatment in assembly, connection scheduling, classification, or interchange.

Existing joint committees are inadequate. In CPKC's experience, efforts to resolve operating problems with UP have encountered slow responses, resistance to addressing the problem, references to irrelevant matters, and negotiating positions that prolong disputes while operating difficulties continue.[202] Participation in joint committees with UP has likewise produced protracted, unproductive negotiations while service problems and congestion escalate.[203] Joint service committees and similar consultation mechanisms, standing alone, do not provide the rigorous implementation and monitoring needed for effective oversight and adequate incentives.[204] Moreover, a process that depends on obtaining another meeting or Applicants' agreement to act cannot assure timely resolution while service and customers suffer.

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199 *See* UP-80/NS-78 at Supp. 119-25.

200 *See id*. at Supp. 127-28, 189-95.

201 *See id.* at Supp. 43-45.

202 *See* Redd V.S. ¶ 98.

203 *See* Redd V.S. ¶ 99.

204 *See* Gameiro V.S. ¶ 227.

The Board would need a standing resource capable of addressing problems promptly, with effective access to the Board when intervention is required.

Board precedent supports enforceable protections to prevent and remedy service degradation resulting from Applicants' combined operations. In adopting the Major Merger Rules, the Board addressed the need for defined service standards, ongoing operational monitoring, and effective mechanisms to remedy service failures.[205] Even under the less demanding pre-2001 merger rules governing *CP/KCS*, the Board imposed service-recovery and dispute-escalation procedures for Metra as merger conditions, shortened the periods triggering recovery measures, and required operational reporting.[206] Here, the more demanding merger standard, the Proposed Transaction's geographic reach, and the range of foreseeable and unpredictable service and operating risks would require a substantially broader, sustained Board effort to develop, monitor, and enforce protections responsive to both foreseeable and unforeseen risks.

The common framework should administer the conditions imposed in this proceeding within each condition's substantive scope. Its enforcement procedures should reach pricing, access, contract-release, anti-retaliation, agreement-implementation, governance, and equipment obligations as well as operating protections. The framework should allow direct and indirect beneficiaries of the Board's conditions—including CPKC, affected customers, and other rail carriers—to seek enforcement for covered traffic and operations within the scope of the relief granted by the Board. Independent obligations imposed on Applicants by the Board should remain enforceable without a new service-failure or merger-causation showing. More protective

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205 *See* Major Merger Rules, 5 S.T.B. at 579-81.

206 *CP/KCS*, Decision No. 35 at 18, 117-20.

existing contractual rights should also remain effective unless expressly modified, and Applicants should perform the acts and procure the arrangements required by Section VI.B.

B. Effective Protection Requires a Standing Board-Appointed Monitor and Prompt Board Intervention

Relief that arrives after a competing service has become less commercially effective or otherwise unusable cannot preserve effective competition. CPKC's South End haulage dispute illustrates the cost of delayed enforcement. Its petition to enforce a condition dating to the 1988 UP/MKT transaction remained pending from August 2023 until July 2025, while UP effectively blocked the disputed competitive access.[207] An eventual favorable decision cannot restore competitive opportunities lost while relief is pending. Enforcement delays can cost procurement opportunities and undermine the traffic density supporting that service.[208] The Board should therefore establish a standing, expedited dispute-resolution resource so affected customers and carriers need not devise a new process for each dispute or rely on unresponsive joint committees.

To ensure effective monitoring and enforcement, the Board should appoint an independent monitor with substantial railroad operating expertise to serve for the duration of the permanent protections. The monitor should maintain a working knowledge of the Board's conditions and affected operations across the combined UP-NS network. It should review compliance and planned changes, obtain necessary information promptly, report independently to the Board and affected beneficiaries, and help resolve disputes expeditiously before delay defeats the underlying right. The monitor's role should include prompt initial findings or determinations within the authority lawfully assigned by the Board, subject to expedited Board review, and recommendations for action reserved to the Board. The Board should establish the

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207 Clements V.S. ¶ 47.

208 *See* Brooks V.S. ¶ 176.

monitor's authority, selection procedures allowing affected-party input, conflict-of-interest safeguards, replacement procedures, and access to technical support, while retaining final responsibility for enforcement.

The monitor's responsibilities should also include continuing review of service performance and emerging operational risks, whether or not a dispute has arisen. Applicants should provide the monitor with regular service-performance and compliance reports, prompt notice of material service failures, and advance notice of planned operational changes capable of impairing protected service. They should also promptly furnish records, data, and explanations reasonably requested for the monitor's oversight duties, including information from elsewhere on the combined network needed to assess effects on protected service. These obligations should apply regardless of whether a complaint has been filed, a performance trigger has been met, or a dispute is pending. The approval order should establish initial and recurring reporting requirements and response deadlines, subject to standing confidentiality protections and subsequent refinement by the Board.

Applicants should be required to fund the monitor and necessary staff and expertise without controlling its selection, conclusions, or reporting. The monitor's work must continue despite changes in the individual serving in that role.

The monitor would support, not replace, the Board's responsibility. In *CP/KCS*, the Board preserved direct recourse to it for gateway enforcement and emphasized its authority to enforce that obligation.[209] Here, the Board would need to determine which implementation issues the monitor could resolve and which require Board action, provide a fair opportunity to respond, and ensure that review occurs quickly enough to protect the service at issue.

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209 *CP/KCS*, Decision No. 35 at 76-77.

The Board should establish short, definite deadlines for Applicants' responses and information production, the monitor's findings or referral of unresolved disputes, and requests for Board review, together with an expedited timetable for Board decisions. Response and production deadlines should apply to requests made in the course of ongoing oversight, whether or not a dispute is pending. The dispute resolution procedures established by the Board should reflect the urgency and operating consequences of the dispute and provide accelerated consideration of requests for interim or emergency relief. A request for Board review of a monitor decision should not automatically suspend an operative obligation or activated remedy. Thus, any initial relief granted by the monitor should become effective during any subsequent Board-review period, and any extension of the procedural timeline should preserve effective interim protection.

Whenever a condition requires CPKC and Applicants to agree on commercial, operating, or other implementing terms, the parties should negotiate in good faith for up to 90 calendar days.[210] For initial implementing terms, the period should begin upon the effective date of the approval order; for later-arising terms, upon receipt of a written request identifying the matters requiring agreement. Neither refusal to participate nor requests for additional information should delay or restart the period. The parties should promptly exchange necessary information and implement agreed, severable terms.

If agreement has not been reached by the end of the 90-day period, the parties should be required to submit the remaining disputed terms to the Board for expedited resolution. Either party should be entitled to initiate that referral without the other party's participation or consent.

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[210] Gameiro V.S. ¶ 233.

Further consultation, mediation, committee proceedings, or monitor review should not be a prerequisite to Board determination.

This process should not reopen rights or substantive standards established by the Board, suspend existing obligations, or delay interim relief or exercise of a preauthorized remedy. Required arrangements should be established before consummation or exercise of the affected right, as applicable; activation should not begin a new negotiation period. Interim and emergency Board relief should remain available throughout negotiation and review.

An eligible beneficiary should be able to invoke the process by identifying the condition, the actual or threatened failure, the information reasonably available, and the relief sought. The Board should establish expedited procedures and binding response and disclosure requirements suited to the urgency and operating consequences of the dispute. Negotiation of unsettled implementing terms should follow the procedure above. Consultation, a committee meeting, mediation, or monitor review should not impose an additional exhaustion requirement or waiting period. Neither the negotiation procedure nor any additional consultation should delay enforcement of an established obligation, requests for interim or emergency relief, or exercise of a preauthorized remedy on its prescribed terms. Any notice or cure requirement expressly applicable to the underlying condition should continue to govern.

Applicants should preserve and promptly provide the Board, the monitor, and affected beneficiaries the records needed to evaluate compliance, subject to standing confidentiality protections. Access to underlying event data and independent verification must be available without first proving the violation those records are needed to test. The Board should provide for focused production and appropriate consequences for unjustified withholding, after an opportunity to respond. Applicants should not be able to resist enforcement by invoking an

evidentiary gap created by their own failure to provide agreed means of verification. [redacted]

[redacted][211] The Board's conditions should therefore make information and monitoring obligations independently enforceable, without requiring beneficiaries first to prove the service failure or other violation those obligations are intended to help detect.

The Board should retain responsibility for adopting disputed substantive standards, prescribing additional corrective operating measures, determining matters affecting independent third-party rights, and granting additional statutory authority. It should enforce established rights without reopening the underlying entitlement. Initial monitor determinations should remain within the Board-defined role and be subject to prompt review. The monitor's decisions should neither enlarge a condition nor reduce its protection. A dispute about the monitor's authority should not delay direct Board recourse or performance of severable obligations already in effect.

Direct emergency Board relief should remain available when supported evidence shows that delay threatens material impairment of a protected right and the requested action is feasible and consistent with safety obligations. Depending on the condition, relief could restore a handoff or connection, enforce an operating obligation, require production of essential records, or provide another authorized interim correction. The Board should set a response and decision schedule reflecting the threatened harm. A pending ordinary proceeding or monitor review should not prevent emergency action, and maintaining the status quo should not mean preserving the challenged impairment.

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211 Gameiro V.S. ¶¶ 62-66.

Board orders should specify the required action and its effective date and remain operative unless stayed or modified by the Board or a reviewing court. An objection or request for review should not itself suspend compliance or a remedy activated under Section V.D. The Board should retain authority to enforce and, for cause, supplement its conditions during and after formal merger oversight.[212] Existing contractual dispute-resolution protections should be preserved where applicable, without creating an additional prerequisite to the Board remedies or notice-activated rights established here.

C. Service Standards Must Reflect Customer Needs and Be Developed and Adapted Through a Board Process

To preserve effective competition, the Board should require both nondiscriminatory treatment and a minimum level of commercially effective service for each protected operation, regardless of Applicants' own service performance. Applicants should be required to treat competing traffic no less favorably than their own similarly situated traffic and, where relevant at shared facilities, comparable traffic of other carriers. The obligation should reach dispatching, capacity allocation, switching, blocking, handling, connection windows, and interchange. Differences in treatment should require a documented operational justification—carrier identity or competition with Applicants should not suffice. Equal treatment alone, however, would not protect a usable option if the entire route performs poorly or if Applicants divert their own traffic and eliminate the comparator.[213] Compliance with the independent minimum should likewise not excuse discrimination. These duties would give practical effect to the Board's recognition

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212 *See* 49 U.S.C. § 11327.

213 Brooks V.S. ¶¶ 172-75; *see* Redd V.S. ¶ 104.

that commercially reasonable gateway obligations extend to operations as well as financial terms.[214]

The Board should determine the measures used to administer those duties through an expedited technical conference or comparable process involving affected customers and carriers, Applicants, and, if appointed in time, the monitor and its staff. For protected trackage-rights operations, the standards should address reliable transit, timely admission from appropriate staging locations, dispatching treatment, holding en route, and recrew performance. For gateway and terminal protections, the standards should address interference with protected movements, occupancy and blockage of shared routes, effective interchange and connections, and the reliability of the complete movement. For reciprocal switching, the standards should address timely pickup of available cars, delivery windows and frequency, completion of the required movements, and compliance with applicable blocking arrangements. The process should identify the information needed to assess each protected operation and the consequences appropriate to a failure. The Board should decide disputed substantive standards and establish binding deadlines for completing this work. Applicants should not consummate the Proposed Transaction or implement merger-related operating changes until the Board determines that the initial service standards and monitoring, reporting, and enforcement arrangements are in place and operative.[215] Applicants should not control the standards or postpone protection by withholding data or agreement. The resulting measures should use consistent definitions where operations are comparable and remain subject to refinement as operating conditions and customer needs change.

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214 *See CP/KCS*, Decision No. 35 at 71.

215 Gameiro V.S. ¶ 232; *see also* Redd V.S. ¶ 101.

The Board should establish up front the substantive rights, governing duties, scope of conditional operating authority, and available remedies. The subsequent process would select and calibrate performance measures, thresholds, measurement conventions, reporting, and the conditions for applying those remedies within the authority granted, applying the 30-day measurement and 30-day cure framework specified below for performance-based springing remedies. That process should refine, rather than postpone, Applicants' initial reporting and information-access obligations under Section V.B. It also should not defer any decision on whether the competitive right exists. Once adopted, those standards and trigger-to-remedy relationships should be binding and enforceable on their terms, including through notice activation where authorized under Section V.D.

Determining performance standards and metrics should not relieve Applicants of the obligation to demonstrate the adequacy of their operating plan and SAP before approval. The Major Merger Rules emphasize addressing operational uncertainties during the application process.[216] Technical matters essential to deciding whether a protection is feasible and effective must be resolved on this record. A later process for administering conditions cannot supply the missing basis for approving an unsupported operating plan.

Board precedent supports subsequent technical work within obligations established at approval. In *CSXT/Pan Am*, the Board required submission of service and performance metrics and directed consultation with Board personnel on measures, methodologies, and procedures for monitoring and reporting.[217] In *CP/KCS*, a post-approval technical conference addressed reporting scope, methodology, and format, followed by Board guidance on measurement and

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216 *See* Major Merger Rules, 5 S.T.B. at 579.

217 *CSX Corp. – Control & Merger – Pan Am Systems, Inc.*, Finance Docket No. 36472 (STB Decision No. 9 served Apr. 14, 2022) at 31, 50, 53.

reporting.[218] The broader scope of the conditions required here would make their technical implementation and continuing adjustment substantially more demanding.

Representative pre-merger performance should inform the process, including the historical benchmarks required by 49 C.F.R. § 1180.10(k), with supported treatment of seasonality, traffic mix, and exceptional disruptions. Historical performance should not automatically define acceptable service or displace a more protective contractual requirement. For a newly authorized service, the standard should reflect the operating plan, customer requirements, available capacity and resources, and comparable operations. A restriction that previously prevented the service should not produce a zero-service baseline.[219]

Customer-focused measures should accompany operating measures appropriate to the protected operation, including transit performance, acceptance and admission delays where applicable, and recrews.[220] The inquiry should follow the customer's trip plan across the complete movement and the territories and connections needed to execute it. Relevant measures could include reliability of promised pickup and delivery windows, successful connections and interchange, completion of switching, uncompleted or refused movements, and timely return of equipment needed for the next shipment. Equipment-cycle delays can impair production and inventory even where loaded transit time appears satisfactory.[221] The Board should give substantial weight to affected customers' service requirements, including frequency, seasonal needs, inventory constraints, and the consequences of a missed connection. A beneficiary should

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218 *CP/KCS – General Oversight*, 88 Fed. Reg. 61,658, 61,659-62 (Sept. 7, 2023).

219 Gameiro V.S. ¶ 232.

220 Redd V.S. ¶ 101.

221 *See* Brooks V.S. ¶¶ 82-83, 172.

not need a new customer statement each time it seeks compliance with an established duty. Averages should not conceal severe delays or failures that make a competing option unusable.

The Board would need to determine how those measures operate in practice: what movement or function is measured, which events start and stop the clock, how failures and exclusions are recorded, how the applicable measurement and cure periods are administered, and which response follows. Reliable assessment also requires information about actual arrival patterns, track availability, switching and terminal work, crew and equipment resources, and effects on other authorized users. Nominal daily capacity cannot establish that capacity is available when and where needed. The process must distinguish a warning requiring investigation or prevention, a breach requiring compliance, and a failure warranting an additional operating remedy. A missed metric should not automatically carry the same consequence in every location. Any exception for a genuine safety constraint or external disruption should require substantiation, apply only to the affected obligation and period, and preserve mitigation and restoration duties.

The operational objectives discussed for specific conditions in Section VIII should inform the technical process, alongside other appropriate operating measures and the customer-focused measures to be developed.[222] The standards should require consistently reliable service for the substantial majority of covered movements or required service days, with recrews occurring infrequently and affecting only a small minority of covered movements. CPKC's service performance should be at least comparable to Applicants' performance for comparable movements, and its recrew rates should be no higher than Applicants' rates for such movements, without allowing Applicants' own deficient performance to establish an inadequate standard for

[222] Redd V.S. ¶ 101; Gameiro V.S. ¶¶ 228, 232.

CPKC.[223] For performance-based springing remedies, compliance should be measured over 30 days, followed by notice identifying any failure and beginning a 30-day cure period, during which Applicants must achieve the same applicable standard.[224] If an applicable standard remains unmet over that cure period, CPKC should be entitled to activate the corresponding preauthorized remedy by supported notice under Section V.D, subject to the predicates and limits specified for that remedy. That approach should apply to the Gulf, Kansas City, Meridian, Baton Rouge, Techny, Chicago–Detroit, and other operations for which performance-based springing remedies are requested, using the particular standards appropriate to each protected service. The Board should adopt the operative thresholds and measurement conventions through the technical process. Existing contractual duties and independent conditions enforceable without a performance trigger should remain effective.

The Board should adopt the resulting standards after an opportunity for affected parties to participate and address material objections. Ordinary-course ISAs and agreed implementation terms can inform that work, but Applicants' unilateral proposal should not become binding through filing or inaction. Where the applicable condition permits return of a transferred dispatching function, the Board should also establish the verification needed before that return, with attention to representative operating conditions and whether corrections would remain effective under Applicants' control. As part of the pre-consummation technical process, the Board should establish initial verification requirements addressing the duration of verification, the recorded event that begins it, the traffic levels and operating conditions needed for a representative assessment, and which material or recurring failures would require verification to

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223 Redd V.S. ¶ 102.

224 Redd V.S. ¶ 103.

restart or be extended. The monitor can assist in developing and testing measures; the Board should retain control of their substantive content and consequences.

Interim protection must apply whenever the underlying right becomes effective. Preserved contractual standards, nondiscrimination, information duties, and interim operating requirements established by the approval order should protect existing services while the subsequent process proceeds. Newly authorized services should have adequate initial operating terms before commencement, supplied by the order, authorized agreement, or prompt Board determination. The absence of a final performance schedule should not leave service to Applicants' discretion or prevent operation under adequate initial terms. Missed implementation obligations should be independently enforceable, with necessary interim relief available under Section V.B.

The measures must also be capable of responding to unpredictable changes in traffic, operating practices, customer requirements, and the problems the combined network creates.[225] The Board should provide for periodic review and prompt reconsideration when experience reveals a material gap, including addition or revision of measures, triggers, and reporting. Such changes should rest on disclosed evidence and affected-party participation, preserve the condition's competitive purpose, and require Board action for substantive changes. Applicants should not lower standards through unilateral rebasing, changed classifications, calculation methods, or exclusions; revisions should not erase past failures.[226] Existing requirements should continue during review unless the Board orders otherwise. More protective contractual

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225 Redd V.S. ¶ 101.

226 *See* Gameiro V.S. ¶ 232.

standards, including the Meridian Speedway LLC ("MSLLC") framework within its existing scope, should remain effective unless expressly modified.

NS's service disruptions illustrate why customer-focused measures are essential. For example, NS's operations delayed [redacted] receipt of empty equipment in October 2026.[227] Such delays can force plant shutdowns and cause production losses that may not be recoverable. The framework should therefore assess whether Applicants return equipment and complete other critical service steps in time to meet customers' production and shipping needs, alongside operating measures appropriate to the protected service, including transit performance and acceptance and admission delays where applicable. The Board should select and refine those measures to capture customer harm that broader operating indicators may miss.

Where Applicants control access for protected train movements, the standards should address admission of trains that are ready and validly offered from an appropriate staging location, including delays incurred while awaiting access outside Applicants' tracks. The technical process should define the relevant readiness, offer, acceptance, and admission events so that delayed acknowledgment or refusal to accept a movement does not postpone measurement. The measures should distinguish delay obtaining access from transit after admission and should capture holding after entry or passage over a crossing. For switching and interchange services, the measures should follow the particular pickups, deliveries, blocking, and handoffs needed to complete the protected service. Satisfactory running time on an individual segment should not conceal access delays, a failed connection, or incomplete service that defeats the customer's trip plan.

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[227] Brooks V.S. ¶ 82.

D. Prevention and Effective Operating Remedies Must Give Practical Effect to the Conditions

Monitoring should be calibrated to identify both emerging risks and actual failures affecting the routes, facilities, traffic, and obligations protected by the Board's conditions. Applicants should be required to submit regular reports to the monitor, provide underlying operating records in usable form, permit independent verification, and promptly notify the monitor and affected beneficiaries of serious interruptions and material failures.[228] The Board-directed process should refine the initial reporting and retention requirements established in the approval order, including reporting frequency and continuity across changes in systems or classifications. Routine retention should support continuing oversight whether or not a dispute is pending; records relevant to pending or reasonably anticipated disputes should remain preserved through resolution. These duties should also cover information needed to enforce commercial, access, agreement-implementation, governance, and equipment conditions, subject to appropriate confidentiality protections.

Applicants should also be required to respond promptly and fully to any monitor requests for records, data, or explanations needed to carry out its oversight responsibilities beyond any regular reporting cycle or dispute-resolution proceeding.[229]

For planned material changes capable of impairing protected service, Applicants should be required to provide enough advance notice and operating information for the monitor, affected beneficiaries, and the Board to evaluate the consequences and secure protection before implementation. The inquiry should address where affected trains and work would go and

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228 *See* Redd V.S. ¶ 100; Gameiro V.S. ¶ 231.

229 Redd V.S. ¶ 100; Gameiro V.S. ¶ 231.

whether capacity and resources would be available under concurrent demand.[230] Waiting until congestion develops to devise and activate a concrete contingency plan can prolong the disruption: transitioning a large-scale operation can take days, and shuttered or downgraded facilities cannot immediately resume service.[231] More protective consent, notice, and prior-authorization requirements should remain controlling. Necessary emergency deviations should be documented promptly, confined to the affected operation and necessary period, and accompanied by feasible protection and restoration measures.

Preventive obligations should operate before the threatened impairment. At Meridian, Applicants should disclose and evaluate reasonably anticipated demands and provide required capacity and operating adjustments on enforceable schedules before the adverse impacts they address. *See* Section VIII.D.3(a). That duty should not depend on deterioration or an expired cure period. Gulf capacity cooperation should likewise remain available for existing or authorized CPKC service and reasonably anticipated growth on the terms of Section VIII.B.2(b). The separate Houston–DeQuincy preventive-capacity obligation in Section VIII.B.6(c) should apply before material degradation occurs, with remedial capacity required if degradation nevertheless occurs; Kansas City capacity relief should retain its separately specified predicates. A process for developing metrics should not postpone these independently enforceable duties.

Enforcement of an independent access, nondiscrimination, service, commercial, implementation, or governance obligation should not require proof of merger causation anew. Where an additional remedy requires Applicants' contribution to deterioration, their conduct

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230 *See* Elphick & Nelson V.S. ¶¶ 570, 591-94, 607.

231 Elphick & Nelson V.S. ¶ 593.

should need only cause or materially contribute to the harm.[232] The beneficiary should not have to show that Applicants were the sole cause or that every affected train was generated by the merger. Materiality should reflect the practical effect on the protected service and customer, including cumulative harm, without requiring repeated failures where the particular condition permits relief for one material failure.

For contribution determinations, the Board should adopt a rebuttable presumption where a beneficiary identifies material deterioration following a specified post-merger change in Applicants' traffic, routing, operations, terminal work, or resources and shows a reasonable operational connection.[233] Applicants should then have to demonstrate, by a preponderance of the evidence supported by contemporaneous records, that the change neither caused nor materially contributed to the deterioration. Another contributing cause or a preexisting constraint should not excuse material worsening by Applicants. The beneficiary should not first have to prove that the identified operating change was itself merger-caused. The presumption should address contribution only, leaving the other requirements of the particular remedy intact.[234]

Corrective action should address the service actually impaired and be operationally executable. Depending on the condition, it may require restoration of a connection, changes in handling or dispatching, additional resources, required capacity work, or alternative operations already authorized by the Board. Plans should identify the work, available capacity, responsible parties, resources, and enforceable milestones. Holding cars elsewhere does not demonstrate that

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232 *See* Gameiro V.S. ¶ 235.

233 Gameiro V.S. ¶ 235.

234 *See* Gameiro V.S. ¶ 235.

a constrained facility can perform its assigned work.[235] Compensation should not substitute for operating relief needed to preserve the protected service. Submission of a plan is not cure. Where physical work takes time, effective interim protection should accompany binding completion obligations; repeated plans should not produce indefinite extensions or postpone a duty already due.

The Board should preauthorize the springing rights and remedies specified in Section VIII within their stated geographic and functional limits. Once the applicable activation requirements—including any performance trigger adopted through Section V.C and any expressly required cure opportunity—have been satisfied, CPKC should be entitled to activate the corresponding remedy by filing notice with the Board and serving Applicants and other directly affected parties. The notice should identify the ground, reasonably available supporting evidence, authorized operations, and permitted commencement date. Activation should take effect upon filing and service without a further Board merits determination, additional cure period, or new application, subject to the specific commencement rule for the dispatching transfer under Section VIII.B.2(d). A dispatching transfer should take effect on the commencement date specified in CPKC's notice, which may provide time for an orderly transition. Exercise should comply with the condition's commencement, safety, and qualification requirements. An objection or request for review should not suspend activation or continued exercise unless the Board grants a stay. Preauthorization, activation by notice, and continuing effectiveness until affirmative Board action would help prevent the enforcement process from undermining the springing conditions' competitive value.[236]

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235 *See* Elphick & Nelson V.S. ¶ 597.

236 Majure V.S. Vol. II ¶ 22; *see also* Gameiro V.S. ¶¶ 229-30, 235, 237.

Different activation grounds must remain distinct. The Houston bidirectional fallback should remain available upon discontinuance of directional running or a modification that eliminates equivalent efficient and commercially effective access under Section VIII.B.2(e). Lufkin relief should retain its specified predicates without awaiting completion of capacity work. Existing control rights and independently enforceable access or governance obligations should not acquire a new performance trigger. For the separately specified material-breach or deterioration grounds for springing relief, CPKC proposes a 30-day opportunity to cure after notice of the qualifying failure, without requiring that failure also cross a numerical threshold. Earlier Board-ordered interim protection and more protective existing contractual rights should remain available. Performance-based triggers for the Gulf, Baton Rouge, Kansas City, Techny, and other operations should be developed and adopted under Section V.C; their associated remedies should operate on the terms established by the Board. Measurement or cure periods should not become automatic sunsets for activated relief.

The Gulf dispatching remedy should respond to persistent failures to meet applicable service standards under Section VIII.B.2(d). The Meridian remedy should address failures to meet applicable service standards or material degradation in fluidity caused or materially contributed to by Applicants' post-merger operations under Section VIII.D.3(c). The deterioration ground should apply the contribution standard and rebuttable presumption above. Other geographic remedies should retain their particular substantive predicates. A transfer should provide an effective, proportionate, and operationally feasible response within the preauthorized grant, without requiring exhaustion of every lesser remedy or a new Board determination before notice activation. Necessary interim Board relief should remain available before ordinary activation or cure requirements have been satisfied.

Relief should respect the traffic, geographic, and functional limits of each grant, the rights of independent third parties, and the safety and operational requirements of other authorized users. Matters requiring new statutory authority or enlargement of a grant should remain for the Board. Direct access should extend only to the authorized facilities and necessary track; Lufkin rights should remain nonexclusive and overhead. An alternative gateway should not excuse impairment of a protected route. Rerouting generally should substitute for required construction only upon the finding specified by the local condition that it provides adequate and durable protection, including for traffic unable to use the alternative. Otherwise, required capacity work and milestones should remain intact.

The instruments, assents, information access, personnel, safety qualifications, and operating arrangements indispensable to exercising conditional rights should be prepared in advance under Section VI.B and the applicable condition. An activation event should not reopen negotiations over whether the right can be used.[237] Applicants should not delay exercise through incomplete arrangements within their control, and implementation disputes should receive prompt Board resolution without reopening the grant. Transferred dispatching should operate under protocols providing neutral treatment of authorized trains and preserving each carrier's safety and infrastructure responsibilities.

An activated dispatching transfer should continue unless affirmatively stayed, modified, or suspended by the Board, or otherwise directed by the Board in issuing its conditions of approval. In seeking return of transferred authority, Applicants should bear the burden of showing they are capable of sustaining compliance with performance standards, have implemented corrections, and can ensure effective protection after they resume control, under the

[237] Gameiro V.S. ¶¶ 233-34.

verification requirements established through Section V.C. CPKC should have a meaningful opportunity to respond, and the transfer should remain effective pending the Board's order. Improvement achieved while CPKC dispatches should not alone justify return.[238] Ending or modifying a remedy should not discharge outstanding corrective or funding duties, terminate underlying protections, or extinguish renewed activation by notice when the applicable requirements are again met. Suspension of Lufkin operations should remain governed by Section VIII.B.6(d).

E. Applicants Must Fund Enduring Protections That Would Impose Extraordinary Continuing Demands on the Board

Applicants should bear the reasonable costs of establishing, administering, monitoring, and enforcing the conditions, including the monitor and necessary technical support, development and validation of measures, and beneficiaries' reasonable legal and expert expenses in good-faith enforcement and review. Requiring customers and connecting carriers to finance repeated efforts to secure compliance would diminish the competitive value of the rights and reward resistance.[239] Funding should be available when needed; disputes over an expense should not interrupt the monitor's work or payment of undisputed amounts.

Applicants should not recover costs assigned to them through corresponding surcharges, access charges, assessments, or deductions imposed on protected customers or carriers. Separate provisions governing ordinary transportation compensation, infrastructure responsibilities, and particular projects should continue to control those matters. The Board should establish funding arrangements sufficient to maintain independent expertise and continuity for as long as the underlying obligations remain necessary.

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238 *See* Gameiro V.S. ¶ 237.

239 *See* Majure V.S. Vol. II ¶¶ 19, 22; Gameiro V.S. ¶ 233.

The framework should be permanent, binding Applicants, their controlled affiliates, and successors without a fixed sunset, subject to affirmative Board modification for cause, because the merger's structural effects would outlast any integration and formal oversight period. The party seeking reduction or termination of the framework should demonstrate that the continuing need has ended or that an identified replacement provides equally effective and durable protection, after affected beneficiaries have an opportunity to respond. Completion of integration, expiration of oversight, or satisfactory performance while protections remain in place should not alone establish that showing.[240]

The Board's rules distinguish formal oversight from the continuing obligations needed to make conditions effective. They require annual demonstrations for at least five years that conditions are working and contemplate significant operational monitoring and prompt resolution of service problems.[241] In ending formal *UP/SP* oversight, the Board preserved authority to enforce conditions, issue supplemental orders, and address later compliance disputes, subject to applicable arbitration requirements.[242] Here, too, the approval order should retain enforcement and supplemental-order authority under 49 U.S.C. § 11327, without treating the end of formal oversight as the end of protection.

These requirements would impose extraordinary and continuing demands on the Board, but they are the minimum necessary to give service assurance and competitive access a chance of working in practice.[243] An effective framework would require the Board to establish and continually adapt protections tailored to different territories, operating arrangements, data

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240 *See* Gameiro V.S. ¶¶ 220, 233.

241 *See* 49 C.F.R. § 1180.1(g), (h)(2)-(3).

242 *UP/SP*, 5 S.T.B. 1173, 1177-78 (2001).

243 *See* Redd V.S. ¶ 100.

systems, and customer needs; assess causation and competing operational explanations; and determine which remedies would be effective, feasible, and consistent with other users' rights. It would then need to revisit those judgments periodically as traffic and operations change and unforeseen problems arise. Selecting and maintaining an independent monitor with sufficient expertise and resources would itself require continuing attention. Applicants' funding would not remove the Board's responsibility for those difficult judgments, and no single monitor could eliminate the need for substantial institutional resources and prompt Board decisions.

Even a carefully designed framework would leave customers and carriers dependent on information, monitoring, and repeated intervention after NS had ceased to be an independent competitor. It could not recreate NS's commercial incentives or assure relief before competitive opportunities are lost.[244] These protections represent the minimum any approval would require; they do not establish that the Proposed Transaction's harms can be adequately controlled. The scale and permanence of the regulatory burden alone reinforce the case for rejecting the Proposed Transaction.

VI. EFFECTIVE COMPETITIVE ACCESS REQUIRES BOTH REMOVAL OF CONTRACTUAL BARRIERS THAT MIGHT FRUSTRATE BOARD REMEDIES AND PROTECTIONS AGAINST REPRISAL BY APPLICANTS

A Board-ordered access remedy—whether reciprocal switching, haulage, trackage rights, or operating rights solely for interchange—is meaningful only if the customer and competing carrier can use it without contractual barriers or fear of reprisal. Three distinct obstacles may frustrate that relief. First, a customer's existing contract with UP or NS may impose volume commitments, exclusivity provisions, routing requirements, rebate recapture, or other penalties if

[244] Majure V.S. Vol. I ¶¶ 340-47; *id*. Vol. II ¶¶ 19, 22.

the customer shifts traffic to a competing carrier.[245] Second, a trackage-rights, interchange, short-line, or other carrier agreement may restrict the traffic that the competing carrier may handle.[246] Third, even after those restrictions are removed, Applicants could discourage use of the access by threatening higher rates, worse service, reduced equipment availability, or other adverse treatment elsewhere in the customer's or competing carrier's business.[247] The Board should address each obstacle through complementary contract-release, agreement-amendment, and anti-retaliation protections.

The Rosenberg Line illustrates the distinction between a customer's freedom to choose a competing carrier and that carrier's authority to handle the traffic. CPKC's Rosenberg–Beaumont trackage rights generally require a prior or subsequent movement over the Laredo–Robstown–Corpus Christi line, with limited exceptions.[248] The traffic reforms described in Section VIII should remove the applicable paper barriers both to the proposed reciprocal-switching service for Point Comfort and other South Texas locations and to potential direct service through build-outs or build-ins connecting shipper facilities with the Rosenberg Subdivision.[249] Direct service to [redacted], for example, would require an approximately [redacted] build-out to reach the Rosenberg Subdivision in addition to removal of the applicable contractual restrictions.[250] To make the new competitive access effective for customers CPKC can serve locally along the Rosenberg Line, each applicable

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245 Brooks V.S. ¶¶ 62, 177.

246 *See* Gameiro V.S. ¶ 11.

247 *See* Brooks V.S. ¶¶ 62-63, 173-74, 177.

248 *See* Gameiro V.S. ¶ 161 & n.94.

249 *See* Redd V.S. ¶¶ 170, 181-83; Gameiro V.S. ¶¶ 163-167.

250 Redd V.S. ¶ 183.

instrument should be conformed to the specific traffic and operating rights granted in Section VIII. Amending only customer-facing restrictions or only one of several overlapping applicable trackage-rights restrictions would not necessarily enable the newly authorized movement.

Applicants' CN settlement does not supply a systemwide solution. Its Kansas City Line reciprocity provision addresses only whether CN receives equivalent treatment if UP removes or grants an exception to a restriction on that line.[251] It does not release affected customers from their own contracts, protect other remedy carriers, or conform agreements elsewhere on the combined system. Systemwide contract-release, agreement-amendment, and anti-retaliation protections should cover both participation in this proceeding and exercise of competitive relief.

A. Effective Access Requires Customers to be Freed From Contractual Barriers That Penalize or Frustrate Use of Board-Granted Competitive Access

First, any customer whose covered traffic can use competing service made available through a Board-imposed condition providing reciprocal switching, haulage, trackage rights, operating rights solely for interchange, ratemaking, terminal access, or other competitive relief should be entitled, upon written notice, to tender all or any portion of that traffic to the competing carrier providing that service notwithstanding a contrary contract with UP or NS. For example, Todd Rynaski, UP's Senior Vice President of Strategy, acknowledged that [redacted][252] Jacob Thomas, UP's General Director for Business Planning, likewise recognized that [redacted][253] Those contractual impediments can frustrate the competitive access remedies

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251 *See* UP-80/NS-78, at Supp. 202, ¶ 10.

252 Rynaski Dep. Tr. at 113:11-24.

253 J. Thomas Dep. Tr. at 169:3-22.

granted by the Board.[254] Long-term contracts negotiated under pre-merger competitive conditions should not restrict customers' ability to choose the competing services made available by merger conditions.[255] The Board should therefore ensure that exercising that choice is not treated as a contractual breach or a ground for retaliation.

Applicants should not treat that election as a breach or impose shortfall payments, liquidated damages, rebate recapture, minimum-volume penalties, termination charges, loss of discount, contract extensions, repricing elsewhere, or another adverse consequence because the customer uses Board-authorized access. These protections should apply throughout the combined network, regardless of whether the affected facilities or lanes are associated with the same or different legacy carriers. They should supplement Section IV.B's prohibition on using leverage across the two legacy networks to penalize or foreclose competing-carrier service and should not be waivable through a portfolio agreement.

Applicants may continue applying the contract to traffic the customer tenders to them, subject to the foregoing protection against penalties or withdrawn benefits.

The release should apply to contracts in effect before consummation and to any renewal, amendment, replacement, or post-merger agreement to the extent it restricts or penalizes the customer's use of Board-authorized competitive access. Applicants should not be permitted to evade the condition by replacing an express exclusivity term with a portfolio commitment or commercial arrangement producing the same practical result.

The release should be self-executing at the customer's election and should not require a new merits proceeding. Any dispute over eligibility or calculation of the relief should receive

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254 Brooks V.S. ¶ 177.

255 Majure V.S. Vol. II ¶ 23.

expedited determination under Section V.B. The customer should be permitted to use the authorized access while the dispute is pending unless the Board orders otherwise upon a specific showing of irreparable operational harm. Applicants' objection alone should not suspend the customer's election.

In *UP/SP*, the Board imposed a contract-modification condition permitting eligible 2-to-1 shippers to divert up to 50% of volume committed under existing UP or SP contracts to BNSF without penalty.[256] The Board applied the same principle in the *Conrail* proceeding, prospectively overriding pre-existing contractual volume and trainset commitments that would have frustrated the head-to-head competition between CSX and NS that the approved transaction was intended to create.[257] Although those commitments had not been anticompetitive before the transaction, the Board found that their continued enforcement would impede the new competition—even if only for six months.[258] That reasoning supports releasing traffic covered by the access conditions imposed here from contractual commitments and penalties that would otherwise defeat the competition those conditions are designed to secure. A customer should not be required to leave a fixed portion captive to Applicants merely because a pre-merger contract would otherwise have done so.

B. Implementation of Specific Access Rights Requires Amendment or Waiver of Restrictive Carrier Agreements

UP's own trackage-rights review illustrates why implementation should address the terms governing use of the rights: [redacted]

256 *See UP/SP*, 1 S.T.B. at 373, 420.

257 *CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc.*, 3 S.T.B. 1070, 1071-73, 1075 (1998).

258 *See id.* at 1072.

[redacted][259] These pre-merger materials do not establish a violation of a Board condition; they demonstrate why a grant of access must include enforceable protection against restrictions that defeat its competitive purpose.

Applicants and their controlled affiliates should be required to execute and procure the amendments, waivers, consents, assents, approvals, and other instruments necessary to give full effect to the specific rights ordered by the Board. This obligation should reach the agreements identified in the applicable condition and any other trackage-rights, operating-rights, haulage, interchange, short-line, terminal, tariff, side-letter, or related arrangement that would otherwise restrict those rights. The substantive condition should determine the traffic, facilities, territory, and operations authorized; conforming amendments should implement that grant without independently enlarging its scope.

Applicants should ensure execution of the necessary instruments by entities they control and provide all approvals and assents within their authority. Where implementation also requires an independent entity's assent, Applicants should exercise their ownership, governance, voting, contractual, and other rights to procure such assent and should not oppose or obstruct implementation of the Board's orders. If the necessary assent cannot be obtained, Applicants should promptly submit for Board approval, and implement, an operationally equivalent arrangement that gives effect to the Board-ordered rights. An inability to obtain assent should not excuse Applicants from providing the required relief through that alternative arrangement.

Applicants and CPKC should negotiate initial conforming amendments and implementing arrangements in good faith under Section V.B, within the 90-calendar-day period

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[259] UP_1544866, at -867; *see* Gregory Dep. Tr. at 173:4-175:19.

beginning upon the effective date of the approval order. The parties should promptly execute and submit agreed instruments within their authority and refer any remaining disputed terms for expedited Board resolution upon expiration of that period. Applicants should complete the implementing acts within their control that do not depend on resolution of those disputed terms without awaiting the outcome of negotiations.

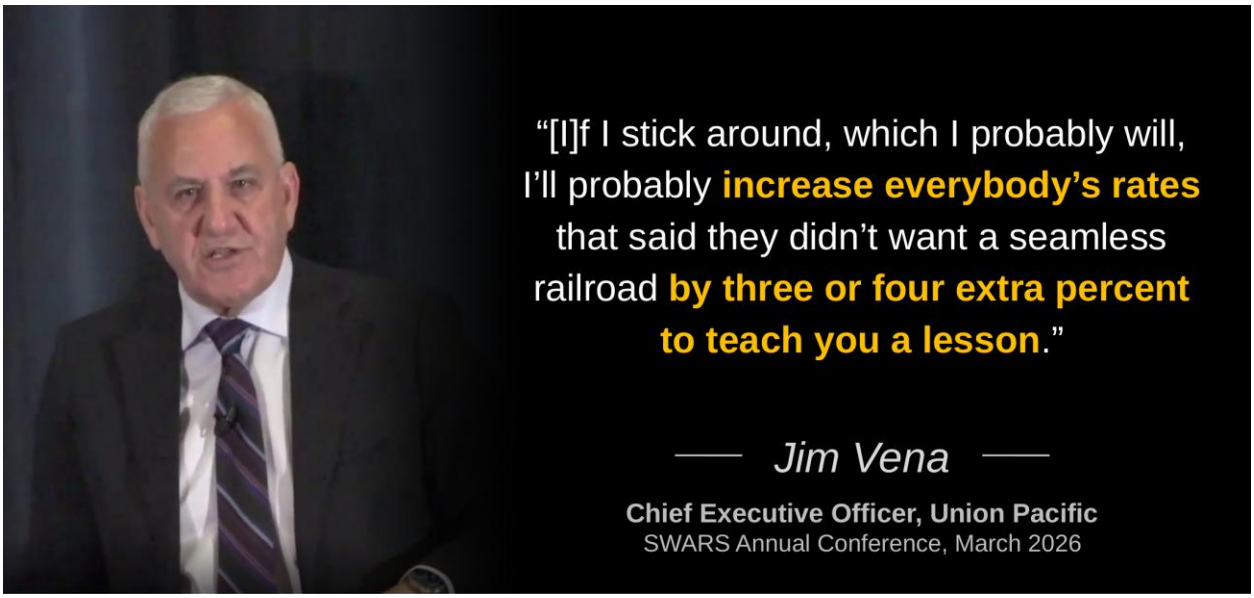
The negotiation and referral process should not extend any separate compliance deadline established by the applicable condition or through Section V.C. Applicants should have the instruments and arrangements necessary to exercise each right in effect by that right's prescribed effective date, including any requirement for completion before consummation and the advance-preparation requirements of Section V.D. Activation of a contingent remedy should not begin a new period for negotiating or completing arrangements that should already have been established.

Determinations concerning new statutory authority, relief outside the preauthorized grant, or independent third-party rights should remain for the Board. Those reservations should not require a new Board determination to activate a preauthorized remedy under Section V.D. Applicants should not invoke severability, termination, failure of consideration, or a similar provision to extinguish beneficial access, haulage, interchange, or service rights because the Board modifies a restriction. The implementing amendments should preserve the remainder of each affected agreement to the maximum extent practicable.

C. Customers and Carriers Require Protection Against Retaliation for Participating in This Proceeding or Seeking or Exercising Competitive Relief

Removing contractual restrictions would not make access effective if Applicants could punish a customer or competing carrier for using it. Nor should a customer or carrier risk adverse commercial treatment for providing the Board with its views or evidence concerning the

Proposed Transaction. Mr. Brooks reports hearing directly from customers who believe the merger would harm competition but fear publicly opposing UP because their businesses will remain dependent on it.[260] UP's own chief executive reinforced that fear by publicly threatening higher prices for customers who did not advocate for the merger.[261]



The Board has already recognized the danger that commercial retaliation poses to this proceeding. After reviewing Vena's SWARS remarks, it expressed "serious concerns" about their potential chilling effect and reiterated that it "will not tolerate actual or threatened retaliation."[262] Those concerns reinforce the need for enforceable protections ensuring that customers and carriers can participate in this proceeding and exercise Board-granted rights without risking adverse rates, service, or other commercial treatment. If the Board nevertheless approves the Proposed Transaction, it should condition that approval on a permanent,

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260 Brooks V.S. ¶¶ 68-70.

261 *See* UP, *Customers Deserve a Debate Based on Facts*, https://www.up.com/about-us/contact-us/play; *see also* Decision No. 45 at 3 (STB served Nov. 4, 2026) (identifying relevant passages in the recording).

262 Decision No. 45 at 3-4, 7.

enforceable prohibition against retaliation for participating in this proceeding or subsequent oversight and enforcement proceedings, or for exercising Board-granted competitive-access rights.

Specifically, the Board should prohibit Applicants and their controlled affiliates from taking or threatening retaliatory commercial or operational action against a customer or carrier because it submits comments, testimony, or other evidence; expresses opposition to or concerns about the Proposed Transaction or its implementation; declines to support the Proposed Transaction; assists another participant; or otherwise participates in good faith in this proceeding or subsequent oversight or enforcement proceedings. The same protection should apply when a customer or carrier requests or uses competitive relief, assists another party in implementing that relief, reports noncompliance, provides supporting evidence, or seeks enforcement. Protection should not depend on whether the customer or carrier requests or receives a particular access remedy. The prohibition should cover reprisals through rates, discounts, contract renewals, equipment availability, capacity allocation, dispatching, service, connection access, and interchange handling. It should reach direct and indirect reprisals, including adverse treatment at other facilities or on other lanes, throughout the combined network.

An affected customer or carrier should be able to seek expedited Board resolution under Section V.B, including necessary interim protection. Applicants should provide the information within their possession or control needed to evaluate the challenged conduct and any asserted commercial or operational justification. The timing of an adverse change alone would not establish retaliation, but an asserted justification should not excuse conduct that penalizes protected activity or violates the contract-release protections in Section VI.A. Applicants should

be required to cease and remedy any violation established through that process. These protections should survive formal merger oversight unless modified by the Board.

D. The Board Has Authority to Make Its Access Conditions Effective

The *UP/SP* and *Conrail* precedents discussed in Section VI.A support broader overrides here given the transaction's scope and required access remedies. 49 U.S.C. § 11324(c) grants broad conditioning authority, while 49 U.S.C. § 11321(a) supplies immunity from otherwise applicable law only to the extent necessary to carry out the approved transaction and thus permits the Board to override contractual restrictions in approving a merger.[263] Indeed, Applicants themselves have repeatedly invoked 49 U.S.C. § 11321(a) preemption to support contemplated overrides of the Terminal Railroad Association of St. Louis ("TRRA") and Kansas City Terminal Railway ("KCT") corporate documents.[264]

The Board has a history of modifying contractual restraints to make competitive-access remedies effective.[265] Without these overrides, the access conditions imposed by the Board could become nominal rights that shippers and connecting carriers cannot effectively exercise. The Board has implemented contractual changes by specifying the required result and directing parties generally to amend existing agreements accordingly. For example, in *CSX/Conrail*, it required arrangements preventing the transaction from expanding the reach of short-line blocking provisions.[266] In *UP/SP*, it required amendment of the BNSF agreement to permit

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263 *Norfolk & W. Ry. v. Am. Train Dispatchers' Ass'n*, 499 U.S. 117, 129-30 (1991); *Norfolk S. Ry. – Joint Control & Operating Pooling Agreements – Pan Am. S. LLC*, Finance Docket No. 35147 (STB served Mar. 10, 2009) at 19; *CSX – Control & Merger – Conrail*, Finance Docket No. 33220 (STB Decision No. 5 served Jan. 9, 1997) at 5.

264 *See* UP-68/NS-66 at 17-18, 23-24, 26, 29-30, 46.

265 *See UP/SP*, 1 S.T.B. at 373, 420.

266 *CSX Corp. – Control & Operating Leases/Agreements – Conrail Inc.*, 3 S.T.B. 196, 390 ¶ 39 (1998).

specified KCS-BNSF interchanges of TU Electric coal trains and gave the parties 120 days from service to submit agreed implementing terms or separate proposals for Board resolution.[267] The conditions requested here likewise identify the affected agreements, explain the restrictions, and specify the competitive rights that the implementing amendments must secure. Those amendments are necessary to make the Board's substantive access remedies effective. The Board should direct Applicants, consistent with Section VI.B., to conform and procure all necessary assents to conform all relevant contracts, agreements, and other instruments to make the conditions ordered by the Board effective.

VII. EFFECTIVE COMPETITION REQUIRES NEUTRAL GOVERNANCE AND CONTINUED INTEGRITY OF SHARED RAILCAR POOLS

Comment Volume I of CPKC's Comments addresses the broader concern that the Proposed Transaction would increase Applicants' influence within AAR and other shared industry processes.[268] The conditions requested in this Section address the distinct governance, participation, and equipment-access arrangements of TTX, the Multilevel Pool, and the North American Boxcar Pool ("NABP"). Their purpose is to preserve effective access to shared railcar equipment on which competing service depends.

CPKC relies on three distinct but related sets of cooperative equipment-supply and pooling arrangements: TTX's flatcar pool, including intermodal equipment, and Railbox pool; the Multilevel Pool; and the NABP. These arrangements supply equipment needed to serve its customers and compete with larger carriers. TTX owns and manages its own equipment and

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267 *UP/SP*, 1 S.T.B. at 471.

268 *See* Comment Volume I § IX.C.1.

separately administers the Multilevel Pool and the NABP on behalf of their participating railroads.[269]

TTX is a cooperative industry platform that provides participating railroads with shared access to large, professionally managed fleets of essential railcars.[270] Its equipment includes intermodal well cars and flatcars, centerbeams, bulkhead flats, specialized flatcars, autorack equipment, boxcars, and gondolas.[271] Those shared fleets allow carriers to meet variable demand, respond to seasonal surges, pursue new business, and support interline movements without individually replicating the scale and diversity of TTX's equipment base.[272] They also spread the cost and risk of railcar acquisition and replacement across participating railroads.[273] CPKC owns and leases substantial equipment outside TTX, but those targeted investments complement rather than replace the flexible base of pooled equipment TTX supplies.[274] Approximately [redacted]% of CPKC's loadings in the identified flatcar categories for shipments to or from U.S. points rely on TTX equipment. The supporting breakdown shows [redacted] reliance overall and [redacted] for intermodal/double-stack wells.[275] As a smaller carrier, CPKC depends on efficient access to pooled assets to meet its customer commitments and compete with larger carriers.[276]

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269 Verified Statement of Michael Walczak ¶¶ 6, 12-14, 21, 23-28 ("Walczak V.S.").

270 Walczak V.S. ¶ 12.

271 Walczak V.S. ¶ 13 & App. A.

272 Walczak V.S. ¶¶ 12, 16-18.

273 Walczak V.S. ¶ 17.

274 Walczak V.S. ¶ 15.

275 Walczak V.S. ¶ 14 & tbl. 1.

276 Walczak V.S. ¶¶ 14, 18-21.

Separately, the Multilevel Pool centrally distributes autorack equipment among participating railroads under the applicable contribution and distribution rules to meet loading demand, rather than requiring empty equipment to return to the railroad that supplied it.[277] The Multilevel Pool is governed by its signatory railroads through an Executive Committee and steering committees. TTX administers the pool.[278] The NABP combines participant-contributed boxcars, including TTX-owned boxcars contributed within participants' TTX entitlements, into a centrally managed pool. It permits cars to be loaded and reloaded where needed rather than returned empty to their owners, reducing empty mileage, cycle times, and equipment requirements.[279] The NABP supports almost [redacted] of CPKC's U.S. loaded boxcar shipments, including traffic originating on connecting shortline railroads.[280] These arrangements are important to equipment availability and effective rail-to-rail competition.[281]

CPKC's reliance on the Multilevel Pool is heightened by the geographic imbalance between its automotive origins and destinations. CPKC has a relatively small U.S. footprint of finished-vehicle distribution facilities, and many vehicles it transports are unloaded on other railroads, leaving empty autoracks away from CPKC's loading points. CPKC therefore relies heavily on empty cars released on UP and BNSF and distributed through the pool, particularly for loading in Mexico. Its investment in a Dallas auto compound does not eliminate that imbalance. If the merged railroad retained those cars for use within its own network, CPKC could face equipment shortages that impair its ability to compete and reduce shippers' service

277 Walczak V.S. ¶¶ 23-24.

278 Walczak V.S. ¶¶ 23, 70.

279 Walczak V.S. ¶¶ 26-28.

280 Walczak V.S. ¶ 32.

281 Walczak V.S. ¶¶ 14, 19-28, 32.

options.[282] UP's position as the largest terminating railroad for automotive traffic and NS's position as the largest originating railroad would give the merged carrier both stronger incentives and greater opportunity to favor its own equipment flows.[283]

These arrangements already produce equipment efficiencies across the interline network by allowing cars to be reloaded near their destinations and used in successive movements over different carriers, rather than requiring empty returns to their owners. UP itself reports that NABP boxcars have average cycle times six days shorter than non-pooled boxcars. Applicants did not calculate incremental empty-mileage savings for nationally pooled intermodal wells, autoracks, and boxcars.[284] Reliable equipment access supports CPKC's competition with Applicants for Mexico-Chicago and Midwest intermodal and automotive traffic, southern forest-products traffic, and traffic from dual-served International Paper, Graphic Packaging, and Westrock mills.[285] The Proposed Transaction would reduce Applicants' independent incentives to support the interline network. The conditions requested here would mitigate that harm, but would not recreate the incentives of two independent carriers.[286]

The Proposed Transaction would materially alter TTX's governance balance. UP already holds approximately 37.03% of TTX's outstanding shares, and NS holds approximately 19.78%.[287] Their combination would produce a 56.81% ownership position, substantially larger than that of any other participant. The Proposed Transaction would also combine UP's and NS's

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282 Walczak V.S. ¶ 25.

283 Walczak V.S. ¶¶ 38, 72.

284 Walczak V.S. ¶¶ 7-10, 31.

285 Walczak V.S. ¶¶ 19, 22.

286 Walczak V.S. ¶¶ 10-11, 37-39.

287 *See* Rev. App. 1-403 to -04 (Novak V.S. ¶¶ 74-75); UP-68/NS-66 at 47-51.

use of TTX equipment, giving the merged railroad an even larger economic interest in decisions concerning fleet investment, pool composition, equipment distribution, and entitlement.[288]

Those decisions are competitively important. TTX's governing pooling agreements establish the general framework for participation, but leave discretion over fleet investment, pricing and utilization incentives, and the rules governing participants' access to equipment. Governance influence over those rules can affect the distribution and entitlement arrangements administered under them.[289] The implementing Car Contracts and policies provide another means of changing operating terms within the approved pooling framework; changes consistent with that framework do not each require separate Board approval.[290] Those decisions can directly affect whether CPKC and other railroads have the equipment needed to meet customer demand and compete for new business.[291] Applicants could use increased influence over shared equipment resources to foreclose competing service where the administration of those resources determines other carriers' ability to offer competitive prices and service.[292] A material increase in one carrier's ownership, usage, and governance influence therefore stands to distort a cooperative platform whose effectiveness depends on maintaining an appropriate balance among participants.[293]

The merger would also change UP's incentives regarding TTX. Its combined ownership and equipment-usage positions would increase its leverage over fleet investment, pricing,

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288 Walczak V.S. ¶¶ 40, 54-56.

289 Walczak V.S. ¶¶ 44-52.

290 Walczak V.S. ¶ 52.

291 Walczak V.S. ¶¶ 46-52.

292 Majure V.S. Vol. II ¶ 24.

293 Walczak V.S. ¶¶ 53-59.

distribution, and entitlement rules, even if its ownership were reduced to 49%.[294] A 49% owner would need support from owners holding just over one additional percentage point to carry an ordinary majority-vote matter; UP and CN together, for example, would hold more than 52% of the shareholder votes.[295] UP could press for fleet investments favoring its own traffic mix or changes to the governing distribution and entitlement rules that favor its expanded network. For example, replacing historical loadings with forecast demand in entitlement formulas could favor Applicants' projected growth over other carriers' demonstrated usage. Those changes could deprive competing carriers of equipment needed to serve their customers.[296]

Applicants' proposed remedy does not adequately address that harm. Applicants propose to reduce the combined ownership position to no greater than 49%, preferably at consummation, but acknowledge that the merger could close before any divestiture occurs and provide no enforceable outside date.[297] Under the TTX Buy/Sell Agreement, TTX and the existing owners receive sequential opportunities to purchase shares at book value.[298] If they do not purchase, Applicants may seek a third-party buyer on commercially reasonable terms defined by a seller-controlled standard. Applicants' alternative Independent TTX Transferee or excess-share voting mechanism would apply only if the divestiture is not completed and would end when the contemplated sale occurs.[299]

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294 Walczak V.S. ¶¶ 42-43, 54-56.

295 Walczak V.S. ¶ 55.

296 Walczak V.S. ¶¶ 46-52, 57-58.

297 *See* UP-68/NS-66 at 52-58.

298 *See id.* at 47, 52-58.

299 *See id.* at 52-58.

That proposal has four defects. First, it would permit consummation of the merger before any divestiture and provides no enforceable outside date. In the interim, Applicants would hold the combined interest subject only to voting mechanisms that apply if the sale is delayed and that terminate upon a sale on commercially reasonable terms defined by a seller-controlled standard. Second, it could result in a 49% ownership position that would still materially exceed UP's pre-transaction interest, as noted above. Third, it would not prevent the merged carrier's increased equipment usage from producing additional influence across the pooling arrangements. And fourth, it could transfer shares to a non-participant whose financial interests may conflict with the equipment-supply objectives of participating railroads.[300] Underscoring these issues, UP's Chief Financial Officer, Jennifer Hamann, admitted that [redacted][301]

To address these issues, the Board should impose conditions ensuring neutral governance of these industry platforms and preserving continued nondiscriminatory use of their assets pursuant to its merger-conditioning authority and its continuing authority over approved pooling arrangements under 49 U.S.C. § 11322.[302]

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300 Walczak V.S. ¶¶ 42-43, 56, 61-65.

301 Jennifer Hamann Deposition Transcript at 274:6-277:5, 278:1-279:16 (Oct. 15, 2026).

302 *See* 49 U.S.C. § 11324(c); *see, e.g.*, *TTX Co. – Application for Approval of Pooling of Car Services with Respect to Flatcars*, Finance Docket 27590 (Sub-No. 4), (STB served Oct. 1, 2014); *Providence & Worcester R. R.—Pooling of Car Service Regarding Multilevel Cars*, Finance Docket No. 29653 (Sub-No. 9), (STB served Jan. 8, 2007); *Am. Rail Box Car Co. & Trailer Train Co. – For Approval of the Pooling of Car Service with Respect to Box Cars*, 347 I.C.C. 862 (1974).

A. Applicants' Proposed Share Divestiture Would Not Adequately Protect TTX Governance

Applicants implicitly acknowledge the risks posed by the merged carrier's control of TTX by proposing to reduce their post-merger ownership to 49% and offering interim voting arrangements if a sale is delayed.[303] A reduction to 49% would still materially increase UP's influence above its current 37.03% position, and divestiture would not reduce the merged carrier's enlarged share of equipment usage.[304] The Board should therefore reject the premise that a reduction to 49% adequately addresses the merger's negative governance effects.

Nor should TTX or another participant, including CPKC, be required to purchase shares or divert capital from its own operations to solve a concentration problem of Applicants' making.[305] TTX shares should be held only by active pool participants, because a sale to a non-participant would introduce financial incentives inconsistent with TTX's cooperative purpose. Applicants' open-ended divestiture process could also leave their combined 56.81% interest in place indefinitely.[306]

The Board should impose the permanent governance cap described below, independently of whether Applicants complete any share divestiture.[307] The cap should apply upon consummation and remain effective after any divestiture, so that delay in completing a sale or a later transaction cannot increase Applicants' governance rights beyond the prescribed limit.

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303 UP-68/NS-66 at 56-57; Walczak V.S. ¶ 61.

304 Walczak V.S. ¶¶ 42-43, 54-56.

305 Walczak V.S. ¶ 62.

306 Walczak V.S. ¶¶ 63-65.

307 Walczak V.S. ¶¶ 66-67.

B. Neutral TTX Governance Requires a Permanent Cap on UP's Influence at Its Pre-Transaction Level

To address these governance harms, the Board should prohibit the combined UP-NS and all entities under their control from acquiring or exercising greater governance rights at TTX than UP possesses at its current, pre-transaction level. The shareholder-voting baseline is UP's 37.03% pre-transaction interest; each other category of governance rights should be capped at UP's current, pre-transaction level, including any governance rights determined by its current equipment usage.[308] UP, NS, and every entity under their common control should be treated as a single participant for that purpose. The cap should cover shareholder and director votes, director-designation and committee rights, and appointment, consent, veto, quorum, agenda-setting, or comparable powers, including formal rights determined by equipment use or contributions.[309]

Applicants also report that the NS director position will be eliminated and that TTX directors vote according to their appointing owners' shareholdings.[310] The condition should therefore maintain the pre-transaction weight of votes and all associated governance rights, rather than assume that eliminating a second director position resolves the issue. The cap should apply to the TTX Board, all standing and special committees, and any TTX governing body that makes or recommends decisions concerning fleet acquisition, capital budgets, equipment specifications, pool composition, pricing and utilization incentives, entitlement, distribution, empty-car assignment, or amendments to the pooling arrangements. Applicants should remain free to advocate their commercial interests, receive the economic benefits associated with shares

308 *See* UP-68/NS-66 at 48-51.

309 Walczak V.S. ¶¶ 66-67.

310 UP-68/NS-66 at 59 n.110.

they lawfully own, and use equipment and receive entitlements under neutral pool rules, subject to the equipment-access protections below. Neither NS's shares, NS's equipment usage, nor any former NS representation should confer additional governance or decision-making power on the combined company. No portion of NS's governance rights or voting weight relinquished or redistributed to implement the condition should be allocated to Applicants; any reallocation should be limited to other independent participants. Cancellation, redistribution, or reweighting of NS's governance rights should not increase Applicants' relative voting power or other governance rights above the baseline. Economic ownership and usage can be separated from governance rights for these purposes. Applicants' own TRRA proposal supports the same principle: increased economic ownership need not confer greater governance rights than UP currently has.[311]

Applicants should not be permitted to evade the cap by leaving NS as the nominal holder of shares or governance rights while UP controls NS. Any former NS director, committee position, voting right, or designation authority should be relinquished, rendered non-voting, or placed beyond Applicants' direction and control to the extent necessary to maintain the pre-transaction cap. The same rule should apply to an affiliate, trustee, nominee, or other entity acting on Applicants' behalf.

Applicants should be required to amend or supplement, as necessary, TTX's governing and ownership instruments, and obtain the approvals and assents necessary to implement the permanent governance cap pursuant to the framework proposed in Section VI.B. Before consummation, Applicants should submit the implementing governance arrangements and any related transfer documents to the Board. The submission should document the fixed pre-

311 Walczak V.S. ¶¶ 66-69.

transaction date and any usage-measurement period underlying the governance baseline, identify the rights in each covered category, and demonstrate compliance with the imposed shareholder-voting cap. Those documents should demonstrate that the cap applies permanently from consummation and is not extinguished by any share divestiture. Any later acquisition, transfer, amendment, governance change, or usage-based adjustment that could increase Applicants' influence above the baseline should require prior Board authorization.

These governance conditions would mitigate the transaction-related harm by preventing UP from converting its acquisition of NS's shares, representation, and usage-derived governance rights into additional formal power over fleet investment, distribution, and entitlement decisions, while leaving ordinary TTX governance and operations in place to minimize car supply disruption.[312]

C. The Multilevel and North American Boxcar Pools Require Distinct Governance Conditions

The Multilevel Pool requires a distinct condition. Its governance is based on participating membership—[redacted].[313] Ordinary Executive Committee decisions require [redacted] The Reload Carrier Steering Committee gives each participating signatory [redacted] present to take action. The condition must therefore address both Executive Committee and steering-committee representation and voting.[314] To maintain that structure and ensure that the merged carrier does not increase its

312 Walczak V.S. ¶¶ 66-67.

313 Walczak V.S. ¶ 70.

314 Walczak V.S. ¶ 70.

control of the Multilevel Pool, the Board should condition approval of the Proposed Transaction on UP, NS, and all entities under their common control collectively exercising no more than one membership, one representative, and one vote on the Multilevel Pool Executive Committee and each applicable steering committee, including the Reload Carrier Steering Committee. Applicants should not preserve or obtain a second position through NS's continued separate corporate existence, an affiliate, nominee, proxy, or other person acting at Applicants' direction or on their behalf. Before consummation, Applicants should provide the governing documents and implementation arrangements establishing compliance. This prevents two formerly independent voices from coming under a single carrier's control.[315]

Consolidating governance should not itself reduce the aggregate contribution, payment, return, or other participation obligations attributable to legacy UP's and NS's combined operations. Adjustments reflecting genuine traffic changes and neutral governing rules should remain permissible, subject to the advance-notice, standstill, and anti-circumvention requirements in Section VII.D. TTX administers the pool; membership and voting changes should be implemented through the pool's governing procedures and required approvals. Applicants should implement the [redacted] and voting requirements through the applicable Multilevel Pool governing and participation arrangements, including obtaining the amendments, approvals and assents necessary under Section VI.B before consummation. Implementation should proceed through the governing pool procedures, subject to the merger condition.

The NABP requires a separate voting condition. Unlike the Multilevel Pool, its votes are weighted by each participant's contribution of cars. Combining UP's and NS's contributions

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315 Walczak V.S. ¶¶ 71-73.

would give the merged carrier approximately [redacted] of the fleet and vote, compared with UP's current [redacted] share.[316] UP's ownership interest in, and influence over, FXE create an additional risk that UP–NS and FXE could act together in pool decisions; together they would account for more than [redacted] of the pooled fleet.[317] That concentration could permit UP to shape distribution, contribution, and car-hire rules to favor its own network.[318]

The Board should therefore require that UP, NS, and all entities under their common control collectively exercise no greater voting power in the NABP than UP's pre-merger contribution-based share of [redacted]%.[319] Neither NS's contributions nor subsequent additions to Applicants' contributed fleet should increase their aggregate voting power above that cap. The voting cap should not itself reduce Applicants' underlying equipment contributions or legitimate equipment access under neutral pool rules; any material contribution reduction should remain subject to Section VII.D. Applicants should implement that requirement through the applicable governing arrangements, securing necessary approvals and assents under Section VI.B before consummation. Those arrangements should document the pre-transaction contribution measurement date and calculation supporting the imposed cap and specify the treatment of voting weight, quorum, and approval thresholds so that cancellation or reallocation of votes does not increase Applicants' effective voting power above the cap. They should not preserve additional voting power through NS's separate corporate existence, an affiliate, nominee, proxy, or other person acting at Applicants' direction or on their behalf.

316 Walczak V.S. ¶ 74 & tbl. 3.

317 Walczak V.S. ¶ 74.

318 Walczak V.S. ¶ 75.

319 Walczak V.S. ¶¶ 74-75.

D. Effective Pooling Requires Protection of TTX's Fleets, Advance Notice of Material Contribution Reductions, and Nondiscriminatory Equipment Access

While the governance conditions address control of these shared industry bodies, a separate condition is necessary to protect the continued scale and integrity of the pools themselves. After the Proposed Transaction, UP-NS would possess a substantially larger internal network, traffic base, and equipment position. Applicants state that TTX will remain important after the merger and their growth plans depend on its equipment.[320] To the extent Applicants' projected intermodal growth materializes, the resulting demand for pooled equipment could constrain competing carriers' ability to serve their customers. Changes in Applicants' equipment demand and traffic flows could affect the distribution and availability of pooled equipment across participating railroads.[321] That risk reinforces the need for neutral equipment-allocation and investment decisions, protection of TTX's fleets, advance notice of material contribution reductions in the Multilevel Pool and NABP, and enforceable protection against discriminatory equipment practices. Those protections should operate alongside the governance requirements so that Applicants cannot use their expanded influence to satisfy their own equipment needs at the expense of competing service.

In a preliminary April 2025 merger assessment, NS's Michael McClellan [redacted][322] A permanent fleet-

320 UP-68/NS-66 at 51.

321 Walczak V.S. ¶¶ 33-37.

322 NS_00482221, at -223.

integrity condition would make continued protection of the pooled fleets an enforceable obligation rather than leaving it dependent on Applicants' future equipment strategy.

Equipment access also requires protection apart from governance conditions and withdrawal limitations. Merger-related traffic shifts could keep pooled equipment on the UP-NS network longer, intensify competition for cars, require additional empty-car repositioning, and alter other carriers' equipment needs and participation economics. CPKC and other participants could need additional cars to sustain their service.[323]

The Board should require ongoing monitoring and reporting of fleet equity, railcar distribution by railroad, car cycle times and empty returns, TTX allocation practices, and car availability for participating railroads' customers for the duration of the equipment-access protections, subject to modification by the Board under Section V.E. Reporting should also identify distribution directives issued to Applicants, their applicable deadlines, fulfillment or nonfulfillment, and associated penalties assessed, paid, or outstanding. Applicants should provide the information within their possession, control, or contractual responsibility needed to assess those indicators and cooperate with reporting through the applicable pool procedures. Existing ordinary-course pool reports, including daily TTX reports, should be used to the extent they provide the required information, supplemented as necessary to address material gaps. This monitoring should support enforcement of the equipment-access protections below.

A material reduction in the pooled equipment available to other carriers could impair their ability to serve customers and compete.[324] Pool efficiencies depend on fleet scale and the

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323 Walczak V.S. ¶¶ 34-35, 80-81.

324 Walczak V.S. ¶¶ 25, 76, 81.

breadth of the network over which equipment can be redistributed.[325] Even if a reduction in Applicants' contributions also reduces their loading demand on the Multilevel Pool or NABP, the remaining participants could need additional cars and longer empty hauls to support their customers.[326] Procuring replacement equipment and adjusting supply arrangements and operations would take substantial time.[327] Existing NABP rules require only [redacted] of equipment withdrawal, while the Multilevel Pool's rules [redacted] for equipment additions or withdrawals. TTX's fleets present a different risk because they comprise equipment owned or leased by TTX, rather than equipment contributed by participating railroads.[328] The conditions should address those distinct risks separately.

For TTX's flatcar and Railbox pools, the Board should prohibit Applicants and their controlled affiliates and successors from causing or procuring dissolution, unwinding, or material dismantling of the pooled fleets. The prohibition should include a transfer or restructuring that reserves a material portion of that equipment for Applicants' exclusive use and undermines its availability to other participating railroads. It should apply independently of the governance cap and reach actions within Applicants' control without treating TTX-owned or leased equipment as Applicants' property. Applicants should not evade the prohibition through an affiliate, private-fleet arrangement, equipment reclassification, transfer, or other restructuring.[329]

For the Multilevel Pool and NABP, Applicants and their controlled affiliates and successors should give at least 18 months' advance notice before reducing the number of railcars

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325 Walczak V.S. ¶ 81.

326 Walczak V.S. ¶¶ 28, 81.

327 Walczak V.S. ¶¶ 80-82.

328 Walczak V.S. ¶¶ 76-77, 80.

329 Walczak V.S. ¶¶ 77-79.

in their combined contributions to either pool by five percent or more, whether through a single action or a series of related reductions.[330] The threshold should be applied separately to each pool. Notice should be provided to the Board, the pool administrator, and all other participants and should identify the affected equipment, the extent of the proposed reduction, and its anticipated timing. The proposed reduction should not take effect during the notice period. Applicants should not evade these requirements through an affiliate, equipment reclassification, transfer, restructuring, or division of a related reduction into smaller steps. The implementing arrangements should establish before consummation the contribution baseline and calculation, aggregation, and equipment-counting rules necessary to apply the five-percent threshold, consistent with this condition, with unresolved terms submitted for expedited Board determination under Section V.B.

The notice requirement should give affected participants an opportunity to seek Board review and appropriate interim or other relief before a reduction takes effect. Providing notice or completing the notice period should not establish that a proposed reduction is permissible or restrict the Board's authority to address its competitive or operational consequences.[331] The notice requirement should apply on a continuing basis from consummation and should survive formal oversight unless modified by the Board.

Applicants should perform their contribution, return, interchange, car-movement, payment, information, and other obligations under the governing arrangements, subject to these conditions and any Board order. Ordinary equipment turnover and adjustments reflecting genuine traffic changes under neutral governing rules should remain permissible, provided they

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330 Walczak V.S. ¶ 82.

331 Walczak V.S. ¶ 83.

comply with the applicable notice and standstill requirements and do not evade the TTX fleet-integrity or equipment-access protections.

Applicants should provide pooled equipment and associated services within their possession, control, or contractual responsibility without discrimination against CPKC or another participant. They should not favor their own traffic in the release, return, repositioning, interchange, repair coordination, or provision of information concerning pooled equipment, except to the extent justified by objective differences under the applicable neutral rules. Applicants should comply promptly with distribution orders issued under the applicable pool rules, including any prescribed deadlines, and should not delay or otherwise impede compliance in a manner that deprives other participants of timely access to pooled equipment. Applicants should not retain or reload equipment for their own traffic contrary to an applicable distribution directive, or otherwise withhold pooled equipment in violation of pool rules or these conditions. Payment of a penalty should not excuse compliance with an applicable distribution directive. They should not use their TTX, Multilevel Pool, or NABP voting or contractual rights to sponsor, direct, or implement discriminatory distribution or entitlement practices.

Ordinary equipment allocation, distribution directives, and enforcement of pool rules should remain with the applicable pool administrators and members under the governing arrangements. CPKC or another affected participant should be entitled to invoke Section V.B's procedures for expedited Board enforcement of these merger conditions, including their TTX fleet-integrity, notice, standstill, nondiscrimination, and distribution-directive requirements and any necessary interim relief. Affected participants should also be able to seek relief addressing a proposed contribution reduction's competitive or operational consequences before it takes effect. On finding a violation of these conditions or an applicable Board order, the Board should be able

to order reversal or unwinding of the offending action, restoration of required contributions and equipment entitlements, and return or release of affected equipment within Applicants' control to the extent necessary to remedy the violation. Applicants should bear implementation costs; the condition should not compel an independent third party to transfer its property.

The TTX fleet-integrity and advance-notice conditions would protect shared equipment access while preserving nondiscriminatory administration and compliance with distribution directives. They would not require additional TTX share purchases or equipment contributions beyond Applicants' obligations under the governing arrangements and these conditions. This limitation would not restrict the Board's authority to address a proposed contribution reduction or order corrective relief for a violation of these conditions.

E. The Railcar Pool Conditions Address Merger-Related Harm and Are Administrable

The requested conditions would limit the merger-related increase in Applicants' formal governance power and protect the continued functioning of the covered equipment-supply and pooling arrangements. They would provide nondiscriminatory access, protection of TTX's pooled fleets, and advance notice and an opportunity for Board review of material contribution reductions in the Multilevel Pool and NABP without dictating particular fleet investments or routine equipment allocations. Limiting Applicants' combined influence over these shared resources and requiring compliance with neutral allocation decisions would mitigate the opportunity to foreclose competitors without harming competition.[332]

The TTX governance cap would not prescribe what cars TTX purchases, how TTX's board votes on an individual proposal, or how equipment is allocated under neutral rules. It

[332] Majure V.S. Vol. II ¶¶ 25-26.

would prevent the increase in formal governance power associated with UP's acquisition of NS. The restriction on acquiring duplicate Multilevel Pool membership and voting power likewise ensures neutral control of a critical railcar pooling entity. The NABP condition would cap Applicants' aggregate voting power at UP's verified pre-transaction contribution-based share while preserving their legitimate equipment contributions and access.[333]

The TTX fleet-integrity protection would prevent Applicants from causing or procuring dissolution, unwinding, or material dismantling of those pooled fleets. The advance-notice condition for the Multilevel Pool and NABP would give other participants time to respond to material contribution reductions and seek Board relief before those reductions take effect. Those reductions could increase equipment requirements and costs and impair service even if Applicants' loading demand also falls.[334] These distinct protections, together with nondiscrimination, distribution-directive compliance, and reporting requirements, would mitigate transaction-related risks while preserving ordinary administration under the governing arrangements.

VIII. PRESERVING AND ENHANCING COMPETITION WOULD REQUIRE PERMANENT PROTECTIONS FOR AFFECTED ROUTES, GATEWAYS, AND TERMINALS

A. Geographic Conditions Address the Merger's Effects on Independent Routes, Shared Facilities, and Competitive Access

The geographic conditions below apply the preceding framework to the routes, gateways, terminals, and customer-access arrangements through which CPKC and other carriers compete. They complement the systemwide protections in Sections III–VII. Throughout the merged carrier's network, the Proposed Transaction would place additional infrastructure and contractual

333 Walczak V.S. ¶¶ 66-67, 70-75.

334 Walczak V.S. ¶¶ 77-83.

rights under common control, alter incentives governing access to that infrastructure, and shift traffic and operating work onto shared facilities. Each subsection below identifies the resulting competitive or service risk and the rights, governance protections, operating obligations, or capacity measures needed at a minimum to at least partially address the sweeping competitive harms threatened by the Proposed Transaction.

The joint-facility conditions address a common threat to the interline network. KCT, TRRA, Indiana Harbor Belt Railroad ("IHB"), and Belt Railway Company of Chicago ("BRC") sustain the connections and routing choices on which competing carriers and shippers depend. The merged carrier would become less reliant on those facilities while acquiring additional influence over their investments, operations, and annual budgets. It could use that influence to redirect investment or withhold support for facilities serving competing interline routes. The resulting deterioration could emerge gradually, even beyond the first decade after consummation. That risk exists whether or not the merger gives UP formal legal control of a particular terminal railroad. The specific governance and operating protections in Sections VIII.F, VIII.G, and VIII.I therefore must address the enduring incentives and practical means to impair the shared network.

The conditions also address specific threats to competition in regions across the country, including Gulf Coast access and operations (Section VIII.B), New Orleans gateway access and interchange (Section VIII.C), competitive use of the Meridian Speedway and capacity at Meridian (Section VIII.D), CPKC's ownership and control of Wylie Intermodal Terminal and surrounding property (Section VIII.E), operations through the Kansas City and St. Louis gateways and the corridor connecting them (Sections VIII.F–H), operations and competition surrounding the Chicago gateway and Chicago–Detroit route and Detroit-area access (Sections

VIII.I–J), and competitive access for certain customers in Minnesota (Section VIII.K). Sections V and VI supply the common service-assurance, enforcement, agreement-amendment, and anti-circumvention framework. The geographic provisions apply that framework to affected routes and facilities. Corridor access and gateway protections serve distinct purposes: an independent through route requires usable connections at both ends, while a shared gateway also serves other carriers and customers. While each condition responds to an identified merger-related risk, the Board should assess the remedies as a comprehensive package as the bare minimum necessary to at least partially offset the competitive harms threatened by the Proposed Transaction.

B. Effective Competition in the Gulf Coast Region Requires Permanent Access and Operating Protections

1. The Proposed Transaction Would Magnify UP's Leverage Over Gulf Coast Shippers and Its Control of Infrastructure Essential to CPKC Competition

The Gulf Coast from the Mexican border through Houston to Baton Rouge contains a substantial concentration of chemicals, plastics, refining, and related industrial production.[335] Rail service is essential to those industries, whose facilities generate large volumes of chemicals, plastics, grain, and other commodities that move over long distances.[336] UP is already one of the principal carriers, "serv[ing] more receivers and packaging facilities than any other carrier" in these markets.[337] CPKC is well positioned to compete for this traffic because its network can connect shippers along the Gulf Coast with Mexico, the Midwest, the Southeast, and CPKC's

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335 *See* Brooks V.S. ¶¶ 203, 210-11.

336 *See* Brooks V.S. ¶ 203; Rev. App. 1-319 (Rocker & Elkins Second Errata V.S. ¶ 98).

337 Rev. App. 1-319 (Rocker & Elkins Second Errata V.S. ¶ 98).

interline partners at key gateways in the watershed region of the U.S.[338] CPKC's ability to compete, however, depends critically on rights over UP's lines in the Gulf Coast region.[339]

The Proposed Transaction would materially alter UP's incentives concerning competition for Gulf Coast traffic in at least three ways:

First, UP's acquisition of NS would increase its financial incentive to steer Gulf Coast traffic away from competing interline routes. The combined carrier would retain all the railroad revenue from a movement over its new single-line route, but only its own portion of the revenue from a competing interline movement. That change can weaken the credibility of the interline alternative in negotiations even when the route remains physically available.[340] NS today remains an independent carrier with an interest in competitive interline services that attract traffic to its eastern network. On major plastics lanes originating on CPKC at Baton Rouge, [redacted].[341] UP, by contrast, benefits when Gulf Coast traffic remains on its own network for more of the movement.[342] Traffic that NS might win today in cooperation with CPKC could instead become traffic that UP prefers to move over its own Gulf Coast lines and retain on the former NS network.[343] UP would therefore have a materially stronger incentive to favor its own single-line services over more efficient routes involving CPKC; deprioritize CPKC trains, maintenance

338 *See* Brooks V.S. ¶¶ 202-03, 210-11.

339 Redd V.S. ¶¶ 155-63.

340 Majure V.S. Vol. I ¶¶ 46, 48; Vol. II ¶¶ 29, 32.

341 Brooks V.S. ¶ 58.

342 Majure V.S. Vol. I ¶¶ 46, 61; Brooks V.S. ¶¶ 38-44, 66-67.

343 Majure V.S. Vol. I ¶ 46; Vol. II ¶¶ 29, 32; Brooks V.S. ¶¶ 31, 47-48, 167.

needs, and capital requirements on shared infrastructure; and preserve contractual and operational restrictions that prevent CPKC from developing competing services.[344]

Second, for the same reasons, the merger would increase UP's ability and incentive to use its ownership and control of shared track, dispatching, terminal operations, and related infrastructure to impair competing CPKC services.[345] The merger thus increases the risk that Applicants could make CPKC's competing service commercially ineffective without formally closing a gateway or terminating an operating agreement. They could do so through delayed interchange, discriminatory dispatching, inadequate crews, restrictive operating rules, deferred maintenance, unproductive work windows, insufficient block building, or failure to make needed capacity investments.[346] Although that conduct may be less visible than a formal gateway closure, it can be just as effective in depriving shippers of a meaningful alternative.[347]

Third, the merger would increase UP's bargaining power over customers whose facilities and traffic depend on both legacy networks. Today, a shipper can benefit from negotiating separately with UP and NS across its facilities even when particular facilities are sole-served; but combining those dependencies can weaken its bargaining position and expose traffic elsewhere in its portfolio to worse terms.[348] For Gulf Coast customers, an effective CPKC alternative would help constrain that increased power as well as preserve competing interline routes. If Applicants could impair the customer access or shared infrastructure needed to make that alternative usable, they could use their combined network to raise rates, degrade service, or steer

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344 Majure V.S. Vol. II ¶¶ 32-36; Brooks V.S. ¶¶ 169-75, 202-09; Gameiro V.S. ¶¶ 12, 14, 20-24.

345 Gameiro V.S. ¶¶ 10-14; Brooks V.S. ¶¶ 172-75.

346 Majure V.S. Vol. I ¶¶ 61, 99; Brooks V.S. ¶¶ 172-75; Gameiro V.S. ¶¶ 19-40.

347 Brooks V.S. ¶ 174.

348 Majure V.S. Vol. I ¶¶ 190-99.

traffic to UP–NS, including by worsening terms at a legacy UP facility because the customer uses a competing carrier at a legacy NS facility.[349]

These concerns are magnified by CPKC's experience with UP in the Gulf Coast region, which demonstrates both the value and limits of the existing agreements. The Brownsville slow-order example discussed in Section VIII.B.2(a) is a recent example.[350] But these problems are longstanding: in the *CP/KCS* proceeding, CPKC's predecessors explained that reduced information sharing and poorly coordinated work curfews impaired service; dispatching and operating arrangements failed to give all carriers sufficient common visibility into train and maintenance plans; and cooperation on capacity planning had declined.[351] Those experiences support conditions that reinforce the existing framework through timely disclosure, defined review periods, measurable service obligations, and expedited enforcement.

CPKC's concentration of operations on infrastructure UP owns, controls, or dispatches amplifies the merger's competitive consequences. CPKC today provides, or is positioned to provide, competitive alternatives for Gulf Coast traffic through its South Texas network connecting to Mexico, its connections at Houston and Shreveport, its operations over the Meridian Speedway, and its interchange opportunities with eastern carriers.[352] Those operations depend on rights over UP track between Robstown and Victoria and between Rosenberg and Beaumont, as well as Houston Belt & Terminal Railway Company ("HBT") and related trackage in the Houston Terminal and CPKC's operations over the Houston and Beaumont

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349 Majure V.S. Vol. I ¶¶ 198-201, 215; Vol. II ¶¶ 20-21, 38, 43.

350 Gameiro V.S. ¶¶ 17-40.

351 *See CP/KCS*, Applicants' Response to Comments & Requests for Conditions, Opposition to Responsive Applications, & Rebuttal in Support of the Application, Vol. 2, Reply V.S. of John Orr, Finance Docket No. 36500 (filed July 13, 2022), ¶¶ 38-41; Reply V.S. of Steve Simmons ¶¶ 26-40.

352 Brooks V.S. ¶¶ 98-110, 202-03, 210-11; Redd V.S. ¶¶ 116, 124-26, 154-57, 190-91.

Subdivisions.[353] Those rights and operating arrangements are critical both to local Gulf Coast traffic and to CPKC's ability to compete for longer-haul traffic between Mexico and the eastern United States.[354] UP already owns or dispatches the relevant track, administers operating rules, controls maintenance, and participates in capital decisions.[355] In some locations, UP also supplies switching service.[356] The merger would expand the network of competing routes under UP's control and increase demands for operating and capital resources, creating a risk that UP would prioritize its merger traffic and systemwide objectives over reliable CPKC service.[357]

If the Board were to approve the Proposed Transaction, it should address the interrelated Gulf Coast problems exacerbated by the proposed merger through three measures: (1) removing traffic-scope, customer-contract, operational, and physical barriers that prevent CPKC from reaching or serving customers it can serve competitively; (2) preserving and improving the operating arrangements on which CPKC's existing and new services depend; and (3) establishing enforceable remedies if merger-related traffic growth or resource allocation degrades CPKC service despite those protections.

Accordingly, CPKC seeks an integrated package of Gulf Coast conditions directed at those harms:

1. Preserving and reforming CPKC's existing rights over UP between Robstown and Beaumont and its HBT and related Houston Terminal rights, including by removing specified traffic-scope and local-service restrictions while preserving existing exceptions and access rights; permanently preserving CPKC's Houston Subdivision rights regardless of directional-running practices; and providing permanent bidirectional Houston

353 Redd V.S. ¶¶ 155, 160-62.

354 Gameiro V.S. ¶ 7.

355 Gameiro V.S. ¶¶ 8, 12, 20; Redd V.S. ¶¶ 155, 163-64.

356 Redd V.S. ¶¶ 193-96.

357 Gameiro V.S. ¶¶ 14, 24; Redd V.S. ¶¶ 95, 114-20, 163-65.

Subdivision rights if directional running ends or changes so that equivalent efficient and commercially effective CPKC access is no longer preserved;

2. Providing reciprocal-switching access to eligible existing and future UP sole-served facilities within the Bloomington and Corpus Christi switching zones defined in Section VIII.B.3(b);

3. Applying the traffic-scope reforms described above to Houston Port Terminal Railway Association ("PTRA")- and HBT-related traffic and protecting neutral, nondiscriminatory, and commercially effective access through the Houston terminal;

4. Providing competitive access to eligible existing and future UP sole-served facilities within the West Baton Rouge route and connected customer trackage identified in Section VIII.B.5(b); and

5. Protecting CPKC service between Houston and DeQuincy through an integrated sequence of capacity and alternative-route remedies.

Customers made competitive through these conditions should also benefit from the global contract-release condition in Section VI.A.

CPKC would use the requested access to compete for identified Gulf Coast traffic suited to its network and connecting-carrier routes. In South Texas, those opportunities include chemicals, plastics, and refined products moving to Mexico and, with the existing restrictions removed, to the Midwest, Canada, and eastern destinations through connections with CSXT and other carriers.[358] The additional traffic would build on existing operations. In South Texas, CPKC would use its existing manifest train network to pick up and deliver traffic at Corpus Christi, Bloomington, and Kendleton.[359] For Baton Rouge traffic, CPKC would use its existing manifest services connecting Baton Rouge with Shreveport and New Orleans, which have capacity to accommodate the anticipated additional traffic.[360]

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358 Brooks V.S. ¶¶ 202-07.

359 Redd V.S. ¶¶ 155-57, 191-92.

360 Redd V.S. ¶¶ 203-06.

The competitive benefit would extend beyond traffic CPKC ultimately wins. A credible CPKC alternative would strengthen customers' bargaining position and could induce UP–NS to improve its own rates or service, including for traffic that remains on the combined system.[361] Those benefits remain relevant even for shippers that might continue to originate their traffic with UP, at least initially after the merger. [redacted].[362] [redacted] And even if it elects to keep its business with UP, the availability of CPKC as a credible competitive alternative will give it more leverage when negotiating that future contract.

The complementary remedies should be evaluated together. New customer access requires reliable service, while service standards alone cannot create competition for customers CPKC remains prohibited from serving. The package would preserve and expand nonexclusive alternatives without eliminating existing service or excluding Applicants from any facility. Conditions providing both customer access and protection of the shared operating infrastructure can effectively preserve a credible constraint on the combined carrier's rates and service.[363]

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361 Brooks V.S. ¶ 209; Majure V.S. Vol. I ¶¶ 61, 72, 100; Vol. II ¶¶ 38, 43, 45.

362 Brooks V.S. ¶ 211.

363 Majure V.S. Vol. II ¶¶ 31, 34, 36, 38, 41-43.

2. Effective Gulf Coast Competition Requires Protected and Improved Robstown–Beaumont and Houston Terminal Rights

(a) The Proposed Transaction Threatens the South Texas Operating Rights Critical to CPKC's Service and Operations

CPKC's operations linking its network in Mexico and South Texas with Houston, Beaumont, DeQuincy, Shreveport, the Meridian Speedway, and eastern interchange partners rely on critical operating rights over UP and HBT trackage between Robstown and Beaumont and in the Houston Terminal. CPKC's route between Robstown and Beaumont consists of two UP-owned segments—Robstown–Victoria and Rosenberg–Beaumont—over which CPKC exercises trackage and operating rights, connected by CPKC's own Victoria–Rosenberg line.[364] In the Houston Terminal and Houston–Beaumont corridor, CPKC also operates over HBT trackage and the UP Houston and Beaumont Subdivisions.[365] Those rights support both CPKC's current traffic and its potential service to additional shippers, connecting shortlines, and facilities located on or reached through CPKC's Rosenberg Subdivision.[366] Existing traffic-scope, local-service, build-in, transload, and related restrictions, however, prevent CPKC from making competitive use of that physical access.[367] CPKC could not provide reliable service, including for newly accessible customers in South Texas, if Applicants may terminate, narrow, or operationally degrade the rights necessary to connect those customers with CPKC's broader network.[368] Preserving and reforming this operating regime is therefore indispensable to the Gulf Coast remedial package.

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364 Redd V.S. ¶¶ 154-56.

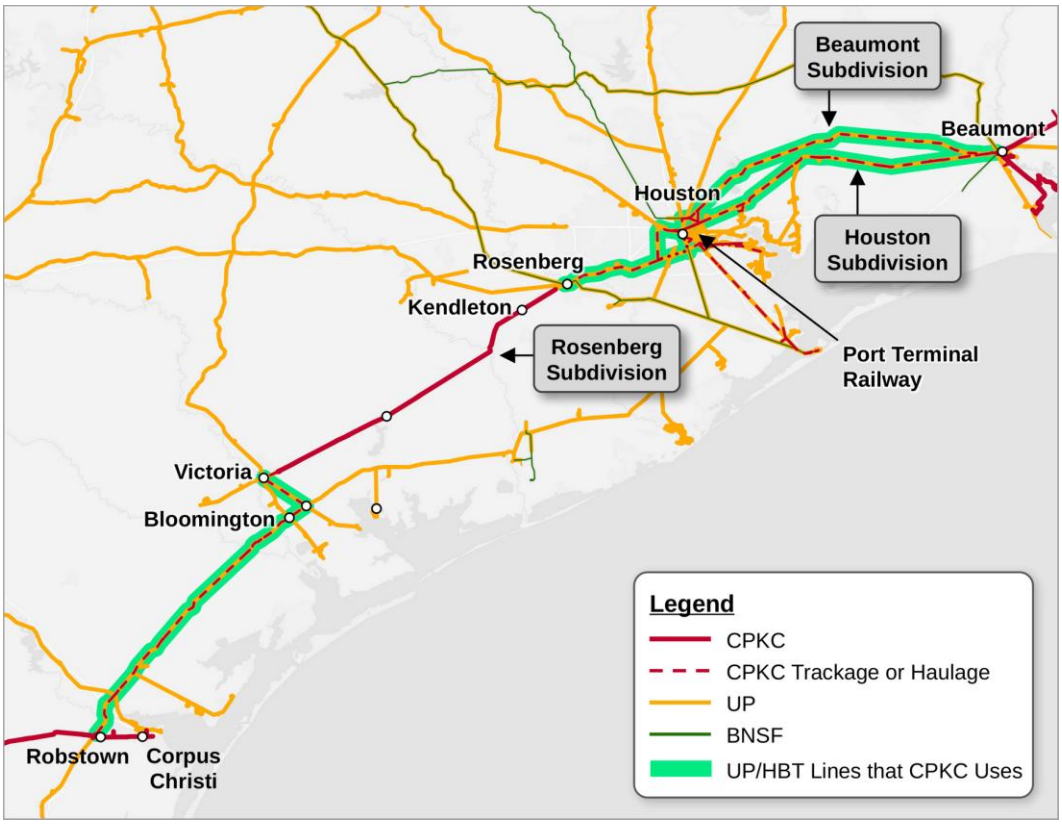
365 Redd V.S. ¶¶ 155, 160-62.

366 Redd V.S. ¶¶ 155, 166-67, 181-86.

367 Redd V.S. ¶¶ 166-67, 180-81, 184-86; Gameiro V.S. ¶¶ 163-72.

368 Redd V.S. ¶¶ 161-66; Gameiro V.S. ¶¶ 136-38.

CPKC's Robstown–Beaumont Route and UP/HBT Operating Rights[369]



The South Texas trackage-rights agreements impose separate restrictions on the traffic CPKC may handle and the local service it may provide.[370] Under those agreements, traffic transported pursuant to those rights must either have a prior or subsequent movement on the Laredo–Robstown–Corpus Christi line or originate or terminate at shipper facilities on the Rosenberg Line Sale Portion.[371] The agreements separately exclude traffic originating or terminating at locations on lines connecting to the Rosenberg Line Sale Portion and traffic to or from transload facilities on that portion.[372] These traffic restrictions, together with the separate

369 Redd V.S. Figure 15.

370 Gameiro V.S. ¶¶ 161-63, 167-69.

371 Gameiro V.S. ¶ 161.

372 Gameiro V.S. ¶ 163.

limitations on local service, restrict CPKC's ability to use the covered trackage to serve otherwise reachable traffic, as described in Section VIII.B.2(c).[373] The Board should require Applicants to amend the applicable instruments and procure the necessary assents under Section VI.B to implement the specific rights sought below throughout the authorized route while preserving existing beneficial rights.

Although CPKC might have the formal right to operate trains over these lines, that alone does not ensure an effective competitive service. UP controls dispatching and capital work on the Houston and Beaumont Subdivisions.[374] CPKC's experience on the Robstown–Beaumont corridor illustrates how UP's exercise of operational control can impair the competitive value of those rights. UP has delayed capacity improvements, maintained longstanding slow orders, imposed an arbitrary 8,000-foot train-length restriction on the Brownsville Subdivision, and delayed CPKC trains in favor of its own movements. KCSR paid tens of millions of dollars for Brownsville Subdivision capital projects through settlement agreements, although Gameiro explains that the existing gross-ton-mile charge already covered the contractually required work.[375] The consequences, however, are unequal. The Brownsville Subdivision is essential to CPKC's Mexico route, whereas UP has alternative routes through San Antonio. CPKC's trains on the subdivision also outnumber UP and BNSF trains combined.[376] CPKC also paid for a turnout capable of twenty-mile-per-hour operation, but UP retained the ten-mile-per-hour timetable limit, preventing CPKC from obtaining the intended operating benefit.[377] In addition,

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373 Gameiro V.S. ¶¶ 161-70.

374 Redd V.S. ¶ 164.

375 Gameiro V.S. ¶¶ 20-27, 29-34, 38-40.

376 Gameiro V.S. ¶¶ 13, 19.

377 Gameiro V.S. ¶ 28.

UP has held southbound CPKC trains on CPKC's Rosenberg Subdivision while UP local trains worked near Bloomington, and northbound CPKC trains on CPKC's track at Robstown while UP locals worked at Odem and Sinton. UP has maintained that CPKC is not disadvantaged because those trains have not yet entered the joint track, although the CPKC trains have higher dispatching priority than UP's locals.[378] Those practices can undermine CPKC's ability to provide service with commercially acceptable and predictable transit times. Formal operating rights therefore must be accompanied by enforceable protections against practices that impair their competitive value.

CPKC participates in directional operation over the parallel Houston and Beaumont Subdivisions, using the Beaumont Subdivision eastbound and the Houston Subdivision westbound rather than relying on bidirectional operation over the predominantly single-track Beaumont route alone.[379] The Houston–Beaumont agreement conditions CPKC's additional Houston Subdivision rights on continued directional operation.[380] Section VIII.B.2(e) specifies the permanent-rights protection and bidirectional fallback required to address that vulnerability.

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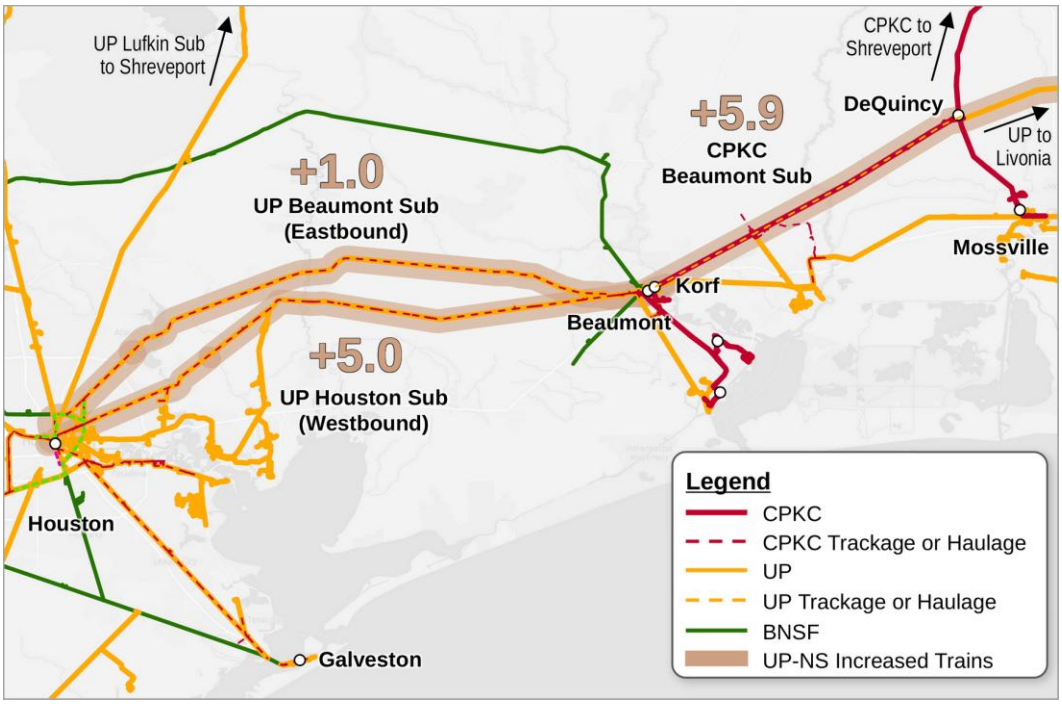
[378] Gameiro V.S. ¶ 40.

[379] Redd V.S. ¶¶ 161-64.

[380] Gameiro V.S. ¶ 137.

Houston–DeQuincy Directional Routes and Projected UP/NS Train Growth[381]



The Proposed Transaction threatens those rights and competitive access by increasing UP's incentive and practical ability to impair CPKC's South Texas service.[382] After the merger, UP would capture greater economic benefit from keeping Gulf Coast and Mexico traffic captive on the combined UP-NS system, strengthening UP's incentive to weaken CPKC's ability to compete for traffic it currently carries and interchanges with CSX or NS.[383] UP need not formally terminate CPKC's rights to achieve that result. It could weaken CPKC's competitive service through dispatching priorities that delay CPKC trains; operating rules that uniquely or disproportionately burden CPKC; train-length or work-event restrictions that reduce CPKC efficiency; inadequate notice and coordination of maintenance windows; prolonged slow orders or signal outages; insufficient engineering and maintenance resources; delayed capacity projects;

381 Redd V.S. Figure 7.

382 Majure V.S. Vol. I ¶¶ 46, 61; Vol. II ¶¶ 29, 32.

383 Majure V.S. Vol. I ¶ 46; Vol. II ¶¶ 29, 32.

changes in crew, terminal, or service priorities; or the diversion of personnel and capital to higher-priority portions of the enlarged UP-NS network.[384] Applicants could also preserve CPKC's Houston Subdivision rights nominally while altering directional operations in ways that force CPKC to rely on bidirectional operation over the predominantly single-track Beaumont Subdivision. The limited siding lengths and spacing on that route could require CPKC to shorten trains, operate additional trains, or stage trains at Amelia, reducing the capacity and reliability of CPKC's service.[385]

Each of those actions could increase CPKC transit time, reduce reliability, raise operating costs, and make CPKC less attractive to shippers without producing an easily identifiable denial of access.[386] Those actions exacerbate the existing traffic, local-service, build-in, transload, and related restrictions that prevent CPKC from making full competitive use of its current physical access.[387]

The combination of changed incentives and increased traffic requires protection of the practical quality, capacity, and reliability of CPKC service, beyond a prohibition on express termination.

Applicants' planned traffic growth would also increase the physical risk of degradation over infrastructure critical to CPKC's operations. Applicants project merger-related increases through Houston, between Houston and Beaumont and San Antonio and Houston, across or near the CPKC Neches River Bridge crossing, and over other infrastructure on or adjacent to CPKC's route toward DeQuincy. Those increases include approximately six additional trains per day

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384 Gameiro V.S. ¶¶ 12-15, 24-40.

385 Redd V.S. ¶¶ 162-66.

386 Redd V.S. ¶¶ 116, 162-66; Gameiro V.S. ¶¶ 12-15, 38-40.

387 Redd V.S. ¶¶ 166, 181, 183-86.

between Houston and DeQuincy, including movements across the Neches River Bridge.[388] Applicants also project two additional trains per day between San Antonio and Houston.[389] That incremental traffic and the associated terminal work could increase congestion affecting CPKC trains through Houston and Beaumont and across the Neches River Bridge.[390]

In *CP/KCS*, UP argued that approximately eight additional daily CPKC trains would threaten fluid operations in Houston and related shared infrastructure.[391] CP and KCS disputed the incremental operations and burden, maintained that capacity was sufficient, and attributed delays principally to operating practices, dispatching, maintenance coordination, and information sharing.[392] That history supports transaction-specific disclosure, monitoring, operating corrections, and capacity remedies if Applicants' additions cause defined degradation; it does not establish that the corridor is already at capacity.

CPKC's experience under the existing agreements demonstrates why formal rights and after-the-fact contractual remedies are insufficient. For example, UP imposed a train-length restriction on the Brownsville Subdivision that forced CPKC to remove cars from trains moving to or from Mexico. CPKC secured removal of that restriction only by accommodating a longer UP/NS train on the Meridian Speedway, illustrating how control of one route can be used to

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388 Redd V.S. ¶ 119.

389 Rev. App. 2-762 to -63 (Gehringer & Orr Second Errata V.S. ¶ 316). References to the Gehringer & Orr V.S. are to that statement as corrected and adopted by Brian Barr. *See* UP-84/NS-82, Notice ¶¶ 4-5; Barr V.S. ¶¶ 4-6 (July 27, 2026).

390 Redd V.S. ¶¶ 118-24.

391 *See CP/KCS*, Union Pacific Railroad Company's Comments and Request for Conditions (UP-10), Finance Docket No. 36500 (filed Feb. 28, 2022) at 58-59; *id.*, Turner & Rocker V.S. at 31-33.

392 *See CP/KCS*, Applicants' Response to Comments & Requests for Conditions, Opposition to Responsive Applications, & Rebuttal in Support of the Application, Vol. 2, Reply V.S. of John Orr, Finance Docket No. 36500 (filed July 13, 2022), ¶¶ 7-13; Reply V.S. of Steve Simmons ¶¶ 26-40; Reply V.S. of Jason Wilkerson ¶¶ 15-16.

obtain concessions on another.[393] UP has also imposed slow orders on the Brownsville Subdivision that have reduced speeds below the standards established under the operative agreements. CPKC's service-design group calculates that these slow orders cause at least ten minutes of delay per train even under optimal conditions.[394] CPKC does not ask the Board to adjudicate that contractual dispute here. These episodes nevertheless support conditions that establish objective operating standards, require disclosure of the basis for operating restrictions, and provide prompt enforcement and interim relief without first requiring resolution of disputes over the meaning or breach of existing agreements.

(b) CPKC's Existing Rights Require Permanent Protection Against Termination, Narrowing, Suspension, and Material Impairment

As a primary remedy, the Board should prohibit Applicants and their successors from terminating, suspending, narrowing, or materially impairing CPKC's rights over the Robstown-Victoria and Rosenberg-Beaumont segments of UP track, related HBT trackage in the Houston Terminal, and UP's Houston Subdivision.

Applicants and their successors should be prohibited from any action or omission that directly or indirectly terminates, suspends, narrows, or materially diminishes the practical, operational, or commercial utility of CPKC's existing rights, as modified by the Board. The prohibition should encompass discriminatory or unreasonable conduct involving dispatching or train priority; operating rules or restrictions, including train length, weight, horsepower, crews, or work events; access to necessary connections, yards, sidings, interchange tracks, staging facilities, or terminal infrastructure; maintenance, repairs, slow orders, signal outages, work

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393 Gameiro V.S. ¶¶ 29-34.

394 Gameiro V.S. ¶¶ 25-27.

windows, or capacity; or changes to terminal and operating arrangements, including the Houston-Beaumont operating pattern. An action or omission would constitute a material impairment if its effect is to materially delay CPKC trains, reduce the capacity, reliability, or efficiency of CPKC service, materially increase CPKC's transit time or operating costs, prevent CPKC from exercising the authority granted by the Board, or otherwise render CPKC's rights commercially or operationally ineffective. The prohibition should apply regardless of whether the impairment is implemented directly or through an affiliate, terminal railroad, tariff, operating protocol, coordinated operating arrangement, or other mechanism. Applicants should remain free to impose legitimate, documented, generally applicable, and nondiscriminatory safety and operating requirements.

The Board should also require Applicants to maintain a coordinated, transparent, and nondiscriminatory dispatching arrangement for the covered UP- and HBT-owned trackage over which UP controls dispatching. The arrangement should require neutral, nondiscriminatory dispatching under train-priority and sequencing criteria applied equally to comparable CPKC and UP trains, without preference based on carrier identity. It should also give personnel responsible for the covered segments sufficient authority and operational visibility to coordinate CPKC movements efficiently; require contemporaneous sharing with CPKC of train lineups, planned work events, outages, restrictions, and other information necessary to operate over the corridor; and preserve the train-level information necessary to verify compliance with those standards, including train priorities, readiness to move, and the reasons for delays and any permitted departures from agreed dispatching priorities.

The common service-assurance framework in Section V should govern disclosure, consultation, reporting, corrective action, and enforcement for the Robstown–Beaumont corridor.

The measures developed under Section V.C should address the effects on customers' complete movements, including access delay, transit time and reliability, treatment relative to comparable UP trains, maintenance and slow orders, practical capacity, and timely completion of required maintenance and capacity projects. The protections should cover properly offered CPKC trains awaiting UP-controlled admission while standing on CPKC track. The standards should capture the waiting time between a valid offer by a train ready to proceed from an appropriate staging point and its actual admission, and Applicants should not exclude such trains or that delay from the relevant access, dispatching-priority, and reliability measures solely because the trains have not yet entered the joint trackage.[395] Existing contractual obligations should remain enforceable according to their terms; an aggregate transit-time result should not excuse a breach of a separately applicable maintenance or location-specific obligation.

The Board should adopt performance standards that protect CPKC's ability to move reliably between Houston and DeQuincy and between Beaumont and Rosenberg, including through the Houston Terminal. Those standards should address timely acceptance and admission of CPKC trains offered and ready to proceed onto UP's lines from appropriate staging points, transit times across the corridors, delays while held en route, and excessive recrews.[396] The measures should capture the effects of Applicants' terminal work, dispatching decisions, and train movements on CPKC's complete protected movement, including delays before or after crossing the Neches River and interference from UP operations on CPKC's Beaumont–DeQuincy line. The standards should be established through the technical conference under Section V.C, with any additional remedy governed by the predicates and geographic and

395 Gameiro V.S. ¶ 40.

396 Redd V.S. ¶¶ 101-03, 124.

functional limits specified for that remedy. Existing contractual standards and independent obligations should remain enforceable.

The Board should separately adopt performance standards that protect CPKC's ability to enter and traverse the Victoria–Robstown corridor reliably in both directions. Those standards should address timely acceptance and admission of trains offered and ready to proceed onto UP's lines from appropriate staging points, transit times across the corridor, delays while held en route, nondiscriminatory dispatching and treatment of comparable trains, and excessive recrews.[397] The standards should be established through the technical conference under Section V.C. Performance-based activation of the Victoria–Robstown dispatching remedy should be governed by Section VIII.B.2(d), applying Section V.C's 30-day measurement and 30-day cure framework. These standards should supplement existing contractual standards and the independent access, service, and nondiscrimination protections. Applicants should provide CPKC timely visibility into material train-plan, maintenance, engineering, work-window, and capital changes affecting the Robstown–Beaumont corridor. Applicants should also afford CPKC annual participation in the development and updating of UP's five-year capital plan for the joint trackage, including an opportunity to propose projects for the mutual benefit of its users or for CPKC's sole benefit and to address their timing.[398] This planning process should supplement, without delaying, the project-specific review and implementation requirements below.

Consistent with Section VI.B, Applicants and their controlled affiliates should amend or waive the applicable trackage-rights and related agreements to prohibit unreasonable

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397 Redd V.S. ¶ 124 & n.33; *id.* ¶¶ 193-94.

398 Gameiro V.S. ¶ 139.

withholding, conditioning, or delay of the approvals, cooperation, and implementation necessary for operationally feasible capacity improvements supporting CPKC's existing or Board-authorized service and reasonably anticipated growth. This obligation should apply from consummation without requiring prior service degradation, prior agreement on the project, or a showing that CPKC's growth results from the merger. It should supplement, and not diminish, existing rights to require Applicants to construct, improve, or maintain infrastructure.

CPKC should submit the proposed project's scope, capacity need, reasonably available operating and engineering analysis, anticipated effects, implementation schedule, and proposed cost allocation. Applicants should be required to promptly provide the information within their control reasonably necessary to develop and evaluate the proposal. The Board should establish defined schedules for evaluating and implementing necessary projects, with short, definite deadlines for Applicants' responses and production of information and expedited resolution of disputes under Section V.B. Objections should identify the specific engineering, safety, operating, cost, or other applicable requirements at issue and reasonable modifications that would resolve the objections. Applicants should not withhold cooperation because the project would facilitate competing CPKC service or because unrelated projects elsewhere on their system receive higher priority.

Disputes over a project's necessity, scope, design, cost allocation, or implementation should receive expedited Board resolution under Section V.B, including appropriate interim relief. Projects required by the governing agreements, agreed to by the parties, or directed under this condition should proceed under enforceable implementation schedules, requiring Applicants to provide necessary consents, engineering cooperation, access, and work windows. A dispute should not automatically suspend undisputed or authorized work; interim funding arrangements

subject to final allocation should be available under Section V.B. Existing consultation and contractual remedies should remain available without postponing enforcement of this condition. The process should preserve applicable construction, environmental, safety, and property requirements and should not independently enlarge CPKC's traffic or geographic authority.

Existing contractual capacity, funding, cost-allocation, reimbursement, and shared-use protections should remain effective except as expressly modified by a Board condition. The Board should preserve the existing compensation framework applicable to CPKC's South Texas trackage rights, including the rate basis and escalation formula. Applicants should not be permitted to use the merger or implementation of these conditions to reprice those rights, replace that formula, or circumvent this protection through additional charges. [redacted][399] To the extent implementation requires the Board to address compensation, it should preserve terms no less favorable to CPKC than the existing framework, including the adjustments that framework already prescribes.[400] Compensation for reciprocal switching services should be determined separately under Section VIII.B.3(b).[401]

Applicants should remain responsible for ordinary maintenance and renewal of infrastructure they own or control and for capacity made necessary principally by merger-related traffic or resource diversion. CPKC or a benefiting customer may appropriately bear reasonable costs of facilities constructed principally for separate incremental CPKC service, to the extent those costs are neither already included in applicable trackage-rights charges nor otherwise

399 *See* UP_2254190.

400 Gameiro V.S. ¶ 143.

401 Gameiro V.S. ¶ 204.

Applicants' responsibility under the governing agreements or the Board's conditions. Mixed-use costs should follow the governing agreement or applicable Board condition; where neither supplies an allocation, costs should be allocated according to causation, use, capacity consumed, and principal economic benefit.

(c) Competitive Use of Existing Rights Requires Removal of Traffic-Scope and Local-Service Restrictions

The operating rights addressed above give CPKC the physical route necessary to compete for traffic in South Texas and the greater Houston area, including traffic at significant chemicals, plastics, petroleum, port, and related industrial facilities located near CPKC's existing routes.

CPKC is positioned to offer facilities along those routes a valuable competitive alternative to UP. But restrictions in its existing rights prevent it from handling much of the traffic at issue, even after a shipper or connecting railroad creates an otherwise feasible physical connection to CPKC.[402]

As discussed in Section VIII.B.2(a), traffic transported under CPKC's Rosenberg–Beaumont rights must either have a prior or subsequent movement on the Laredo–Robstown–Corpus Christi line or originate or terminate at shipper facilities on the Rosenberg Line Sale Portion.[403] Separate restrictions exclude traffic to or from locations on lines connecting to that Sale Portion and transload facilities on the Sale Portion.[404] The agreements also limit CPKC's ability to serve local customers and interchange with connecting carriers.[405] Together, these restrictions limit CPKC's ability to use the covered trackage to offer competing service through

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402 Redd V.S. ¶¶ 167, 181-83.

403 Gameiro V.S. ¶ 161.

404 Gameiro V.S. ¶ 163.

405 Gameiro V.S. ¶¶ 161-63, 167-70.

otherwise feasible customer connections, connecting-carrier interchanges, and transload facilities.[406]

These carrier-to-carrier restrictions govern the traffic CPKC may handle and the operations it may perform under its trackage-rights and operating agreements with UP. They are distinct from the customer-contract restraints addressed in Section VI.A, which may prevent a newly competitive shipper from tendering traffic to CPKC. Both forms of relief may be necessary; neither substitutes for the other. Section VI.B should govern the conforming amendments and assents needed to implement the carrier rights requested here.

The requested Gulf relief addresses three related opportunities: traffic reached through lifting paper barriers restricting Rosenberg Subdivision traffic; new access to existing UP sole-served facilities; and additional traffic at customers CPKC already can access, including those served over PTRA and HBT trackage. Customer access and authority to transport the resulting traffic are separate requirements, and a particular movement may require both forms of relief.

The Proposed Transaction would materially increase the competitive significance of these limitations. Restrictions that already impede CPKC competition would become more potent instruments of foreclosure in the hands of a carrier controlling both UP's Gulf Coast network and NS's eastern network. That carrier would have an incentive to preserve and enforce restrictions that prevent CPKC from developing competing services to the Midwest, Canada, Mexico, and eastern interchange partners.

The Board should therefore modify CPKC's existing rights as follows.

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406 Gameiro V.S. ¶¶ 163-65, 168-70.

(i) Competitive Service Requires Authority to Handle Traffic for Otherwise Accessible Shippers and Connecting Shortlines

The Board should eliminate the requirement that traffic handled through CPKC's existing rights have a prior or subsequent haul over CPKC's line between Laredo and Corpus Christi. CPKC should be permitted to use its rights to handle any traffic to or from a shipper or connecting shortline to which CPKC otherwise has lawful physical access, regardless of whether the traffic has moved or will move over the Laredo–Corpus Christi route.[407]

The qualifying-haul requirement can prevent CPKC from competing for otherwise accessible traffic in Houston and other Gulf Coast locations when the proposed movement does not use the qualifying Laredo–Robstown–Corpus Christi line and no applicable exception permits it.[408] This paper barrier can therefore prevent CPKC from competing even when:

- the shipper can physically reach CPKC;
- a connecting shortline can interchange the traffic with CPKC;
- CPKC has an operational route for the line-haul movement; and
- the proposed service would not require CPKC to obtain access to additional UP track.

The condition should reach functionally equivalent restrictions, regardless of their wording. Applicants should be prohibited from imposing or enforcing any origin-and-destination, routing, commodity, interchange, prior/subsequent-haul, or equivalent restriction that produces the same practical limitation on traffic CPKC may handle through its existing rights. This relief should extend to traffic interchanged by any connecting shortline or terminal railroad that CPKC is otherwise authorized to access.

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407 Gameiro V.S. ¶¶ 161-62, 166-67.

408 Gameiro V.S. ¶¶ 161-62; Redd V.S. ¶¶ 167, 184-86.

(ii) Competitive Service Requires Authority to Handle Traffic for Facilities on or Reached Through the Rosenberg Subdivision

The Board should permit CPKC to use its existing rights to handle traffic to or from shipper, transload, terminal, and other facilities located on, connected to, or reached through CPKC's Rosenberg Subdivision between Victoria and Rosenberg.[409] That authority should include warehouses and other facilities that receive rail traffic but do not originate it, as well as traffic moving through a connection or build-in constructed by a shipper or another authorized party.

The present restrictions can foreclose competition even after physical access has been created.[410] A shipper may be willing to connect to CPKC's Rosenberg Subdivision or develop a transload facility through which its traffic could reach CPKC. Yet CPKC may remain contractually prohibited from handling that traffic. The restriction thus protects UP from competition by preventing CPKC from using an otherwise operationally available route once the connection exists.

[redacted][411]

More broadly, CPKC projects that, if these restrictions are removed, it could attract approximately [redacted] annual carloads of newly handled traffic from new transload and

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409 Gameiro V.S. ¶¶ 163-67.

410 Redd V.S. ¶¶ 181-83; Gameiro V.S. ¶¶ 163-65.

411 Brooks V.S. ¶ 207.

build-in opportunities on the Rosenberg Subdivision by Year 3, the steady-state year after the applicable condition becomes effective.[412]

[redacted][413] The Board should not permit Applicants to use those provisions to thwart a shipper's interest in investing in a competing rail option or CPKC's willingness to provide it. Facilities at or near Victoria, Gregory, Sinton, and other South Texas locations may support service through reciprocal switching or a customer build-out, depending on the location and available connection.[414] The appropriate mechanism may vary by facility and traffic volume. Removal of the Rosenberg restrictions would preserve the ability to evaluate lawful, operationally feasible connections and handling arrangements as additional opportunities develop.

For example, a potential build-out of approximately [redacted] could connect [redacted] with CPKC's Rosenberg Subdivision. If that opportunity were pursued, CPKC would work with the customer to develop service and supporting facilities, subject to removal of applicable traffic restrictions and completion of the necessary connections and arrangements.[415]

The competitive access would also benefit customers in future contract negotiations, including those that currently receive or stand to receive favorable terms from UP to support the

412 Brooks V.S. ¶ 207.

413 Redd V.S. ¶¶ 181-83; Brooks V.S. ¶¶ 205, 208.

414 Redd V.S. ¶¶ 167-83.

415 Redd V.S. ¶ 179.

Proposed Transaction. Favorable terms today do not ensure competitive rates and service when an agreement expires or is renegotiated. By permitting development of a commercially and operationally viable CPKC alternative, removal of the restrictions could strengthen a customer's bargaining position at renewal even if it ultimately keeps its traffic on UP.

These restrictions protect UP from competition by preventing use of a connection that the customer and CPKC might otherwise find economically attractive. The Board should therefore:

1. eliminate restrictions on traffic moving to or from a shipper build-in;
2. eliminate restrictions on traffic moving through a transload, terminal, or similar facility located on or reached through the Rosenberg Subdivision;
3. permit CPKC to accept and handle traffic through lawful new connections to the Rosenberg Subdivision;
4. prohibit Applicants from discriminating against traffic because it reaches CPKC through a build-in, transload facility, connecting shortline, or other indirect physical connection; and
5. require Applicants to provide any operational cooperation, connection arrangements, or assents reasonably necessary to permit lawful and operationally feasible use of the Board-authorized traffic rights.

The condition need not require construction of every proposed build-in. Each project would remain subject to applicable safety, engineering, environmental, property, and regulatory requirements. But Applicants should not retain a contractual veto based solely on the competitive origin, destination, customer, or routing of the traffic.

(iii) Effective Access Requires Reciprocal Switching and Authority to Transport the Resulting Traffic

The Board should remove restrictions preventing CPKC from using its existing trackage and operating rights between Robstown and Beaumont to transport covered customer traffic received or delivered through reciprocal switching.[416] CPKC would receive and deliver

[416] Gameiro V.S. ¶¶ 168-69.

assembled blocks at designated interchange points, while UP and any applicable connecting shortline would perform the local movements between those points and the covered customer facilities. The authorized rights should include the pickups, setouts, interchange, and incidental operations necessary to make that service effective.[417]

Customer access under the Robstown–Beaumont condition would be provided through reciprocal switching, with CPKC receiving and delivering blocks at designated interchange points. The separate trackage rights and reciprocal-switching access over the Victoria Industrial Lead are addressed in Section VIII.B.3(c).

(iv) Effective Implementation Requires Amendment of All Instruments Restricting the Authorized Traffic or Service

Applicants and their controlled affiliates should make the amendments and procure all assents necessary to implement the traffic and service rights granted by the Board throughout the authorized route. The changes should cover every instrument applicable to this traffic, including those containing the restrictions identified above; their applicable amendments, supplements, and assignment and implementing arrangements; and any other instrument that would otherwise prevent exercise of the authorized rights. Section VI.B should govern implementation, including an operationally equivalent means of providing the Board-ordered access if Applicants cannot obtain a necessary assent. The changes should preserve existing beneficial rights and should not independently enlarge the traffic, facilities, or territory covered by the substantive grant.

Applicants should be prohibited from recreating an eliminated restriction through charges, traffic limitations, routing requirements, operating rules, denial of necessary

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417 Gameiro V.S. ¶ 168.

connections, or affiliate or terminal arrangements that prevent exercise of the authorized right or render it commercially or operationally ineffective.

The Board should require Applicants to implement the requested reforms without narrowing CPKC's existing rights. Any amendments necessary to implement those reforms should supplement, rather than diminish, the rights CPKC already possesses.[418]

Any dispute over whether a proposed movement or service falls within CPKC's Board-authorized rights should be resolved through the expedited procedures in the common service-assurance framework in Section V. Pending resolution, the Board should be able to authorize interim service upon a reasonable showing that the movement falls within the condition and can be handled safely, unless Applicants demonstrate that interim operation would create a material safety or operational risk. Applicants should not be permitted to deprive the Board's condition of practical effect by suspending an otherwise feasible service throughout an extended dispute. A dispute should not suspend a preauthorized remedy activated under Section V.D unless the Board grants a stay.

The relief described in this subsection governs what traffic CPKC may handle and what service it may provide under carrier-to-carrier agreements and operating arrangements. It does not, by itself, eliminate restrictions in a customer's transportation contract. Customers made competitive through this condition should receive the customer-contract release in Section VI.A. Applicants also should be required under Section VI.B to amend or waive any carrier-to-carrier agreement inconsistent with the Board-authorized rights.

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418 *See* Gameiro V.S. ¶¶ 136, 167-70.

(d) Reliable, Nondiscriminatory Service Requires a Springing Transfer of Dispatching Responsibility

The immediate trackage-rights, dispatching, operating-rule, service, and capital-planning protections described above are necessary, but they may not be sufficient. Applicants would remain responsible for dispatching the covered trackage and would therefore continue to control the real-time decisions that determine whether CPKC's rights produce reliable and commercially effective service. The Board should therefore preauthorize a transfer of dispatching responsibility to CPKC over the following Victoria–Robstown track segments: (i) the Cuero Subdivision from Victoria to South Placedo; (ii) the south end of the Angleton Subdivision from Placedo to Bloomington Yard; and (iii) the Brownsville Subdivision from Bloomington Yard to Tex Mex Junction.[419] This geographic limitation applies only to the transfer remedy; the broader access, service, nondiscrimination, monitoring, and corrective-action obligations remain applicable throughout their specified territory.

The Brownsville Subdivision train-length enforcement episode described in Section VIII.B.2(a) illustrates the practical significance of that control: when UP imposed an 8,000-foot train-length limit on CPKC's Brownsville Subdivision operations, CPKC had to remove cars from affected trains.[420] That experience reinforces the need for a preauthorized dispatching remedy that can take effect promptly when the specified triggers are met. The Board should adopt performance-based activation requirements through Section V.C, informed by the Victoria–Robstown operational objectives in Section VIII.B.2(b) and applying Section V.C's 30-day measurement and 30-day cure framework, that permit CPKC to elect transfer over Victoria–Robstown upon a failure measured over that corridor.

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419 Redd V.S. ¶¶ 193-94; Gameiro V.S. ¶¶ 141-42.

420 Gameiro V.S. ¶ 31.

The Victoria–Robstown performance standards adopted through Section V.C should implement the operational objectives described in Section VIII.B.2(b). Failure to satisfy an applicable standard under Section V.C's 30-day measurement and 30-day cure framework should permit CPKC to elect the preauthorized Victoria–Robstown dispatching transfer by supported notice under Section V.D.[421] Once the adopted requirements are satisfied, CPKC should be entitled to activate the preauthorized remedy by supported notice under Section V.D without a further Board merits determination. Failure on Victoria–Robstown should permit transfer over the three track segments specified above. These protections should cover existing CPKC operations and additional service expressly authorized by the Board. Enforcement of an independent obligation should not require a fresh showing of merger causation.

CPKC's activation notice should identify the affected measurement corridor and authorized dispatching segments, supporting performance records, satisfaction of the Board-adopted activation requirements, and the date on which the transfer will take effect. The transfer should take effect on the date stated in CPKC's notice, which may provide the time necessary for an orderly transition. Applicants' objection should not suspend activation unless the Board grants a stay. Disputes should receive prompt resolution under Section V.B without reopening the merits of the preauthorized grant. The Board should impose the dispatching condition in its approval order and require advance implementing arrangements under Sections V.D and VI.B, including the safety, systems-access, staffing, and operating prerequisites necessary to exercise the transferred authority. Applicants should complete the arrangements within their control and should not use unresolved implementation matters to delay the transfer. CPKC must satisfy the safety and qualification requirements applicable to its dispatching functions. Exercise of the

[421] Redd V.S. ¶¶ 101-03, 194; *id.* ¶ 124 & n.33; Gameiro V.S. ¶¶ 140-42, 226.

transferred authority should remain an effective, proportionate, and operationally feasible response within the preauthorized geographic and functional limits. Interim operating measures or temporary dispatching relief should remain available under Section V.D where necessary to prevent material harm.

The transfer should remain confined to the three Victoria–Robstown track segments specified above. An activated transfer should remain effective unless affirmatively stayed, modified, or suspended by the Board under Section V.D. Any commencement window adopted for a performance-based trigger should not impose an expiration date on an activated transfer. Cure, improved performance, or expiration of a measurement period, cure period, review period, or merger oversight should not automatically return dispatching to Applicants. Applicants may seek return under Sections V.C and V.D upon demonstrating sustained compliance and durable protection under their resumed control; the existing transfer should remain effective pending an affirmative Board order. The implementing arrangements should provide for an orderly transition if the Board orders return. Return should not terminate the underlying rights, service standards, monitoring, or enforcement obligations, or the availability of reactivation by notice when the applicable adopted trigger is again satisfied. The underlying rights and supporting obligations should bind Applicants and their successors and assigns, and accrued corrective-action and funding duties should survive until fulfilled.

The transferred authority should include real-time dispatching of all authorized train movements over the affected segments, administration of nondiscriminatory train priorities, and the systems access, operating information, staffing coordination, maintenance-window coordination, and emergency communications reasonably necessary to make the transfer effective. Applicants should retain ownership of the line and responsibility for ordinary

maintenance, capital investment, regulatory compliance, and infrastructure safety unless the Board directs otherwise. CPKC would then dispatch all authorized trains neutrally under objective Board-approved protocols and applicable safety requirements.

(e) Effective Houston Access Requires Permanent Houston Subdivision Rights and a Bidirectional Fallback

CPKC currently operates over UP's Beaumont and Houston Subdivisions and over related UP- and HBT-controlled trackage in the Houston Terminal.[422] Under the current directional-running practice, CPKC uses the Beaumont Subdivision eastbound and the Houston Subdivision westbound.[423] The spacing and length of sidings on the predominantly single-track Beaumont Subdivision would make bidirectional operation of CPKC's existing trains highly disruptive.[424] CPKC's existing Houston Subdivision rights are operationally important, but they are not permanent and could be threatened by changes to or discontinuance of directional running.[425]

The Board should therefore permanently prohibit Applicants and their successors from terminating, suspending, declining to renew, restricting, narrowing, or materially impairing CPKC's Houston Subdivision rights, regardless of whether Applicants continue, modify, or discontinue directional running between Houston and Beaumont. Preservation of those rights should not depend on activation of the bidirectional fallback described below. The condition should preserve both the rights and their practical utility by barring operating changes that render them commercially or operationally ineffective. Applicants should maintain access to necessary

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422 Redd V.S. ¶¶ 155, 160-62.

423 Redd V.S. ¶¶ 161-62.

424 Redd V.S. ¶¶ 162-64.

425 Redd V.S. ¶¶ 161-66; Gameiro V.S. ¶ 137.

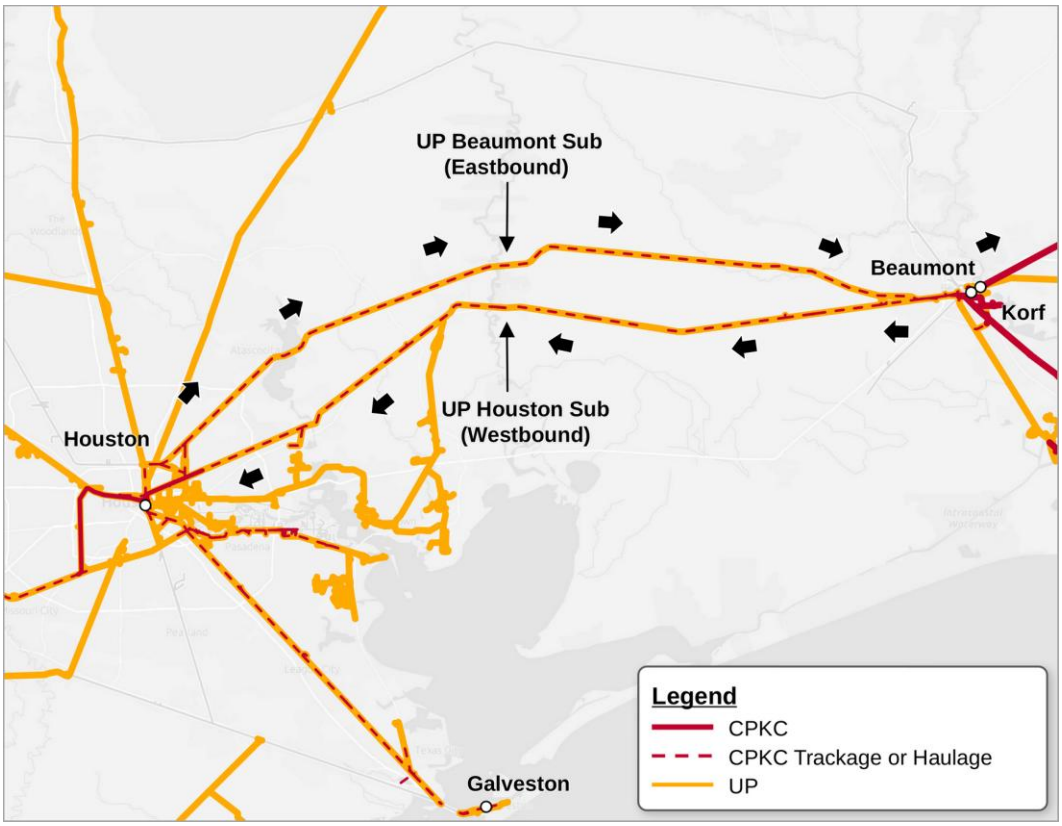
connections and facilities and comply with Section V's nondiscrimination and independent service duties. They should not defeat access through a subsidiary, terminal arrangement, route redesignation or transfer of the affected track. Without permanent protection, UP could discontinue directional running and thereby terminate CPKC's Houston Subdivision access.[426] Loss of that access would force CPKC's westbound trains onto the predominantly single-track Beaumont Subdivision, whose short, infrequently spaced sidings cannot accommodate CPKC's existing train lengths and volumes in both directions without major service impairment.[427] UP could instead use the threatened loss of Houston Subdivision access to demand an arbitrary increase in compensation as the price of continued operations there.[428]

426 Gameiro V.S. ¶¶ 137-38.

427 Redd V.S. ¶¶ 162-64.

428 Gameiro V.S. ¶ 138.

Current Directional Running Between Houston and Beaumont[429]



The Board should preauthorize permanent, nonexclusive rights for CPKC to operate in both directions over the Houston Subdivision with its own crews, locomotives and equipment if Applicants discontinue directional running between Houston and Beaumont or change that operation so that it no longer preserves equivalent efficient and commercially effective CPKC access.[430] The grant should include the connections and incidental authority necessary for effective operation.

CPKC should be entitled to activate the preauthorized rights by filing and serving a supported notice under Section V.D identifying the operational change, its effect, satisfaction of the applicable trigger, and the proposed commencement date. The rights should become

429 Redd V.S. Figure 17.

430 Gameiro V.S. ¶ 138; *see also* Redd V.S. ¶ 162.

exercisable upon that notice, without a further Board merits determination. Discontinuance of directional running should itself satisfy the trigger. For modified directional operation, equivalent access should be assessed against a representative pre-merger directional-running baseline adopted under Section V, taking account of the existing and additional customer services authorized by the Board. The comparison should address transit time, reliability, capacity, train length, frequency, route mileage, terminal handling, crew requirements, operating cost, and access to covered customers, interchanges and onward routes. Any challenge to activation should receive expedited Board review without suspending exercise of the rights unless the Board grants a stay. The Board should retain authority to order necessary interim protection before activation where threatened impairment would cause material harm.

The general non-impairment protections described in Section VIII.B.2(b) should apply fully to CPKC's Houston Subdivision rights. Applicants should not be permitted to preserve those rights nominally while altering the Houston–Beaumont operating pattern in ways that materially diminish their practical, operational, or commercial utility. The condition also should cover changes implemented through a UP subsidiary, terminal affiliate, connecting carrier, dispatching arrangement, coordinated operating plan, or redesignation of routes within the Houston or Beaumont terminal areas if the practical effect is to terminate, narrow, or materially impair CPKC's Houston Subdivision rights. A material impairment should include any change that removes or restricts CPKC's use of the Houston Subdivision or a connection necessary to enter or leave the route, or otherwise materially diminishes the efficiency, reliability, or commercial utility of CPKC's service using those rights. Materiality should turn on CPKC's practical ability to exercise its Houston Subdivision rights and provide the services authorized by

the Board. Nominal preservation of an agreement or the availability of another route should not control that assessment.

Temporary changes needed for emergencies, infrastructure failures, safety or maintenance should require appropriate notice, coordination, documented nondiscriminatory requirements and prompt restoration. A temporary accommodation should not extinguish Houston Subdivision rights or substitute permanently for them. Prolonged or recurring deviations should receive expedited review and appropriate interim relief.

Applicants may seek to modify directional-running practices or other Houston–Beaumont corridor operations for legitimate operational reasons, but they should be prohibited from making changes that terminate, narrow, or materially impair CPKC's Houston Subdivision rights. Applicants should give CPKC and the monitor advance notice of planned operational changes capable of impairing protected service and promptly provide the records, data, and explanations reasonably requested. Alternative routes or operating arrangements should not substitute for preservation of CPKC's Houston Subdivision rights. Whether a change materially impairs CPKC's rights should be determined based on its practical effects, including CPKC's ability to provide the customer services authorized by the Board's other Gulf Coast conditions. Applicants should report any material change or extended deviation through the common service-assurance framework in Section V and provide CPKC and the Board the underlying train-level, capacity, dispatching, and performance data necessary to evaluate the change independently.

These protections and activated bidirectional rights should be permanent and bind Applicants and their successors and assigns. Unless affirmatively modified by the Board, they should survive formal oversight and any transfer or reorganization of the affected operation.

Resumption of directional running should not automatically terminate activated bidirectional rights. Accrued corrective-action and funding duties should also survive until fulfilled.

(f) The Requested Remedies Address Merger-Related Harm, Are Operationally Feasible, and Are Supported by Board Precedent

The conditions would preserve and improve existing rights, remove restrictions on otherwise accessible traffic, and provide the geographically limited dispatching relief specified in Section VIII.B.2(d). They would not transfer ownership, displace UP service, confer exclusivity, or guarantee traffic. UP would remain free to compete and apply legitimate, documented, generally applicable, and nondiscriminatory safety and operating requirements. CPKC's existing operations provide a feasible basis for implementing the service.[431] And the cost allocations in Section VIII.B.2(b) would distinguish independent incremental CPKC service from Applicants' maintenance and merger-capacity responsibilities.

The requested conditions are narrowly tailored to preserve and enhance competition threatened by the Proposed Transaction. They would preserve and improve rights CPKC already exercises, remove contractual restrictions that prevent CPKC from competing for traffic it can otherwise reach, and preauthorize a limited transfer of dispatching responsibility under Section VIII.B.2(d), exercisable on the commencement date specified in CPKC's supported notice satisfying the performance-based activation requirements adopted through Section V.C, including any applicable cure requirement. Once activated, a transfer should remain effective unless affirmatively stayed, modified, or suspended by the Board. These conditions would not transfer ownership of UP's lines, displace any UP service, confer exclusive rights on CPKC, guarantee CPKC any traffic, or prevent Applicants from moving their own trains. UP would

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431 Redd V.S. ¶¶ 155, 171-83, 187-92.

remain free to compete for every movement and to apply legitimate, documented, generally applicable, and nondiscriminatory safety and operating requirements. CPKC or the benefiting shipper may appropriately bear reasonable costs of facilities constructed principally for new CPKC service, while Applicants should remain responsible for ordinary maintenance and for capacity made necessary principally by their merger-related traffic or operating changes. CPKC's existing operations provide the basis for implementing the additional rights and handling additional traffic.[432]

Board precedent supports that approach. In *UP/MKT*, the ICC made negotiated access arrangements—including South End haulage rights convertible to trackage rights—a condition of approval. The Board later enforced the Term Sheet to preserve KCSR's ability to use those rights for qualifying traffic interchanged with CP operating affiliates after the *CP/KCS* combination.[433] In *UP/SP*, the Board coupled trackage and haulage rights with build-in/build-out, transload, contract-modification, dispatching, and directional-running protections necessary to make the replacement service commercially effective.[434] The Board specifically relied on additional rights that allowed BNSF to operate with the directional flow over parallel UP and SP routes rather than relegating it to an operationally inferior alternative.[435] In *CP/KCS*, the Board required pre-merger performance baselines, extensive reporting, Service Action Plans when service-performance thresholds were triggered, and an initial seven-year oversight period subject to extension, while retaining authority to impose supplemental relief if shared Gulf Coast

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[432] Redd V.S. ¶¶ 155, 171-83, 187-92.

[433] *See Union Pacific Corp.—Control—Missouri-Kansas-Texas R.R*, 4 I.C.C.2d 409, 452-58 (1988) ("*UP/MKT*"); *see UP/MKT*, Finance Docket No. 30800 (Sub-No. 22), slip op. at 2, 6-15 (STB served July 7, 2025).

[434] *See UP/SP*, 1 S.T.B. at 403-05, 408-09, 419-20.

[435] *See id.* at 404, 408.

operations deteriorated.[436] The requested access relief also advances the 2001 Major Merger Rules' express objectives of preserving gateway options and enhancing competition through operationally feasible conditions that produce net public benefits.[437]

3. Effective Gulf Coast Competition Requires Reciprocal Switching Within Defined Zones and Protected Victoria Industrial Lead Rights

(a) The Proposed Transaction Threatens to Harm UP Sole-Served Customers Along the Victoria–Robstown Corridor

Section VIII.B.2 preserves existing rights and grants specified traffic and local-service reforms over already-authorized trackage. Those reforms address traffic restrictions under those rights, including restrictions affecting facilities that can connect with CPKC's Rosenberg Subdivision. This Section addresses a related problem: customers within the Bloomington and Corpus Christi switching zones specified in Section VIII.B.3(b) remain served solely by UP and cannot receive effective CPKC service merely by modifying the traffic scope of CPKC's existing rights. For those facilities, the Board should require reciprocal switching on enforceable terms that allow CPKC to provide a commercially effective competing line-haul service. For covered facilities on or directly accessible from the Victoria Industrial Lead, CPKC also seeks reciprocal-switching access under Section VIII.B.3(c), with UP performing the local customer movements and CPKC transporting the traffic under its protected trackage rights.

CPKC is well positioned to provide a competitive line-haul alternative for traffic along this corridor.[438] CPKC's operations over the Victoria–Robstown segment connect with its own line at Victoria and its South Texas network at Robstown, allowing traffic to move north toward Houston, Beaumont, Shreveport, and eastern interchange partners or south toward Corpus

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436 *See CP/KCS*, Decision No. 35 at 89, 142-45.

437 *See* 49 C.F.R. § 1180.1(c)(2)(i), (iv), (d).

438 Redd V.S. ¶¶ 154-57, 167-80, 193-94.

Christi, Laredo, and Mexico.[439] Those operations form part of the broader network linking Mexico and South Texas with Houston, DeQuincy, Shreveport, the Meridian Speedway, and other North American markets.[440]

The existing UP sole-served facilities identified as examples in Section VIII.B.3(b) illustrate the competitive enhancement within the Bloomington and Corpus Christi switching zones. Those captive facilities have traffic for which CPKC could offer a formidable competitive alternative on its network or with its interchange partners.[441] With reciprocal switching access, CPKC's expected-case forecast indicates that by Year 3 steady-state it could handle approximately [redacted] annual loaded carloads in the Corpus Christi area. In the Victoria–Bloomington area, CPKC forecasts approximately [redacted]} annual loaded carloads. Across the two areas, the forecast comprises [redacted] newly handled and [redacted] extended-haul carloads.[442] Those estimates reflect CPKC's traffic history, customer RFPs, and assessment of specific customer facilities expected to ship by rail.[443] CPKC would pursue those opportunities through the access mechanism applicable to each facility, including reciprocal

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439 Redd V.S. ¶¶ 154-157, 176-80, 191.

440 Redd V.S. ¶¶ 118, 124-25, 154-57, 191.

441 Brooks V.S. ¶¶ 202-05.

442 The traffic estimates in this Comment illustrate traffic for which CPKC could compete if the requested conditions are granted and made effective; they are not guaranteed traffic awards. Unless otherwise stated, the estimates describe annual traffic in Year 3, the steady-state forecast year; Year 1 begins when the applicable condition becomes effective. The forecasts include traffic with origins or destinations in Mexico. Newly handled traffic is traffic CPKC does not handle today; extended-haul traffic already moves in part on CPKC and would move a longer distance on CPKC's network. The extended-haul forecasts assume that all existing CPKC traffic identified in that category would move to the longer CPKC haul if the applicable condition were granted. That modeling assumption does not guarantee that customers will select the longer CPKC routing; neither category necessarily represents new rail-industry traffic. Traffic discussed under more than one condition is counted only once when describing the combined opportunity. The competitive benefit also includes improvements in incumbent rates or service induced by a credible alternative. Brooks V.S. ¶ 205 & n.64; *id.* ¶¶ 203, 209.

443 Brooks V.S. ¶ 205 & n.64.

switching for customers covered by this subsection.[444] The resulting service alternative would strengthen customers' ability to obtain competitive rates and service.[445]

CPKC presently cannot offer competitive service to these nearby customers without access through UP's existing local-service and connecting-carrier interchange arrangements and an effective mechanism requiring UP to interchange the traffic with CPKC. The formal availability of CPKC's line-haul route therefore does not itself create competition. UP may seek to preserve its sole-service position by declining to switch the customer's traffic to CPKC, providing switching service too slowly or unreliably to support a competitive offering, failing to build usable CPKC blocks, imposing excessive charges or operating restrictions, or otherwise controlling local service in ways that make CPKC's line-haul alternative commercially ineffective.

The Proposed Transaction would increase UP's incentive to engage in precisely that conduct. For traffic connecting the Gulf Coast with NS's eastern network, the merged carrier could earn revenue over both portions of a new single-line movement, increasing its incentive to impair competing service involving CPKC. The merger would also increase its bargaining power over shippers whose facilities and traffic depend on both legacy networks. Effective reciprocal-switching access would give those customers a CPKC line-haul alternative that can constrain the combined carrier's rates and service without removing UP as an available carrier.[446]

The Proposed Transaction would also increase the risk that UP could impair CPKC's operations through its control of supporting infrastructure. UP dispatchers regularly route CPKC

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444 Redd V.S. ¶¶ 167-81.

445 Majure V.S. Vol. II ¶ 38.

446 Majure V.S. Vol. I ¶¶ 46, 61, 198-201; Vol. II ¶¶ 32, 35-38.

through trains over the Victoria Industrial Lead between Victoria and Bloomington to bypass congestion on the Cuero Subdivision and at Bloomington Yard. When UP dispatchers are unable or unwilling to permit that routing, CPKC trains often experience substantial congestion-related delays.[447] The Lead thus provides an important operating alternative when congestion affects CPKC's ordinary route, but CPKC's ability to use that alternative currently depends on UP's dispatchers permitting the movement.[448] To protect the availability of that alternative, CPKC seeks formal rights to use the Lead at its own option, as well as at UP dispatchers' option, when appropriate to maintain fluidity between Victoria and Bloomington.[449] The requested condition should secure that through-operation right and reciprocal-switching access to covered facilities on or directly accessible from the Lead. UP would perform the local customer movements, and CPKC would receive and deliver the resulting traffic at designated interchange points.

(b) Effective Competition Requires, at a Minimum, Competitive Access Through Reciprocal Switching for Covered Existing and Prospective UP Sole-Served Facilities

The Board should require Applicants to provide reciprocal switching between CPKC and all eligible existing and future UP sole-served facilities within the following defined switching zones: (1) the Bloomington switching zone, comprising the territory within a 35-mile radius centered on Bloomington Yard on the Brownsville Subdivision; and (2) the Corpus Christi switching zone, comprising the territory within a 35-mile radius centered on the Common Interchange Yard (Nueces River Yard) on the Corpus Christi Subdivision.[450]

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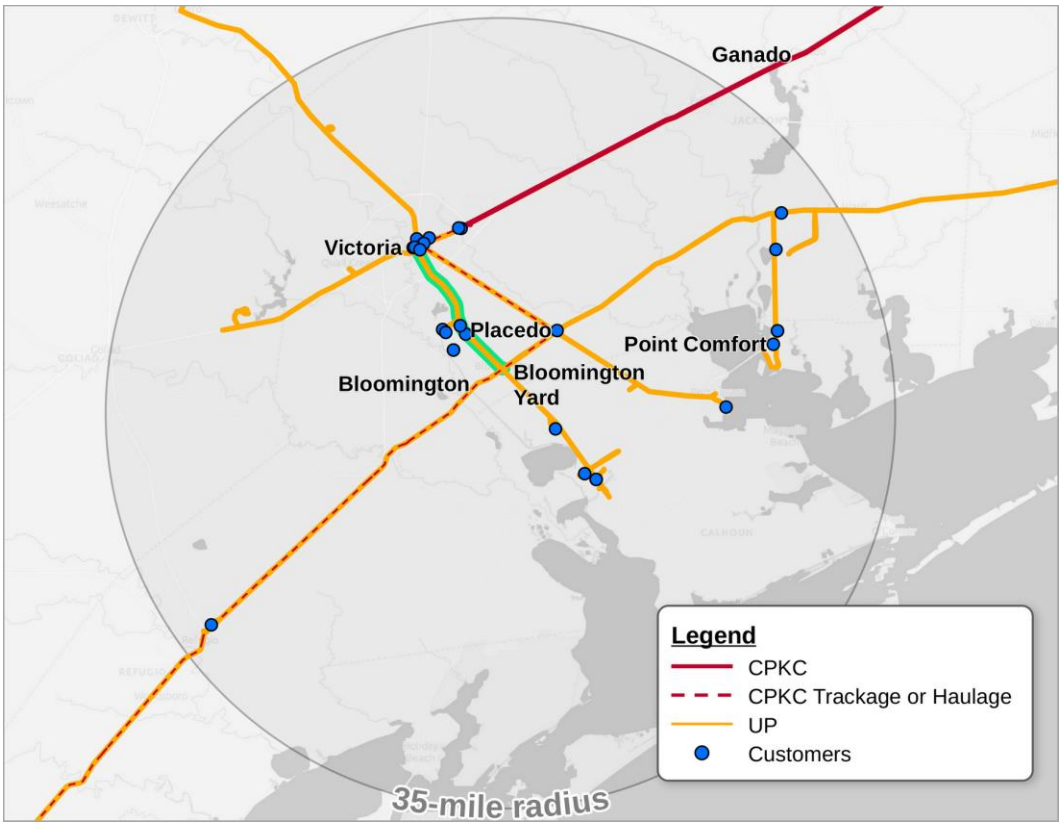
447 Redd V.S. ¶¶ 158-59.

448 Redd V.S. ¶¶ 158-59.

449 Redd V.S. ¶ 160.

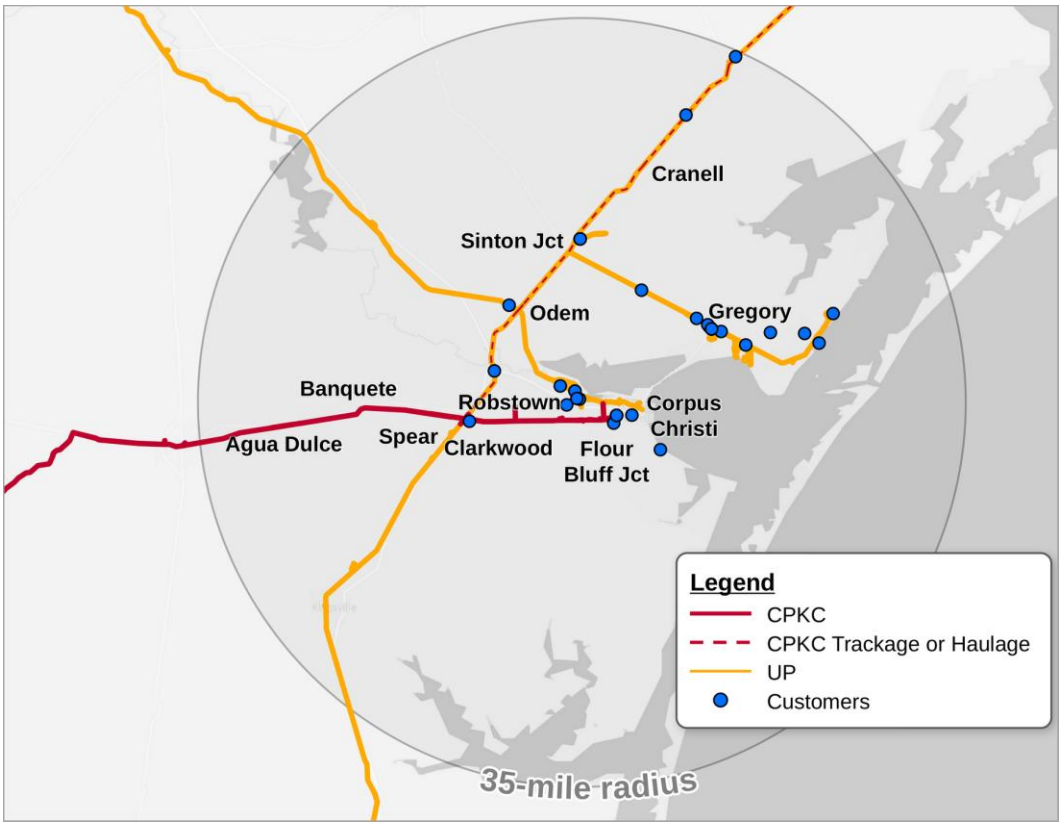
450 Gameiro V.S. ¶ 203.

Proposed Bloomington Reciprocal Switching Zone[451]



451 Redd V.S. Figure 18.

Proposed Corpus Christi Reciprocal Switching Zone[452]



Access at a covered physical facility should survive any change in name, ownership, or operator. This condition would allow CPKC to compete for traffic from covered UP sole-served facilities including but not limited to [redacted] within the Bloomington Yard reciprocal switching zone and [redacted] within the Corpus Christi reciprocal switching zone.[453]

UP would continue to use its existing local-service and interchange network, including its interchange with the Point Comfort & Northern ("PC&N") at Lolita on the Angleton Subdivision

452 Redd V.S. Figure 19.

453 Brooks V.S. ¶ 205.

for customers served by that shortline, to gather and distribute covered traffic, assemble usable CPKC blocks, and deliver them at an operationally reasonable interchange.[454] For the Victoria–Sinton service area, CPKC would exchange traffic at Bloomington Yard or another agreed location; for the Robstown–Sinton service area, it would use the existing Corpus Christi interchange.[455] For traffic handled under this reciprocal-switching condition, CPKC would provide the competing line haul while UP and the applicable connecting shortline would perform the local service. The same division of local switching and line-haul responsibilities should govern customer access under Section VIII.B.3(c). UP would receive reasonable switching compensation and remain free to compete for the entire movement.

Commercially Effective Service Standards. A nominal obligation to provide reciprocal switching would not remedy the merger-related harm if UP could provide service too slow, infrequent, unreliable, or operationally burdensome to support effective competition. The Board should therefore require UP to provide reciprocal switching on reasonable and nondiscriminatory terms under an implementing arrangement that:

1. establishes defined customer-service windows and switching and interchange frequency that scale reasonably with actual traffic;
2. requires prompt pickup, placement, acceptance, release, and interchange of CPKC traffic, including the assembly and delivery of complete, operationally usable CPKC blocks without unnecessary classification, handling, or route circuity;
3. requires sufficient crews, locomotives, yard capacity, and other local-service resources to perform the service reliably; and
4. provides CPKC timely operating, waybill, placement, release, and interchange information, reasonable notice of outages and material operating changes, and access to the data necessary to evaluate UP's performance and compare the treatment of CPKC traffic with that of comparable UP traffic.

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454 Redd V.S. ¶¶ 167-73, 175-80.

455 Redd V.S. ¶¶ 169-76.

Compliance should be measured through corridor- and customer-specific metrics addressing three principal dimensions of performance: customer-service timeliness and completion; interchange and block quality; and service frequency, resource availability, and nondiscriminatory treatment. Those metrics should include a comparison of the treatment of CPKC's traffic with that of comparable UP traffic.

The Board should establish and retain authority to adjust the detailed metrics, reporting intervals, performance thresholds, and any applicable cure periods through the technical process in Section V.C, informed by the customer-service considerations discussed there. The measures identified here should guide that process without exhausting the circumstances requiring protection. Failures should receive prompt enforcement and appropriate interim relief under Sections V.B and V.D to restore effective reciprocal-switching service.

Commercial Terms, Cost Allocation, and Contract Release. UP should be entitled to reasonable and nondiscriminatory compensation for performing reciprocal switching and related terminal services, but the structure and application of switching rates and any terminal, accessorial, or other charges should not nullify the competitive value of the access. Compensation, cost-allocation, and other implementing terms requiring agreement should be determined through Section V.B's 90-day good-faith negotiation process and mandatory expedited Board referral. Compensation should take account of the nature and cost of the reciprocal switching and related terminal services and should be established using customary reciprocal switching compensation principles. Interim service should remain available on reasonable provisional terms during negotiation and Board review.[456]

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[456] Gameiro V.S. ¶ 204.

Implementation costs should be allocated according to causation and principal economic benefit. UP should remain responsible for ordinary maintenance and renewal of the infrastructure it already uses to serve the covered facilities, while the switching compensation should account appropriately for the incremental local-service work required by the condition. CPKC or the benefiting customer may appropriately bear reasonable costs of customer-specific connections, facilities, or resources constructed principally to support new CPKC service. Applicants should fund capacity or other infrastructure made necessary principally by merger-related traffic or operating changes, and the costs of mixed-use projects should be allocated based on causation, use, capacity consumed, and economic benefit. Applicants should not be permitted to condition access on CPKC's or the customer's financing of infrastructure required principally to preserve UP's existing operation or accommodate Applicants' merger traffic.

Applicants should amend the governing agreements and provide the associated interchange and operating authority necessary for CPKC to transport traffic received or delivered under this condition over the complete authorized route, notwithstanding otherwise applicable prior-or-subsequent-haul, origin-and-destination, or equivalent traffic restrictions.

Customers made competitive through this condition should receive the customer-contract release in Section VI.A. Under Section VI.B, Applicants should amend or supplement the applicable switching, interchange, customer-track, and related operating agreements, execute any additional implementing instruments, and procure the assents necessary to provide the authorized switching service on the terms specified here. A new reciprocal-switching agreement should not be a prerequisite to service; the necessary operating protocols should be implemented under the existing arrangements as amended.

(c) Reliable Through Operations and Reciprocal-Switching Access Require Formalized and Protected Use of the Victoria Industrial Lead

A written agreement governs CPKC's use of the Victoria Industrial Lead. It permits UP, at its discretion and for operating convenience, to route CPKC trains over the Lead as necessary to maintain fluidity in the Victoria–Placedo–Robstown corridor, while UP maintains and operates the Lead.[457] [redacted][458] UP uses the Lead for CPKC bypass movements [redacted] and CPKC can incur substantial delay when that routing is not provided.[459] The existing agreement leaves those movements subject to UP's routing discretion. CPKC therefore seeks an enforceable right to elect through use of the Lead when operationally appropriate to maintain fluidity, subject to nondiscriminatory dispatching and safety requirements.[460] CPKC also seeks reciprocal-switching access to covered facilities on or directly accessible from the Lead, with UP performing the local customer movements and CPKC providing the competing line haul.

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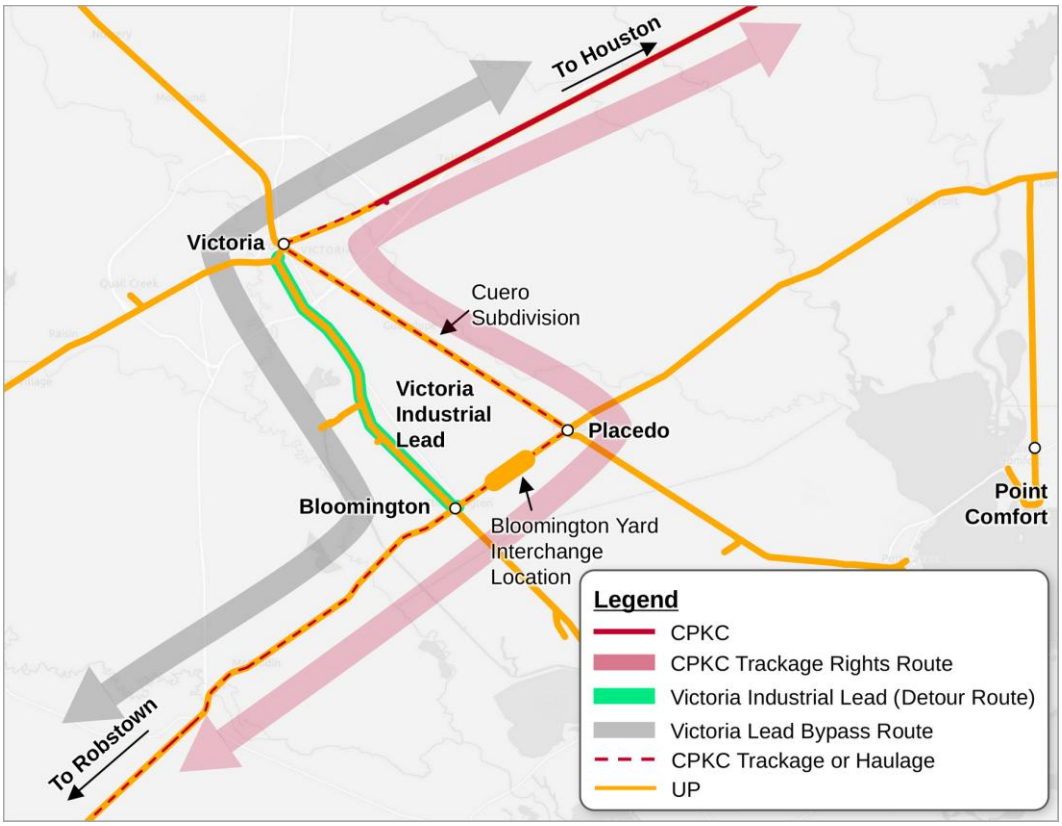
457 Gameiro V.S. ¶ 205 & nn.119-20.

458 Gameiro V.S. ¶ 205.

459 Redd V.S. ¶ 159.

460 Redd V.S. ¶ 160; Gameiro V.S. ¶ 206.

Victoria Industrial Lead Bypass of the Cuero Subdivision and Bloomington Yard[461]



The Proposed Transaction would increase both the need for and the vulnerability of that operating option. Additional merger-related traffic and resource demands could increase congestion or operating conflicts on CPKC's ordinary route. At the same time, UP would have a stronger anticompetitive incentive to keep more traffic on its extended lines by exercising its discretion to restrict CPKC's use of the Lead for competing services.[462] The existing arrangement thus does not provide sufficient protection for reliable current and future operations.

To preserve CPKC's current operations and enhance competition between Bloomington and Victoria, the Board should require Applicants, under Section VI.B, to amend or supplement all instruments related to CPKC's use of the Victoria Industrial Lead, and procure all necessary

461 Redd V.S. Figure 16.

462 *See* Majure V.S. Vol. I ¶ 46; Vol. II ¶¶ 35-36.

assents, to provide the durable trackage rights and reciprocal-switching access described below. Compensation for use of the Victoria Industrial Lead should be calculated using the current gross-ton-mile rates for trackage rights under the agreements governing the Cuero Subdivision.[463] The implementing changes should preserve other beneficial rights and conform maintenance, capacity, and cost responsibilities to the applicable conditions.

Scope and Protection of the Victoria Industrial Lead Rights. The Board should require UP to grant CPKC durable, nonexclusive rights to operate with CPKC crews and locomotives over the Victoria Industrial Lead between Bloomington and Victoria for through train operations and to transport traffic received or delivered through reciprocal switching for covered facilities on or directly accessible from the Lead.[464] UP should perform the local customer pickups and deliveries and assemble the traffic for interchange with CPKC. CPKC's rights should include the pickups, setouts, interchange, and connecting and incidental operations necessary to receive and deliver those blocks and transport the resulting traffic. Applicants should provide or procure the operating authority and assents necessary to implement the authorized through operations and reciprocal-switching access under Section VI.B.

The through-operation rights and reciprocal-switching access should take effect without requiring a prior service failure. CPKC should be permitted to elect through use of the Lead when operationally appropriate to maintain fluidity, subject to nondiscriminatory dispatching and safety requirements. Reciprocal-switching access to covered facilities should not depend on congestion elsewhere or on UP's discretionary authorization of a bypass movement.[465]

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463 Gameiro V.S. ¶ 207.

464 Gameiro V.S. ¶¶ 205-06; Redd V.S. ¶¶ 158-60.

465 *See* Redd V.S. ¶ 159.

Applicants should be prohibited from directly or indirectly terminating, narrowing, obstructing, or discriminatorily administering that access. The prohibition should cover dispatching and train-priority treatment, operating restrictions, maintenance and work-window practices, outage notice, access to necessary operating information and facilities, compensation, and any other conduct that materially diminishes the practical, operational, or commercial utility of the rights. It should also bind any successor, affiliate, lessee, or operator and apply notwithstanding any redesignation or transfer of the track. It should allow legitimate, documented, generally applicable, and nondiscriminatory safety restrictions. Any emergency or maintenance restriction should last only as long as reasonably necessary to address the underlying condition and should be accompanied by prompt notice and an expected restoration schedule.

Jurisdiction. UP may contend that the Victoria Industrial Lead constitutes industrial or spur track exempted from the Board's ordinary licensing requirements under 49 U.S.C. § 10906. The Board has authority to grant the requested relief regardless of how it classifies the line.

The Victoria Industrial Lead should be treated as a railroad line within the meaning of 49 U.S.C. § 11323(a)(6). The Board determines whether track is a railroad line or excepted track through a case-specific inquiry that focuses principally on the track's actual and intended use and also considers its physical characteristics.[466] Track used for loading, unloading, storage, classification, or switching incidental to train movements ordinarily falls within 49 U.S.C. § 10906.[467] UP regularly routes CPKC through trains over the Victoria Industrial Lead—[redacted]

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466 *See New York City Economic Development Corp.—Petition for Declaratory Order*, 7 S.T.B. 756, 760-62 (2004).

467 *See id*. at 761. For an acquisition of trackage rights, the inquiry focuses on the use to be made of the track by the acquiring carrier. *See Brotherhood of Locomotive Engineers* v. *United States*, 101 F.3d 718, 727-28 (D.C. Cir. 1996).

[redacted]—as an alternative route between Victoria and Bloomington that bypasses congestion on the Cuero Subdivision and at Bloomington Yard.[468] CPKC thus uses the Lead to carry through trains between established network points. CPKC's existing and proposed use of the Lead for through movements between Victoria and Bloomington supports treating the requested rights as trackage rights over a railroad line under 49 U.S.C. § 11323(a)(6). The requested rights would preserve this through-route function while also permitting CPKC to transport traffic received or delivered through reciprocal switching, with UP performing the local customer pickups and deliveries. The customer-access component would remain available independently of whether congestion requires use of the Lead as a bypass.

Even if the Board concludes that the Lead falls within 49 U.S.C. § 10906, that classification would exempt the access arrangement from ordinary licensing without placing the operation wholly outside the Board's jurisdiction. The Board would be authorized to—and should—condition approval of the Proposed Transaction under 49 U.S.C. § 11324(c) on UP's execution and maintenance of an enforceable agreement providing the same substantive access. That agreement should bind UP and any successor, affiliate, lessee, or operator for so long as UP and NS remain under common control. Under either classification, the result should be the same: UP must provide and may not withdraw or discriminatorily restrict CPKC's trackage rights and reciprocal-switching access over the Lead, together with the incidental rights necessary to exercise them, as protected by the Board's condition.

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468 Redd V.S. ¶ 159.

(d) The Customer-Access and Victoria Industrial Lead Conditions Address Merger-Related Harm, Are Feasible, and Are Supported by Board Precedent

The requested conditions are narrowly tailored to the merger-related harms identified above. Under the reciprocal-switching remedy, UP and the applicable connecting shortline would continue their existing local-service roles, with UP providing the interchange and blocking needed for CPKC's line-haul service and receiving reasonable compensation. UP would remain free to compete for the entire movement, while CPKC would compete for the line haul. The Victoria Industrial Lead condition would secure durable trackage rights for through operations and transportation of covered customer traffic received or delivered through reciprocal switching, without transferring ownership of the Lead. Those rights would preserve an important operating alternative and permit CPKC to compete for the line haul while UP performs the local customer movements. These remedies would confer no exclusivity or guaranteed traffic and would build on existing CPKC corridor operations, UP local service, and South Texas interchange infrastructure.

CPKC's existing train network and South Texas interchange arrangements provide a concrete basis for implementing the requested access. CPKC's existing operations include daily U.S.–Mexico service, on-demand bulk trains, and local service between Kendleton and PTRA North Yard three days per week.[469] The operating plan would integrate the additional traffic into existing manifest services and Corpus Christi-area interchange arrangements, with new or improved facilities where necessary to support Bloomington interchange.[470] At Bloomington, CPKC proposes siding and crossover improvements to increase capacity while keeping a through

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469 Redd V.S. ¶¶ 156-58.

470 Redd V.S. ¶¶ 171-80, 191-92.

route open. UP should be required to cooperate with CPKC in designing and installing the improvements without unreasonable resistance or delay, with costs allocated under the principles above.[471]

The requested access relief also advances the 2001 Major Merger Rules' express objectives of preserving customer routing choices and enhancing competition through operationally feasible conditions that produce net public benefits.[472] The competitive-access requests rejected in *CP/KCS*, decided under the pre-2001 merger rules, are distinguishable from the tailored relief sought here. There, the Board rejected generalized competitive-access requests because they sought broad relief for longstanding concerns, identified no specific transaction-related harm, and did not demonstrate that the transaction would cause service failures warranting the requested conditions.[473] The Board separately rejected a request for UP access to a Corpus Christi facility as addressing a preexisting access issue, noting that UP had never had access to the facility and that the facility was not then actively shipping by rail.[474] Here, by contrast, CPKC has identified defined switching zones with supporting customer examples, an existing CPKC line-haul route, the merger-created change in UP's incentives, a concrete operating arrangement, and enforceable service and nondiscrimination requirements.

4. Effective Houston Competition Requires Lifting Paper Barriers and Ensuring Commercially Effective, Nondiscriminatory PTRA and HBT Access

PTRA and HBT perform distinct but complementary roles in the Houston rail complex. PTRA serves Houston-area shippers and interchanges their traffic with CPKC at PTRA's North

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471 Redd V.S. ¶¶ 174-75 & n.55.

472 49 C.F.R. § 1180.1(c)(2)(i), (iv), (d).

473 *See CP/KCS*, Decision No. 35 at 84-85.

474 *See id.* at 85-86.

Yard.[475] CPKC also operates over HBT trackage for its through service between Rosenberg and Beaumont and has access to specified HBT customers granted in the Board's decision approving the *UP/SP* merger.[476] For those customers, the contemplated local service would be provided through switching by UP or BNSF, as applicable.[477]

Restrictions governing CPKC's Rosenberg-Beaumont rights prevent CPKC from handling certain Houston traffic for customers to which it already has access through PTRA or HBT.[478] The prior/subsequent-haul requirement prevents CPKC from competing for that traffic unless it also moves over CPKC's Corpus Christi–Laredo route.[479] As discussed above, CPKC seeks modification of that traffic restriction.

Removing the restrictions would permit CPKC to compete for additional traffic at Houston-area facilities it already can access, using its own network and those of its interchange partners. CPKC's forecast identifies an opportunity to compete for a significant amount of traffic—approximately [redacted] annual loaded carloads in Year 3 (including [redacted] loaded carloads newly handled by CPKC and [redacted] loaded carloads for which CPKC would provide a longer haul) from expanded traffic eligibility and effective PTRA access. Under that forecast, the newly handled traffic consists mainly of chemicals and plastics moving between Houston Ship Channel plants and CPKC-served points in Canada and the Midwest.[480] The relief would allow CPKC to compete for PTRA traffic moving between Houston and other points on

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475 Redd V.S. ¶¶ 155, 185.

476 Redd V.S. ¶¶ 155, 184, 190.

477 Redd V.S. ¶ 190.

478 Redd V.S. ¶¶ 155, 184, 190.

479 Redd V.S. ¶¶ 167, 185-86.

480 Brooks V.S. ¶¶ 203, 208.

CPKC's network, rather than being limited to Corpus Christi and Mexico.[481] The resulting alternative could also improve the negotiating position of customers that continue to use UP–NS.[482] Accordingly, pursuant to Section VI.B., the Board should require Applicants to amend all applicable trackage-rights and terminal instruments to remove the qualifying-haul and related traffic-eligibility restrictions that prevent CPKC from using that existing interchange authority for traffic permitted by the Board's conditions.

CPKC anticipates adapting its existing operating framework to handle additional PTRA and HBT traffic moving between Houston and points north. For PTRA traffic, local Train M75 would operate between Kendleton and PTRA's North Yard, with CPKC's northbound manifest trains carrying the traffic into its network. Kendleton Yard has capacity to handle the additional traffic, and Train M75 could accommodate considerable additional volume. As volumes increase, CPKC anticipates increasing M75's operating frequency.[483]

Initially, CPKC would pick up and deliver all traffic to and from PTRA and sort northbound and southbound traffic at Kendleton. As volumes grow, CPKC anticipates that PTRA would build separate northbound and southbound blocks, consistent with PTRA's existing practice of building multiple blocks for UP. CPKC understands that PTRA has sufficient capacity and is willing to perform this work if CPKC obtains the right to move PTRA traffic northbound. Depending on longer-term volume growth, CPKC anticipates working with PTRA to build full trains that CPKC would power, crew, and launch from PTRA's North Yard.[484]

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481 Brooks V.S. ¶¶ 202, 208.

482 Brooks V.S. ¶ 209; *see* Majure V.S. Vol. I ¶¶ 29, 33.

483 Redd V.S. ¶¶ 185-87.

484 Redd V.S. ¶¶ 188-89.

Even after removal of the contractual restriction, reliable switching, blocking, and interchange are necessary to make those commercial opportunities effective.[485] UP's operating role in Houston, including its role in operating HBT and providing the contemplated switching service to former HBT customers, gives it the ability to affect those movements.[486] To implement the expanded traffic eligibility, Applicants should be prohibited from using any rights or authority they hold with respect to PTRA or HBT to terminate, narrow, obstruct, or discriminatorily administer CPKC's existing or Board-authorized access. For comparable movements, CPKC's service performance should be at least comparable to Applicants' performance, taking account of legitimate operational differences. Compliance with that comparative obligation should not excuse failure to meet an applicable minimum service requirement under Section V. Those protections should apply to the switching, blocking, interchange, and related terminal functions necessary to make the authorized access commercially effective. Applicants should be required to comply with the condition through their own operations and to cause each entity they control to comply. In their dealings with PTRA and HBT, Applicants should exercise any rights or authority they hold consistently with the condition, refrain from sponsoring or supporting discriminatory treatment, and take all actions within their authority necessary to implement the Board-ordered access.

The prohibition should also reach indirect circumvention. Applicants should not route, classify, stage, or exchange CPKC traffic in a manner that imposes unnecessary handling, delay, or cost relative to comparable competing traffic, or shift a covered function to HBT, an affiliated yard, or another terminal entity in a manner that evades or materially diminishes the Board-

485 *See* Redd V.S. ¶¶ 102, 187-90; *see* Brooks V.S. ¶¶ 172-75.

486 *See* Redd V.S. ¶¶ 155, 190.

ordered access. Any material change sponsored or supported by Applicants that is reasonably likely to impair the access or service established by the Board should require Applicants to provide advance notice, disclose the supporting operational data, and consult with CPKC. Applicants' compliance with these access and nondiscrimination obligations should be enforced through the common service-assurance framework in Section V.

If the PTRA Agreement terminates, PTRA ceases operations, or any facility served by PTRA comes to be served by UP, HBT, or another UP-NS entity, Applicants should be required to grant or cause to be granted to KCSR trackage, haulage, or reciprocal-switching rights sufficient to reach the PTRA-served facilities KCSR could reach through PTRA immediately before the relevant event, on terms no less favorable than those in effect under the PTRA Agreement.[487]

The requested PTRA and HBT conditions complement the traffic-scope relief described in Section VIII.B.2(c). That Section would authorize CPKC to handle otherwise eligible Houston traffic. The conditions requested here would prevent Applicants from using their ownership, governance, contractual, or operating rights to nullify that authority through discriminatory conduct. The relief would not transfer ownership or control of PTRA or HBT, confer exclusive rights on CPKC, or guarantee CPKC any traffic. It would apply only to traffic and facilities CPKC is otherwise authorized to access, as that authority is modified by the conditions imposed in this proceeding, and would leave UP and other carriers free to compete for every movement. Under the contemplated operating plan, the applicable terminal or local serving carrier would continue to perform the relevant services and receive reasonable compensation, subject to the PTRA continuity protection described above.

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487 Gameiro V.S. ¶ 170.

The relief requested here aligns with Board precedent and advances the Major Merger Rules' gateway-preservation and competition-enhancement objectives.[488] In *UP/SP*, the Board granted Tex Mex specified main-line, terminal, and interchange rights, together with operating protections needed to make those rights effective.[489] The rights, however, remained subject to the prior-or-subsequent-movement restriction, which the Board declined to remove in the subsequent Houston/Gulf Coast oversight proceeding.[490]

The present request addresses the additional competitive harm from combining UP with NS. NS would cease to be an independent eastern interline partner, and UP would gain the ability to retain an eastern haul within the combined network for traffic that could otherwise move over a competing interline route. That change would increase UP's incentive to use Houston traffic restrictions, switching, blocking, or interchange arrangements to divert traffic from CPKC and its independent connections to the combined UP-NS network.[491] Removing the identified traffic restrictions and prohibiting Applicants' discriminatory interference with CPKC's existing or Board-authorized PTRA/HBT access would give customers access to those competing offerings through the operating rights and facilities CPKC already uses. The Board should prescribe the implementation and enforcement requirements needed to make Applicants' access and nondiscrimination obligations effective, without transferring control of Houston terminal operations to CPKC.

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488 49 C.F.R. § 1180.1(c)(2)(i), (iv), (d).

489 *UP/SP*, 1 S.T.B. 591, 596-98, 607-09, 620-21 (1996).

490 *Id.* at 609-12 & n.30; *UP/SP – Houston/Gulf Coast Oversight*, Finance Docket No. 32760 (Sub-No. 26), Decision No. 10, slip op. at 17-18 & n.28 (STB served Dec. 21, 1998).

491 *See* Gameiro V.S. ¶ 166; *see* Brooks V.S. ¶¶ 172-74.

5. Effective Competition Near Baton Rouge Requires Access to Covered UP Sole-Served Facilities West of the Mississippi River

(a) The Proposed Transaction Would Increase UP's Ability and Incentive To Foreclose Competition for Baton Rouge and West Bank Traffic

The Baton Rouge and West Bank corridor contains a substantial concentration of chemical and plastics facilities served solely by UP.[492] CPKC already has an operating presence in Baton Rouge, including an established yard and line-haul service north to Shreveport and south to New Orleans, but lacks the competitive access requested here for those West Bank facilities.[493] This condition concerns competitive access to all eligible existing and future UP sole-served facilities on or reached through the West Baton Rouge route defined in Section VIII.B.5(b).

CPKC could offer competitive service for traffic at UP sole-served facilities in this area, including [redacted], by linking them to its network in the Midwest and Canada and to eastern markets through interchange connections.[494] CPKC estimates that shipper access at Baton Rouge could support a competitive opportunity for approximately [redacted] annual loaded carloads at Year 3 steady state, comprising [redacted] newly handled carloads and [redacted] extended-haul carloads, gathered at its Baton Rouge yard.[495] CPKC would use its existing Baton Rouge operations and line-haul network, with UP initially performing the customer switch and delivering usable CPKC blocks.[496]

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492 Brooks V.S. ¶¶ 210-11.

493 Redd V.S. ¶¶ 195, 203-206; Brooks V.S. ¶ 211.

494 Brooks V.S. ¶¶ 210-11.

495 Brooks V.S. ¶ 210 & nn.73-75.

496 Redd V.S. ¶¶ 195-98, 203-05.

The Proposed Transaction would make that preexisting access limitation materially more restrictive. UP already controls the local-service network, classification functions, customer switching, and routing decisions affecting the UP-only facilities in the corridor.[497] Once it acquires NS, UP would also control NS's eastern network and would capture a larger share of the revenue when Baton Rouge traffic remains on the combined UP–NS system.[498] UP would therefore have a stronger financial incentive to preserve its sole-service position at the customer facility and prevent CPKC from obtaining the traffic density necessary to support competing line-haul service.[499]

Traffic made available to CPKC through reciprocal switching could move through Shreveport toward the Midwest, Canada, or Mexico, or through New Orleans and connecting-carrier routes to other destinations.[500] Eastbound traffic from the eligible Baton Rouge facilities could also move over independent interline routes, including routes connecting with CSXT at New Orleans or Myrtlewood, providing an interline alternative to UP-NS line-haul service.[501] By contrast, traffic retained by UP could move over a combined UP–NS route or another UP-controlled routing. The Proposed Transaction would therefore combine UP's control of local customer access with a greater economic interest in determining the line-haul network over which that traffic moves.

The competitive benefit would extend beyond traffic CPKC ultimately wins. A credible CPKC line-haul alternative would strengthen the covered shippers' bargaining position and

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497 Redd V.S. ¶¶ 195-98.

498 Majure V.S. Vol. I ¶ 46; Vol. II ¶¶ 41, 43.

499 Majure V.S. Vol. I ¶¶ 46, 61; Vol. II ¶¶ 41-43.

500 Brooks V.S. ¶¶ 210-11; Redd V.S. ¶¶ 156, 203-06.

501 Brooks V.S. ¶ 211.

could induce UP–NS to improve its rates or service, including for traffic those shippers continue to award to UP–NS.[502] Conversely, if UP controls both access to the customer facility and the relevant post-merger line haul, those customers may lack a meaningful competitive alternative with which to discipline UP's rates or service.[503]

Applicants might claim that the relief is unnecessary because the covered facilities were captive to UP before the merger. But the harm extends beyond the preexisting absence of CPKC access. The merger would extend that local monopoly with NS's eastern network, realign UP's incentives against independent routes involving CPKC, increase the value to UP of preventing CPKC from developing competitive Baton Rouge services, and strengthen the ability of one carrier to determine which networks Baton Rouge shippers may use.[504] Under the Board's current major-merger rules, conditions may enhance—not merely preserve—competition where necessary to offset merger-related harms that would otherwise remain unmitigated.[505]

(b) Effective Competition Requires, at a Minimum, Competitive Access Through Reciprocal Switching for Covered Existing and Prospective UP Sole-Served Facilities

The Board should require UP to provide reciprocal switching between CPKC and all eligible existing and future UP sole-served facilities within a reciprocal switching zone that encompasses all shipper facilities on or reached through the West Baton Rouge route extending from Lobdell to Addis over the Avoyelles Subdivision alignment and necessary connecting trackage at Addis, and continuing south over the Livonia Subdivision to MP 79.7, including the siding and industrial trackage along that route and the customer leads and connections necessary

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502 Brooks V.S. ¶ 208; Majure V.S. Vol. II ¶ 45.

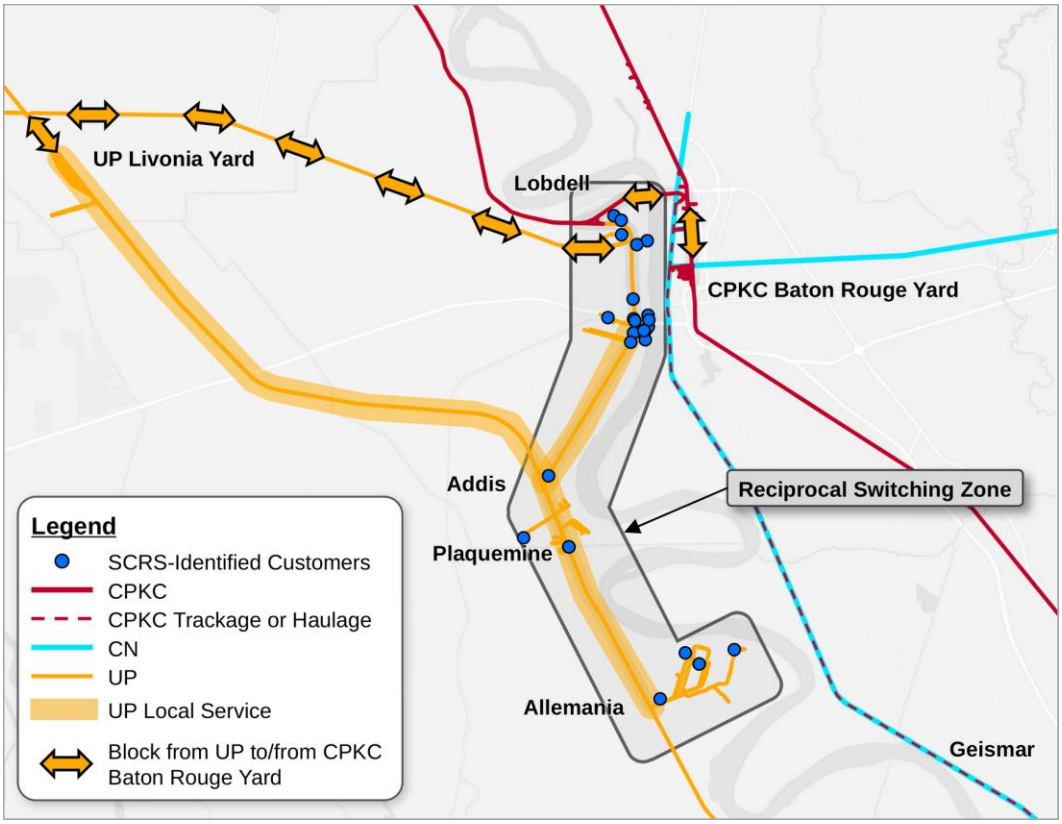
503 Majure V.S. Vol. I ¶¶ 61, 69, 95; Vol. II ¶¶ 41, 43, 45.

504 Majure V.S. Vol. I ¶¶ 46, 61, 190-99; Vol. II ¶¶ 41, 43, 45.

505 49 C.F.R. § 1180.1(c), (d).

to reach the covered facilities. Eligibility should turn on whether an existing or future UP sole-served facility falls within the reciprocal switching zone described above, rather than on its inclusion in a customer list or traffic forecast.[506]

Proposed West Baton Rouge Reciprocal Switching Territory Along the Lobdell–Addis and Livonia Route[507]



For covered traffic, UP would remain the local serving carrier. UP would perform the customer pickup and placement, assemble CPKC traffic into operationally usable blocks, and deliver those blocks to CPKC at its Baton Rouge Yard. The access should extend to all carload traffic that the shipper elects to route over CPKC. For example, even if a shipper with a covered facility like [redacted] might support Board approval of the Proposed Transaction, the

506 Gameiro V.S. ¶ 196.

507 Gameiro V.S. Figure 16.

requested condition would leave that shipper free to choose UP while making an additional competitive option available. Likewise, even for a shipper that currently has favorable terms with UP, a credible CPKC alternative could strengthen its position when negotiating future rates, including if it ultimately keeps its traffic on UP.[508] Indeed, [redacted].[509]

These examples should not limit eligibility within the reciprocal switching zone described above. Every eligible existing or future UP sole-served facility within that zone should receive the same access. Common ownership alone should not extend access to an otherwise uncovered facility. Applicants should not be permitted to defeat a covered facility's access by changing its station designation, serving yard, local-service assignment, classification point, routing, or operating plan. Changes in a covered facility's name, ownership, or operator should not terminate this access. Disputes concerning facility identification or implementation should receive expedited Board resolution under Section V.B.

The new access should supplement CPKC's existing Baton Rouge-area reciprocal-switching rights without narrowing or displacing them. Under Section VI.B, Applicants should be required to amend or supplement the applicable UP–CPKC switching, interchange, customer-track, and related operating agreements, execute any additional instruments, and procure the assents necessary to provide the authorized switching service and contingent direct access. Inconsistent traffic, interchange, and operating restrictions should be removed or waived to the

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508 Brooks V.S. ¶¶ 209, 211.

509 Brooks V.S. ¶ 211.

extent necessary to implement these rights. The covered customers should also benefit from Section VI.A's global contract-release condition.

(c) Effective Switching Requires Workable Interchange, Blocking, Service, Capacity, Compensation, and Enforcement Terms

To make the requested access meaningful, UP should be required to perform the customer pickup and placement, assemble CPKC traffic into operationally usable blocks, handle the traffic through Livonia, and deliver those blocks to CPKC at its Baton Rouge Yard, with corresponding arrangements for traffic moving in the opposite direction. That arrangement would build on UP's existing Livonia-based local service. UP already assembles CPKC interchange blocks at Livonia Yard for delivery to CPKC's Baton Rouge Yard.[510] CPKC would then provide the competing line haul using its existing manifest services.[511]

The service should meet the agreed ISA window and frequency, currently 1300–1700 seven days per week, or a replacement window and frequency mutually agreed by CPKC and UP.[512] Negotiation of a replacement window or frequency should proceed under Section V.B, with unresolved terms referred for expedited Board resolution. The existing window and frequency should remain effective unless replaced by agreement or Board order. UP should provide the service on reasonable and nondiscriminatory terms.

The compensation and cost-allocation principles in Section VIII.B.3(b) should also govern West Baton Rouge switching, including protection against charges that nullify competitive access and the allocation of ordinary maintenance, customer-specific, merger-related, and mixed-use costs. Compensation should take account of the nature and cost of the

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510 Redd V.S. ¶¶ 196-98.

511 Redd V.S. ¶¶ 203-06; *see* Gameiro V.S. ¶ 197.

512 Gameiro V.S. ¶ 200.

reciprocal switching and related terminal services and should be established using customary reciprocal switching compensation principles.[513] Switching rates, accessorial charges, operating requirements, and interchange practices should not be structured or applied in a manner that nullifies the competitive value of the access.

The Board should adopt performance standards that ensure UP provides dependable reciprocal switching for traffic in CPKC's account between the covered customer facilities and CPKC's Baton Rouge Yard. Those standards should address timely pickup after cars become available at customer facilities or CPKC's yard; pickup and delivery windows and frequency at Baton Rouge Yard; timely completion of the required movements; and compliance with blocking protocols, including separation of northbound and southbound traffic upon delivery.[514] The standards should include UP's compliance with the applicable ISA window and frequency and should be developed through the technical conference under Section V.C.[515] Failure to satisfy an applicable Board-adopted standard under Section V.C's 30-day measurement and 30-day cure framework should permit CPKC to activate the preauthorized direct-access rights under Section VIII.B.5(d) by supported notice under Section V.D, subject to the other requirements stated there. The existing ISA obligations should remain independently enforceable, and no escalation threshold should excuse an individual failure. Once the adopted activation requirements are satisfied, activation should not require a further Board merits determination. Other individual material failures, or repeated failures that collectively materially impair effective switching,

513 Gameiro V.S. ¶ 198.

514 Gameiro V.S. ¶ 200.

515 Gameiro V.S. ¶ 200.

should continue to support direct access under the separate substantive ground and any applicable cure requirement.

(d) To Sustain Effective Competition, Springing Direct-Access Rights Are Required to Address Potential Reciprocal Switching Failures

Reciprocal switching should serve as the initial remedy because it can introduce competition while continuing to use UP's existing local-service operation. But CPKC and affected customers should not remain dependent on UP-provided switching that proves commercially or operationally ineffective. The Board should therefore preauthorize nonexclusive direct operating rights over additional UP track necessary to connect the facility with CPKC's network, exercisable at CPKC's election upon satisfaction of the performance-based activation requirements adopted through the process described in Section VIII.B.5(c) or, under the separate substantive requirements below, a qualifying failure of UP-provided reciprocal switching to support effective competition.[516] The preauthorized routes should also include UP's Livonia Subdivision trackage beyond Allemania to the extent reasonably necessary for headroom, runaround movements, and other incidental operations needed to serve the covered facilities.[517] Exercise under either ground should begin upon supported notice under Section V.D, without a further Board merits determination.

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[516] Gameiro V.S. ¶¶ 199-202.

[517] Redd V.S. ¶ 199; Gameiro V.S. ¶ 202.

Proposed Contingent CPKC Direct Access to West Baton Rouge Facilities[518]



Upon satisfaction of the triggering conditions adopted through Section V.C, CPKC should be entitled to activate the preauthorized direct-access rights by written notice identifying the qualifying failures and supporting records, covered facility or facilities, authorized route, and commencement date. Satisfaction of the adopted requirements should establish the service-failure predicate without a further Board merits determination or requirements beyond those adopted for that trigger. Applicants' objection should not suspend activation unless the Board grants a stay; disputes should receive prompt resolution under Section V.B without reopening the merits of the grant. The approval order and advance implementing arrangements should establish the route and necessary operating, safety, and qualification prerequisites. Applicants

518 Redd V.S. Figure 22.

should complete the arrangements within their control and should not use unresolved implementation matters to delay exercise of the rights.

For failures outside the adopted objective performance-based trigger, CPKC should remain entitled to activate the preauthorized direct-access rights by notice under Section V.D when UP-provided switching fails to support effective competition under the requirements below, following notice of the failure and a 30-day opportunity to cure. Where that ground rests on measured service performance, Section V's 30-day measurement period should also apply.[519] An individual material failure, or repeated failures that collectively materially impair effective switching, should satisfy that separate activation ground. Applicants may challenge the notice and seek expedited Board review or a stay, but an objection should not suspend activation or continuing exercise. Discriminatory terms should qualify where they prevent a commercially and operationally credible CPKC alternative; a trivial uncured defect should not independently activate that separate ground. Compliance should be measured against nondiscrimination and independent service duties, without fresh proof of merger causation for each breach. Interim switching, operating accommodations, or temporary direct access should remain available where the Board finds them necessary to prevent material harm.

Compensation for the contingent direct-access rights should be the same as the current gross-ton-mile rate UP pays for utilizing CPKC's DeQuincy–Beaumont line.[520] Compensation should be reasonable and nondiscriminatory and should not be structured or applied in a manner that nullifies the competitive value of the access. Applicable cost allocation and documented, nondiscriminatory safety and qualification requirements should apply.

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519 Gameiro V.S. ¶ 201.

520 Gameiro V.S. ¶ 202.

The Board should require UP and CPKC to negotiate the implementing terms pursuant to the procedures in Section V.B. Once the direct-access rights are activated, the standards adopted under Section V.C should protect timely admission of CPKC trains offered and ready to proceed from appropriate staging points, reliable transit, and nondiscriminatory dispatching over the authorized route. Those terms should address dispatching and train priority; operating rules and restrictions; access to necessary tracks, connections, and facilities; crew qualification and initial pilot arrangements; maintenance and outage coordination; operating information and emergency communications; liability, indemnification, and insurance; and compensation and cost allocation. The necessary instruments and arrangements should be completed in advance under Sections V.D and VI.B. Any implementing terms remaining unresolved at the end of Section V.B's 90-day negotiation period should be submitted for expedited Board determination, including appropriate interim terms, without reopening the substantive grant. Activation should not begin a new period for negotiating those terms, and UP should not delay exercise of the rights by withholding execution of an instrument embodying agreed or Board-prescribed terms.

UP should provide the access, information, and reasonable cooperation necessary for CPKC to qualify its supervisory train and engine personnel on the authorized route. CPKC should then be permitted to qualify additional personnel through its qualified supervisory personnel, consistent with applicable safety and qualification requirements. Once the CPKC personnel assigned to an operation satisfy those requirements, UP should not require an additional UP pilot or operating crew.[521]

The grant should be proportionate to the demonstrated failure. A failure affecting one covered facility might require rights only over the track necessary to reach it; failures affecting

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[521] Gameiro V.S. ¶ 202.

more than one covered facility may justify a broader connecting segment. The approval order and implementing instruments should designate in advance the routes available under both the adopted objective performance-based trigger and the separate switching-failure grounds. Those routes should include the route and associated trackage described in Section VIII.B.5(b), together with the customer leads and other connections necessary to reach the covered facilities, including any necessary portion of the Anchorage Subdivision. CPKC's activation notice should identify the affected covered facility or facilities and the corresponding preauthorized route. Any authority outside the preauthorized routes should require an additional Board order, without enlarging the customer scope established in Section VIII.B.5(b). Once activated, the rights should remain exercisable unless affirmatively stayed, modified, or suspended by the Board. The rights and supporting obligations should survive formal oversight, service restoration, and track transfer. Accrued corrective-action and funding duties should survive until fulfilled.

(e) The Requested Remedies Address Merger-Related Harm, Are Operationally Feasible, and Are Supported by Board Precedent

The West Baton Rouge condition is tailored to use UP's existing local service initially, with reasonable compensation and CPKC competition for the line haul. The direct-access fallback in Section VIII.B.5(d), if activated, would reach only the UP trackage reasonably necessary to serve affected covered facilities. The remedial package ultimately would not transfer ownership, confer exclusivity, displace UP from a customer, or guarantee CPKC traffic. A second Class I option at these facilities can constrain the combined carrier's bargaining power and improve rates and service, as retaining direct access as a fallback if reciprocal switching fails will help encourage effective competition.[522]

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[522] Majure V.S. Vol. II ¶¶ 41-43, 45.

Existing operations provide a concrete basis for the initial remedy. CPKC maintains a yard at Baton Rouge and operates manifest service between Baton Rouge and Shreveport six days per week and service in both directions between Baton Rouge and New Orleans seven days per week.[523] UP's daily interchange operation at CPKC's Baton Rouge Yard already handles an average of approximately [redacted] cars delivered to CPKC and [redacted] cars picked up from CPKC.[524] Additional traffic can be integrated into these existing trains.[525] If direct access is activated, CPKC can implement a local turn from Baton Rouge across the Mississippi River to Lobdell, via UP's Avoyelles Subdivision to Addis and the necessary portion of UP's Livonia Subdivision, supported by an additional locomotive set.[526] The principal direct-access alignment should follow the route and associated trackage described in Section VIII.B.5(b), with the additional connections and incidental operating rights described in Section VIII.B.5(d). The direct-access grant should also include any necessary connecting portion of UP's Anchorage Subdivision at Anchorage Junction and the connection to CPKC's New Orleans Subdivision at Lobdell.

Applicants also recognize that reciprocal switching can serve as an operationally feasible merger remedy. Their proposed TAP would permit certain sole-served terminal-area customers experiencing defined service deterioration during the merger-implementation period to obtain temporary reciprocal switching subject to specified eligibility, cure, and arbitration procedures.[527] That proposal addresses transitional service failures. CPKC's conditions address

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523 Redd V.S. ¶¶ 203-06.

524 Redd V.S. ¶ 198.

525 Redd V.S. ¶¶ 203-06.

526 Redd V.S. ¶¶ 199-202 & Figure 22.

527 *See* UP-80/NS-78 at Supp. 23-24; Brooks V.S. ¶¶ 188-93.

the structural incentive created by common UP–NS ownership. The primary reciprocal-switching conditions addressing the structural changes from the Proposed Transaction do not depend on a customer first suffering degraded service or expire after a short implementation period, while additional springing direct-access rights would address service degradation.

The phased remedy requested here—initial reciprocal switching, backed by direct access rights subject to the activation and interim-relief provisions in Section VIII.B.5(d)—is confined to a defined territory and addresses the specific merger-related harms identified above. Those features distinguish it from the generalized competitive-access requests rejected in *CP/KCS*, whose proponents sought relief for longstanding concerns without identifying specific transaction-related harm or demonstrating that the transaction would cause service problems warranting the broad relief sought.[528] Here, CPKC seeks access for eligible existing and future UP sole-served facilities on or reached through the West Baton Rouge route along the UP Avoyelles and Livonia Subdivision trackage and necessary customer leads and connections identified in Section VIII.B.5(b), with the three identified facilities illustrating that coverage. CPKC also identifies the merger-created change in UP's incentives, the existing local-service and interchange pattern, the CPKC line-haul route, the operating terms necessary to make switching effective, and a proportional structural fallback if that remedy fails. The requested access relief also serves the 2001 Major Merger Rules' goals of preserving customer routing choices and enhancing competition through operationally feasible conditions that produce net public benefits.[529]

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528 *See CP/KCS*, Decision No. 35 at 84-85.

529 49 C.F.R. § 1180.1(c)(2)(i), (iv), (d).

6. Reliable Houston-DeQuincy Service Requires Preventive Capacity and Remedies for Material Degradation Caused by UP's Post-Merger Operations

(a) Applicants' Incremental Merger Traffic and Operating Plan Threaten Fluid Service Between Houston and DeQuincy

Reliable CPKC service linking South Texas and the Houston gateway with Shreveport, the Meridian Speedway, and eastern interchange partners depends on fluid operations through the Houston Terminal, between Houston and Beaumont, across CPKC's single-track Neches River Bridge, and over CPKC's line between Beaumont and DeQuincy. CPKC, UP, BNSF, and Amtrak's *Sunset Limited* use the Neches River Bridge. UP also operates over CPKC's Beaumont–DeQuincy line pursuant to trackage rights. These shared facilities support not only CPKC's existing traffic but also the competitive South Texas and Houston services that the other Gulf Coast conditions would make possible.[530]

Although those routes have sufficient capacity to handle current traffic volumes, Applicants project approximately six additional daily trains between Houston and DeQuincy, including movements across the Neches River Bridge and over CPKC's Beaumont Subdivision.[531] Average daily traffic through Beaumont and across the Neches River Bridge was 31.9 trains in 2026, about four more than compared with the average in 2021.[532] Those incremental trains would increase demands on Houston Terminal and main-line capacity, dispatching windows, and the Neches River crossing.[533] The risk arises from Applicants' transaction-specific train growth and operating changes, which could create material congestion,

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530 Redd V.S. ¶¶ 118, 154-56, 190.

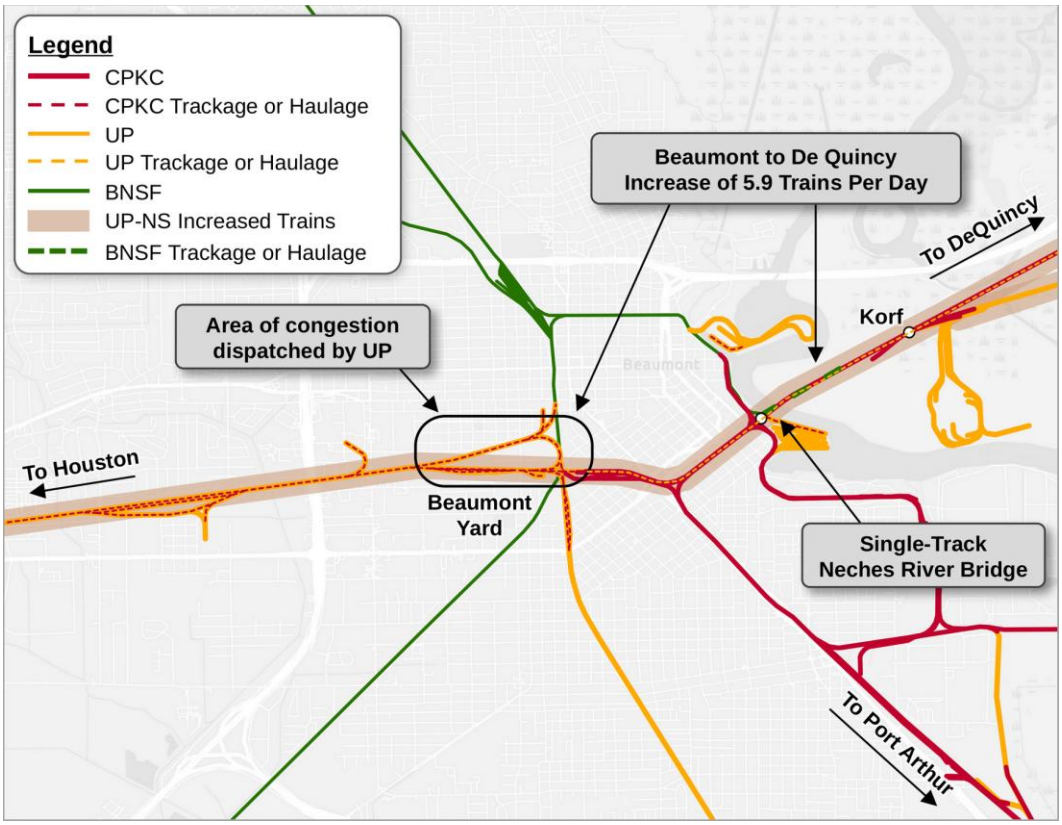
531 Redd V.S. ¶¶ 118-20.

532 Redd V.S. ¶ 123.

533 Redd V.S. ¶¶ 118-20, 123.

degrade CPKC and other through service, and impose on other carriers the operating costs of Applicants' merger plan.[534]

Beaumont and Neches River Approaches: Projected Additional UP/NS Trains[535]



The Proposed Transaction would compound that risk by changing UP's incentives. Acquiring NS would expand UP's portfolio of captive origins and destinations for Gulf Coast and Mexico traffic and increase the revenue it could retain by keeping that traffic on the combined system.[536] UP would therefore have a stronger incentive to prioritize its merger-related trains, operating plans, maintenance needs, and capacity projects over CPKC services that compete with the combined network. Even without overtly discriminatory dispatching, the

534 Redd V.S. ¶¶ 119-20, 123.

535 Redd V.S. Figure 9.

536 Majure V.S. Vol. I ¶¶ 46, 61, 201-04; Vol. II ¶¶ 32, 39-40; Brooks V.S. ¶¶ 49-63, 166-67.

incremental UP trains and expanded terminal activity could further impair CPKC's service along the Houston–DeQuincy corridor. UP's interest in moving its own trains efficiently does not ensure that its additional operations will preserve reliable service for CPKC or other users of the shared route. Indeed, CPKC trains already experience significant delays from congestion caused by UP trains working or staging at Englewood and from UP train operations in the Beaumont area.[537] The Proposed Transaction threatens to exacerbate those conflicts, with congestion potentially extending across the Neches River Bridge and onto CPKC's Beaumont–DeQuincy line. That UP's own trains may also experience delays does not eliminate the need for protections against the service impacts of Applicants' additional merger-related operations. The threatened harm thus arises from the combination of incremental merger traffic on shared infrastructure and a diminished incentive to protect the quality of competing CPKC service.

UP's own position in the *CP/KCS* proceeding is difficult to reconcile with its present plan. CPKC disputed UP's capacity conclusions then and does not adopt them now. But UP cannot credibly argue that, four years ago, roughly eight additional CPKC trains per day threatened to overwhelm the Houston Terminal and approximately 11.4 additional trains per day would threaten the Neches River crossing yet now contend that approximately six additional UP–NS trains creating more complex conflicts in the corridor require no comparable protection.[538] The Board declined to impose UP's requested infrastructure-funding and traffic-growth conditions. It instead required additional monitoring of the Houston terminal area and retained authority to order further relief, including infrastructure measures, if transaction-related

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537 Redd V.S. ¶ 123.

538 *See* Union Pacific Railroad Company's Comments and Request for Conditions, UP-10, *CP/KCS*, Finance Docket No. 36500, at 58-62 & Rocker & Turner V.S. at 30-34 (filed Feb. 28, 2022); Redd V.S. ¶¶ 119, 123.

congestion significantly impaired fluidity.[539] Applicants' proposal presents a materially different risk and must be evaluated on its own facts and under current operating conditions. Under current conditions, the merged carrier's proposed operations present material risks from a 20% increase in daily processing at Englewood Yard, adjacent to CPKC's westbound route.[540] Additional train movements through Beaumont near the Neches River crossing present further risks to CPKC's operations.[541] At a minimum, Applicants should be required to reconcile the two positions and bear responsibility for the measures needed to prevent or remedy degradation of shared operations caused or materially contributed to by their own trains.

The conditions below combine permanent monitoring, prompt operating corrections, Applicants-funded capacity when warranted, and preauthorized Lufkin bypass rights.

(b) Reliable Corridor Service Requires Permanent Monitoring and Prompt Operating Corrections

Because infrastructure improvements can require substantial lead time, the Board should require Applicants to identify and address developing problems before they result in a serious service failure. Beginning at consummation, the Houston–DeQuincy corridor should be subject to permanent corridor-specific monitoring under the service-assurance framework in Section V. Applicants should establish a transparent and representative pre-merger baseline and provide CPKC and the Board with sufficiently granular operating and infrastructure data to identify deterioration affecting a particular train, terminal, segment, bridge movement, interchange, or customer service.

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539 *CP/KCS*, Decision No. 35 at 89, 91-98.

540 Redd V.S. ¶ 123; Rev. App. 2-741 (Gehringer & Orr Second Errata V.S. Table 7); Elphick & Nelson V.S. ¶¶ 509-513.

541 Redd V.S. ¶¶ 118-24.

Applicants should organize their Englewood, Beaumont, and related terminal work to preserve a clear route through Houston and Beaumont for protected through trains and avoid delays caused by that work, subject to the applicable service standards and documented, nondiscriminatory safety requirements.[542]

The Houston–DeQuincy measures should implement the coordinated corridor objectives described in Section VIII.B.2(b), including reliable transit, timely access, and protection against interference from Applicants' trains and terminal work across Houston, Beaumont, the Neches River crossing and its approaches, and CPKC's Beaumont–DeQuincy line.[543] The standards should be developed through Section V.C and applied to the monitoring, corrective-action, and capacity obligations specified here; performance-based activation of the Lufkin bypass should remain governed by Section VIII.B.6(d).[544] The process should establish consistent definitions for comparable corridor measures while preserving existing contractual standards as floors. Applicants should preserve and provide the train-movement records, dispatching information, and other operating data reasonably necessary to identify the effect on protected services and assess the causes of delay. Measures should reveal localized and customer-level failures that systemwide or corridor averages could conceal. Each standard and remedy should operate within its defined scope.

When an adopted warning or breach threshold is crossed, Applicants should promptly disclose relevant data and their cause assessment, consult with personnel authorized to implement a solution, and carry out the preventive or corrective measures required under the

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542 *See* Redd V.S. ¶ 124.

543 Redd V.S. ¶¶ 101-03, 124.

544 Redd V.S. ¶¶ 124, 227-31; Gameiro V.S. § VII.

Board-established procedures in Section V. Disputes over performance, Applicants' contribution, or the adequacy of a response should receive prompt consideration through the standing resource and Board procedures in Section V.B. Appropriate interim relief should prevent material harm to protected customer services and shared-line operations. A dispute should not suspend an obligation already due or a preauthorized remedy activated under Section V.D unless the Board grants a stay.

CPKC should not be required to prove that the merger was the sole cause of the degradation; that would set an impossibly high bar. Section V's rebuttable presumption should apply when material deterioration follows Applicants' post-merger increase or rerouting of trains, additional terminal work, or reduction or diversion of relevant operating, maintenance, engineering, or capital resources, and the change has a reasonable operational connection to that deterioration. In those circumstances, Applicants' post-merger operations should be presumed to have caused or materially contributed to the failure. CPKC should not first have to prove that the change itself was merger-caused to invoke the presumption. Rather, it should be sufficient that the problem was caused by UP's post-merger operations. Applicants should not avoid responsibility by identifying a preexisting constraint where their operations materially increase the demands on that constraint.

The Houston-DeQuincy monitoring, reporting, data-preservation, and corrective-action requirements should remain effective for so long as UP and NS remain under common control and should not expire with a conventional merger-oversight period. The Board should retain jurisdiction to revise the applicable metrics and thresholds and to impose additional operating, routing, capacity, infrastructure, or access conditions if merger-related concerns emerge that the

original conditions do not adequately address. Any obligation to implement a corrective-action plan or fund and complete a required improvement should survive until satisfied.

(c) Effective Relief Requires Capacity to Prevent and Remedy Material Degradation Caused by UP's Post-Merger Operations

Applicants should provide the necessary additional capacity before their additional trains cause material degradation of CPKC or other through service.[545] The corridor capacity analysis and objective performance or utilization measures should identify that need in time for preventive action. If Applicants' post-merger trains or operating changes nevertheless cause or materially contribute to material degradation, including through failure of a corrective-action plan, Applicants should promptly implement the capacity necessary to restore reliable operations, with funding responsibility governed by the allocation principles below and Section V's rebuttable presumption applying where its predicates are satisfied.

The required capacity plan should address, at a minimum, two identified areas of potential constraint:

1. **Neches River Capacity.** Applicants should determine and implement the additional capacity needed across the Neches River and on the approaches to the existing crossing. The plan should evaluate approach improvements, a separate UP bridge across the Neches River, and other feasible projects that would provide timely and durable relief, subject to engineering feasibility and all necessary approvals. Applicants' plan and its implementation should preserve CPKC's existing property, access, and operating rights; and

2. **Beaumont-DeQuincy Capacity.** Applicants should determine and implement the additional capacity needed on CPKC's single-track line between Beaumont and DeQuincy, including any siding, double-track, signal, connection, staging, or related improvements necessary to accommodate Applicants' post-merger volumes without degrading CPKC service.

The Board need not select the final engineering solution before the operating and engineering record is complete and identifies the particular constraints. The condition should

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[545] Redd V.S. ¶ 124.

require Applicants to evaluate feasible means of addressing the identified capacity constraints, disclose the supporting capacity and engineering analysis and the status and expected timing of necessary approvals, and implement the project or combination of projects needed to preserve or restore the governing service levels, consistent with the protections for CPKC's existing route, facilities, and rights. Once a project has been selected, Applicants should not substitute a different project unless they demonstrate that it will provide equal or greater relief within an equally prompt implementation period and comply with those protections. An engineering or approval obstacle to a particular project should not suspend Applicants' obligations to implement other feasible measures sufficient to meet the applicable requirements or to comply with the interim protections required under the following paragraph.

Necessary capacity should be provided before Applicants' additional trains cause material degradation. If material degradation nevertheless occurs, CPKC should not be required to wait until congestion becomes recurrent or prolonged before Applicants begin a necessary capacity project requiring substantial lead time. The required plan should contain enforceable design, permitting, procurement, construction, and completion milestones. Where a required project cannot be completed soon enough to prevent continuing material harm, Applicants should provide interim operating or capacity measures, and CPKC should be permitted to exercise the Lufkin Subdivision rights described below. The Board may authorize the bypass in place of a particular capacity project upon finding that it would provide an adequate, timely, and proportionate remedy for the harm that project would address, including effects on protected traffic that cannot use the bypass. Exercise of the Lufkin rights should not otherwise discharge Applicants' capacity, funding, or corrective-action obligations.

Applicants should bear the full cost of capacity made necessary principally by their merger-related traffic, rerouting, terminal work, or allocation of operating and engineering resources, including necessary work on CPKC-owned infrastructure between Beaumont and DeQuincy. Applicants should not be permitted to shift those costs to CPKC or its customers on the mere pretext that CPKC would benefit from preservation or restoration of reliable service. CPKC may appropriately bear only the identifiable incremental cost of capacity constructed principally to support separate new CPKC service beyond the capacity required to accommodate Applicants' merger traffic and preserve or restore the prescribed performance levels.

Any dispute concerning the necessity, scope, cost, timing, or adequacy of the required work should be resolved through the expedited procedures in Section V without delaying necessary interim relief. The Board should retain jurisdiction to require additional capacity if the completed projects do not produce the anticipated durable protection or restoration of service. Under Section VI.B, Applicants should amend or execute any applicable Neches River and Beaumont-DeQuincy shared-use and operating instruments and the necessary project and funding arrangements, and procure required assents, to implement these obligations. All implementing instruments, required assents, and supplemental relief under Section VIII.B.6 should remain subject to the protections above concerning CPKC's existing route, facilities, and rights.

(d) Effective Interim and Alternative Relief Requires Preauthorized Lufkin Rights Triggered by Material Degradation Caused by UP's Post-Merger Operations

The immediate service-assurance, corrective-action, and capacity obligations described above are important components of the remedial package. But CPKC should not be required to continue operating over a materially degraded Houston–Beaumont–DeQuincy route while a corrective-action dispute is resolved or a long-lead capacity project is designed and constructed.

Nor should the Board require unnecessary construction where use of the Lufkin Subdivision would itself provide an adequate and proportionate remedy. Moreover, voluntary detour arrangements do not provide equivalent assurance: CPKC has used the Lufkin route for detours, but UP increased the applicable charge from approximately $25 to approximately $100 per train-mile, materially limiting that option's practical availability.[546] The Board should therefore preauthorize springing nonexclusive overhead trackage and operating rights over UP's Lufkin Subdivision between Houston and Shreveport, together with the additional UP trackage reasonably necessary at Houston and Shreveport to connect the Lufkin Subdivision with CPKC's existing Houston Terminal rights, CPKC's own network, and the Meridian Speedway to address material service degradation.[547]

The Houston entry and exit point is MP 230.87 on Main Track 3 of UP's Houston West Belt Subdivision; the Shreveport entry and exit point is MP L-558.8 on No. 3 Main Track of CPKC's Shreveport Terminal Subdivision.[548] For trains connecting with the Meridian Speedway, the operating plan provides a progressive connection via CPKC's Wilson's Alley and a crew change at Bossier City. For southbound moves, trains connecting with CPKC's Shreveport Yard or its routes to Dallas and Kansas City could use Red Junction and Main 3, change controlling ends, and continue their movement; alternatively, they could use the Hollywood track and perform a reverse move. Those trains would change crews at Shreveport Yard.[549] The grant should include the additional UP trackage and connections reasonably necessary to implement these and other eligible bypass movements.

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546 Redd V.S. ¶ 228.

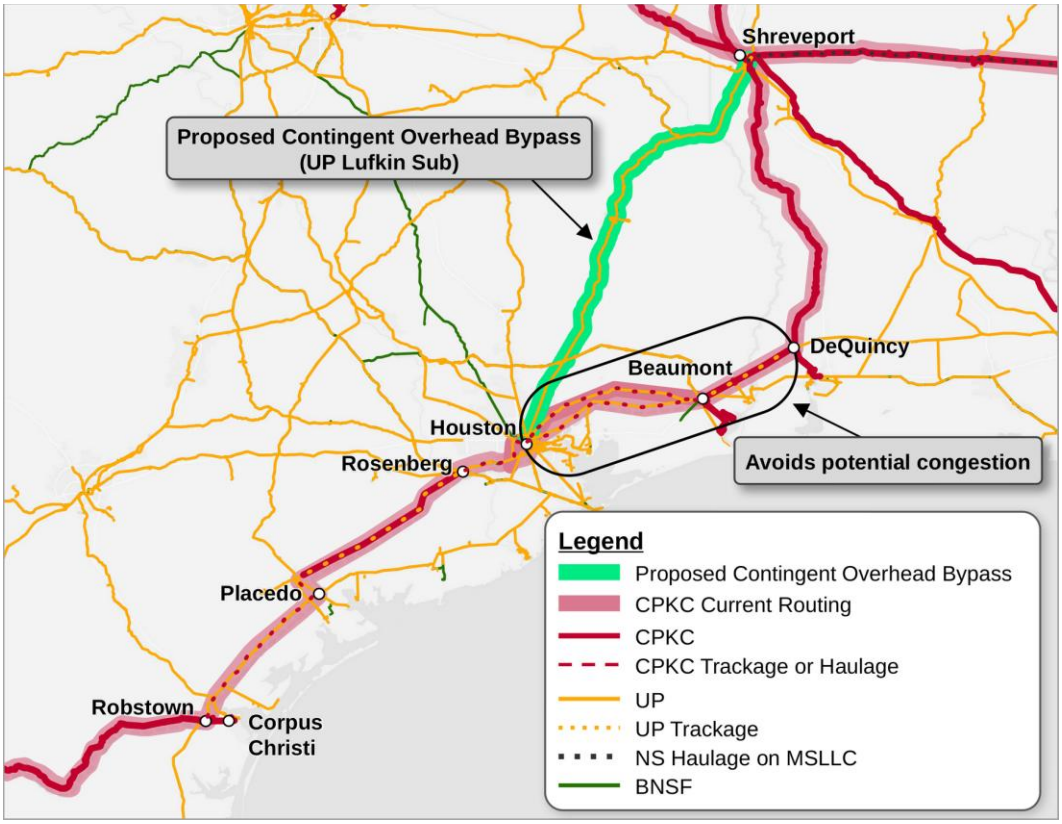
547 Redd V.S. ¶¶ 123, 227-29, 232-33.

548 Redd V.S. ¶¶ 232-33.

549 Redd V.S. ¶¶ 233-35 & Figure 28.

CPKC should be permitted to exercise the rights with its own crews, locomotives, and equipment so that the bypass does not depend on UP's allocation of operating resources. Under Section VI.B, Applicants should execute the trackage-rights and operating agreements necessary to implement the Lufkin rights, conform any inconsistent connecting-track arrangements, and procure the necessary assents. The implementing terms should be established through Section V.B's 90-day negotiation and expedited Board-resolution process and completed in advance as required by Sections V.D and VI.B.

Proposed Contingent Lufkin Bypass and CPKC's Existing Route via Beaumont[550]



For the service-performance predicate of the Lufkin remedy, the Board should adopt standards that identify failures of reliable CPKC service over the existing shared Houston–

550 Redd V.S. Figure 26.

DeQuincy route, addressing timely acceptance and admission from appropriate staging points, transit times, delays while held en route, and excessive recrews.[551] The standards should be developed through the technical conference under Section V.C, consistent with the coordinated corridor objectives described in Section VIII.B.2(b). Failure to satisfy an applicable standard under Section V.C's 30-day measurement and 30-day cure framework should establish the performance-based service-failure predicate. The contribution requirement below, the eligibility and operating limits for bypass movements, advance implementation obligations, and notice-activation procedures should remain applicable.

The rights should become exercisable upon CPKC's supported activation notice under Section V.D, after satisfaction of the applicable measurement and cure requirements, establishing that:

1. CPKC service over the shared Houston-DeQuincy route has materially deteriorated from the applicable pre-merger baseline, failed to satisfy an adopted service-performance trigger, or otherwise suffered material service degradation; and
2. Applicants' post-merger traffic growth, terminal work, resource diversion, or changes in operating priorities caused or materially contributed to that degradation, applying Section V's rebuttable presumption where its predicates are satisfied.

CPKC should be entitled to exercise the activated rights to use the Lufkin Subdivision to reroute existing through trains that have no work to perform between Houston and Shreveport in accordance with the operating arrangements established in advance, bypassing the affected Houston–DeQuincy route and alleviating congestion there.[552] Activation should not require a renewed determination of the feasibility of operations already addressed by those arrangements.

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551 Redd V.S. ¶ 229 & n.62.

552 Redd V.S. ¶¶ 229, 231.

CPKC's activation notice should establish the two predicates above and satisfaction of the applicable cure requirement and, for a performance-based trigger, the applicable measurement period. The notice should also describe the proposed use of the bypass under the operating arrangements established in advance. Upon filing and service of a notice satisfying the activation requirements, CPKC should be entitled to exercise the preauthorized rights without further Board confirmation or authorization. Applicants may challenge satisfaction of those requirements and seek expedited Board review or a stay; their objection should not suspend activation or continuing use. Section V's material-contribution presumption should govern.

Once the criteria above and the applicable cure requirement and, for a performance-based trigger, the applicable measurement period are satisfied, CPKC should be entitled to exercise the preauthorized rights upon notice without requiring completion or exhaustion of capacity improvements or an additional cure period. CPKC may use the bypass while Applicants implement corrective measures or required capacity work, or as an escalating remedy where Applicants fail to restore reliable service or implement required measures on time. Substitution of the bypass for an otherwise required capacity project should remain subject to the separate Board finding described in Section VIII.B.6(c); that determination should not be a prerequisite to exercising the bypass rights while the capacity obligation remains in force. Necessary interim operating protection, including temporary bypass use ordered by the Board, should remain available before the applicable cure period expires to prevent material harm. Any activation dispute should receive expedited resolution without suspending use unless the Board grants a stay.

The underlying authorization should be permanent and remain effective unless the Board affirmatively modifies it. Once activated, exercise of the rights should continue unless the Board

modifies or suspends it. Before suspending interim use, the Board should find that the required corrective or capacity measures have been completed and that sustained performance demonstrates durable restoration. Where the bypass substitutes for capacity construction, suspension should require a finding that adequate replacement protection is in place. In either case, Applicants should demonstrate that the protected service would continue to meet the governing requirements under the traffic volumes and operating arrangements reasonably expected if use of the bypass were suspended. Improved performance attributable to continued use of the bypass should not alone establish that showing. Applicants should not terminate or restrict the rights unilaterally. Recurring degradation satisfying the standards above should permit reactivation by notice under Section V.D, without a further Board merits determination; necessary interim protection should remain available under Section V.B.

The rights would remain nonexclusive and overhead. They would not permit CPKC to serve UP customers along the Lufkin Subdivision and would extend only over the route, connections, and incidental facilities necessary to move eligible trains between Houston and Shreveport.

Once the rights are activated, the implementing arrangements should provide timely acceptance and admission of eligible CPKC trains offered and ready to proceed from appropriate staging points at Houston and Shreveport, reliable transit over the authorized route, and dispatching no less favorable than that afforded comparable UP movements and any comparable BNSF movements over the same territory, together with Section V's independent service protections.[553] Operating protocols should address reasonable advance notice, crew qualification

[553] Redd V.S. ¶ 239.

and recrewing, generally applicable train-length limits, and necessary locomotive power.[554] Compensation for the Lufkin rights should be established through the same advance negotiation and Board-resolution process, using customary trackage-rights and terminal compensation principles. Compensation and operating terms should be reasonable and nondiscriminatory and should not be structured or applied in a manner that nullifies the bypass's competitive or operational value. Once the rights are activated, CPKC may route eligible trains over the Lufkin Subdivision at its election, subject to the operating arrangements and movement-specific notice requirements established in advance, without renewed satisfaction of the activation predicates or further Board authorization. Exercise of the Lufkin rights should not extinguish or diminish CPKC's existing rights. Disputes concerning implementing terms should receive expedited resolution under Section V.B.

(e) The Integrated Remedy Addresses Merger-Related Harm, Is Operationally Feasible, and Is Supported by Board Precedent

The monitoring, operating-correction, and capacity obligations above would require Applicants to provide necessary capacity before their additional trains cause material degradation and to remedy material degradation where their post-merger operations caused or materially contributed to the harm, with costs allocated under Section VIII.B.6(c). The capacity plan would require Applicants to evaluate and implement feasible measures providing timely and durable relief at the Neches River crossing, on its approaches, and between Beaumont and DeQuincy, subject to necessary approvals and the protections above for CPKC's existing route, facilities, and rights. Engineering or approval constraints should not diminish Applicants' responsibility to provide effective relief or satisfy their funding obligations under those allocation principles.

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554 Redd V.S. ¶¶ 236, 238, 240.

CPKC could exercise the preauthorized Lufkin rights upon supported notice satisfying Section VIII.B.6(d) while corrective or capacity work proceeds. Use of the bypass as a substitute for an otherwise required capacity project should remain subject to the separate Board finding in Section VIII.B.6(c). Applicants may seek Board suspension of bypass operations upon demonstrating durable restoration and satisfying Section VIII.B.6(d). Rerouting eligible CPKC trains over the bypass would protect those trains and reduce pressure on the affected corridor.[555] The initial operating plan anticipates rerouting existing trains that perform no intermediate work between Houston and Shreveport and does not assume new traffic generated solely by availability of the bypass. The proposed bypass would reroute existing CPKC trains over the Lufkin route, where Applicants project limited traffic and little merger-related growth.[556] The relief would remain nonexclusive and overhead, without local service to UP customers, and extend only to the route, connections, and incidental facilities needed for the bypass. The contingent Lufkin rights serve two competitive functions: they preserve CPKC's ability to provide timely service if the shared route deteriorates, and they give Applicants an incentive to maintain service quality so that the alternative need not be exercised.[557]

The Board's approach in *CP/KCS* supports the monitoring, capacity, and escalating-remedy principles underlying this package. There, the Board recognized the operational risks associated with Texas Gulf Coast capacity and shared-line fluidity, required performance reporting and pre-transaction baselines, and retained authority to require additional remedial measures if post-merger operations impaired fluidity.[558] CPKC's proposed conditions apply that

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555 Redd V.S. ¶¶ 229, 231, 237.

556 Redd V.S. ¶¶ 237, 241.

557 Majure V.S. Vol. II ¶¶ 39-40.

558 *CP/KCS*, Decision No. 35 at 87-98, 141-44.

approach prospectively by defining the monitoring, corrective-action, and capacity obligations in advance and identifying the alternative route that may be required if those protections prove inadequate.

C. Effective Competition Through New Orleans Requires Reliable Gateway Access and Direct Interchange Options

CPKC depends on the New Orleans Gateway to reach its West Yard, serve Port traffic, and connect with eastern carriers.[559] The Board should protect the operational effectiveness of that access through permanent monitoring and enforceable service obligations, and require nonexclusive operating rights solely to effect direct CPKC–CSXT interchange through West Yard.

1. The Proposed Transaction Would Reconfigure a Shared Gateway on Which CPKC Depends

Applicants propose to reconfigure New Orleans operations by reducing interchange movements on NS's Back Belt and moving BNSF's interchange with NS from Oliver Yard to UP's Avondale Yard on the west side of the Mississippi River.[560] Applicants claim these changes would free capacity and improve fluidity on the Back Belt and over the Huey P. Long Bridge.[561] Applicants also propose to relocate non-local work from Oliver Yard while retaining local work.[562] They state that Oliver would continue supporting interchange with CN, CPKC, and NOPB. They also identify further opportunities to shift UP's and NS's interchanges with CN and CPKC through Livonia to Baton Rouge.[563]

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559 Redd V.S. ¶ 151.

560 *See* Rev. App. 2-715 to -16 (Gehringer & Orr Second Errata V.S. ¶¶ 223-25); Redd V.S. ¶ 150.

561 *See* Rev. App. 2-715 to -16 (Gehringer & Orr Second Errata V.S. ¶¶ 223-25).

562 *See* Rev. App. 2-813 (Gehringer & Orr Second Errata V.S. ¶ 447).

563 *See* Rev. App. 2-716 (Gehringer & Orr Second Errata V.S. ¶ 226).

Those changes would occur alongside additional merger-related traffic. Applicants project eight additional freight trains per day on the Back Belt and three additional trains per day between New Orleans and Meridian.[564] They also identify planned pre-merger Back Belt crossover improvements and claim that improved fluidity would benefit Amtrak's Crescent and Mardi Gras services.[565] The Board must weigh those asserted benefits against the combined effects of additional trains, changed interchange locations, and altered yard functions on the access and service that competing carriers continue to require.

NS's chief operating officer Brian Barr acknowledged that [redacted] [566] He further explained that [redacted] [567]

Applicants have not shown that their proposed New Orleans changes would reduce terminal work or that the yards receiving additional work could handle it. Their model combines separate facilities and interchange movements, obscuring where cars would be sorted and understating the number of outbound blocks that must be built. At the same time, the Growth Plan assigns Livonia additional blocking and interchange responsibilities even though its projected average traffic is only [redacted] cars per day below Applicants' stated capacity, leaving virtually no room for normal traffic fluctuations. Applicants therefore have not established that

564 UP-80/NS-78 at Supp. 100; Rev. App. 2-767 to -68 (Gehringer & Orr Second Errata V.S. ¶ 328).

565 *See Rev.* App. 2-716, -767 (Gehringer & Orr Second Errata V.S. ¶¶ 227, 327).

566 Brian Barr Deposition Transcript at 412:12-413:19 (Sept. 3, 2026).

567 *Id.* at 414:3-19, 415:4-21.

they can reduce operations at Oliver Yard and redistribute the work without creating congestion at Livonia and the connected gateways.[568]

CPKC reaches West Yard, its New Orleans yard, over CN trackage from Frellsen/Orleans Junctions to East Bridge Junction and then over a few hundred feet of the NS Back Belt from East Bridge Junction to the West Yard connection track. CPKC lacks operating rights over most of the Back Belt.[569] West Yard connects with the New Orleans Public Belt Railway (NOPB), through which CPKC serves the Port of New Orleans and interchanges with NS and CSXT.[570] The existing rights also leave a gap that prevents direct CPKC–CSXT interchange through West Yard.[571] NS contends that CPKC may not operate far enough over the Back Belt to make the required interchange movement, while CSXT lacks the CN rights necessary to enter West Yard by the alternative route.[572] CPKC's predecessor relocated its operations onto Illinois Central Gulf trackage as part of a 1977 highway-grade-crossing elimination project undertaken with the State of Louisiana and Jefferson Parish, and the corresponding portion of its own line was removed. Although the agreements governing that relocation called for construction of a replacement interchange track on ICG property, that track apparently was never constructed.[573] Those operating rights leave CPKC and CSXT in a Catch-22: CSXT can operate over the Back Belt to East Bridge Junction but lacks the rights over CN's track needed to advance its trains far enough to back into West Yard; CPKC, although able to operate over the necessary CN trackage,

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568 Elphick & Nelson V.S. ¶¶ 471-83.

569 Redd V.S. ¶ 151.

570 Redd V.S. ¶ 151.

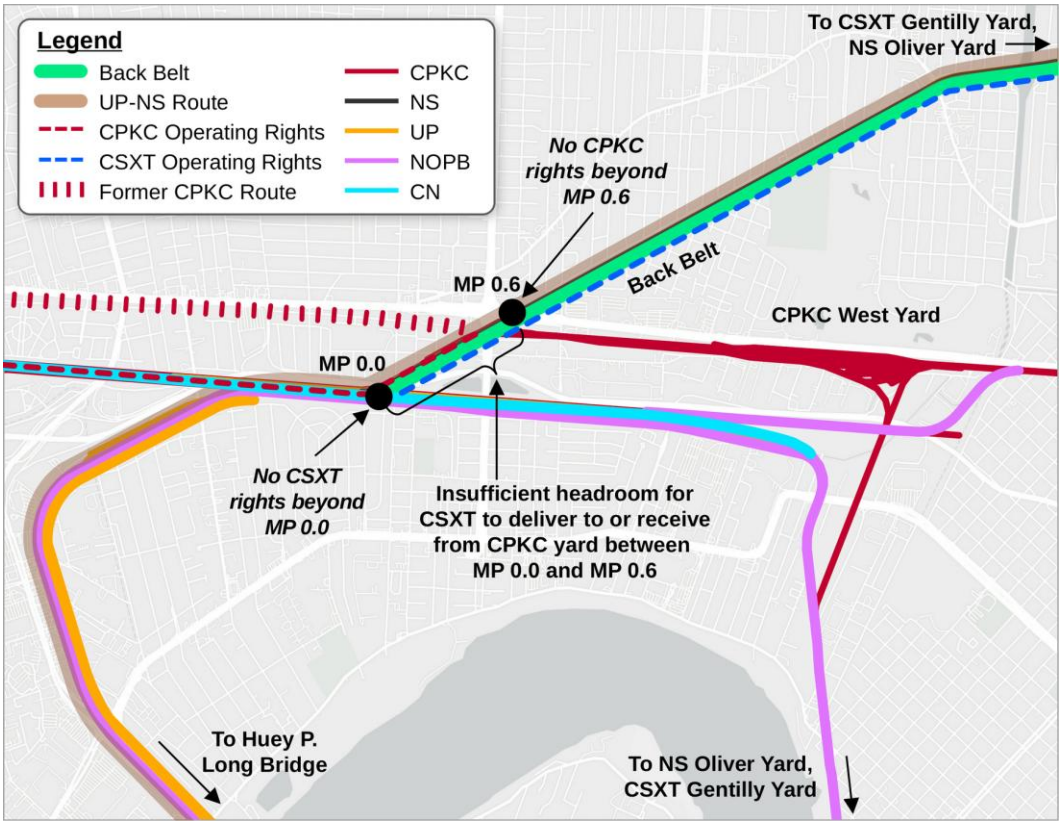
571 Redd V.S. ¶ 151.

572 Redd V.S. ¶ 151.

573 *See CP/KCS,* Finance Docket No. 36500, CP-53/KCS-39, Vol. 2, Simmons Reply V.S. ¶ 82, at 40.

faces NS's position that CPKC may not operate on the Back Belt beyond the entrance to West Yard, preventing the movement needed for direct interchange. As a result, neither carrier can complete the movements necessary to interchange directly with the other through West Yard.[574]

Existing Routes and Access Restrictions for CPKC–CSXT Interchange at New Orleans[575]



The existing gap already requires CPKC and CSXT to use the less direct NOPB interchange arrangement. Applicants' planned reconfiguration, if implemented successfully, would improve the combined system's own connection while leaving competing CPKC–CSXT service dependent on that arrangement.[576] Applicants' assurance that their changes would not adversely affect other carriers' interchanges does not itself secure the rights and service needed

574 Redd V.S. ¶ 152.

575 Redd V.S. Figure 14.

576 *See* Redd V.S. ¶ 152.

to preserve a commercially effective alternative.[577] A more effective CPKC–CSXT interline option through New Orleans would put competitive pressure on the combined UP–NS without removing any existing option.[578] The Board should therefore preserve CPKC's existing access and remove the defined obstacle to direct CPKC–CSXT interchange. Protecting the connections and terminal functions that carry the service is necessary to realize that benefit; a paper right to interchange cannot supply a credible alternative if the movements needed to reach the interchange remain materially impaired.[579]

2. Effective New Orleans Access Requires Permanent Monitoring and Enforceable Service Protections

The Board should require Applicants to preserve CPKC's existing authorized access to West Yard and provide reasonable and nondiscriminatory dispatching, connection access, and interchange handling within their control. Applicants should not use changes in routing, yard functions, interchange locations, or operating practices to terminate, narrow, or materially impair that access. The obligation should protect both CPKC's existing operations and the interchange-only operating rights required under Section VIII.C.3.

The common service-assurance framework in Section V should apply to the New Orleans Gateway. It should include a representative pre-merger baseline for existing operations, appropriate service standards for the additional interchange movements enabled by Section VIII.C.3, and measures tailored to the protected operations, including CPKC transit time to and from West Yard.[580] Monitoring should distinguish running time from time awaiting

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577 *Compare* Rev. App. 2-716 (Gehringer & Orr Second Errata V.S. ¶ 226), *with* Redd V.S. ¶ 152.

578 Majure V.S. Vol. II ¶ 47.

579 *See* Majure V.S. Vol. I ¶¶ 46, 48; *id*. Vol. II ¶¶ 22, 46-47.

580 Gameiro V.S. ¶¶ 209-10, 228, 232; Redd V.S. ¶ 153; *see also* Majure V.S. Vol. II ¶ 47.

access and identify delay at relevant connections and handoffs so that a terminal-wide average does not obscure impairment of CPKC's movements.

Applicants should provide the operating information within their possession or control necessary to evaluate compliance, disclose material changes affecting the protected movements, and implement corrective measures required under Section V. After CPKC gives notice of an alleged breach, compliance and appropriate relief should receive expedited Board determination under Section V.B, including interim protection where necessary to prevent material harm. The monitoring, reporting, nondiscrimination, and corrective-action obligations should survive the ordinary merger-oversight period and remain effective unless modified by the Board. Accrued corrective obligations should survive until fulfilled, and the Board should retain jurisdiction to address merger-related concerns that later emerge. Board review should not suspend an obligation already in effect or a preauthorized remedy properly activated under Section V.D unless the Board grants a stay.

3. Effective New Orleans Competition Requires Direct CPKC–CSXT Interchange Through West Yard

The Board should require Applicants to grant or confirm nonexclusive operating rights over their tracks solely to effect direct interchange between CPKC and CSXT through West Yard.[581] CPKC seeks operating rights for interchange only, not trackage rights for independent overhead or local service on Applicants' lines. Operating arrangements confined to effecting interchange, without independent overhead or local service for the visiting carrier's own account on the host carrier's line, do not require separate approval as an acquisition of trackage rights.[582]

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581 Redd V.S. ¶ 153.

582 *See Norfolk S. Ry. – Pet. for Declaratory Order – Interchange with Reading Blue Mountain & N. R.R.,* Docket No. 42078 (STB served Apr. 29, 2003) at 4 n.5; *Black* v. *ICC*, 837 F.2d 1175, 1177-78 (D.C. Cir. 1988).

CPKC asks the Board to impose and enforce Applicants' obligation to provide and preserve these interchange arrangements as a condition of merger approval.

The arrangements should encompass the Back Belt segments, entry and exit points, connections, and incidental operating movements necessary solely to complete direct interchange between CPKC and CSXT through West Yard. They should permit the delivery and receipt of interchange traffic and the associated movements necessary to complete the operation into and out of West Yard. Neither carrier should be left with rights that stop short of an operationally usable interchange.[583] These interchange operating rights should be permanent, subject to Board modification, and protected by the service obligations in Section VIII.C.2.

The rights should be available on reasonable and nondiscriminatory compensation and operating terms. Charges for exercising the interchange operating rights, terminal or accessorial charges, and operating requirements should not be structured or applied in a manner that nullifies the interchange option's competitive value. Compensation, operating, and other implementing terms requiring agreement should be determined through Section V.B's 90-day negotiation and expedited Board-resolution process, with interim arrangements available throughout where necessary to prevent delay from defeating the relief.

Under Section VI.B, Applicants should amend or execute the instruments governing Back Belt use, interchange, West Yard access, and related connecting movements, and procure the assents necessary to make the interchange arrangements required by this condition effective by consummation.[584] The implementing changes should remove geographic, interchange, operating, and equivalent restrictions only to the extent necessary to permit the specified

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583 Gameiro V.S. ¶ 210.

584 Gameiro V.S. ¶¶ 211-212.

movement, while preserving existing beneficial rights. Applicants should not recreate an eliminated restriction through a replacement agreement, charge, operating practice, or connection change.

Applicants should ensure execution of the necessary instruments by entities they control and provide all approvals and assents within their authority. If the selected operating plan also requires rights or assent from CN or another independent entity, Section VI.B's procurement and Board-approved equivalent-arrangement requirements should apply. The implementing arrangements should secure an operationally complete interchange. They should not assume that Applicants can unilaterally convey rights over an independent carrier's property.

4. The New Orleans Gateway Conditions Address Merger-Related Harm, Are Operationally Feasible, and Accord with Board Precedent

The conditions would address disadvantages intensified by Applicants' gateway reconfiguration: they would preserve existing access, including Port traffic, and permit direct CPKC–CSXT interchange through West Yard. They would not require diversion from NOPB, confer exclusivity or guaranteed traffic, or restrict Applicants' use of the trackage.

The proposed interchange would build on existing Back Belt trackage and CPKC's existing West Yard.[585] The confirmed operating plan should identify any additional connecting or interchange trackage needed to complete the operation and the arrangements for providing it. The implementing agreements and Section V protections should make the granted rights commercially and operationally effective while preserving safe and nondiscriminatory use by other carriers.

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585 *See* Redd V.S. ¶¶ 151-153.

The requested conditions are consistent with the Board's use of access rights and implementing protections to preserve effective interline competition. In *UP/SP*, the Board required Applicants to amend their agreement with BNSF to permit interchange with KCS at Shreveport and Texarkana for covered Lake Charles-area traffic and to remove destination restrictions on BNSF's direct service to the covered Lake Charles-area shippers.[586] The Board also relied on nondiscriminatory dispatching, operational monitoring, prompt dispute resolution, and continuing oversight to ensure that trackage-rights relief would function effectively.[587] Those implementation principles also support the narrower relief requested here: operating rights solely to effect interchange, coupled with the agreement amendments and operating protections necessary to make the specified movements commercially and operationally effective.

The proposed monitoring likewise follows the Board's practice of tailoring reporting requirements to shared infrastructure. In *CP/KCS*, the Board required location-specific measures of transit time, terminal dwell, bridge occupancy, and time awaiting bridge access, together with historical baseline data.[588] Comparable measures would allow the Board to identify impairment of CPKC's protected movements and require appropriate corrective action. The requested access relief also advances the 2001 Major Merger Rules' express objectives of preserving gateway options and enhancing competition through operationally feasible conditions that produce net public benefits.[589]

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586 *UP/SP*, 1 S.T.B. at 428.

587 *Id.* at 403-04.

588 *CP/KCS*, Decision No. 35 at 106-08.

589 49 C.F.R. § 1180.1(c)(2)(i), (iv), (d).

D. Competitive Use of the Meridian Speedway Requires Lifting NS Traffic Restrictions and Reliable Meridian Terminal Operations

1. The Merger Would Combine Speedway Gatekeeping Rights With UP's Western Network and Increase Demands on Meridian

The Meridian Speedway, the Meridian Terminal, and CPKC's Wylie Intermodal Terminal are distinct but interconnected components of a competitive route linking Dallas-Fort Worth and western rail networks with the Southeast. The Speedway connects Shreveport and Meridian; the Meridian Terminal connects that route with CPKC and NS routes serving the Southeast; and the Wylie Intermodal Terminal supports CPKC's Dallas-Fort Worth intermodal services.[590] CPKC's broader Wylie facilities also support merchandise and bulk services, as described in Section VIII.E.[591] The Proposed Transaction would combine NS's contractual rights affecting those operations with UP's competing western network, increase demands on shared Meridian capacity, and give UP control over [redacted] Those changes create related harms to Speedway competition and Meridian operations, addressed here, and to Wylie's competitive independence, addressed in Section VIII.E.

First, the governing agreements impose distinct restrictions on competing intermodal service. The NSR-MSLLC Joint Use Agreement reserves to [redacted] for defined NS Traffic over the Speedway and restricts MSLLC's ability to authorize competing [redacted].[592] Covered traffic includes [redacted]

590 Redd V.S. ¶¶ 25, 36, 126-28.

591 Gameiro V.S. ¶¶ 216, 219-20.

592 Gameiro V.S. ¶ 181.

[redacted][593]

Today, an independent eastern carrier holds those contractual rights. NS's primary interline partner for the covered transcontinental traffic is UP, although NS may also partner with BNSF using CPKC haulage. UP's acquisition of NS would eliminate NS's independent incentive to develop that competing western connection.[594] Combining those contractual rights with UP's western network would increase Applicants' incentive to retain traffic on the combined transcontinental system and reduce their incentive to facilitate competing interline service through CPKC, including additional arrangements beyond existing contractual permissions.[595] To promote competition, the Board should require Applicants to relinquish the applicable exclusivity and consent restrictions and provide and procure the conforming operating and governance approvals needed for CPKC to develop competing service with BNSF, CSX, or another lawful connecting carrier. That relief should create a competitive opportunity without treating all Speedway traffic as exclusively reserved to NS or conferring unrestricted operating rights on another carrier.

Second, Applicants' operating plan would place materially greater demands on the Meridian Terminal.[596] Meridian connects Speedway traffic in east-west and Mexico-southeast lanes with NS's New Orleans-Birmingham route and CPKC's routes toward Artesia and

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593 Gameiro V.S. ¶ 181; Brooks V.S. ¶ 105.

594 Brooks V.S. ¶¶ 223-26; Gameiro V.S. ¶¶ 181-82.

595 Majure V.S. Vol. I ¶ 61; Vol. II ¶¶ 48-49.

596 Elphick & Nelson V.S. ¶¶ 529, 531; Redd V.S. ¶¶ 126-27.

Myrtlewood.[597] Those movements, together with Amtrak operations, use a common terminal chokepoint.[598] Meridian's existing operations require coordination among NS and CPKC yard activity, Amtrak service, and through-train movements, with shared crossings and limited operating windows constraining NS switching operations.[599] Applicants Growth Plan projects to add eight to ten daily train starts between Meridian and Austell and three daily train starts between New Orleans and Meridian.[600] Those additional movements would join existing CPKC, NS, and Amtrak operations through the same terminal core.[601]

The services exposed to that interference include CPKC and CSXT's SMX interline service, which carries intermodal traffic between Mexico and the Southeastern United States over the Speedway, through Meridian, and across the direct CPKC-CSXT interchange at Myrtlewood, Alabama.[602] Two SMX trains per day use the same Meridian chokepoint traversed by the other operations described above.[603] Additional congestion or obstruction at that shared connection could therefore delay SMX trains and impair the reliability of this competing interline service.[604]

The Board recently recognized the competitive value of the routing that supports SMX. In approving CPKC's acquisition of the MNBR line between Meridian and Myrtlewood, the

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597 Redd V.S. ¶¶ 126-28.

598 Redd V.S. ¶¶ 127-28.

599 Elphick & Nelson V.S. ¶¶ 529-530 & Figure 128; *see also* UP-NS Response to OEA for Second Errata Filing, Master Data Table—Rail Line Segments, EI-34309, at 3-4, 134 (filed Sept. 9, 2026) (identifying 19.91 daily trains on the Meridian-Burstall segment of the route toward Birmingham).

600 UP-80/NS-78, at Supp. 100.

601 Redd V.S. ¶¶ 126-28, 132.

602 Redd V.S. ¶ 36.

603 Redd V.S. ¶¶ 126-27.

604 *See* Redd V.S. ¶¶ 126-27.

Board explained that the new routing would give shippers then using CPKC-NS interchange at Meridian an additional option and increase competition between CSXT and NS.[605] The requested Meridian protections would preserve the practical value of that recently established competitive option by preventing Applicants' merger-related traffic and terminal practices from materially impairing its operation.

NS's own performance assessment corroborates the competitive significance of the new CPKC/CSX alternative. [redacted][606]

The requested protections for SMX's terminal movements and connections would therefore preserve existing competition. Preventing additional merger-related traffic and terminal work from materially impairing that service would protect the practical value of the alternative recently created through the MNBR transaction.

The additional New Orleans-Birmingham trains could impede Speedway operations both by blocking movements through Meridian as they cross the terminal and by congesting NS's line north and east of Meridian, delaying NS-bound trains coming off the Speedway. Those delays could cause traffic to back up onto the Speedway and impede CPKC's operations in both directions.[607] If usable staging capacity near Meridian is insufficient to accommodate Applicants' additional traffic and terminal work, eastbound Speedway trains may have to wait farther west, increasing the time needed to advance them into the terminal and constraining other

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605 *Canadian Pac. Kan. City Ltd. – Acquis. & Operation – Certain Rail Line of Meridian & Bigbee R.R.*, Finance Docket No. 36732, (STB Decision No. 6 served Oct. 17, 2024) at 8, 11 (*CPKC/MNBR*).

606 NS_00103985 at -990.

607 Redd V.S. ¶¶ 133-36.

movements.[608] Fueling and recrewing practices can compound the interference, including by blocking Amtrak station access and CPKC's Artesia movements.[609] CPKC's existing Switch Tender authority does not eliminate that problem: holding NS trains at the crossing can increase congestion on the approach needed to clear Speedway traffic.[610] Applicants have not evaluated how their additional trains and yard work at Meridian would affect CPKC's operations, and [redacted]. Their proposed schedule clusters several trains between 4:30 and 5:15 p.m., calls for two trains to perform work simultaneously, and allows another too little time to complete its work. Applicants therefore have not shown that the additional work can be completed within the available operating windows without interfering with CPKC and other users of the terminal.[611] The Board should require Applicants to demonstrate how those demands will be accommodated and implement the necessary capacity improvements and operating adjustments before the additional traffic and work materially impair service through Meridian.

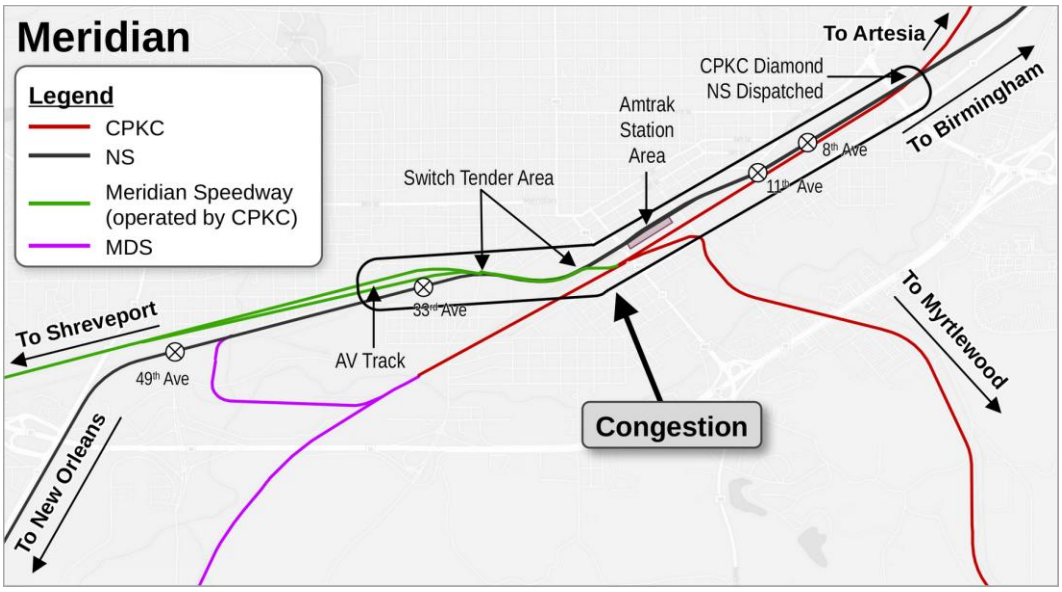
608 Redd V.S. ¶ 134.

609 Redd V.S. ¶ 136.

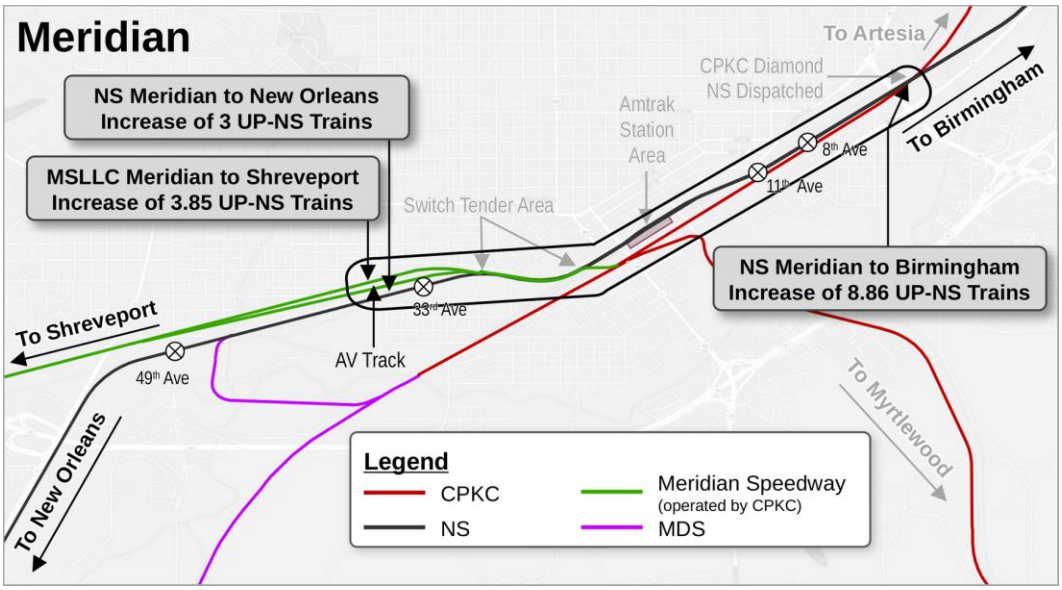
610 Redd V.S. ¶ 135.

611 Elphick & Nelson V.S. ¶¶ 529-532 & Figure 129.

Meridian Terminal Routes and Shared Operating Chokepoint[612]



Projected Merger-Related Train Growth Through Meridian Terminal[613]



NS previously argued that additional CPKC traffic could impair NS and Amtrak operations at Meridian and sought operating and infrastructure protections.[614] CPKC disputed that its proposed additional trains would worsen those problems, attributing the existing

612 Redd V.S. Figure 10.

613 Redd V.S. Figure 11.

congestion to NS's own train operations, capacity constraints, and crewing, fueling, and scheduling practices.[615] CPKC also opposed conditions that would transfer control over its route to Artesia to NS.[616] The Board ultimately found that the limited additional traffic contemplated in *CPKC/MNBR*—one to two daily train pairs—was unlikely to impair Meridian operations, taking account of existing daily traffic variation and the streamlining of terminal operations contemplated by that transaction.[617] The present proposal requires a separate assessment of Applicants' eight to ten additional daily trains and the resulting demands on shared terminal capacity.[618]

Applicants' proposed infrastructure investments do not guarantee that service through Meridian will not be impacted by the significant new traffic they project to introduce. Applicants propose 2.9 miles of extended double track north of Meridian by the end of Year 3, but they have not demonstrated that the timing of that work will prevent adverse effects on other users as their traffic and operations change.[619] Applicants' proposed corridor investment program therefore does not itself establish that the capacity needed to protect shared Meridian operations will be available on time.[620] The Board should require Applicants to provide and fund

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614 *CPKC/MNBR*, Norfolk Southern Railway Company's Comments, App. B, McClellan V.S. at 3, 5-7 (executed Dec. 28, 2023).

615 *CPKC/MNBR*, CPKC's Rebuttal in Support of Its Application, CPKC-13, at 23-26, 32-33; *see* Redd V.S. ¶ 130 & n.38.

616 *CPKC/MNBR*, CPKC Rebuttal at 32-33; Redd V.S. ¶ 131.

617 *CPKC/MNBR*, Decision No. 6, at 10 (STB served Oct. 17, 2024).

618 Redd V.S. ¶¶ 128, 132-36.

619 Rev. App. 2-910 (Turner Second Errata V.S. ¶ 91 & n.61); UP-80/NS-78 at Supp. 99-100; Redd V.S. ¶ 131 & n.39.

620 *Cf.* UP-80/NS-78 at Supp. 100.

sufficient capacity in time to prevent material impairment, supported by express operating duties, permanent monitoring, and targeted additional dispatching relief when warranted.

2. Competing Intermodal Service Requires Removal of Restrictive Speedway and DTMA Traffic Provisions

The requested relief should address the Speedway agreements and the Dallas Terminal Marketing Agreement ("DTMA"). NS's exclusive commercial rights over certain transcontinental intermodal traffic limit CPKC's ability to develop competing service with other connecting carriers. Removing that exclusivity would preserve the potential for competing transcontinental service involving BNSF, CPKC, and CSX after the merger.[621] The Board should require Applicants to amend the relevant Speedway agreements as necessary to make that nonexclusive access commercially and operationally effective.

After the merger, UP would control NS's rights and benefit from retaining traffic on the combined system. Applicants could use those rights to withhold consent, reserve covered traffic to themselves, or impose terms that prevent a commercially viable competing service.[622] Existing Speedway services already demonstrate that cooperation among independent carriers can support a competitive intermodal offering. CPKC provides the haulage, while UP and NS control pricing and marketing for their transcontinental service.[623] UP and NS already exchange a daily intermodal train pair through CPKC haulage over the Speedway, and Applicants propose to retain that haulage arrangement and the handoffs with CPKC after the merger.[624] Applicants' own diversion model assigns coordinated Speedway service a substantially lower interchange

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621 Gameiro V.S. ¶¶ 181-83; Brooks V.S. ¶¶ 223-26.

622 Majure V.S. Vol. II ¶ 48.

623 Brooks V.S. ¶¶ 96, 104-06; Elphick & Nelson V.S. ¶¶ 632, 636-42.

624 Elphick & Nelson V.S. ¶¶ 632, 637, 643.

penalty than an ordinary uncoordinated interchange, reflecting efficiencies already achieved through cooperation among independent carriers.[625] Removing the contractual gatekeeping restrictions would allow additional carrier combinations to compete using that existing operating platform.[626] The requested relief would permit additional lawful carrier combinations and commercial arrangements for traffic that remains restricted under the governing agreements.[627]

As originally conceived, the Speedway was a competitive route, capable of handling traffic to or from either UP or BNSF. To maintain that pro-competitive purpose if UP takes over NS, the Board should authorize CPKC to solicit, price, interchange, transport, or arrange competing intermodal service over the Speedway with BNSF, CSX, or another lawful connecting carrier. Covered traffic should include traffic otherwise subject to NS traffic exclusivity, including through traffic requiring no Wylie lift or drop. CPKC should be able to use lawful interline, through-rate, Rule 11, joint-rate, fixed-division, or haulage arrangements without Applicants' discretionary commercial consent.[628]

The DTMA gives NS a separate two-week right of first refusal over Dallas Intermodal Terminal Traffic, as defined in that agreement. That category covers domestic intermodal containers or trailers with U.S. origins and destinations, a lift or drop at the Wylie Intermodal Terminal, and movement over KCSR and MSLLC tracks between Wylie and Meridian, with an origin or destination at or west of Dallas/Fort Worth. That arrangement supported cooperation when NS did not reach Dallas. After the merger, however, NS would be part of a carrier that

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625 Majure V.S. Vol. I ¶¶ 157, 160.

626 Majure V.S. Vol. II ¶¶ 48-49.

627 Brooks V.S. ¶ 226.

628 Gameiro V.S. ¶¶ 181-83.

reaches Dallas over its own network and competes with CPKC for that traffic, increasing its incentive to use the first-refusal right to impede competing service.[629]

The Board should therefore require NS to permanently relinquish its remaining two-week first-refusal right under DTMA and release CPKC from the associated submission and waiting-period obligations and any corresponding restrictions under the MSLLC agreements. CPKC should be able to arrange competing service for the defined traffic without first offering it to NS or awaiting NS's decision.[630] [redacted] and the associated service and nondiscrimination protections should remain fully effective.

Under Section VI.B, the Board should require Applicants to amend all relevant instruments, including the Dallas Terminal Marketing Agreement, the NSR-MSLLC and KCSR-MSLLC Joint Use Agreements, the MSLLC-KCSR Operating Agreement, and the MSLLC Limited Liability Company Agreement, each as amended, and procure all necessary assents, to make the authorized competing service effective. The implementing arrangements should permanently remove the applicable exclusivity, first-refusal, consent, and related haulage and operating restrictions; provide the traffic and service authority needed under the KCSR agreements; and secure the necessary MSLLC governance approvals. Applicants should not use voting, quorum, consent, scheduling, or other procedures to defeat or delay that relief, or recreate an eliminated restriction through traffic definitions, routing or connecting-carrier limitations, pricing consents, discriminatory charges, penalties, termination rights, or equivalent devices.

Applicants should be permitted to retain their underlying transportation rights, subject to their existing terms and the nonexclusive access established here. Removing exclusivity would

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629 Gameiro V.S. ¶ 224; Majure V.S. Vol. II ¶ 49.

630 Gameiro V.S. ¶ 224.

neither extinguish those movement rights nor expand NS's ability to exercise the contingent trackage rights. CPKC's existing traffic rights and associated service and nondiscrimination protections should remain fully effective. That preservation includes [redacted], NS's associated nondiscrimination obligation, and the obligation to amend or administer the MSLLC agreements so that they do not restrict those authorized movements.

Applicants should not use their contractual or governance rights under the MSLLC agreements or DTMA to discriminate against competing intermodal service developed by CPKC with BNSF, CSX, or another connecting carrier under this condition. Any transportation, terminal, or other services Applicants provide for that traffic should be furnished on reasonable, nondiscriminatory terms. In providing those services, Applicants should treat that traffic no less favorably than similarly situated traffic of their own or, where relevant, other participating carriers. Any differences in treatment should rest on objective, documented operating or cost differences, including legitimate volume differences, rather than carrier identity or competition with Applicants. Applicable minimum service standards should remain enforceable even when Applicants' own traffic also receives inadequate service.

CPKC should receive reasonable compensation for the transportation, facilities, and designated operator services it provides. Payments for services and facilities actually provided by other carriers should likewise remain due under the applicable agreements, as modified by these conditions. Applicants should not use rates, revenue divisions, charges, or operating requirements to defeat the competing service rights established here.

CPKC and its connecting partners would remain responsible for demonstrating that any proposed operation is safe and feasible and for funding facilities attributable to their independent

incremental service, subject to the allocation principles in Section VIII.D.3(a). That responsibility should not shift any costs to them that Applicants must bear under Section VIII.D.3 to prevent or remedy material impairment caused or materially contributed to by Applicants' merger-related traffic and operating changes.

The condition should be permanent, bind Applicants, their controlled affiliates, and successors, and remain effective unless affirmatively modified by the Board. Removal of the exclusivity, first refusal, and consent restrictions should take effect pursuant to the Board's order, without requiring a contractual volume shortfall under the operative agreements or an election by Applicants to relinquish those restrictions. The condition should not reinstate any volume guarantee that has otherwise terminated. Eliminating the restriction would authorize development of a competing service; it would not guarantee traffic or prescribe a particular train plan. It would not give CPKC exclusivity, displace any existing UP-NS service, or require another carrier to participate. It would remove only the contractual restrictions that otherwise would allow UP to reserve important intermodal opportunities for the merged system and prevent competing carriers from testing an alternative service in the market.

3. Reliable Meridian Operations Require Applicant-Funded Capacity, Nonobstructive Operations, Permanent Monitoring, and Targeted Dispatching Relief

Removing contractual restrictions would not preserve effective competition if Applicants' merger-related operations impair the shared Meridian connection. Removing Speedway restrictions, together with the capacity and operational protections needed to accommodate Applicants' plans without degrading other traffic, would preserve competitive options without eliminating existing ones.[631] Applicants' additional trains and proposed

[631] Majure V.S. Vol. II ¶¶ 50-51.

investment timing, described in Section VIII.D.1, require the preventive-capacity obligations below to protect CPKC, Amtrak, short-line, and other authorized operations. The Board should require Applicants to provide, fund, and maintain the capacity and operating adjustments necessary to prevent material impairment of CPKC, Amtrak, short-line, and other authorized operations, with the work phased and completed before the adverse impacts it is intended to prevent occur, as specified in Section VIII.D.3(a). Monitoring, expedited enforcement, and preventive and corrective measures should secure compliance with those affirmative obligations, with the proposed additional dispatching remedy addressed in Section VIII.D.3(c).

(a) Preventing and Remedying Merger-Related Impairment Requires Timely Applicant-Funded Capacity

The Board should require Applicants to provide, fund, and maintain sufficient capacity in time to accommodate their merger-related traffic and operating changes without materially degrading CPKC, Amtrak, short-line, or other authorized operations at Meridian. Necessary capacity should be operational when required to prevent impairment from the introduction or growth of that traffic or implementation of those changes. This obligation should apply affirmatively and before any degradation occurs; it should not depend on an actual service-standard violation, repeated crossing of an early-warning threshold, or expiration of a cure period. A preexisting constraint should not excuse Applicants when their merger-related operations materially increase the demands placed on it. The [redacted] and lack of a CPKC-impact evaluation, together with the overlapping work identified in Applicants' terminal clock, demonstrate why that obligation must address the timing, location, and duration of terminal work as well as the number of additional trains.[632]

[632] *See* Elphick & Nelson V.S. ¶¶ 529-32 & Figure 129.

Applicants should disclose their planned traffic and operating changes on the Birmingham-New Orleans route and at Meridian, and the supporting operating and capacity information, sufficiently in advance to permit CPKC and other affected operators to assess their effects and obtain effective protection before implementation. The analysis should address the interaction of those operations with Speedway traffic and CPKC's access to Artesia and to Myrtlewood and the CSX interchange, including the location, timing, and duration of crew changes, fueling, inspections, staging, and other terminal work. Train counts alone would not establish that those movements and customer services can be accommodated. The Board should require a timely technical process, assisted by the Board-appointed monitor, in which Applicants disclose and evaluate their plans with affected operators, and the Board resolves disputed capacity needs, operating adjustments, and implementation milestones. That process should permit CPKC to model and address the effects on its customers' services before they occur, while preserving existing contractual rights except as expressly modified by the Board's conditions. The resulting obligations should remain enforceable as plans and operating conditions change.

The Board should require Applicants to fund and complete the double-track investments north of Meridian described in their operating plan and staging tracks east of Meridian where trains can await clearance, change crews, and refuel without interfering with other terminal movements.[633] The Board should establish enforceable project milestones and completion dates through the process described above, so that the required capacity and operating adjustments are in place before the additional traffic or changed operations would otherwise materially impair protected service. The Board should also require any further siding or staging capacity needed

[633] Redd V.S. ¶ 137.

on the Speedway approach to Meridian so that eastbound trains awaiting entry do not obstruct westbound movements. The timing of each project should reflect the operating need it addresses and feasible phasing, together with effective interim protection; completion of every project should not be an automatic prerequisite to any increase in Applicants' traffic. In all events, the specified double-track, staging-track, and Speedway-approach capacity projects should be completed no later than Applicants complete the work they propose north of Meridian on their own track; that outside deadline should not extend any earlier completion date needed to prevent material impairment.[634]

The specified projects should not exhaust Applicants' continuing preventive-capacity obligation. Applicants should evaluate other actual or reasonably anticipated capacity shortfalls in consultation with affected operators and provide any further improvements required to prevent material impairment, based on operating and engineering evidence concerning the shared terminal and its approaches. Required work should have binding completion milestones and be operational before the added traffic or operating change would otherwise cause material impairment. Interim measures—including adjustments to traffic implementation, routing, train length, staging, and terminal practices—should prevent impairment while work proceeds. Applicants, however, should not be permitted to use interim measures to defer necessary improvements indefinitely or introduce traffic or operating changes that would materially impair protected service before effective capacity or operating protection is in place.

If service degradation occurs despite these affirmative obligations, the monitoring and corrective-action process should also identify and require capacity work needed to restore and

634 Redd V.S. ¶ 137.

sustain compliant performance. Actual service-standard violations and repeated early-warning events should inform that determination without limiting the independent preventive obligation.

Applicants should bear the full cost of capacity reasonably necessary to prevent or remedy material impairment caused or materially contributed to by their merger-related traffic or operating changes. Costs demonstrably attributable to separable project scope required for independent incremental CPKC or third-party service, and unnecessary to satisfy Applicants' obligation, may be assigned to the carrier requiring that scope. Any allocation within a mixed-use project should distinguish those incremental costs from the capacity Applicants must provide under this condition. Incidental benefits to other users, including preservation of their existing service, should not reduce Applicants' funding obligation. Applicants should not shift costs allocated to them under this condition to CPKC through MSLLC capital calls, usage charges, or Designated Operator compensation. Ordinary contractual cost allocations should otherwise remain effective, with appropriate accounting to prevent double recovery.

The technical process and assistance of the Board-appointed monitor should help identify and resolve capacity issues promptly. Disputes over the need, scope, cost allocation, schedule, or adequacy of capacity measures should receive expedited Board resolution under Section V.B. Those disputes should not stay necessary interim protection or undisputed work. Completion of a particular project or restoration of compliant performance should not terminate Applicants' continuing obligation to maintain sufficient capacity as merger-related traffic and operating conditions evolve.

(b) Reliable Meridian Service Requires Permanent Monitoring and Corrective Action

The Board should require Applicants to monitor Meridian operations under the common service-assurance framework in Section V beginning at consummation. Existing contractual

service standards should continue to apply according to their terms, traffic coverage, and geographic scope, except as expressly modified by a Board condition. Preservation of existing contractual standards under Sections V.A and V.C does not exempt the separate Applicant-controlled operations and interfaces addressed here from this condition's monitoring, capacity, non-obstruction, and remedial duties.

The service-assurance framework under Section V should separately govern Applicants' compliance with the obligations imposed here on Applicant-controlled routes, approaches, and terminal interfaces, including fueling, recrewing, staging, holding, terminal work, and movements crossing or obstructing CPKC routes.

Under Section VI.B, Applicants should amend or supplement relevant instruments, including the applicable MSLLC Joint Use, Operating, and LLC Agreements and the Meridian interchange, terminal, and dispatching instruments and protocols, and procure all necessary assents, to implement the capacity, operating, monitoring, and contingent dispatching obligations imposed here while preserving existing CPKC authority and MSLLC service standards except as expressly modified.[635] Gameiro describes the Joint Use Agreements and their traffic restrictions.[636]

The Board should also require Applicants to conduct fueling, recrewing, staging, holding, and yard work at locations and in configurations that keep CPKC routes, Switch Tender and crossing movements, and Amtrak's terminal and station access clear, including the common route between 29th Street and the CPKC Diamond. Fueling or recrewing should not consume capacity in Meridian between 29th Street and the CPKC Diamond. Other work and holding

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635 *See* Redd V.S. ¶ 137.

636 Gameiro V.S. ¶ 181 & n.106.

practices should not obstruct protected movements when they can reasonably occur clear of the affected route. When necessary to prevent blockage, Applicants should adjust train length, positioning, staffing, or work practices and provide appropriate staging capacity.[637]

To evaluate compliance with the Meridian conditions and service standards, Applicants should establish a transparent and representative pre-merger baseline and provide information sufficient to identify impairment of a particular train, route, connection, terminal movement, or user. The Board should adopt standards through Section V.C that protect CPKC's ability to enter, move through, and leave the Meridian Terminal reliably, with performance-based springing relief subject to Section V.C's 30-day measurement and 30-day cure framework.[638] The standards should address transit and clearance delays to CPKC trains attempting to pass through the terminal; occupancy and blockage of shared routes and the Switch Tender area; backups of Applicants' trains on the New Orleans–Meridian route or other approaches; holding on the Speedway that obstructs protected movements; and interference from fueling, recrewing, staging, and other terminal work. They should also address recrew performance and effects on CPKC, Amtrak, short-line, and other authorized operations.[639] Applicants should disclose material changes to train counts, schedules, routing, train length, terminal work, fueling and recrewing plans, maintenance activity, and capital projects affecting Meridian.

For existing service, the Board should use a representative pre-merger baseline that accounts for ordinary seasonal and traffic variation without allowing merger implementation to lower the standard. For authorized new service lacking a historical baseline, the Board should

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637 Redd V.S. ¶¶ 135-37.

638 Gameiro V.S. ¶ 226; Redd V.S. ¶ 137.

639 *See* Redd V.S. ¶¶ 131-37.

establish an independent standard based on the approved operating plan, commercially effective service, and relevant comparable operations. The reporting should separately identify SMX movements and their access delays and transit times through Meridian, including delays associated with Applicants' crossing movements, staging, fueling, or recrewing. Aggregate averages should not conceal failures affecting a particular protected service, including SMX, and Applicants should not unilaterally lower an adopted standard.

CPKC should initiate enforcement by notifying Applicants of an alleged failure, including a reasonably anticipated failure to satisfy the preventive capacity obligation, the affected operation, the supporting information available, and the requested preventive, corrective, or interim measures. Applicants should promptly provide relevant operating and engineering data, their assessment of the actual or anticipated constraint, and proposed measures with binding milestones where physical work is necessary. Following CPKC's request, any disputed breach or need for preventive relief should receive expedited Board resolution under Section V.B, including orders directing the measures necessary to secure compliance. Where the applicable obligation or remedy requires a showing of Applicants' contribution, Section V.D's contribution standard and rebuttable presumption should apply; enforcement of an independent obligation should not require a fresh showing of merger causation. Neither a preexisting constraint nor another contributing cause should excuse Applicants where their operations materially worsened the effect on protected service.

Necessary interim operating or capacity protection should be available under Section V.B during a dispute or cure process, including before any applicable cure period expires where actual or reasonably anticipated impairment threatens material harm. The interim order should identify the required measures and implementation schedule. Additional dispatching relief

should remain governed by Section VIII.D.3(c). The capacity, non-obstruction, monitoring, reporting, data-preservation, and corrective-action obligations should be permanent, bind Applicants, their controlled affiliates, and successors, and remain effective unless affirmatively modified by the Board. They should not expire with the ordinary merger-oversight period. Any obligation to fund or complete a required improvement should survive until satisfied. The Board should retain authority to revise metrics and impose further relief if the protections prove inadequate.

(c) Reliable Meridian Operations Require Preservation of CPKC's Existing Control and Targeted Additional Dispatching Relief

Applicants should respect CPKC's existing Switch Tender authority at Meridian.[640] They should also preserve KCSR's existing role as MSLLC's Designated Operator and dispatcher on the Speedway. CPKC already provides the crews, dispatches the line, and operates the trains for the NS haulage service between Shreveport and Meridian.[641] Applicants' funding or installation of improvements should neither transfer CPKC's existing control to Applicants nor entitle Applicants to require unified dispatching under their control as a condition of that work. The implementing instruments should expressly preserve CPKC's existing authority. Any additional dispatching transfer should supplement that authority and address Applicant-controlled functions necessary to remedy the demonstrated failure. For those Applicant-controlled functions, the Board should preauthorize additional dispatching relief under the common activation requirements in Section V.D, applying Section V.C's 30-day measurement and 30-day cure framework for a performance-based trigger. The transfer should be available upon an uncured

640 Redd V.S. ¶¶ 129-37.

641 Brooks V.S. ¶ 105.

material failure to satisfy the objective service standards adopted for Meridian under Section V.C, or material degradation in Meridian Terminal fluidity or protected CPKC service caused or materially contributed to by Applicants' post-merger operations and not timely corrected. The first ground should not require a fresh showing of merger causation. The second should apply Section V.D's contribution standard and rebuttable presumption. Under either ground, the identified transfer should provide an effective, proportionate, and operationally feasible response. Upon satisfaction of the applicable predicates, CPKC should be entitled to activate the preauthorized functions by supported notice under Section V.D, without a further Board determination. The transfer should take effect on the commencement date specified in that notice. The geographic and functional limits and governing operating protocols should be established in advance.

Under the deterioration ground, once material service deterioration and Applicants' contribution are established, Applicants' failure timely to propose, commence, meet material milestones for, or complete required capacity work addressing that impairment should independently satisfy the failure-to-cure element. Once the applicable cure requirement is satisfied, CPKC should not have to await completion of that work or expiration of an additional generic cure period to activate the preauthorized transfer by notice. A capacity-milestone default alone should not activate this remedy. An independently established material failure to satisfy the adopted Meridian service standards should remain actionable under the first ground, subject to the applicable measurement and cure requirements.

The preventive-capacity obligation in Section VIII.D.3(a) should remain independently enforceable before service deteriorates. The Board should be able to require compliance and order interim operating measures or temporary additional dispatching where necessary and

operationally feasible to prevent actual or reasonably anticipated impairment of Meridian Terminal fluidity or protected CPKC service from causing material harm, including before an applicable cure period expires. Any temporary dispatching authority should remain confined to the Applicant-controlled functions identified in this subsection and preserve existing CPKC authority. Activation disputes should receive expedited Board determination under Section V.B without requiring CPKC to file a new application relitigating the conditional grant. Such review should not be a prerequisite to exercise of the preauthorized transfer or suspend its exercise unless the Board grants a stay.

The transfer should give CPKC dispatching authority over all train movements on or across CPKC's routes between the Meridian Speedway and the Artesia Subdivision, including movements across the CPKC Diamond. Together with CPKC's existing Switch Tender authority, that transfer would place all train movements over the covered segment under CPKC's dispatching control, enabling CPKC to dispatch movements from the Meridian Speedway through the Switch Tender area and across the diamond to the Artesia Subdivision without a remaining Applicant-controlled dispatching interface through which Applicants could impede those movements.[642] The Board's order and implementing arrangements should identify the precise dispatching, signal, and interlocking functions to be transferred and any operating or signal changes necessary for its safe exercise, while preserving CPKC's existing control. The transfer otherwise should not displace MSLLC's existing governance or service-standard regime beyond the scope necessary to address the service-standard failure or material degradation in fluidity or protected CPKC service warranting relief under this condition.

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642 Redd V.S. ¶¶ 134-37.

Applicants should retain ownership of their infrastructure and their maintenance, capital-investment, safety, and regulatory obligations. CPKC should dispatch all authorized operations neutrally under Board-approved protocols and remain responsible for the safety and regulatory duties applicable to its dispatching functions. Any return of transferred dispatching authority to Applicants should require an affirmative Board order under Section V.D, following satisfaction of the verification requirements established for the affected Meridian operations under Section V.C. The showing should address the relevant movements and interfaces and the capacity, resources, and operating arrangements necessary to preserve compliant performance under Applicants' control. Return should extend only to the additional functions transferred under this condition and should preserve CPKC's existing Switch Tender authority and KCSR's existing role as MSLLC's Designated Operator and dispatcher. Meridian's preventive-capacity, non-obstruction, monitoring, and other underlying obligations should remain effective, and additional dispatching relief should remain available for reactivation by notice under Section V.D when the applicable predicates are again satisfied.

The Speedway and Meridian Terminal conditions address contractual access and shared operations along the route. Section VIII.E separately addresses the acquisition rights threatening CPKC's ownership and control of Wylie. Those protections are complementary, but each rests on the distinct merger-related harm it addresses.

4. The Speedway and Meridian Conditions Address Merger-Related Harm, Are Operationally Feasible, and Are Supported by Board Precedent

The Speedway and Meridian conditions address two distinct harms. Combining NS's contractual gatekeeping rights with UP's western network would threaten CPKC's ability to develop competing intermodal service with other connecting carriers. Additional merger-related traffic and operating changes would place greater demands on the shared Meridian Terminal.

Removing the applicable Speedway restrictions would create a competitive opportunity; the preventive-capacity, operating, monitoring, and enforcement obligations would protect the shared connection needed to make that opportunity effective.

The relief builds on existing routes, facilities, and operations. CPKC already operates the Speedway through KCSR, MSLLC's Designated Operator, and participates in Meridian Terminal operations. Removing the gatekeeping rights principally changes the carrier combinations and commercial arrangements CPKC may pursue; it does not require construction of a new railroad, immediate operation of a new train, participation by another carrier, or prescribed rates. Applicants would retain their underlying lawful Speedway movement rights on their existing terms, subject to removal of the specified exclusivity, first-refusal, and consent restrictions, and could compete for every movement. Neither the Speedway condition nor the Meridian protections would guarantee traffic to CPKC or displace existing UP–NS service.

The Meridian obligations would require the double track north of Meridian, staging tracks east of Meridian, and any further needed siding or staging capacity on the Speedway approach, accounting for completed improvements and evaluating capacity toward 65th Street at the west end. All would follow enforceable schedules that provide the capacity and operating protection needed before adverse impacts occur, subject to the preventive and outside completion deadlines specified in Section VIII.D.3(a). Advance disclosure and technical consideration of Applicants' plans would inform the phasing of those projects and the operating measures needed to protect customers' services while work proceeds. Applicants would also have to provide further capacity when needed to prevent or remedy material impairment caused or materially contributed to by merger-related traffic or operating changes. Monitoring would use ordinary train, dispatching, terminal, and capacity data; required infrastructure would respond to identified

constraints and Applicants' incremental demands. Preventive enforcement and necessary interim protection would remain available before service deteriorates. Any additional dispatching relief would remain subject to the substantive activation requirements and geographic and functional limits in Sections V.D and VIII.D.3(c), with exercise commencing on the date specified in CPKC's supported notice and continuing effectiveness unless affirmatively stayed, modified, or suspended by the Board.

Board precedent supports pairing access with the operating arrangements needed to sustain it. *UP/SP* coupled trackage rights with terminal access, interchange rights, and implementation protections, and *CSX/NS-Conrail* approved shared-asset arrangements and imposed targeted-access conditions to preserve and enhance competing service.[643] *CP/KCS*'s reporting, oversight, and supplemental-relief provisions provide a further model for enforcing service protections.[644] The requested conditions apply those principles to the specific contractual and operating risks here and advance the Major Merger Rules' objectives of preserving interline options and enhancing competition through feasible relief.[645]

E. Independent Dallas–Fort Worth Competition Requires CPKC's Continued Ownership and Control of the Wylie Intermodal Terminal and Surrounding Property

1. Effective Dallas–Fort Worth Competition Requires Preserving or Restoring CPKC's Ownership and Operation of the Wylie Intermodal Terminal and Surrounding Property

CPKC's Wylie facilities encompass three distinct operations: manifest and bulk facilities, an automotive compound, and the Wylie Intermodal Terminal, a self-contained intermodal

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643 *UP/SP*, 1 S.T.B. at 403-04, 424-25; *UP/SP*, 1 S.T.B. at 596-98, 620-22; *CSX/NS-Conrail*, 3 S.T.B. at 250, 256, 388-89.

644 *CP/KCS*, Decision No. 35 at 142-45.

645 49 C.F.R. § 1180.1(c)(2)(i), (iv), (d).

handling facility. These facilities and their supporting trackage are critical to CPKC's ability to compete for Dallas–Fort Worth traffic.[646] The Dallas Terminal Marketing Agreement and its First Amendment grant NS an option to acquire the Wylie Intermodal Terminal and govern the related commercial and operating arrangements.[647] [redacted] [redacted] [redacted

[redacted] The Wylie Intermodal Terminal and surrounding property remain owned and controlled by CPKC.[651]

CPKC operates intermodal train service between Wylie and Meridian, where run-through service with NS connects Dallas with Atlanta without a service disadvantage attributable to the interline arrangement.[652] CPKC also pursues Dallas–Southeast intermodal service with CSXT through Myrtlewood and the SMX service, promoting the carrier combination that best meets the customer's needs.[653] Independent control of Wylie enables CPKC to support those partnerships while competing with UP for other Dallas-area traffic, without relying on UP to supply the terminal services needed to compete with it.[654]

Acquisition of the Wylie Intermodal Terminal—[redacted]—would have fundamentally different competitive consequences after the Proposed Transaction. Unlike NS, UP already controls two intermodal terminals serving Dallas–Fort Worth and competes directly with CPKC for Dallas–Chicago traffic.[655] If NS acquires the Wylie Intermodal Terminal and UP acquires NS, UP would own three of the four Dallas-area intermodal terminals, and CPKC would own none.[656] The combined carrier would compete with CPKC in Mexico–Dallas, Dallas–Chicago, and Dallas–Atlanta intermodal service.[657] Indeed, Michael McClellan, NS's Chief Strategy Officer, acknowledged both [redacted]

651 Gameiro V.S. ¶ 218.

652 Brooks V.S. ¶ 108.

653 Brooks V.S. ¶ 110.

654 Brooks V.S. ¶¶ 229-31; Majure V.S. Vol. II ¶¶ 53-55.

655 Brooks V.S. ¶¶ 228-29.

656 Brooks V.S. ¶ 228.

657 Brooks V.S. ¶ 229.

[redacted] and [redacted] [redacted][658]

The threatened loss is not limited to intermodal service. [redacted] [redacted][659] [redacted][660] The [redacted] therefore threatens CPKC's ability to compete for automotive, manifest, and bulk traffic in the Dallas market as well as its intermodal service.

[redacted][661]

658 Michael McClellan Deposition Transcript at 354:5-358:15 (Oct. 9, 2026); *see* Majure V.S. Vol. II ¶¶ 55-56.

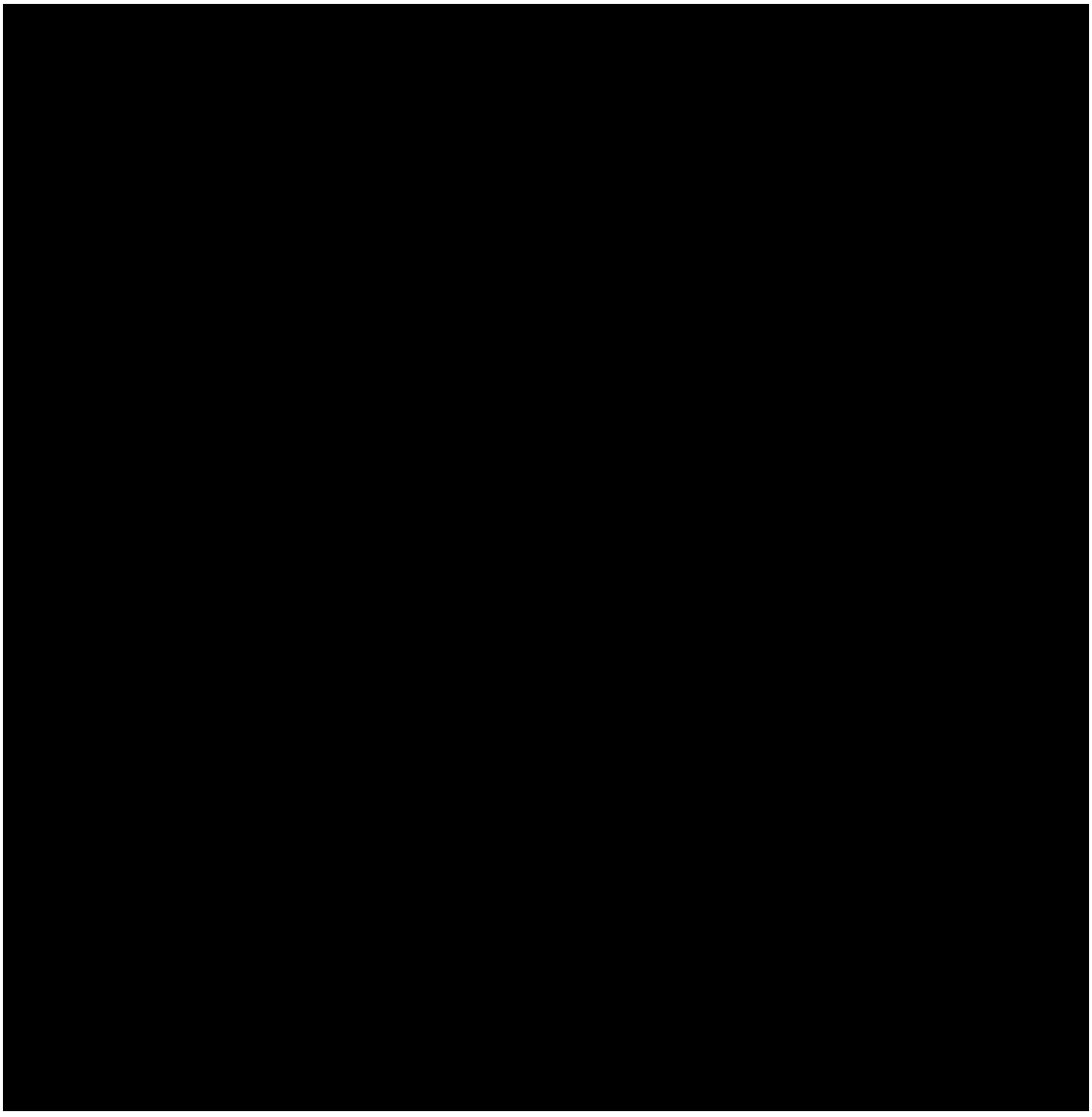
659 Gameiro V.S. ¶ 216.

660 Gameiro V.S. ¶¶ 220-21; Redd V.S. ¶ 274.

661 Gameiro V.S. ¶¶ 216-17 & Figure 19.

[redacted][662]

[redacted]



[redacted]

[redacted] of CPKC's Wylie traffic thus far in 2026 moved to or from markets in which UP, but not NS, competes. After the merger, all of CPKC's Wylie intermodal traffic would compete directly with UP–NS's Mexico–Dallas, Dallas–Chicago, and Dallas–

662 Gameiro V.S. Figure 19.

Atlanta services.[663] [redacted][664]

If NS acquires the Wylie Intermodal Terminal, the DTMA requires NS to provide terminal services to specified KCSR intermodal traffic on a nondiscriminatory basis relative to its own traffic, [redacted].[665] Those intermodal handling obligations would not by themselves protect the railroad operations supporting CPKC's intermodal, automotive, manifest, and bulk services if NS also acquired the disputed property beyond the Wylie Intermodal Terminal.[666] Nor would those service protections preserve CPKC's independent ownership, operation, or strategic control if Applicants acquire the Wylie Intermodal Terminal. CPKC's competitive position depends on control of the facilities, trackage, capacity, operating priorities, and development opportunities needed to adapt and expand its Dallas–Fort Worth service.[667]

NS's strategic planning documents from August 2025 [redacted]

663 Brooks V.S. ¶ 229.

664 Gameiro V.S. ¶¶ 216-17, 220-22; Redd V.S. ¶ 274.

665 Gameiro V.S. ¶ 220 & n.127.

666 Gameiro V.S. ¶¶ 220-21; Redd V.S. ¶¶ 274-75.

667 *See* Brooks V.S. ¶¶ 229-31; Majure V.S. Vol. II ¶¶ 52-56.

[redacted][668] Those planning assumptions reinforce the distinction between preserving a handling obligation and preserving CPKC's independent terminal control.

Further underscoring the competitive significance of Wylie, NS views [redacted]—NS's Assistant Vice President of Strategic Planning testified that [redacted][669] And NS's Chief Strategy Officer confirmed [redacted][670]

To preserve competition in this corridor, the Board should condition approval of the Proposed Transaction to ensure that Wylie Intermodal Terminal and its related property are controlled by CPKC.[671]

As a condition of consummation, Applicants should irrevocably release [redacted][672] The release and withdrawal obligations should encompass

668 NS_00474396, at -417-18.

669 David Lehlbach Deposition Transcript at 340:20-342:13 (Sept. 10, 2026).

670 McClellan Tr. at 364:11-366:7; *see* Majure V.S. Vol. II ¶ 57.

671 Gameiro V.S. ¶ 223.

672 Gameiro V.S. ¶ 223.

[redacted] and any such rights or claims held through an affiliate, nominee, or successor. Under Section VI.B, Applicants should amend the DTMA, the Wylie Memorandum of Agreement, and related option, easement, conveyance, and property-control instruments, and procure all necessary assents, to accomplish that release and withdraw claims seeking to enforce the covered rights. This obligation should apply whether or not a purchase has closed. It should complement the reconveyance requirement for interests already acquired.

If NS or UP acquires any interest in the Wylie Intermodal Terminal [redacted], the Board should require Applicants to divest and reconvey that interest to CPKC before or contemporaneously with consummation to restore, to the maximum extent practicable, CPKC's ownership, operation, and independent control of the Terminal and other nearby railroad property. Upon reconveyance, CPKC would reimburse Applicants for the purchase price actually paid to CPKC for the interests being reconveyed.[673] The Board should not permit Applicants to [redacted][674] The reconveyance should therefore encompass the Wylie Intermodal Terminal and [redacted]

673 Gameiro V.S. ¶ 223.

674 Gameiro V.S. ¶¶ 216, 223.

[redacted] that would impair CPKC control. Any easements, access restrictions, and other encumbrances should be released to the extent necessary to accomplish that restoration.

Pending completion of the required releases and any reconveyance, Applicants should preserve CPKC's access, the property's capacity and condition, and uninterrupted lawful service. They should not use acquired control to displace CPKC's operations, restrict its access, materially alter the property, encumber it, or transfer a covered interest except under Board-approved implementation arrangements. Any dispute concerning the assets covered by the release or reconveyance condition, the adequacy of the reconveyance, or Applicants' interim conduct should receive expedited Board resolution under Section V.B, with interim relief sufficient to preserve CPKC's operations and prevent an irreversible change in the property.

Nothing in the condition should prevent Applicants from tendering traffic to Wylie or entering into arm's-length commercial and operating arrangements with CPKC. No such arrangement should recreate a released acquisition right or confer ownership or practical control of covered property on Applicants. Applicants would remain free to operate their own Dallas-area facilities and compete for every movement through superior rates and service.

The prohibition should be permanent, bind Applicants, their controlled affiliates, and successors, and remain effective unless affirmatively modified by the Board. Applicants should not be permitted later to reacquire an interest in the covered assets without prior Board authorization based on a demonstration that the acquisition would not impair CPKC's competitive independence or otherwise undermine the purposes of the merger condition. The Board should retain jurisdiction to enforce the prohibition, prevent circumvention, and direct any additional relief necessary to preserve CPKC's ownership, operation, and independent control.

The requested condition would preserve or restore CPKC's [redacted] ownership, operation, and independent control of the Wylie Intermodal Terminal and its surrounding property. It would return covered interests acquired from CPKC without requiring conveyance of Applicants' unrelated, preexisting property. It would neither grant CPKC exclusivity nor guarantee CPKC traffic, and Applicants would remain free to use their own Dallas-area terminals. Preserving CPKC's existing ownership and operation would not require changes in existing traffic or routings. If covered property is acquired before consummation, Applicants should implement the conveyance and transition arrangements necessary to restore CPKC's independent operation and service capability. CPKC should retain the ability to adapt its operations, capacity, and service as customer needs and traffic evolve. CPKC would continue operating the Wylie Intermodal Terminal generally consistent with its current operations, including through an intermodal operating contractor, while CPKC's Operating Department continues the associated railroad operations. CPKC would honor its continuing contractual service obligations, as modified by the Board's conditions, without discrimination.[675] The condition would prevent UP from obtaining or retaining control, through the Proposed Transaction, of a CPKC asset needed to facilitate CPKC's independent competitive service.

2. The Wylie Intermodal Terminal and Surrounding Property Conditions Address Merger-Related Harm Through Feasible Ownership Protections Within the Board's Conditioning Authority

The conditions above address a distinct merger-related threat: UP would acquire NS's rights to obtain control of a strategic CPKC terminal while already competing with CPKC in Dallas–Fort Worth. Continuing traffic-handling commitments would not preserve CPKC's ability to make independent decisions about capacity, investment, operations, and development.

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675 Redd V.S. ¶ 284.

Preserving or restoring CPKC's ownership and operation would address that structural risk directly. Preserving CPKC's control of Wylie would retain an independent Class I option for Dallas–Fort Worth intermodal shippers and preserve competition.[676] The justification does not depend on granting the Speedway or Meridian conditions, although those conditions protect complementary elements of CPKC's competitive service.

The remedy would reach only the [redacted]. It would not require conveyance of UP's independently owned Dallas-area facilities. Release would prevent acquisition of interests not yet transferred; reconveyance and removal of acquisition-dependent encumbrances would restore interests acquired before consummation. Applicants could continue tendering traffic to Wylie and negotiating arm's-length arrangements with CPKC.

The condition is operationally feasible because it would preserve the existing CPKC ownership and operating structure or restore that structure if an acquisition occurs before consummation.[677] Interim protections would prevent irreversible changes while release or reconveyance is completed. CPKC would gain neither exclusivity nor guaranteed traffic, and Applicants would remain free to compete using their own facilities. Permanent protection against reacquisition or circumvention is warranted because the structural change placing NS's acquisition rights under UP's control would endure.

The Board's conditioning authority encompasses remedies directed at structural control.[678] In *CP/KCS*, the Board recognized its authority to require divestiture to remedy

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676 Majure V.S. Vol. II ¶¶ 52-56.

677 *See* Redd V.S. ¶¶ 276, 284; Gameiro V.S. ¶ 223.

678 49 U.S.C. § 11324(c).

merger-related competitive harm but denied the requested Springfield Line divestiture because the asserted harm had not been demonstrated.[679] Here, CPKC identifies an existing terminal essential to its independent competitive service and explains how placing NS's existing acquisition rights—or terminal interests acquired through those rights—under UP's control would create the merger-related competitive threat described above. The requested release or restoration addresses that identified threat; it does not seek Applicants' unrelated facilities or a redistribution of their existing business.

F. Effective Competition Through the Kansas City Gateway Requires Neutral and Efficient Gateway Operations

Section VIII.H addresses the specific operating rights necessary to create a more efficient CPKC route between Kansas City and St. Louis. This Section addresses a distinct but related set of harms within the Kansas City Gateway itself. CPKC depends on shared terminal infrastructure and UP-owned trackage in the Kansas City gateway to connect its northern and southern networks, reach its Kansas City facilities and interchange partners, and move traffic between Kansas City and points north, south, and east. Efficient operation of that infrastructure therefore affects local Kansas City traffic, CPKC's through services linking the Midwest with Mexico and the southern United States, and its interchange with other Class I carriers at Kansas City.[680]

First, CPKC seeks confirmation or an affirmative grant of rights over UP trackage between the west end of CPKC's Knoche Yard at Troost Avenue and KCT trackage near Broadway, via the Incline Track.[681] Second, CPKC seeks preservation of the longstanding

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679 *CP/KCS*, Decision No. 35 at 125-26.

680 Redd V.S. ¶¶ 106-10, 115, 242, 250-51.

681 Redd V.S. ¶¶ 242-49.

Airline Junction–Polo paired-track arrangement, together with enforceable service standards and dispatching protections.[682] Third, CPKC also seeks conditions protecting KCT's neutral governance and requiring Applicants to monitor, prevent, and remedy merger-related congestion through coordinated dispatching, effective alternative routing, and targeted bridge, track, and connection improvements where warranted and operationally feasible to preserve reliable CPKC access through the Kansas City gateway.[683]

1. The Proposed Transaction Would Increase UP's Influence Over—and Merger-Related Traffic on—Infrastructure Essential to CPKC's Kansas City Operations

The Kansas City Gateway is a complex network of carrier-owned and jointly used trackage, yards, bridges, interlockings, and terminal facilities. CPKC's operations depend on infrastructure that includes Knoche Yard; KCT trackage; the Troost-Broadway route via the Incline Track, whose use CPKC seeks to restore; Airline Junction; the paired-track route between Airline Junction and Polo; and routes through the central Kansas City Terminal.[684] The Airline Junction-Polo segment is vital to CPKC's main-line operations between Kansas City, Chicago, and the remainder of its northern network.[685] CPKC's route through the Kansas City terminal carries trains between Chicago and Shreveport, bulk traffic from the U.S. Midwest to Mexico and southern U.S. destinations, and premium intermodal traffic between Chicago and Mexico.[686] CPKC also uses the gateway to reach customers and connections to the east and west.

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682 Redd V.S. ¶¶ 250-51; Gameiro V.S. ¶¶ 155-58.

683 Redd V.S. ¶¶ 105-17; Gameiro V.S. ¶¶ 122-28.

684 Redd V.S. ¶¶ 106, 109-10, 242-43, 246, 250 & Figures 29, 30.

685 Gameiro V.S. ¶¶ 67-68.

686 Redd V.S. ¶ 106.

Disruption at a single terminal route, interlocking, bridge, or connection can therefore impair service across a much larger portion of CPKC's network.[687]

The Proposed Transaction would materially increase the risk to those operations in four interrelated ways:

First, Applicants propose to change both the volume and routing of UP–NS traffic through the Kansas City terminal area.[688] UP currently interchanges the relevant traffic with NS via the Hannibal Bridge.[689] Applicants propose instead to shift multiple trains per day to a route through Kansas City Union Station, KCS Junction, Airline Junction, the single-track Truman Bridge, and Birmingham, Missouri.[690] Those shifted and expanded operations will conflict directly with CPKC's route through the Kansas City terminal for trains between Chicago and Shreveport, bulk trains originating in the U.S. Midwest for Mexico and Southern U.S. destinations, premium intermodal service between Chicago and Mexico, as well as all of the trains CPKC moves into and out of its Knoche Yard in Kansas City.[691] Applicants' planned increase in block-swapping at Voltz would also require extended occupancy of the Birmingham diamond and restrict opportunities for north–south trains to cross the interlocking.[692] Even assuming perfectly spaced trains and no more than two hours of work per train, Elphick and Nelson estimate that the proposed westbound activity would occupy the west end of Voltz for [redacted] hours each day. That would leave only [redacted] hours per day for unimpeded

687 Redd V.S. ¶¶ 115, 242, 248.

688 Redd V.S. ¶ 105; Elphick & Nelson V.S. ¶¶ 414-15 & Figure 98.

689 Redd V.S. ¶ 105.

690 Redd V.S. ¶¶ 105, 108-09 & Figure 4.

691 Redd V.S. ¶ 106.

692 Elphick & Nelson V.S. ¶¶ 408-13; Redd V.S. ¶ 106.

north–south movements across Birmingham, assuming no additional interference from eastbound trains working Voltz.[693] Those conflicts would place additional demands on the Birmingham interlocking and impede CPKC's movements over the Airline Junction-Polo route.[694]

The operational risk arises from the interaction of these new train flows with existing CPKC operations, not merely from an increase in aggregate train counts. Applicants' trains would traverse shared routes, interlockings, and the single-track Truman Bridge, creating conflicts with CPKC trains moving into and out of Knoche Yard and between Chicago and Shreveport.[695] CPKC's operating data identify an average of 10.57 trains per day moving across Airline Junction between Knoche Yard and CPKC's Kansas City Subdivision.[696] Congestion in that area could trap CPKC trains in Knoche Yard, prevent other trains from reaching the yard, obstruct movements serving local industries or interchanging with BNSF, and delay CPKC's principal North–South operations through Kansas City.[697] Applicants would receive the benefits of the merger-related rerouting, while CPKC and its customers would bear the consequences if the additional movements reduce terminal fluidity.[698] Two distinct single-track constraints compound that risk: the segment between KCS Junction and Airline Junction and the Truman Bridge.[699] Dispatching responsibilities are also divided at Birmingham, between Birmingham

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693 Elphick & Nelson V.S. ¶¶ 412-13.

694 Redd V.S. ¶¶ 106, 250-251.

695 Redd V.S. ¶¶ 105-06, 109.

696 Redd V.S. ¶ 114.

697 Redd V.S. ¶¶ 114-15.

698 *See* Redd V.S. ¶¶ 105, 115-16.

699 Redd V.S. ¶ 109 & Figure 5.

and Airline Junction, and between Airline Junction and KCS Junction, making coordinated entry and clearance protocols important.[700]

The CN settlement would add another layer of operating complexity. CN may elect interchange through KCT or directly at Neff Yard during haulage operations and has a one-time option, subject to notice and implementation requirements, to convert its overhead haulage service to trackage-rights operations.[701] The movements contemplated by the settlement would interact with Applicants' rerouted and expanded services and cross trackage that CPKC uses to reach its Shreveport route and operate between Kansas City and St. Louis.[702] The Board should therefore evaluate the aggregate conflicts created by Applicants' reroutes and the additional CN operations, rather than analyzing either operating plan in isolation.

UP previously sought capacity protections for projected increases in Kansas City-area train volumes. In *CP/KCS*, UP argued that the anticipated addition of 14 daily CPKC trains over the UP–CP paired-track route between Airline Junction and Polo would require additional capacity.[703] CP and KCS disputed UP's assessment and identified operating changes and capacity measures they maintained would accommodate the additional traffic.[704] The Board nevertheless expressed concern about potential capacity constraints and imposed monitoring, reserving further requirements concerning infrastructure or traffic volumes.[705] The present

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700 Redd V.S. ¶¶ 110, 114 & Figure 5.

701 *See* UP-80/NS-78 at Supp. 205 (Att. 1, Kansas City Access ¶ 4); *id.* at Supp. 215-17 (App'xs. B-C).

702 Redd V.S. ¶¶ 107, 109, 114.

703 *See CP/KCS*, Union Pacific's Comments and Request for Conditions, Finance Docket No. 36500 (UP-10) at 11, 62-63 (filed Feb. 28, 2022).

704 *CP/KCS*, Finance Docket No. 36500, Applicants' Response to Comments and Requests for Conditions, Opposition to Responsive Applications, and Rebuttal in Support of the Application (CP-53/KCS-39), Vol. 2 Elphick & Orr R.V.S. ¶¶ 78-80 (filed July 13, 2022).

705 *CP/KCS*, Decision No. 35 at 101.

proposal requires a separate assessment of Applicants' changed traffic flows and the resulting terminal conflicts. Applicants propose to route incremental trains through the central terminal, across KCS Junction and Airline Junction, over the single-track Truman Bridge, and through Birmingham, while also increasing work at Voltz.[706] Those movements would interact directly with trains entering and leaving Knoche Yard and with CPKC's Chicago-Shreveport route.[707]

Second, the merger would magnify the competitive harm from UP's refusal to recognize CPKC's rights over the more efficient Troost Avenue–Incline Track route connecting the west end of Knoche Yard with KCT trackage near Broadway. CPKC maintains that its existing rights extend to this route because UP's reconfiguration of the North End Freight Line substituted UP trackage for the former KCT connection. The 1984 KCT-MP lease preserved KCT owners' use of the North End Freight Line and provided for remaining UP trackage and connections to be substituted for the leased property. CPKC accordingly maintains that the lease's preservation and replacement provisions, together with its associated operating rights, protect continued use of the reconfigured route, including the Incline Track. UP disputes that position.[708]

CPKC and BNSF used the Incline Track route for interchange until UP refused further access in March 2024.[709] UP's refusal forced CPKC to use a circuitous route from the east side of Knoche Yard through Airline Junction, KCS Junction, and KCT's heavily used mainline past Kansas City Union Station.[710] On that route, CPKC must obtain KCT dispatching clearance and assemble its interchange train on shared mainline trackage, a process that takes approximately 45

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706 Redd V.S. ¶¶ 105-06, 109.

707 Redd V.S. ¶¶ 106, 114-15.

708 Gameiro V.S. ¶¶ 44, 47-55; *see* Redd V.S. ¶¶ 242-44.

709 Gameiro V.S. ¶¶ 50-51.

710 Redd V.S. ¶¶ 243-44.

minutes and blocks both the north–south mainline and the intersecting UP east–west mainline. Delays can cause crews to exhaust their permitted hours, miss transfers, and leave cars congesting Knoche Yard. By contrast, the Incline Track route permits train assembly within the yard and avoids the safety risks associated with assembling trains on the mainline.[711]

The merger would intensify these existing problems because Applicants propose to operate approximately 7.48 additional trains per day over the KCT southern mainline and through the junctions used by CPKC's circuitous interchange route.[712] Those additional movements would increase conflicts on infrastructure that already constrains CPKC-BNSF interchange, further impairing its reliability and efficiency and increasing congestion in Knoche Yard and on KCT.[713] Confirming or granting CPKC's rights to use the Incline Track/North End Freight Line route would restore the previously used interchange route and allow CPKC to avoid those merger-aggravated conflicts.[714] The merger would strengthen UP's incentive to favor its own service through Kansas City by disadvantaging competing interline options, including CPKC-BNSF service.[715]

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711 Redd V.S. ¶¶ 244-45, 247.

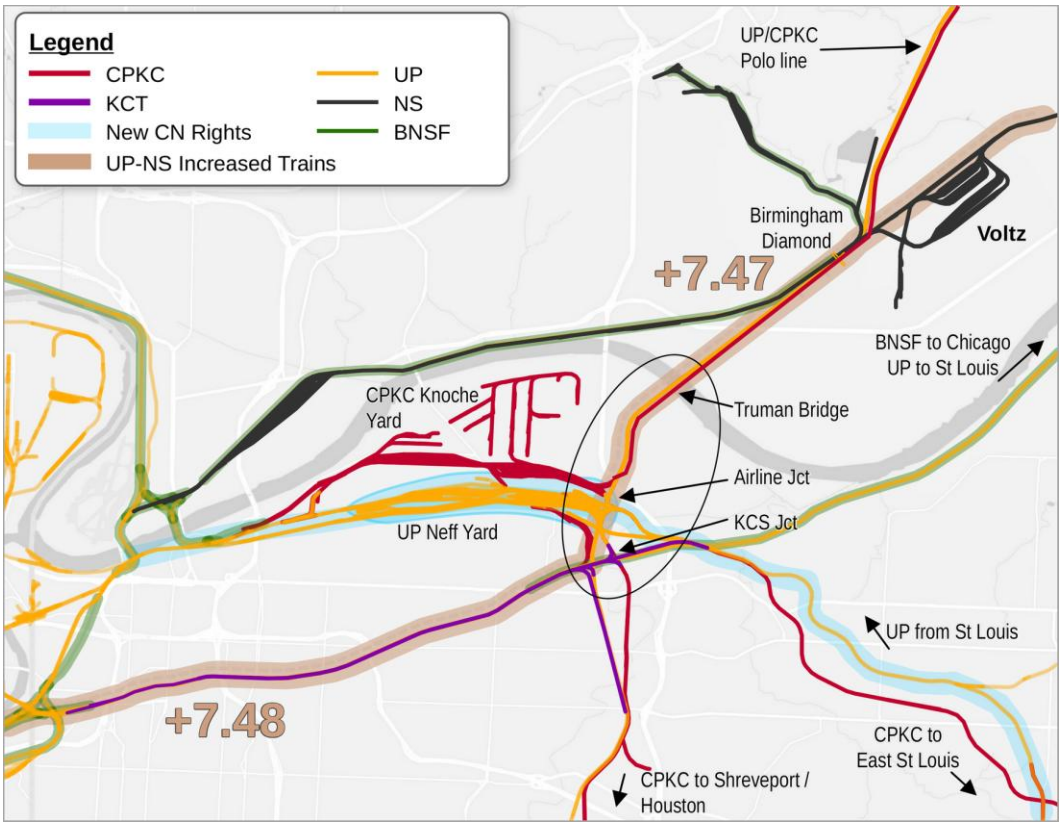
712 Redd V.S. ¶ 248.

713 Redd V.S. ¶ 248.

714 Redd V.S. ¶¶ 242-43, 249.

715 Majure V.S. Vol. II ¶¶ 60, 63-64.

Kansas City Gateway Merger-Related Train Growth and Operating Conflicts[716]



Third, the Proposed Transaction would increase UP's incentive and ability to discontinue or degrade the Airline Junction-Polo paired-track arrangement. Under that longstanding arrangement, UP and CPKC use an integrated operating corridor between Airline Junction and Polo that includes paired mains between Birmingham and Polo.[717] CPKC operates today over the UP-owned portion of the paired trackage.[718] UP's acquisition of NS thus risks creating new incentives to terminate or disrupt the Polo Line agreement.[719] Addressing that risk requires both preservation of the arrangement and enforceable service and dispatching protections.[720]

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716 Redd V.S. Figure 4.

717 Gameiro V.S. ¶ 67; Redd V.S. ¶¶ 250-51 & Figure 30.

718 Redd V.S. ¶ 250 & Figure 30.

719 Gameiro V.S. ¶¶ 155-56.

720 Gameiro V.S. ¶¶ 157-58; Redd V.S. ¶¶ 250-51.

The threatened harm is not limited to formal termination of the Polo Line agreement. Existing maintenance problems on the Polo Joint Line illustrate that risk. Slow orders on portions of the route for which UP has maintenance responsibility have caused continuing delays and reduced operating speeds for CPKC. Some restrictions persisted for months, with UP rejecting CPKC's offer to perform the necessary repairs itself, with the parties sharing the costs.[721] UP could preserve the agreement nominally while altering dispatching, predominant train flows, the use of crossovers between paired tracks, maintenance practices, operating rules, or train priorities in ways that reduce the arrangement's practical capacity or reliability for CPKC.[722] Because the route forms part of CPKC's critical north-south artery through Kansas City, degradation could affect CPKC traffic far beyond the immediate terminal area.[723] The merger would also give UP a greater incentive to prioritize routes and resources supporting the combined UP–NS network over infrastructure essential to CPKC's competing service.[724]

Fourth, the Proposed Transaction would increase UP's influence over KCT's governance, creating a risk to neutral terminal operations independent of the physical congestion concerns described above. Applicants' proposed transfer of NS's KCT interest to CN would not by itself resolve that concern. The Board should impose the governance protections described in Section VIII.F.4 to address the transfer's implementation risks and the potential for aligned UP–CN voting and to preserve independent decision-making at KCT.[725]

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721 Gameiro V.S. ¶¶ 69-72, 156.

722 Gameiro V.S. ¶ 156.

723 *See* Gameiro V.S. ¶ 68; Redd V.S. ¶¶ 106, 115.

724 Gameiro V.S. ¶ 155; Majure V.S. Vol. II ¶¶ 60-61, 65.

725 Gameiro V.S. ¶¶ 122-28.

The Board should address these related harms through an integrated package of Kansas City Gateway conditions:

1. **Troost Avenue–Incline Track Rights.** The Board should confirm or grant CPKC's right to operate over the UP trackage between the west end of Knoche Yard at Troost Avenue and KCT near Broadway at the western end of the Incline Track, together with the incidental authority necessary to make that route operationally effective.

2. **Airline Junction–Polo Protections.** The Board should require a 999-year term for the existing paired-track arrangement, prohibit Applicants from terminating, narrowing, or materially impairing it during that term, and impose enforceable service, dispatching, operating-rule, maintenance, information-sharing, and enforcement protections.

3. **Neutral KCT Governance.** The Board should require Applicants to reduce or restrict the exercise of UP's voting power sufficiently that UP cannot alone force or block KCT action. If Applicants divest KCT shares to an independent railroad group outside KCT's pre-merger ownership group, the condition should also prevent UP together with any single other railroad-owner group from forcing or blocking action. A transfer to an existing independent owner, CPKC or BNSF, would remain subject to the first requirement. Applicants should implement arrangements satisfying the applicable requirement before consummation, as specified in Section VIII.F.4.

4. **Service and Capacity Protection.** The Board should require permanent gateway-specific monitoring, including measurement of track occupancy and delay associated with UP–NS movements between KCS Junction and Birmingham; prompt corrective operating measures when Applicants' operations impair terminal fluidity; and a binding Applicants-funded obligation to provide sufficient capacity to offset merger-related impacts when the applicable trigger under Section VIII.F.5 is satisfied. The existing Truman Bridge truss cannot accommodate an additional track; adding a main track at that crossing would require a new parallel span. Required relief should include double tracking the route between KCS Junction and Birmingham, including a new bridge parallel to the Truman Bridge; coordinated dispatching and signal-control arrangements; rerouting sufficient UP–NS trains via an alternative route between legacy-UP's 18th Street Yard and Birmingham, including via the Hannibal Bridge, to restore pre-merger levels of fluidity; and the Gateway connection and other remedial measures specified in Section VIII.F.5.

These conditions address complementary risks: the Troost Avenue–Incline Track rights would reduce avoidable terminal conflicts; Polo protections would preserve CPKC's onward route; and neutral governance and capacity remedies would protect shared operations.

2. Effective Kansas City Access Requires Confirmed or Granted Rights Over the Troost Avenue–Incline Track Route

CPKC's Knoche Yard connects its northern and southern network operations with KCT and the broader Kansas City Gateway.[726] Before UP denied access in March 2024, CPKC and BNSF used the Incline Track/North End Freight Line route for interchange between Knoche and Argentine Yards.[727]

CPKC maintains that its continuing access rights arise from the 1984 lease of the North End Freight Line to UP's predecessor, Missouri Pacific, and the associated 1984 Trackage Rights Agreement.[728] The lease preserved KCT owners' use of the North End Freight Line and provided that UP trackage and connections substituted for the leased facilities would become part of that route.[729] When UP removed the former KCT connection to BNSF, the Incline Track became the sole remaining connection between the North End Freight Line and BNSF's line.[730] CPKC was already operating over the Incline Track under the 1981 Supplemental Agreement and continued doing so after the reconfiguration.[731] CPKC accordingly maintains that its rights as a KCT owner, implemented through the 1984 Trackage Rights Agreement, extend to the substituted Incline Track.[732] In February 2024, UP announced that it would refuse further CPKC and BNSF access effective March 5, 2024. When CPKC subsequently sought to resume use of the route, UP acknowledged CPKC's right to use the tracks and facilities covered by the 1984

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726 Redd V.S. ¶¶ 106, 109, 114.

727 Gameiro V.S. ¶¶ 44, 50-51; Redd V.S. ¶¶ 242-43.

728 Gameiro V.S. ¶ 47.

729 Gameiro V.S. ¶ 47.

730 Gameiro V.S. ¶ 48.

731 Gameiro V.S. ¶ 49.

732 Gameiro V.S. ¶¶ 47-49.

lease but disputed that the leased premises include the Incline Track. CPKC further maintains that its rights under the 1984 Trackage Rights Agreement remain in effect because no regulatory approval has been obtained to terminate them.[733]

Since UP denied that access, CPKC has used a more circuitous route for interchange with BNSF, exiting Knoche Yard to the east through Airline Junction and continuing over the KCT route to BNSF's Argentine Yard.[734] The replacement route requires approximately four additional miles and [redacted], and its higher grade constrains tonnage.[735] The former route ordinarily allowed the same crew to deliver cars to the other carrier's yard, collect returning cars, and return to its home yard before exhausting its hours of service.[736] On the replacement route, CPKC must obtain KCT dispatching clearance, and UP work at nearby Neff Yard can block Southwest Junction for hours.[737] Those delays can exhaust the transfer crew's hours of service and cause a missed BNSF transfer.[738] When UP-caused delays result in a missed transfer, the train must be returned to yard tracks normally used for inbound traffic, adding switching work and congestion within Knoche Yard.[739]

The Proposed Transaction would materially increase the operational and competitive consequences of that existing dispute. Applicants propose to reroute significant volumes of UP–NS traffic over KCT trackage and congested interlockings used by CPKC.[740] The alternative

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733 Gameiro V.S. ¶ 51.

734 Gameiro V.S. ¶¶ 52-53; Redd V.S. ¶¶ 243-46.

735 Gameiro V.S. ¶ 52; Redd V.S. ¶ 246.

736 Gameiro V.S. ¶ 50.

737 Redd V.S. ¶ 244.

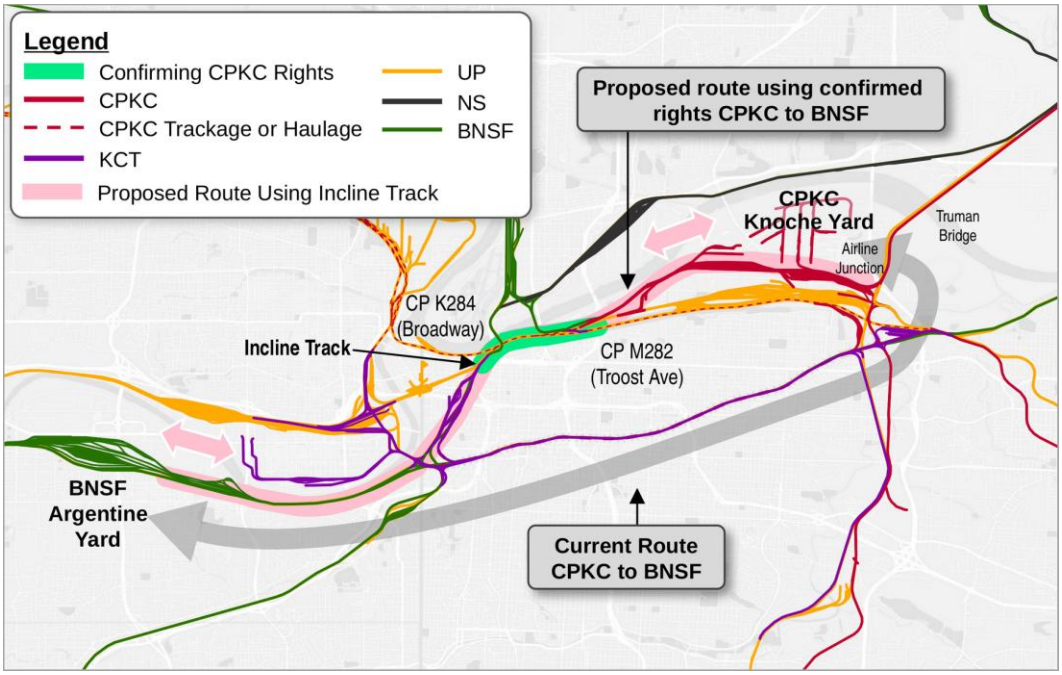
738 Redd V.S. ¶ 244.

739 Redd V.S. ¶ 247.

740 Redd V.S. ¶¶ 105-06, 109; Elphick & Nelson V.S. ¶¶ 414-15 & Figure 98.

route UP now requires CPKC to use for BNSF interchange would place CPKC's interchange trains in direct conflict with those merger-related movements.[741] UP thus would retain control of the more efficient connection while adding traffic to the circuitous route CPKC must use in its absence. That combination presents a merger-specific impediment to CPKC's ability to provide reliable and efficient competing service through the Kansas City Gateway.

Troost Avenue–Incline Track Access for CPKC–BNSF Interchange[742]



The Board should eliminate that impediment by confirming CPKC's existing right—or, in the alternative, granting CPKC the right outright—to operate over the UP trackage between the west end of Knoche Yard at Troost Avenue and the connection with KCT near Broadway at the western end of the Incline Track.[743] The condition should include the connections and incidental operating and interchange authority necessary for CPKC to enter and leave the

741 Redd V.S. ¶ 248; Gameiro V.S. ¶ 55.

742 Redd V.S. Figure 29.

743 Gameiro V.S. ¶¶ 56-57; Redd V.S. ¶¶ 242-43, 249.

segment and to move between Knoche Yard and KCT under CPKC's existing KCT rights, including BNSF interchange. The confirmation or grant should cover each UP-owned segment needed to complete that route and expressly permit CPKC's authorized interchange with other carriers over the route. Applicants should not defeat the relief by recognizing access to the Incline Track while invoking a separate restriction on an intervening segment or on interchange with another carrier.

Applicants should amend or execute the relevant agreements and all related replacement-track, connection, and succession instruments, and procure all required assents, so that the route is operationally effective upon consummation under Section VI.B. Those implementing instruments should include an amendment to the existing trackage-rights agreement governing CPKC's use of the North End Freight Line, expressly confirming—or, if necessary, granting—CPKC's right to use the Incline Track, together with the connections and incidental authority necessary to complete the authorized route.[744] They should remove or waive conflicting traffic and interchange restrictions, including the restrictions UP purports to invoke to the extent necessary to permit the operations authorized by the condition.

The rights should be administered on reasonable and nondiscriminatory terms sufficient to preserve the route's practical utility. UP should maintain the connection, dispatch CPKC movements equitably, provide the operating information necessary to use the route efficiently, and apply operating and safety requirements on terms no less favorable than those applicable to comparable UP movements, taking account of legitimate operational differences. Applicants should not be permitted to impair the route indirectly through a change in track designation, connection configuration, dispatching practice, operating rule, charge, lease, or other

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744 Gameiro V.S. ¶¶ 47 & nn.36-37; *id.* ¶¶ 49, 51, 56.

arrangement that leaves the right nominally intact but makes the movement materially less efficient or reliable. Those obligations should be administered through the common service-assurance and expedited-enforcement framework in Section V.

Whether granting new rights or confirming existing rights, the Board should ensure that CPKC has, as of consummation, the same operationally effective route it used before UP's March 2024 denial of access to the Incline Track. The remedy would restore pre-2024 interchange operations to the more efficient route, preserving existing competition and reducing avoidable route conflicts.[745]

3. Effective Kansas City Access Requires Preservation and Improvement of the Airline Junction–Polo Paired-Track Arrangement

Under their longstanding paired-track arrangement between Airline Junction in Kansas City and Polo, Missouri, CPKC and UP use a coordinated operating corridor that includes paired mains between Birmingham and Polo, with CPKC operating over the UP-owned portion of the paired trackage and UP retaining its existing access to CPKC's line between Birmingham and Polo.[746] The Airline Junction–Polo segment is an essential link between CPKC's northern network and its routes extending south toward the Gulf Coast and Mexico.[747] The practical value of the paired-track arrangement therefore extends beyond the immediate segment: delay, lost capacity, or operating restrictions between Airline Junction and Polo can affect CPKC service across a much larger portion of its network.[748]

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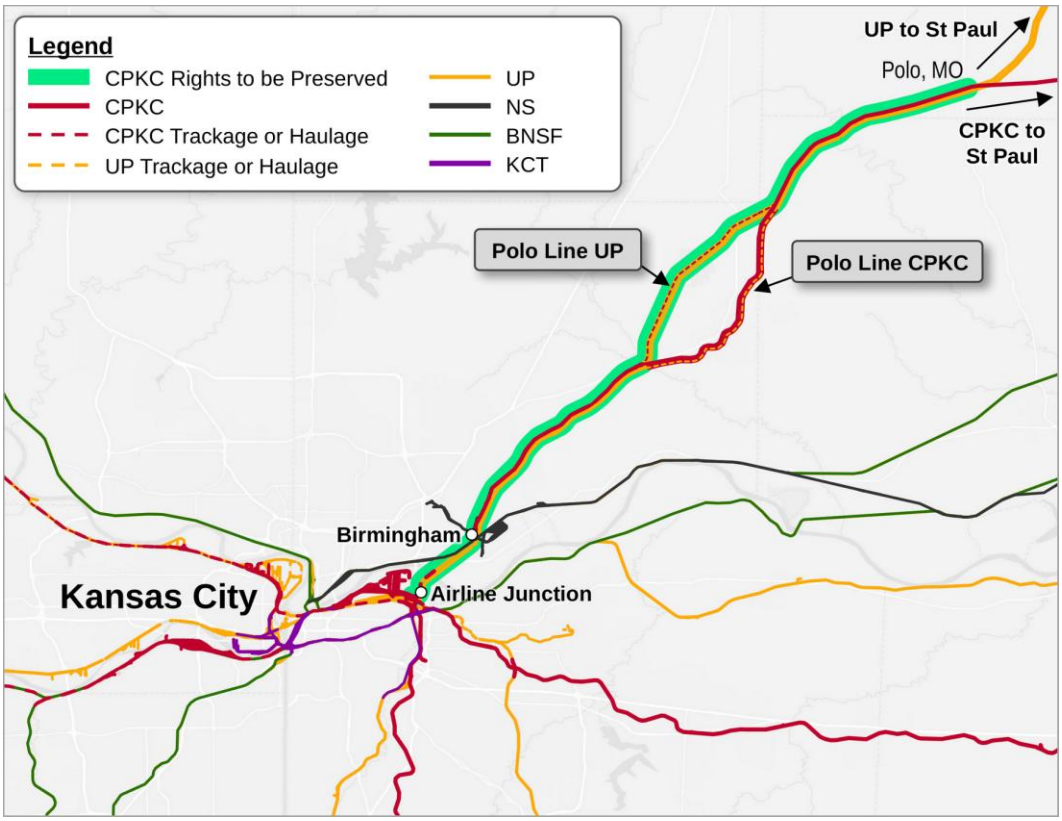
745 Gameiro V.S. ¶¶ 50, 56-57; Redd V.S. ¶¶ 243, 247-49; Majure V.S. Vol. II ¶¶ 64, 66.

746 Gameiro V.S. ¶¶ 67, 155; Redd V.S. ¶¶ 250-51 & Figure 30.

747 Gameiro V.S. ¶ 68; Redd V.S. ¶¶ 106, 250-51.

748 *See* Gameiro V.S. ¶¶ 68, 156; Redd V.S. ¶ 115.

Airline Junction–Polo Paired-Track Arrangement[749]



The Proposed Transaction would strengthen UP's incentive to use its existing control over the paired-track arrangement to disadvantage CPKC's competing service. After acquiring NS, UP would receive a greater economic benefit when traffic remains on the combined UP–NS system rather than moving over CPKC's competing North-South network.[750] The merger would also increase UP's traffic and operating priorities in and around the Kansas City Gateway.[751] UP would thus have a stronger incentive to terminate the Polo Line agreement, narrow CPKC's authority, or administer the arrangement in ways that reduce the capacity, reliability, or commercial utility of CPKC's service.

749 Redd V.S. Figure 30.

750 Majure V.S. Vol. I ¶ 61; *id.* Vol. II ¶¶ 60, 63, 65; Gameiro V.S. ¶¶ 155-56.

751 Redd V.S. ¶¶ 105-06, 109, 114; Elphick & Nelson V.S. ¶¶ 414-15 & Figure 98.

Acquiring NS would also expand UP's routing options between Kansas City and Chicago, as the combined network would provide a parallel route via Springfield into UP's Global 4 facility with an economic incentive to shift intermodal trains from BNSF trackage rights to that route.[752] That routing flexibility and incentive reinforce the need to preserve CPKC's effective use of the paired-track arrangement as Applicants' routing choices and operating priorities change after the merger. CPKC would remain dependent on that corridor for its north–south service, regardless of how Applicants ultimately route their own traffic.[753] The continued availability, maintenance, and operating effectiveness of that shared corridor should not depend on Applicants' decisions about where to route their trains or concentrate their resources.

The threatened harm is not limited to formal termination of the arrangement. Applicants could preserve the agreement nominally while altering dispatching, predominant train flows, the use of crossovers between paired tracks, maintenance practices, operating rules, or train priorities in ways that reduce the arrangement's practical capacity or reliability for CPKC.[754] A condition that merely prohibits cancellation of the agreement would not protect competition if Applicants remain free to deprive the arrangement of its operating value.

The existing slow orders on the Polo Joint Line illustrate the issue. Most of the trackage for which UP has maintenance responsibility is contractually required to support 60-mile-per-hour running speeds, but UP has had as many as fifteen slow orders in effect over the territory, causing ongoing delays for CPKC.[755] Some restrictions have persisted for more than four

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752 Elphick & Nelson V.S. ¶¶ 416-17 & Figure 98.

753 Gameiro V.S. ¶¶ 68, 155; Redd V.S. ¶¶ 250-51.

754 Gameiro V.S. ¶ 158.

755 Gameiro V.S. ¶¶ 69-70, 72.

months, and UP has responded to CPKC's objections with a general commitment to address them within an unspecified timeframe while rejecting CPKC's offer to perform the repairs itself.[756] That experience supports enforceable protections against material impairment of the paired-track arrangement, backed by the framework proposed in Section V.

The Board should therefore require Applicants to amend the Polo Line agreement and its related operating and dispatching arrangements to provide a term of 999 years and prohibit Applicants from terminating, suspending, declining to renew, narrowing, or materially impairing those arrangements or CPKC's existing rights during that term.[757] The condition should preserve CPKC's authority to operate over the UP-owned portion of the paired trackage between Airline Junction and Polo, together with the connections, crossovers, and incidental operating authority necessary to use the paired lines as an efficient and coordinated corridor. The corresponding protection should preserve UP's existing access to the CPKC-owned Birmingham-Polo portion of the paired track on the same terms.[758] The protections should remain effective throughout that 999-year term, regardless of any later change in common control of UP and NS, unless modified by Board order, and should bind any successor, affiliate, lessee, or other entity through which Applicants own, dispatch, maintain, or operate the affected trackage. Applicants would retain their ownership interests and existing operating rights, and the condition would neither exclude UP from the corridor nor guarantee CPKC any traffic. Applicants should amend or supplement the Polo Line paired-track agreement and its related operating and dispatching arrangements as

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[756] Gameiro V.S. ¶¶ 71-72.

[757] Gameiro V.S. ¶ 157.

[758] Gameiro V.S. ¶¶ 67, 157; Redd V.S. ¶¶ 250-51.

necessary under Section VI.B to preserve those rights beyond any contractual expiration and give effect to these protections.

Applicants would also remain free to make temporary, nondiscriminatory operating changes reasonably necessary for an emergency, safety condition, infrastructure failure, or planned maintenance, provided they give CPKC prompt notice, restore the ordinary arrangement promptly, and do not use a temporary deviation to narrow CPKC's rights in practice. Except for temporary changes permitted above, any permanent or material change to the operating arrangements should require CPKC's consent or prior Board authorization based on a showing that CPKC will retain equivalent efficient, reliable, and commercially effective access. The paired-track arrangement should otherwise be administered under the common service-assurance framework in Section V. The new monitoring and remedial protections should supplement, without diminishing, the service standards and remedies already provided by the governing paired-track agreements. The route-specific service measures should identify each slow order's location, track, cause, applicable speed standard, duration and operational effects, the entity responsible for correction, and scheduled corrective work and completion milestones, including any necessary track-access windows. Applicants should substantiate any delay or extension and provide interim operating measures where necessary, while preserving legitimate safety restrictions and existing contractual repair rights and cost-allocation provisions.

4. KCT Neutrality Requires Protection Against UP's Acquisition or Exercise of Formal, Negative, or De Facto Control

KCT's neutral joint-terminal function depends on preventing any one competing railroad from controlling—or effectively blocking—the terminal's governance and operations. UP currently holds 41.67% of KCT and five of its twelve board seats, while NS holds 8.33% and one seat. If UP retains NS's KCT interest, the Proposed Transaction would combine those interests,

placing 50% of KCT's ownership and half its board seats under UP's common control.[759] That position would create a substantial risk that UP could exert negative control to block, delay, or shape decisions concerning capital investments, operating arrangements, access measures, and capacity projects supporting CPKC or BNSF competition.[760] With that increase in power, UP could withhold approval of a critical infrastructure project until KCT changed its dispatching protocols or operating rules to favor UP's planned operations, regardless of the consequences for competing carriers.[761] Indeed, David Hughes, UP's Assistant Vice President for Joint Facilities and Interline Operations, acknowledged that because [redacted][762]

UP's past conduct illustrates why that increased influence matters. As discussed above, in March 2024, UP denied CPKC and BNSF use of the Incline Track as part of their KCT North End Freight Line interchange route, forcing their traffic onto a less efficient route that creates additional congestion.[763] The merger would increase traffic on that alternative route while increasing UP's influence over KCT decisions needed to accommodate competing service.[764]

Applicants contend that their settlement with CN will ensure that the combined company does not control KCT.[765] The MOU provides for CN to acquire NS's 8.33% interest for nominal

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759 *See* UP-68/NS-66 at 38, 41; Gameiro V.S. ¶ 122.

760 Gameiro V.S. ¶¶ 122-23, 126; *see* Decision No. 21 at 17 ("[T]he Board recognizes that Applicants' 50% ownership could give them the ability to veto proposals requiring a majority vote, and that effect of this veto power could be consequential.").

761 Gameiro V.S. ¶ 122.

762 UP_0344233.

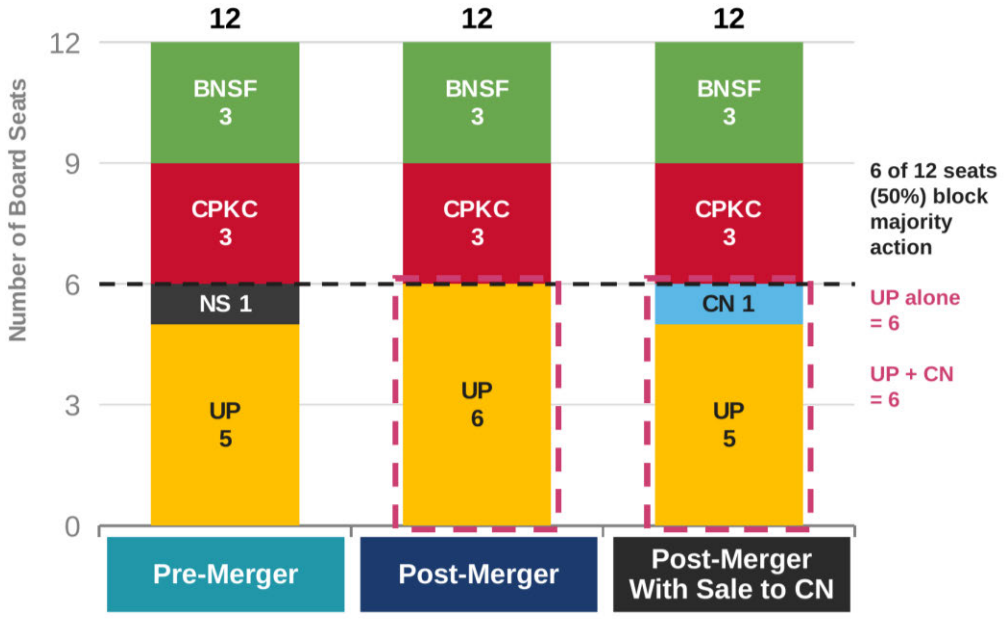
763 Gameiro V.S. ¶¶ 51-54, 123.

764 Gameiro V.S. ¶¶ 55, 122-23.

765 *See* UP-80/NS-78 at Supp. 5-6; *id.* at Supp. 206 (Att. 1).

consideration and assigns UP responsibility for resolving impediments to the transfer. But the MOU also provides only that the parties will discuss alternative arrangements intended to achieve substantially similar competitive objectives if the proposed transfer cannot be completed.[766] Applicants' assertion that the settlement resolves KCT control therefore depends on a transfer that has not yet been definitively documented, approved, or implemented. More fundamentally, even a completed transfer would not eliminate the risk that UP and CN would use their collective voting power to exercise negative control and block initiatives needed by other KCT owners. With five UP directors and one CN director, an aligned UP–CN bloc could prevent majority approval when all twelve directors participate, even if all six CPKC and BNSF directors supported the proposal.[767]

KCT Ownership Before and After the Proposed UP-NS Merger[768]



766 *See* UP-80/NS-78 at Supp. 203, 206 (Att. 1).

767 Gameiro V.S. ¶¶ 122, 124-26.

768 Gameiro V.S. Figure 12.

There are concrete reasons to expect UP and CN to align on KCT matters. Under the proposed access arrangements, CN would depend on UP's lines, yard facilities, and haulage for its Kansas City operations. Both carriers would depend on favorable KCT dispatching of the critical interlockings between Airline Junction and KCS Junction, a segment also vital to CPKC's Kansas City operations. UP's additional post-merger flows would traverse that segment, while CN's operations into and out of Neff Yard would cross Southwest Junction under KCT dispatching. Their shared operating interests would give UP and CN incentives to seek dispatching protocols and operating rules that favor their traffic, even if those measures were described as nondiscriminatory and did not adequately protect CPKC's operations.[769] Combined with their voting power, that alignment could allow them to block investments or other initiatives needed by competing terminal users and use the threat of withholding approval to influence policies not themselves put to a vote.[770]

Nor should the Board rely on KCT management to resolve the resulting governance problem. KCT's bylaws require [redacted].[771] Applicants acknowledge that KCT's governance documents contain no mechanism for resolving shareholder or board deadlocks and that a deadlock generally preserves the status quo.[772] Preserving the status quo is precisely the concern: it can prevent capacity improvements and other investments needed to maintain an efficient and competitive gateway as traffic and operating requirements change. Management's

769 Gameiro V.S. ¶ 125.

770 Gameiro V.S. ¶¶ 122, 125-26.

771 Gameiro V.S. ¶ 126 & nn.78-79.

772 UP-68/NS-66 at 42; Gameiro V.S. ¶ 126 & n.79.

responsibility for daily operations provides no assurance that those investments can obtain approval unless effective divestiture or governance protections remove the blocking power.[773]

Accordingly, if the Board approves the Proposed Transaction, it should condition its approval on Applicants reducing or restricting the exercise of UP's voting power at KCT sufficiently that no matter put to a vote can be voted up or down solely by the votes of (a) UP alone, if Applicants do not divest KCT shares to an independent railroad group outside KCT's pre-merger ownership group; or (b) UP alone or UP and any single other railroad-owner group, if Applicants make such a divestiture. A transfer to CPKC or BNSF, as existing independent owners, would fall within the first branch. In the second branch, the restriction on UP acting with a single other railroad-owner group would apply to every such group, not only the transferee. With those changes, UP could not use the prohibited voting power to force KCT action, exercise an effective veto, or demand or resist changes in KCT policies and practices without the assent of the broader group of owners required by the applicable condition.[774]

The condition should apply to all matters submitted to KCT's shareholders, board of directors, or committees, including action by written consent. UP's voting power should include all rights held or controlled, directly or indirectly, by UP, NS, and their affiliates. Railroads under common control should count as one railroad-owner group. A transfer should not qualify as a divestiture to a new independent group if Applicants retain the ability to direct the exercise of the transferred rights. Independence of the transferee would not, however, dispense with the second branch's protection against aligned voting by UP and any single other owner group.[775]

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773 Gameiro V.S. ¶ 126.

774 *See* Gameiro V.S. ¶ 127.

775 *See* Gameiro V.S. ¶¶ 127-28.

For example, where no new independent railroad-owner group acquires Applicants' shares, the Board could allocate four board votes and one-third of shareholder voting power each to combined UP–NS, CPKC, and BNSF, with approval and quorum rules that prevent UP from acting or blocking action alone.[776]

Those arrangements could change governance rights without changing economic ownership. Under the equal-voting example, each owner's equity and its economic rights and obligations under the governing agreements, including the Operating Agreement, would remain unchanged unless the Board orders otherwise.[777] Equal voting would permit CPKC and BNSF together to act without UP's assent while requiring UP to obtain another owner's support; neither CPKC nor BNSF would acquire unilateral control.

The Board should permit consummation only after finding that Applicants have implemented arrangements satisfying the applicable voting and governance requirement. Applicants should execute or amend KCT's Articles, By-Laws, Operating Agreement supplements, shareholder and voting agreements, and its board, committee, quorum, and consent arrangements, and procure all necessary assents, pursuant to Section VI.B. Applicants should submit the final instruments and demonstrate how the arrangements satisfy the condition for ordinary and special votes, including through their treatment of quorum, abstentions, nonattendance, vacancies, and any management or tie-breaking votes.[778] Applicants should not be permitted to substitute a commitment to negotiate an alternative after consummation or circumvent the condition through their equity, affiliates, cumulative or class voting, delegation to

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776 Gameiro V.S. ¶ 127(b).

777 Gameiro V.S. ¶ 127(b).

778 Gameiro V.S. ¶ 128.

a committee, or any other arrangement. To the extent necessary to carry out the transaction as approved, including this governance condition, the Board should confirm that 49 U.S.C. § 11321(a) exempts Applicants from conflicting requirements of KCT's governing documents or Missouri law. Applicants themselves invoke that provision to overcome corporate-document restrictions that would prevent compliance with a Board-imposed KCT divestiture condition.[779] Neither CPKC nor BNSF should be required to acquire additional KCT equity or compensate Applicants for a reallocation of governance rights. Applicants should bear the costs of implementation.

The condition should remain in effect in perpetuity unless modified by the Board and should bind affiliates and successors. The approved voting and governance arrangements should not be altered or terminated without prior Board authorization. Any later transfer, reacquisition, voting agreement, governance amendment, side agreement, or other material change that could increase UP's influence over KCT should require advance notice and prior Board authorization, with continued compliance with the branch applicable to the resulting ownership structure. The Board should retain jurisdiction to enforce the condition and the implementing arrangements, including where a purported divestiture proves ineffective after consummation.[780]

5. Reliable Kansas City Gateway Service Requires Permanent Monitoring and Springing Operating and Capacity Remedies

Applicants project that they will reroute significant volumes of UP–NS traffic through the Kansas City Terminal over trackage, interlockings, and the single-track Truman Bridge on which CPKC depends for movements between Kansas City and points north, south, and east.[781] The

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779 49 U.S.C. § 11321(a); *see* UP-68/NS-66 at 46.

780 *See* Gameiro V.S. ¶ 128.

781 Redd V.S. ¶¶ 105-06, 109; Elphick & Nelson V.S. ¶¶ 414-15 & Figure 98.

contemplated CN operations from Neff Yard would add further conflicts over the same infrastructure.[782] NS already occupies the Birmingham interlocking, where it has dispatching control, for hours each day for train movement and work, including at its Voltz facility east of the crossing.[783] The Board should therefore impose permanent, gateway-specific monitoring. When the springing trigger below is satisfied, Applicants should be required to fund and implement operating measures and sufficient additional capacity to offset merger-related impacts.[784]

Applicants also have not shown that their Kansas City contingency plan is executable. They [redacted], while Neff Yard's potential lease or sale calls its availability into question. The plan does not identify the traffic, blocking, train, and resource adjustments necessary to accommodate displaced work.[785]

Applicants should provide an integrated assessment of their planned Kansas City routings and terminal work, including the contemplated CN operations at Neff Yard, and their effects on the Truman Bridge, Airline and KCS Junctions, Birmingham Interlocking, and CPKC's ability to enter and leave Knoche Yard.[786] The assessment should also address any alternative involving divestiture of UP's Kansas City Line, identify the resulting UP/NS routings, and evaluate the associated capacity and capital needs through Birmingham and Voltz and over the legacy NS routes to the east.[787] The assessment should identify the operating and capacity measures needed

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782 Redd V.S. ¶¶ 107, 109.

783 Redd V.S. ¶ 111.

784 Redd V.S. ¶ 116.

785 Elphick & Nelson V.S. ¶¶ 581-83.

786 *See* Redd V.S. ¶¶ 105-10, 114-16.

787 *See* Elphick & Nelson V.S. ¶¶ 418, 420.

to address those conflicts, including dispatching changes, connections, additional track and bridge capacity, and alternative routings.[788] CPKC should participate in the Service-Assurance Framework's technical conference or comparable process to establish the governing performance standards and measurement conventions before consummation. Applicants should provide the independent monitor with the records, data, and explanations necessary to evaluate compliance and planned operational changes. That planning should occur in time to identify preventive operating measures and prepare necessary capacity work; it should not postpone corrective action or activation of a preauthorized remedy when its requirements are met.

Permanent Monitoring and Prompt Corrective Action. The Board should establish a representative pre-merger baseline and require Applicants to provide sufficiently granular operating data to determine whether their merger-related rerouting and additional trains are impairing CPKC operations. The Board should adopt standards through Section V.C that protect CPKC's ability to obtain timely clearance and move reliably through the Kansas City Terminal. Those standards should address Applicants' occupancy of shared track between Birmingham and KCS Junction, including the route through Airline Junction; holding of CPKC trains at Birmingham; interference with CPKC transit through those shared routes; access to and from Knoche Yard; and delays in admission caused by UP or KCT dispatching decisions. The standards should capture interference associated with terminal work, including work at Voltz and movements to or from Neff Yard.[789] Reporting should identify the affected CPKC movements, the location and duration of access and transit delays, and the role of UP-NS congestion, with disputed or undetermined causes identified expressly. Applicants should avoid blocking

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788 Redd V.S. ¶ 116.

789 Redd V.S. ¶¶ 106-07, 111, 114-16.

Birmingham Interlocking, Airline Junction, KCS Junction, and Southwest Junction, including through trains working Voltz or Neff Yard, and provide clearance under an objective first-to-arrive/first-to-move protocol.[790] Applicants should use their KCT governance and contractual rights to support neutral dispatching between KCS Junction and Airline Junction, without preferences for UP–NS or CN traffic. The standards should be administered through Section V, including warning and breach thresholds, disclosure, consultation, corrective-action plans, expedited dispute resolution under Section V.B, and interim relief.

An objective performance-based trigger should be developed through Section V.C for activation of the preauthorized dispatching remedy and related remedial obligations, using the Kansas City operating objectives described above.[791] If a failure attributable to UP/NS congestion remains uncured under Section V.C's 30-day measurement and 30-day cure framework, CPKC should be entitled to activate the corresponding preauthorized remedy by supported notice under Section V.D without a further Board merits determination.[792] The technical process should adopt the applicable standards, covered movements and locations, and measurement conventions without weakening more protective existing contractual obligations. The substantive grounds, activation procedures, and available remedies described here and in Section V.D should continue to govern. This objective ground should remain distinct from the separate deterioration ground below.

Independently, CPKC should be permitted to activate the preauthorized dispatching remedy and remedial obligations by supported notice under Section V.D when objective

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790 Redd V.S. ¶ 116.

791 Redd V.S. ¶ 116.

792 Gameiro V.S. ¶¶ 226, 235.

evidence shows both that Applicants' post-merger traffic, rerouting, terminal work, or resource decisions caused or materially contributed to material degradation in terminal fluidity or CPKC service and that Applicants have failed to restore performance within Section V.D's 30-day cure period following notice of the qualifying failure. Activation should not require a further Board merits determination. Applicants may challenge satisfaction of the prescribed requirements and seek expedited Board review or a stay, but their objection should not suspend the activated remedy or obligations. The Board should retain authority to order interim operating or dispatching protection before any applicable cure period expires where necessary to prevent material harm. For this independent deterioration ground, CPKC should not be required to demonstrate repeated or sustained degradation where a material failure creates serious operating harm, nor should it be required to wait until every lesser measure has been attempted and failed. For the separate deterioration ground, where deterioration follows Applicants' post-merger addition or rerouting of trains, expanded work at Voltz, or implementation of the CN settlement operations, and those changes have a reasonable operational connection to the deterioration, there should be a rebuttable presumption under Section V that they caused or materially contributed to the failure.[793]

Springing Operating and Capacity Remedies. Upon activation by notice under Section V.D establishing that the applicable trigger and activation requirements have been satisfied, Applicants should be required to fund and implement the operating measures and additional capacity necessary to offset the identified merger-related impacts and restore and sustain compliant Kansas City Terminal fluidity and CPKC service. The approval order should preauthorize transfer of Birmingham Interlocking dispatching to CPKC and require Applicants to

[793] *See* Redd V.S. ¶ 116; Gameiro V.S. ¶¶ 235-37.

use their KCT governance and contractual rights to support the preauthorized transfer of dispatching between KCS Junction and Airline Junction from KCT to CPKC and procure necessary independent-party assents in advance under Sections V.D and VI.B.[794]

CPKC's activation notice should identify the affected preauthorized functions to be assumed and the commencement date of the dispatching transfer. The transfer should take effect on that date under Section V.D. The implementing arrangements should coordinate the transferred functions with CPKC's existing dispatching of the connecting route and include the signal, communications, control interfaces, and any automation determined through the Board's technical process to be necessary for effective implementation. Applicants should fund those requirements, which should be established in advance under Section V so that their development does not delay an activated transfer. The arrangements should preserve neutral handling of all authorized traffic and should not require CPKC to surrender existing control in exchange for those improvements. The springing capacity and routing remedies should require Applicants to double track the route between KCS Junction and Birmingham, including building a new bridge parallel to the Truman Bridge, and separately reroute sufficient UP/NS trains via an alternative route between legacy-UP's 18th Street Yard and Birmingham, including via the Hannibal Bridge, to restore pre-merger levels of fluidity.[795] Applicants should fund the associated track, signal, and connection improvements, with project design and implementation determined through the process described below.

The capacity package should also include the associated additional main-track capacity between the Truman Bridge and KCS Junction needed to make the bridge improvement

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794 Redd V.S. ¶ 116; *see also* Gameiro V.S. ¶¶ 233-35.

795 *See* Redd V.S. ¶ 116.

effective. The bridge and adjoining track improvements should be designed as an integrated project so that an adjacent single-track segment, junction conflict, or inability to hold a train clear of the route does not defeat the additional bridge capacity.[796]

The available capacity remedies should also include a connection between CPKC's Mexico and Pittsburg Subdivisions to permit loaded grain trains moving from origins on CPKC's Gateway Line to destinations in the southern United States and Mexico, and returning empty trains, to avoid Southwest Junction and KCS Junction and the associated conflicts with Applicants' proposed new train movements. Upon satisfaction of an applicable springing trigger under this subsection, Applicants should fund and implement the connection and the associated access, signal, and operating arrangements.[797] The condition should require Applicants to provide the rights within their control and procure the necessary independent-party arrangements under Section VI.B, with the authorized route and incidental operating rights defined in the approval order.

Any dispatching transfer should be subject to neutral operating protocols and implementation requirements under Section V. The verification, return, and reactivation procedures in Sections V.C and V.D should govern a Kansas City dispatching transfer, with reactivation subject to the activation requirements of this subsection. To the extent design or implementation of particular capacity or routing measures requires agreement between CPKC and Applicants, those terms should be determined through Section V.B's 90-day good-faith negotiation and expedited Board-resolution process, without postponing an activated dispatching remedy or an existing remedial obligation. The Board should determine the design and

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796 *See* Redd V.S. ¶¶ 109-10, 114, 116.

797 Redd V.S. ¶ 116 & Figure 6.

implementation details for the required double tracking, parallel Truman Bridge span, connection, and rerouting based on the operating and engineering evidence. Applicants should execute or amend all relevant operating, dispatching, signal-control, bridge-use, connection, and capacity agreements, and procure required assents under Section VI.B consistent with the Board's grant.

Rerouting may provide interim relief while capacity work proceeds. The rerouting plan should consider effects throughout the affected Kansas City routes, including any new conflicts created south of the terminal, rather than treating removal of trains from the Truman Bridge alone as sufficient. Applicants should not be permitted to defer required construction merely by proposing rerouting or other operating changes, and CPKC should not be required to exhaust lesser measures before required capacity work is ordered. Required improvements should be subject to binding commencement and completion milestones, with effective interim operating protection maintained until the improvements are operational and compliant performance has been restored.

***Costs*.** Applicants should bear the costs of implementing the remedies required under this condition, subject to the applicable activation requirements, including constructing a new bridge parallel to the Truman Bridge and associated connections, providing the required dispatching changes and the connection between CPKC's Mexico and Pittsburg Subdivisions, and implementing any other remedy made necessary by their merger-related traffic or operating plan. CPKC should not be required to finance capacity or operating changes necessary to accommodate Applicants' incremental merger traffic.[798]

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[798] Redd V.S. ¶ 116.

Duration. The metrics, reporting, and operational oversight should remain effective permanently, including after formal merger oversight ends.[799] The Board should retain jurisdiction to enforce or modify the original remedies and to impose additional operating, routing, dispatching, or capacity conditions if merger-related concerns emerge that the original conditions did not adequately anticipate. Any obligation to fund or complete a project that has become effective under this condition should remain enforceable until satisfied, unless modified by the Board. An activated dispatching transfer should remain effective unless affirmatively stayed, modified, or suspended by the Board under Sections V.C and V.D. Restoration of compliance or expiration of a review or oversight period should not automatically return dispatching. Renewed satisfaction of the activation requirements should permit reactivation by notice.

6. The Kansas City Gateway Conditions Address Merger-Related Harm, Are Operationally Feasible, and Are Supported by Board Precedent

The requested conditions are narrowly tailored to the specific merger-related harms identified above. The Troost Avenue–Incline Track condition would confirm or grant rights only over the short segment of UP trackage necessary to connect the west end of CPKC's Knoche Yard with KCT near Broadway and avoid the more circuitous route through Kansas City Union Station. The Polo Line condition would preserve an existing paired-track arrangement for a 999-year term and add only the service and dispatching protections necessary to keep that arrangement operationally effective. The KCT governance condition would prevent UP from using the merger-created concentration of voting power to force or block action alone or, if Applicants divest shares to a new independent railroad-owner group, together with any single

[799] Redd V.S. ¶ 116.

other owner group. That additional protection responds to the risk that a transferee such as CN would share UP's operating priorities and exercise its independent voting rights in alignment with UP.[800] The condition would require an effective governance result while leaving the Board flexibility to approve implementing arrangements that need not change economic ownership. Permanent monitoring would verify compliance with the applicable standards. Either the objective performance-based trigger adopted through Section V.C or the separate deterioration ground would permit CPKC to activate the corresponding preauthorized dispatching and remedial protections by supported notice under Sections V.D and VIII.F.5, subject to the applicable activation requirements, with capacity and funding responsibilities governed by Section VIII.F.5.

The conditions principally preserve or improve routes and operating arrangements CPKC already uses. The design and implementation of the new parallel Truman Bridge span, associated double track, dispatching-system improvements, and Gateway connection should be informed by the project-specific operating and engineering record described in Section VIII.F.5, including their connections to existing routes and the arrangements required for their effective use. CPKC already operates through the Kansas City Gateway and over the UP-owned portion of the Airline Junction–Polo paired trackage.[801] The Troost Avenue–Incline Track remedy would restore CPKC–BNSF interchange over the route used before 2024 rather than require construction of a new railroad route.[802] The Incline Track rights would permit existing CPKC operations to bypass merger-induced congestion, while the Polo Line condition would preserve

800 Gameiro V.S. ¶¶ 125, 127(a).

801 Redd V.S. ¶ 250 & Figure 30.

802 Redd V.S. ¶¶ 242-43, 249.

an efficient shared-track arrangement that supports existing competition.[803] CN's proposed Kansas City access provides a further basis for assessing feasibility. CN's description of its anticipated responsive application seeks access to Neff Yard and trackage rights between Lydia Avenue and Broadway.[804] The CN settlement appears to contemplate use of the same Neff–Broadway route via Troost and the Incline Track.[805] Applicants' willingness to provide CN that route would further support the feasibility of providing CPKC the access requested here.

Board precedent supports that integrated approach. In *UP/SP*, the Board coupled trackage and terminal rights with access, operating, and implementation protections designed to make the competing service effective.[806] In *CP/KCS*, the Board likewise required pre-transaction baselines and ongoing reporting, established continuing oversight, and retained authority to impose supplemental remedies to address merger-related service or fluidity problems that might arise.[807]

G. Effective Competition Through the St. Louis Gateway Requires Neutral and Efficient Gateway Operations

Section VIII.H addresses the operating rights necessary to create an operationally complete CPKC route between Kansas City and East St. Louis. This Section addresses a distinct but related concern: preserving TRRA and the broader St. Louis Gateway as neutral, efficient, and commercially effective shared infrastructure for all carriers whose competitive services depend on that gateway.

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803 Redd V.S. ¶¶ 248-51.

804 CN Description of Anticipated Responsive Application (CN-30) (filed Sept. 9, 2026) at 2, 10.

805 Gameiro V.S. ¶ 57.

806 *UP/SP*, 1 S.T.B. at 403-06, 419-21, 446-49.

807 *CP/KCS*, Decision No. 35 at 89, 142, 145.

The St. Louis Gateway links western, eastern, northern, and southern rail networks and provides essential bridge, terminal, switching, interchange, and customer-access functions. TRRA connects all six Class I carriers, whose services depend on efficient terminal operations to reach their own lines, customers, and connecting railroads.[808] CPKC depends on efficient gateway operations to reach its own lines and connecting carriers, including for its existing interchange between CPKC's East St. Louis Yard and CSX's Rose Lake Yard.[809] The Mexico–St. Louis remedy described in Section VIII.H would make that access still more important: CPKC's requested NS rights would terminate at May Street Interlock, and CPKC would require the additional TRRA operating rights described in Section VIII.H.3 to connect that route with CPKC's East St. Louis Yard and its eastern interchange partners.[810]

Gateway neutrality, however, extends beyond the specific CPKC route addressed in Section VIII.H. TRRA provides shared infrastructure through which multiple carriers reach customers, interchange partners, yards, and routes on both sides of the Mississippi River.[811] A nominal operating right is not a meaningful competitive option if the merged carrier can use governance influence, control of surrounding routes and facilities, or operating and capacity decisions to make movement through the gateway slower, less reliable, or more expensive than UP–NS single-line service.[812] The Board should therefore address both the formal control issue created by the Proposed Transaction and how the St. Louis Gateway operates after consummation.

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808 Gameiro V.S. ¶ 129.

809 Gameiro V.S. ¶ 129; Redd V.S. ¶ 226.

810 Redd V.S. ¶¶ 208-09, 224-26; Gameiro V.S. ¶¶ 188, 192-93.

811 Gameiro V.S. ¶ 129; Redd V.S. ¶ 73.

812 Gameiro V.S. ¶¶ 130-32.

1. The Proposed Transaction Would Increase UP's Ability and Incentive to Influence the St. Louis Gateway to the Detriment of Competing Interline Services

The Proposed Transaction would materially alter the ownership, operating incentives, and traffic flows affecting the St. Louis Gateway. Today, UP and NS are independent railroads with distinct networks and commercial interests. NS has an incentive to support traffic moving over its network through St. Louis, including interline movements that may compete with UP. UP, in turn, does not control NS's routes, its TRRA interest, or the eastern portion of those movements. After the merger, UP would control both networks and would capture the economic benefit of retaining traffic on the combined UP–NS system. That change would increase both UP's incentive and its ability to favor its own single-line routes over competing interline services moving through TRRA and the broader gateway.[813] The Proposed Transaction thus threatens competition in the critical St. Louis Gateway in three ways.

First, the Proposed Transaction would combine UP's and NS's separate TRRA interests within a single corporate system unless an effective governance condition is implemented. UP currently holds 42.84% of TRRA's shares and three of its seven voting board seats; NS holds approximately 14.29% and one voting seat.[814] CN, BNSF, and CSX each hold approximately 14.29% and one voting seat, and TRRA's president is an additional, nonvoting director.[815] Combining UP's and NS's interests would give UP a majority of the shares and four of the seven voting seats—enough, under TRRA's By-Laws, to [redacted]

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[813] Majure V.S. Vol. I ¶ 61; *id.* Vol. II ¶ 67; Brooks V.S. ¶¶ 44, 171-73.

[814] *See* UP-68/NS-66 at 5-6; Amended and Restated By-Laws of the Terminal Railroad Association of St. Louis (June 21, 2013) ("TRRA By-Laws") § VIII.

[815] *See* UP-68/NS-66 at 5; TRRA By-Laws §§ VI, VIII.

[redacted][816] David Hughes, UP's Assistant Vice President for Joint Facilities and Interline Operations, [redacted][817] Applicants recognize the resulting control concern and describe their settlement with CN as providing for CN to acquire NS's TRRA interest.[818]

The operative MOU, however, does not itself select or implement a transfer to CN. It leaves open the five TRRA options identified in Applicants' July 7 submission, requires CN's reasonable, good-faith cooperation and non-opposition in implementing them, and contemplates alternatives if none of the existing options can be implemented or approved.[819] The Board should require a definitive arrangement that satisfies the voting restrictions in Section VIII.G.2 before consummation. Neither an announced divestiture nor a promise to resolve the governance issue later establishes compliance with those restrictions.

Transferring NS's interest to CN would not resolve that governance concern. CN already owns a TRRA interest and appoints one voting director. If CN acquired NS's entire interest and attendant board seat, CN would hold approximately 28.6% and two voting seats, increasing UP's and CN's combined representation from four to five of the seven voting seats. With all seven voting directors participating, those five votes would permit them, acting together, to approve ordinary-majority matters and block matters requiring majority, three-fourths, or unanimous approval.[820] There are concrete reasons to expect alignment between UP and CN: CN's

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816 *See* UP-68/NS-66 at 5, 9; TRRA By-Laws §§ IV, VI, VIII.

817 UP_0344233.

818 *See* UP-80/NS-78 at Supp. 5-6; Gameiro V.S. ¶¶ 130-31.

819 *See* UP-80/NS-78 at Supp. 207 (Att. 1, Kansas City Access ¶ 11).

820 *See* UP-68/NS-66 at 5, 9 & nn.12-14, 15 & n.22; TRRA By-Laws §§ VI, VIII.

proposed rights over UP's Kansas City–St. Louis and Tuscola–East St. Louis routes would give UP and CN parallel interests in terminal policies and operations.[821] The governance condition should therefore address aligned voting even where CN exercises its rights independently and is not contractually required to vote with UP.[822]

Second, even an effective transfer of NS's TRRA ownership interest would not eliminate the merger-related operating risks affecting the gateway. The merger would give UP control of NS's routes and traffic approaching St. Louis while UP would retain its own routes and yards, including its wholly owned Alton & Southern subsidiary.[823] Applicants propose to shift eastbound UP/NS manifest blocking now performed by TRRA to UP-owned Alton & Southern ("A&S")'s Gateway Yard and to transfer intermediate manifest switching from NS's Luther Yard to Gateway.[824] Those changes would move identified terminal functions into UP-controlled facilities while CPKC and other independent carriers would continue to depend on TRRA and shared terminal routes for interchange and gateway access.[825] Indeed, CPKC already experiences delays from overlength trains moving between A&S and UP at Valley Junction and over TRRA trackage; Mr. Gameiro reports approximately 16 CPKC recrews from those delays since June 2025. Those conflicts are expected to worsen as Applicants add NS traffic.[826] The conditions should therefore protect the operating effectiveness of competing carriers' gateway access as well as TRRA's governance.

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821 Gameiro V.S. ¶ 131.

822 Gameiro V.S. ¶¶ 133-34.

823 Gameiro V.S. ¶¶ 130-32.

824 Gameiro V.S. ¶ 132.

825 Gameiro V.S. ¶¶ 129, 132.

826 Gameiro V.S. ¶ 132.

That risk does not depend on overt exclusion. Changes in switching and block-building arrangements could impose additional handling and delay on interline traffic even while formal TRRA access remains available. Applicants' operating plan illustrates that concern. The proposed consolidation does not eliminate handling requirements; for some traffic, it shifts processing to additional facilities.[827] For example, the Growth Plan eliminates the CN and CPKC blocks previously built at Gateway Yard and instead sends that traffic to Proviso for additional processing.[828] Applicants also have not demonstrated that reduced traffic volumes would produce a corresponding reduction in TRRA's operating requirements. Their Optimized and Growth Plans retain substantially the same blocking and train-departure requirements at TRRA despite lower volumes. Elphick and Nelson explain that those blocks would not be viable at the reduced volumes, forcing additional work onto Gateway Yard and other facilities.[829] Applicants have not shown how the additional through-train setouts and pickups would avoid interfering with existing yard movements, and their proposed Gateway Yard improvements do not address those work events.[830] These operating concerns reinforce the need to preserve effective gateway service. Formal access alone does not ensure that competing interline services remain commercially viable.[831]

Third, the Proposed Transaction threatens to impair service and capacity on shared infrastructure that competing carriers continue to require. Applicants state that TRRA will remain important to the combined railroad and project that UP–NS will increase the number of

827 Elphick & Nelson V.S. ¶¶ 421-22, 428-30.

828 Elphick & Nelson V.S. ¶ 422.

829 Elphick & Nelson V.S. ¶¶ 421-24.

830 Elphick & Nelson V.S. ¶¶ 425-26.

831 *See* Majure V.S. Vol. II ¶ 67.

trains moving over both the MacArthur and Merchants Bridges.[832] Those additional trains, together with the added processing and through-train work proposed at Gateway Yard, could increase conflicts, delay, and demand for shared terminal capacity.[833] Those operating effects could reduce the reliability of competing services even without intentional discrimination. That concern should be assessed separately from the feasibility of CPKC's requested route, as there is available capacity for the limited additional CPKC movements contemplated over the reconstructed Merchants Bridge and connecting TRRA trackage.[834] Available capacity for those movements does not resolve the effects of Applicants' separate train additions or of train conflicts and terminal blockages elsewhere in the gateway.

The CN settlement does not resolve these concerns. The Board should reject the proposed divestiture of NS's TRRA interest to CN as an inadequate remedy for the merger's effects on TRRA governance. CN's proposed rights over UP's Kansas City–St. Louis and Tuscola–East St. Louis routes would give UP and CN parallel interests in terminal policies and operations, creating a substantial risk that they would use their combined governance influence to favor their traffic and impair competing carriers' use of the gateway.[835] If the Board approves the merger, it should require Applicants to reduce or restrict UP's voting power so that neither UP alone nor UP together with any single other independent owner group can force or block TRRA action. That requirement should apply whether Applicants retain NS's TRRA interest or divest it, including if the Board permits a transfer to CN over CPKC's objection. Applicants should obtain Board approval of and implement the necessary governance arrangements before

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832 *See* UP-80/NS-78 at Supp. 137.

833 *See* Elphick & Nelson V.S. ¶¶ 421, 425-430.

834 Redd V.S. ¶¶ 225-26.

835 Gameiro V.S. ¶ 131.

consummation.[836] The proposed transfer of NS's TRRA interest would not address the operating risks created by UP's control of surrounding routes and facilities, its routing of merger traffic, or the additional demands on shared gateway infrastructure. Although the settlement includes general gateway commitments, it does not provide the gateway-specific operating, service, capacity, and enforcement protections requested here for CPKC and other carriers.[837]

The close-the-gap rights in Section VIII.H.3 would supply route authority and related operating protections, but would not by themselves resolve the governance, surrounding-facility, and congestion risks identified here. Accordingly, the Board should impose an integrated package of St. Louis Gateway conditions that:

1. requires Applicants before consummation to implement arrangements preventing any matter put to a TRRA vote from being voted up or down solely by UP or by UP together with any single other independent owner group, whether or not Applicants divest NS's interest;

2. preserves neutral, reasonable, nondiscriminatory, and commercially effective access through TRRA and the broader St. Louis Gateway; and

3. requires corridor-specific monitoring, prompt corrective operating measures, and Applicants-funded remediation if merger-related traffic or resource decisions materially impair service or capacity over shared gateway infrastructure.

Those conditions would not give CPKC control over TRRA or exclude UP from the gateway. TRRA's management would remain responsible for ordinary operations, subject to the Board-ordered governance, access, and service protections. They would preserve the neutral shared function on which effective interline competition depends and prevent UP from using the merger's changed incentives and enlarged network to determine, alone or with any single other

836 Gameiro V.S. ¶¶ 133-34.

837 *See* UP-80/NS-78 at Supp. 207-08; Gameiro V.S. ¶¶ 130-32; Majure V.S. Vol. II ¶ 67.

owner group, whether, how, and on what terms competing railroads may use one of the nation's most critical rail gateways.

2. TRRA Neutrality Requires Protection Against UP's Acquisition or Exercise of Formal or De Facto Control

As discussed above, the merger would increase the consequences of concentrating TRRA governance power in UP or in UP acting with an aligned owner. Some of the voting powers at issue already exist. Applicants acknowledge that UP can presently block certain capital matters requiring supermajority approval and that each owner can block certain changes to rates or fees charged to TRRA's owner companies requiring unanimous approval.[838] Following the merger and proposed transfer of NS's interest to CN, UP's and CN's combined representation would increase from four to five of TRRA's seven voting seats. With all seven voting directors participating, those five votes would permit them, acting together, to approve or block any matter requiring ordinary-majority approval by TRRA's board.[839] But the threat to TRRA's neutrality extends beyond the immediate subject of a vote: UP could use the ability to force an outcome or withhold approval to demand changes in TRRA's policies and operating practices that favor the enlarged UP–NS network.[840]

The requested condition would restrict those powers to the extent necessary to satisfy the voting rule below. That scope responds to the merger's changed incentives and enlargement of UP's network, including its acquisition of NS's competing routes and its ability to coordinate traffic and terminal functions across the combined system. Preserving UP's legacy vetoes or

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838 *See* UP-68/NS-66 at 9.

839 *See* UP-68/NS-66 at 5-6, 9; TRRA By-Laws § VI.

840 Gameiro V.S. ¶ 133.

limiting relief to NS's additional vote would leave UP able to impair the independent services that the gateway must continue to support.[841]

UP's announced settlement with CN does not supply an enforceable answer to that concern. Its operative TRRA provision leaves the implementing arrangement unresolved, and Applicants' options are directed principally at avoiding an increase over UP's legacy governance position.[842] An arrangement that addresses only NS's former shares or board seat would not necessarily prevent UP's remaining votes from combining with one other owner's votes to determine an outcome or preserve UP's existing special vetoes. The Board should evaluate each proposed arrangement against the full restriction requested below.

Accordingly, if the Board approves the Proposed Transaction, it should condition its approval on Applicants reducing or restricting the exercise of UP's voting power at TRRA sufficiently that no matter put to a vote can be voted up or down solely by the votes of (a) UP alone, or (b) UP and any single other independent owner group. The restriction should apply whether Applicants retain NS's TRRA interest or divest it. If the Board nevertheless permits a transfer to CN over CPKC's objection, the voting restriction and associated implementation safeguards should remain fully applicable, without diminishing CPKC's opposition to that transfer. With that change, neither UP nor UP acting with any single other owner group could force TRRA action, exercise an effective veto, or use that power to demand implementation of, or resist changes to, other TRRA policies and practices without the assent of a broader group of

841 Gameiro V.S. ¶¶ 130-33; *see* Majure V.S. Vol. II ¶ 26 & n. 49; *id.* ¶¶ 27, 67.

842 *See* UP-68/NS-66 at 9, 13-15, 31-32; UP-80/NS-78 at Supp. 207 (Att. 1, Kansas City Access ¶ 11).

owners. The Board should permit consummation only after finding that Applicants have implemented arrangements satisfying that requirement.[843]

The condition should apply to shareholder, board, and committee action, including written consents and approvals exercised under TRRA's governing and related agreements. UP's voting power should include all rights held or controlled, directly or indirectly, by UP, NS, their affiliates, or persons acting on their behalf. All holders of TRRA ownership or voting interests, including any noncarrier transferee, should be covered, and holders under common control should count as one owner group. The implementing arrangements should address ordinary and special approval thresholds, quorum, abstentions, recusals, nonattendance, vacancies, suspensions of voting rights, committee delegations, and any management participation necessary to prevent circumvention.[844] They may alter voting allocations, approval procedures, or the exercise of voting and consent rights without necessarily changing economic ownership. If Applicants divest shares, the transferee should exercise the associated rights independently, without a proxy, side agreement, financing term, reacquisition right, or other mechanism through which Applicants retain control. That independence would supplement, rather than replace, the restriction on UP acting with any single other owner group.

Applicants should execute or amend TRRA's articles, By-Laws, Operating Agreement, shareholder and voting arrangements, management and committee instruments, and related consent and financing provisions to the extent necessary to implement the condition, procuring the necessary assents under Section VI.B. Before consummation, Applicants should submit the

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843 Gameiro V.S. ¶¶ 133-34.

844 *See* Gameiro V.S. ¶ 134; TRRA By-Laws § IV ([redacted]); *id.* § VI ([redacted]).

final instruments, obtain the Board's determination that the selected arrangements satisfy the condition across all covered voting circumstances, and put those arrangements into effect.[845] Any permitted transfer should satisfy the same substantive test; the Board should not treat divestiture alone as compliance. The Board should determine that the selected arrangement:

1. prevents UP alone or together with any single other independent owner group from forcing or blocking any matter put to a vote;

2. applies that protection to decisions concerning TRRA's management, budgets, capital calls and expenditures, access policies, rates and fees, operations, and amendments to its governing instruments;

3. makes any divested ownership and governance rights independent of Applicants while preventing aligned voting from defeating the condition; and

4. contains effective voting, consent, quorum, and anti-circumvention provisions, including restrictions on later transfers, reacquisitions, delegations, and side agreements that could defeat the condition.

The condition should remain in effect in perpetuity unless modified by the Board and should bind Applicants' affiliates and successors. Any later transfer, amendment, side agreement, governance revision, or other material change that could weaken or circumvent the voting restriction, including by increasing UP's ability to force or block TRRA action, should require advance notice and prior Board approval, with continued compliance with the voting restriction. The Board should retain jurisdiction to enforce the condition and to address arrangements that permit UP alone or with one other owner group to force or block outcomes in practice even if nominal ownership percentages remain unchanged.

The governance resolution also should not relieve Applicants of obligations that NS incurred as a TRRA owner or user. The proposed CN settlement itself provides that UP–NS would remain ultimately responsible for NS's existing obligations under the Merchants Bridge

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[845] Gameiro V.S. ¶¶ 133-34.

Rehabilitation Agreement, including NS's contingent guaranty obligations through the Bridge Indemnity.[846] The Board should preserve those and any comparable funding, indemnity, maintenance, or capital obligations necessary to protect TRRA and its infrastructure. At the same time, Applicants should not be permitted to convert their continuing financial responsibility into a consent, veto, governance, or operating right that defeats the voting restriction. Applicants should execute or amend the Merchants Bridge Rehabilitation Agreement and related guaranty, funding, and indemnity instruments, and obtain any required assents, to preserve those obligations consistently with the approved governance resolution.

3. Effective St. Louis Competition Requires Neutral, Nondiscriminatory, and Commercially Effective Gateway Access

Implementing the voting and governance restrictions in Section VIII.G.2 is necessary but not sufficient to preserve effective competition through the St. Louis Gateway. Applicants would retain control of substantial routes, yards, terminal facilities, and operating functions in the region. They could use those interests to impair competing interline services even without controlling TRRA's board. The Board should therefore require Applicants to preserve reasonable, nondiscriminatory, and commercially effective access through TRRA and the broader St. Louis Gateway.[847]

Applicants should not be permitted to use any ownership, contractual, operating, dispatching, governance, or other right to cause CPKC or another competing carrier to receive materially less favorable gateway treatment than comparable UP traffic, taking account of legitimate operational differences. That protection should extend to the principal functions that determine whether gateway access is effective, including access to routes, bridges, connections,

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846 UP-80/NS-78 at Supp. 207 (Att. 1, Kansas City Access ¶ 11); *see also* UP-68/NS-66 at 3.

847 *See* Gameiro V.S. ¶¶ 130, 132; Majure V.S. Vol. II ¶ 67.

yards, staging and interchange facilities; dispatching and train priority; interchange and terminal service; maintenance and outage coordination; operating and performance information; and terminal, switching, and accessorial charges. The detailed service standards and enforcement procedures should be administered through the common service-assurance framework in Section V.

Applicants should remain responsible for preserving Board-protected gateway access and complying with applicable nondiscrimination and service requirements when they reroute their own traffic or consolidate handling at A&S, Gateway Yard, or another affiliated facility. Such changes should not circumvent those protections or materially impair the access or service they secure. Applicants should be required to provide the monitor with advance notice of planned operational changes capable of impairing Board-protected gateway access or service, including a transfer of functions from TRRA to A&S or another UP-controlled facility. Applicants should promptly furnish the records, data, and explanations reasonably requested by the monitor. These protections should be administered and enforced under Section V.[848]

4. Reliable St. Louis Gateway Service Requires Monitoring and Remediation Funded by Applicants for Merger-Related Impacts

The governance and nondiscrimination conditions described above would not fully protect gateway users if Applicants' post-merger operating plan impairs operations or reduces available capacity on the shared infrastructure on which those users depend. Applicants acknowledge that, even with their proposed elimination of certain intermediate UP–NS switching, TRRA will remain important to the combined railroad and Applicants' Growth Plan will increase the number of UP–NS trains moving over both the MacArthur Bridge and the

[848] Gameiro V.S. ¶ 231.

Merchants Bridge.[849] Those additional trains and related changes in routing, classification, and terminal operations could increase conflicts, delay, and demand for capacity on infrastructure that CPKC and other carriers require to reach their own facilities, customers, and interchange partners. The resulting harm may arise even without intentional discrimination. The Board should therefore require gateway-specific monitoring, reporting, and enforceable corrective-action requirements to be in place before consummation and effective from consummation, with remedies administered under Section V. Existing services should be measured against a transparent and representative pre-merger baseline; new services should be measured against benchmarks reflecting the authorized operating plan, customer requirements, and comparable operations. The covered infrastructure should include, at a minimum, the MacArthur and Merchants Bridges and the terminal routes, approaches, interlockings, connections, yards, and interchange facilities on which competing services depend, including the relevant routes among May Street, CP Junction, CPKC's East St. Louis Yard, CSX's Rose Lake Yard, and other eastern interchange points.

Applicants should provide sufficiently granular information to determine whether merger-related traffic or operating changes are impairing a particular bridge, route, terminal segment, interchange, train, or customer service. Applicants should also give TRRA, CPKC, the Board, and other affected carriers timely information about material changes to train plans, routing, dispatching protocols, maintenance schedules, engineering programs, and capital plans affecting the gateway.

The applicable thresholds and response procedures should be administered through the common service-assurance framework in Section V. When a warning or breach threshold is

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849 *See* UP-80/NS-78 at Supp. 137.

crossed, Applicants should promptly disclose the supporting data and cause assessment, consult with TRRA and affected carriers, and carry out the response prescribed by the Board-adopted procedures, including investigation, prevention, or corrective action as appropriate. CPKC should identify an alleged breach by notice, and the Board should resolve disputed breaches and requests for additional or interim relief on an expedited basis under Section V. No further Board merits determination should be required to activate a remedy already preauthorized under Section V.D once its applicable activation requirements have been satisfied. CPKC and other affected carriers should not be required to establish that the merger is the sole cause of the deterioration; it should be sufficient to show that merger-related train growth, routing or operating-plan changes, or diversion of operating, maintenance, or engineering resources caused or materially contributed to the failure, subject to Section V's rebuttable material-contribution presumption. Enforcement of an independent service or nondiscrimination obligation should not require a separate showing of merger causation. Pending Board review should not suspend an obligation already due or a preauthorized remedy properly activated under Section V.D unless the Board grants a stay.

If corrective operating measures do not restore performance promptly, or if the capacity analysis demonstrates that Applicants' merger-related traffic cannot be accommodated while maintaining the required service levels, Applicants should be required to fund and implement the operating or infrastructure improvements necessary to remedy the problem. The Board need not prescribe a particular project before the final operating and engineering evidence identifies the relevant constraint and appropriate solution, but the condition should require enforceable development and completion milestones. It should also require appropriate interim measures where a long-lead project cannot be completed soon enough to prevent continuing harm.

Applicants should remain responsible for their existing maintenance, rehabilitation, funding, indemnity, and capital obligations and should fund the operating or infrastructure improvements required to remedy deterioration caused or materially contributed to by their merger-related traffic or operating changes. Any allocation of costs for improvements beyond those remedial requirements should be determined under the applicable agreements or by the Board, without delaying required corrective work. Any implementing terms requiring agreement between CPKC and Applicants should be determined through Section V.B's 90-day good-faith negotiation and expedited Board-resolution process, applying the substantive standards prescribed here. Consistent with the CN settlement, UP–NS should remain ultimately responsible for NS's existing obligations under the Merchants Bridge Rehabilitation Agreement. The monitoring and corrective-action requirements should remain effective permanently, while any obligation to fund or complete an ordered improvement should survive until satisfied. The Board should retain jurisdiction to enforce existing conditions and impose additional conditions addressing merger-related concerns that later emerge.

5. The St. Louis Gateway Conditions Address Merger-Related Harm and Are Supported by Board Joint-Terminal Precedent

The requested conditions are tailored to the merger-related risks identified above. The governance condition addresses UP's changed incentives and aligned-voting risk, including existing consent rights whose exercise would become more consequential after the merger. Eliminating NS's incremental vote alone would not suffice. Effective restrictions, however, need not change economic ownership.[850] The access and capacity conditions separately protect

[850] Gameiro V.S. ¶¶ 130-31, 133-34.

competing service from discrimination, circumvention, and merger-related degradation without transferring control of TRRA or A&S, excluding UP, or guaranteeing traffic.

The conditions also complement the route-specific relief sought in Section VIII.H. The Mexico–St. Louis and close-the-gap rights would give CPKC the authority necessary to connect the NS route at May Street, through the necessary TRRA terminal trackage, with CPKC's East St. Louis facilities and eastern interchange partners, including CSX at Rose Lake Yard. The conditions in this Section would ensure that TRRA and the broader gateway remain neutrally governed and commercially effective for CPKC and all other users. Authority to traverse identified track is not an effective competitive remedy if the shared terminal through which the carrier must operate can be administered discriminatorily or allowed to become materially congested.

The remedies also would build on an existing joint-terminal structure. TRRA already provides shared bridge, terminal, switching, interchange, and customer-access functions for multiple carriers. Applicants state that TRRA will continue to play a critical role for the combined railroad and project increased UP–NS train movements over both the MacArthur and Merchants Bridges. Their own governance proposals contemplate transfers of ownership interests, amendments to governing documents, and directions governing the exercise of voting rights.[851] Those proposals identify possible implementation mechanisms, but their sufficiency must be measured against the restriction in Section VIII.G.2. Applicants should demonstrate that the final instruments satisfy that restriction before consummation.

Board precedent supports coupling access with the governance and operating protections necessary to make it effective. In *UP/SP*, the Board granted terminal and main-line rights and

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[851] *See* UP-68/NS-66 at 4-5, 13-15, 31-32; UP-80/NS-78 at Supp. 137.

coupled those rights with supporting connections, yards, interchange access, nondiscrimination protections, operating coordination, access to dispatching facilities and personnel and review of dispatching records in particular disputes, and dispute-resolution procedures necessary for the rights holder to provide commercially effective service.[852] In *CSX/NS–Conrail*, the Board likewise relied on shared-asset arrangements to support competition between CSX and NS and held applicants to their representation that IHB would remain a neutral switching carrier, backed by monitoring during the five-year oversight period.[853] Those decisions support considering ownership, access, operating practices, and necessary capacity together when tailoring conditions to identified merger-related threats to effective competition. The requested gateway protections also serve the 2001 Major Merger Rules' objectives of preserving gateway options and enhancing competition through operationally feasible conditions that produce net public benefits.[854]

Even after the Board implements these remedies, UP would remain free to use TRRA and surrounding facilities, compete for traffic, and redesign its operations for legitimate reasons, subject to the governance, access, and service protections described above.

H. Effective Competition in the Kansas City–St. Louis Corridor Requires an Efficient, Independent Through Route Served by CPKC

1. The Proposed Transaction Would Place the Two Most Direct Kansas City–St. Louis Routes Under UP's Common Control

The corridor between Kansas City and St. Louis connects two of the nation's most important rail gateways and supports traffic moving within Missouri and between western,

852 *UP/SP*, 1 S.T.B. at 421-26; *UP/SP*, 1 S.T.B. at 596-98, 617-22.

853 *See CSX/NS–Conrail*, 3 S.T.B. at 228, 250, 256, 292-93.

854 49 C.F.R. § 1180.1(c)(2)(i), (iv), (d).

eastern, Canadian, and Mexican markets.[855] UP and NS separately operate and control the premier main-line routes connecting those gateways, including important access routes into Kansas City. The Proposed Transaction would place both routes under UP's common ownership and control and allow post-merger UP to dominate corridor traffic. That combination would eliminate the independent ownership, management, investment decisions, and commercial incentives that cause UP and NS to compete for corridor traffic.[856] It would also give UP control over the routing, dispatching, service priorities, maintenance, capacity, and commercial use of the premier routes.[857]

CPKC provides an independent network option between the Kansas City and St. Louis gateways, but its existing route via Roodhouse, Illinois, to East St. Louis is circuitous, as the map below shows. The proposed route using NS between Mexico and St. Louis and the connecting TRRA trackage would shorten CPKC's Mexico–East St. Louis route by approximately 45 miles.[858] CPKC's existing operation supports local service along its Missouri and Illinois lines and connects its network with the St. Louis gateway and CSXT.[859] The merger-related harms described below also threaten CPKC's ability to provide competitive service over its Kansas City–St. Louis route. To offset those harms, the Board should grant CPKC rights that combine CPKC's existing Kansas City-Mexico, MO line with NS's more direct route between Mexico, MO and St. Louis, while preserving CPKC's existing local-service obligations and network connections. The requested rights would improve CPKC's competitiveness both for traffic

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855 Brooks V.S. ¶ 216; Gameiro V.S. ¶¶ 129, 187; Redd V.S. ¶¶ 212-16.

856 *See* Majure V.S. Vol. II ¶¶ 69-70.

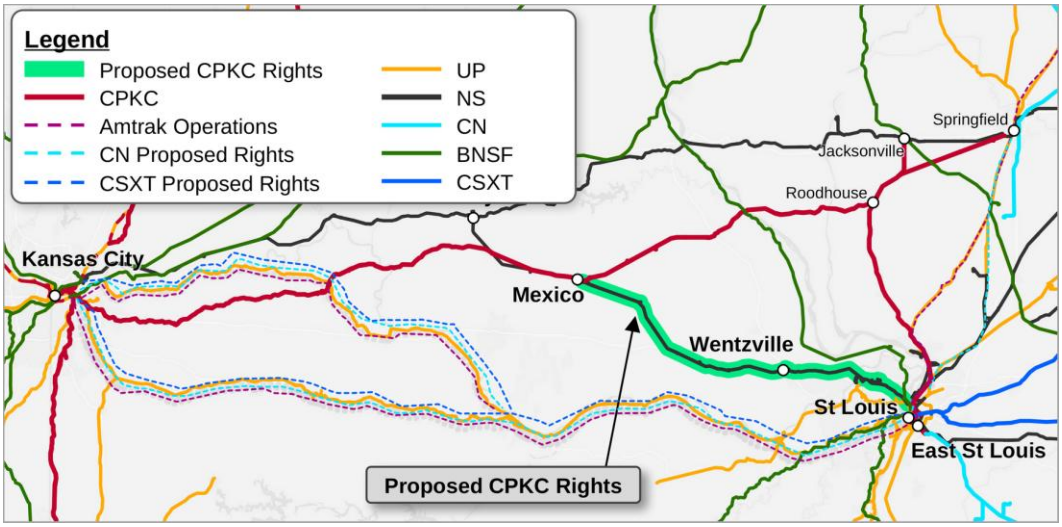
857 *See* Majure V.S. Vol. II ¶¶ 69-70; Brooks V.S. ¶ 216.

858 Redd V.S. ¶ 210.

859 Redd V.S. ¶¶ 211-16, 226.

moving between the St. Louis area and CPKC's network and as a bridge between BNSF and CSXT. The improved route could also support restoration of CPKC–CSXT intermodal service between Kansas City and St. Louis for onward movement to terminals across CSXT's network.[860]

Existing and Proposed CPKC Routes Between Kansas City and St. Louis[861]



The Proposed Transaction would harm competition in this corridor in several interrelated ways.

First, common ownership would eliminate competition between the two carriers controlling the premier routes.[862] NS today has an independent economic interest in attracting traffic to its route, supporting services that compete with UP, investing in its own corridor operations, and cooperating with connecting carriers where doing so increases traffic moving over NS.[863] UP has different and often competing incentives. Once UP acquires NS, those

860 Brooks V.S. ¶ 219.

861 Redd V.S. Figure 25.

862 Majure V.S. Vol. II ¶ 70.

863 *See* Majure V.S. Vol. I ¶¶ 46, 61; *id*. Vol. II ¶¶ 70-71.

independent incentives would disappear. UP would instead internalize the revenue from traffic moving over either route and would have a stronger incentive to coordinate both routes to favor combined UP–NS single-line services over competing interline alternatives.[864]

The harm would not require UP formally to close either route or deny access outright. UP could influence competition through route assignments, train priorities, dispatching, maintenance and capital decisions, interchange practices, local-service design, divisions, and the commercial terms governing movements through the corridor.[865] It could direct the most attractive traffic and operating resources toward its own single-line services while providing competing routes with slower, less reliable, or less commercially attractive access.[866] A corridor nominally open to other railroads would not provide effective competition if UP controlled the premier routes and the operating decisions that determine whether competing services can succeed.[867]

Second, the merger would increase UP's ability and incentive to foreclose competing network and gateway combinations.[868] CPKC's proposed service would connect Missouri customers and the St. Louis gateway with CPKC's existing network; with BNSF at Kansas City; with CSXT at East St. Louis; and with customers and markets served over CPKC's existing Missouri network.[869] The requested rights would also permit CPKC to function as an independent bridge between western and eastern Class I carriers, including between BNSF at

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[864] *See* Majure V.S. Vol. I ¶¶ 46, 61; *id*. Vol. II ¶¶ 70-71.

[865] *See* Majure V.S. Vol. I ¶¶ 46, 61; *id*. Vol. II ¶¶ 67, 69-71.

[866] *See* Majure V.S. Vol. I ¶¶ 46, 61; *id*. Vol. II ¶ 67.

[867] *See* Majure V.S. Vol. I ¶¶ 61, 186; *id*. Vol. II ¶¶ 67, 69-71.

[868] *See* Majure V.S. Vol. I ¶¶ 46, 61; *id*. Vol. II ¶ 71.

[869] Brooks V.S. ¶ 219; Redd V.S. ¶¶ 211-217, 226.

Kansas City and CSXT at East St. Louis.[870] The proposed BNSF-CPKC-CSXT bridge would provide an additional independent alternative, with the operating advantages Redd identifies over proposed routes using UP's Sedalia and River Subdivisions.[871]

Common UP–NS control would threaten that competition both for overhead traffic and for customers located along the NS route.[872] The NS line between Mexico and St. Louis serves or provides access to customer facilities—including General Motors at Wentzville—that could benefit from an additional independent Class I option.[873] The merger would place the two premier Kansas City–St. Louis routes under common ownership and transfer NS's sole access to GM's Wentzville plant to UP.[874] The combined carrier would have an increased incentive to retain traffic on its own single-line routes and weaken competing interline options through pricing, service, equipment, and interchange decisions—particularly where it controls a necessary input such as access to a sole-served facility.[875] CPKC's requested access would give GM an additional rail transportation option at Wentzville and help counteract its increased dependence on UP following the acquisition of NS.[876] The corridor remedy would both preserve an independent through-route alternative and give NS-line customers an additional carrier, protecting them against foreclosure of westbound interline options and the merged carrier's increased bargaining power across their facilities and movements.[877]

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870 Redd V.S. ¶¶ 215-216.

871 Redd V.S. ¶ 216.

872 Majure V.S. Vol. II ¶¶ 68-72.

873 Majure V.S. Vol. II ¶¶ 69, 71-72; Redd V.S. ¶¶ 217-20.

874 Brooks V.S. ¶¶ 216, 221.

875 Majure V.S. Vol. I ¶ 61.

876 Brooks V.S. ¶ 221.

877 Majure V.S. Vol. I ¶¶ 191, 196-97, 199; *id*. Vol. II ¶¶ 68-72.

Third, Applicants' settlement with CN does not provide the same competitive service that the Proposed Transaction would eliminate.[878] That settlement contemplates initial UP haulage, a CN election to convert to overhead trackage rights, continuing UP local haulage, and a Neff Yard lease with a purchase option.[879] The local-haulage access also excludes NS-line customers.[880] The settlement does not divest the premier Kansas City–St. Louis routes or recreate NS as an independently owned and operated competitor. The merged carrier would retain the line, and CN's right of first refusal would activate only if the Board orders divestiture or UP elects to sell the Kansas City Line.[881] Absent those circumstances, UP would continue to own the underlying routes, provide the local haulage, dispatch the contemplated CN trackage-rights operations, and make the operating and infrastructure decisions that determine the quality of the resulting service.

Applicants' explanation for excluding CN from CGP reinforces the need to scrutinize the settlement's competitive adequacy. In defending that exclusion, Applicants emphasize that their traffic interchanged with CN and CPKC includes a substantially larger share of north–south and international movements than their traffic interchanged with BNSF and CSXT. They further assert that potential merger-related anticompetitive effects would be "most directly offset by strengthening BNSF and CSXT alternatives to a combined UP/NS."[882] Applicants' selection of CN as their settlement partner does not itself resolve that concern. The Board should assess

878 Majure V.S. Vol. II ¶ 69 & n.133.

879 *See* UP-80/NS-78 at Supp. 205-06, 215.

880 *Id.* at Supp. 215.

881 *Id.* at Supp. 205.

882 UP-80/NS-78 at Supp. 31-32.

whether the particular routes, customer access, and operating arrangements provided to CN would replace the independent east–west competition lost between St. Louis and Kansas City.

Under CPKC's proposed condition, CPKC would independently offer service using its own infrastructure between Kansas City and Mexico, rights over NS east of Mexico, and TRRA connections to CPKC's East St. Louis facilities and CSXT.[883] CPKC would independently determine its commercial offering and operate its trains, subject to the host and terminal arrangements governing shared segments.[884] The route would serve a distinct combination of customers and network connections, including access to General Motors at Wentzville that CN's proposed UP-line rights would not provide.[885] The remedy would not place the entire route under CPKC ownership or dispatching control.

Applicants' settlement with CN does, however, confirm that the Proposed Transaction cannot leave the corridor without an additional independent Class I option. CN and CPKC are not interchangeable remedy carriers in this regard.[886] CN's access under the proposed settlement would use UP's Kansas City Line and the Kansas City operating arrangements contemplated by the settlement.[887] During the initial haulage phase, UP would handle CN traffic over the Kansas City Line, with CN electing interchange through KCT or directly at Neff Yard.[888] If CN later converts to overhead trackage rights, CN-operated trains would use UP's Sedalia and River

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883 Redd V.S. ¶¶ 207-15, 224-26.

884 *See* Brooks V.S. ¶ 219; Redd V.S. ¶¶ 213, 223-26.

885 Brooks V.S. ¶¶ 219, 221.

886 *See* Majure V.S. Vol. II ¶ 69 & n.133.

887 *See* UP-80/NS-78 at Supp. 204-06, 215-17.

888 *See* UP-80/NS-78 at Supp. 215.

Subdivisions to reach Neff Yard, with access to KCT at either end of the yard and continued UP dispatching.[889]

CN's proposed operations under the settlement would add train movements across trackage that CPKC uses to reach its Shreveport route and its own Kansas City–St. Louis route.[890] CPKC, by contrast, would use its own infrastructure between Kansas City and Mexico, NS's route east of Mexico, and the TRRA trackage necessary to reach CPKC's East St. Louis facilities. That route would connect the corridor with a different set of origins, destinations, gateways, and interchange partners.[891] CPKC's proposed service would preserve direct access to its network, BNSF at Kansas City, CSXT at East St. Louis, and the local and regional markets served by CPKC's Missouri network.[892] It also would preserve an independently marketed and operated CPKC service using CPKC's Kansas City–Mexico line and protected operating rights over NS and TRRA, subject to the host and terminal arrangements governing those shared segments.[893] CPKC's proposed service would build on those existing operations and provide the distinct customer access and network connections described above.

Applicants' settlement therefore establishes, at most, that an additional competitive service in the corridor is feasible in principle. That principle should not permit UP and its settlement partner alone to determine which independent carrier may compete, over which route, and on what terms. Nor does it eliminate the need to quantify and accommodate the terminal effects of both Applicants' operating plan and any settlement operations. Granting CN access

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889 *See* UP-80/NS-78 at Supp. 206, 216-17.

890 Redd V.S. ¶ 107.

891 Redd V.S. ¶¶ 207-16, 221, 224-26; Brooks V.S. ¶¶ 219, 221.

892 *See* Redd V.S. ¶¶ 211-16, 226; Brooks V.S. ¶ 219.

893 Brooks V.S. ¶ 219; Redd V.S. ¶¶ 207-09, 213, 221-26.

therefore does not eliminate the need to preserve CPKC as a separate and independently motivated competitor in the corridor.[894] Preserving that role requires CPKC's requested route and customer-access protections. An improved CPKC route would support competing interline services through CPKC's existing network and connections, while local access would provide an additional option to NS-line customers—including GM at Wentzville—that CN's proposed UP-line access would not reach.[895] The Board should evaluate those distinct competitive benefits independently of Applicants' settlement with CN when deciding whether that settlement adequately offsets the loss of independent UP/NS competition in the corridor.

CSXT has separately described anticipated relief involving a 50% interest and dispatching control in UP's Kansas City Line, full divestiture of Neff Terminal, and partial divestiture of Neff Yard.[896] That relief over UP's Kansas City Line would not provide the NS-line customer access sought here, including access to General Motors at Wentzville.[897] CPKC's proposal builds on its existing Kansas City–Mexico infrastructure and established network connections, with the additional NS and TRRA rights needed to complete a more efficient route. The Board should assess the terminal effects of any additional CN or CSXT operation and should not treat either proposal as a substitute for CPKC's requested route and customer access.[898]

The Board should address those harms through an integrated package of corridor conditions:

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894 Majure V.S. Vol. II ¶ 69 & n.133.

895 Majure V.S. Vol. II ¶ 69 & n.133; Brooks V.S. ¶¶ 216, 219, 221.

896 *See* CSX Transportation, Inc.'s Description of Anticipated Responsive Applications, CSXT-25 at 4-6 (Sept. 9, 2026).

897 *See id*.; Brooks V.S. ¶ 221.

898 *See* Brooks V.S. ¶¶ 217-21.

1. **Mexico–St. Louis rights.** Applicants should grant CPKC overhead trackage rights and reciprocal-switching access over NS's Midwest Division, Kansas City District, and St. Louis Terminal Subdivision from the CPKC–NS connection at Mexico, MO approximately NS Milepost S 110.2, over approximately 105 miles of NS main line to the NS–TRRA connection at May Street Interlock, approximately NS Milepost S 5.2 in St. Louis. Applicants should provide reciprocal switching for current and future customer facilities on, adjacent to, or served via that line, including General Motors at Wentzville, together with the yard, staging, interchange, and other incidental rights necessary for CPKC to receive and deliver assembled blocks and provide operationally effective overhead service.

2. **TRRA close-the-gap rights.** Applicants should procure the assents necessary for CPKC to operate over the TRRA trackage connecting the proposed NS rights with CPKC's existing East St. Louis network, including access in both directions to CPKC's East St. Louis Yard and direct interchange with CSX at Rose Lake Yard.

The Board should evaluate these components as a comprehensive package. The Mexico–St. Louis and TRRA rights would together establish an operationally complete route linking Kansas City, online Missouri customers, the St. Louis gateway, CPKC's East St. Louis facilities, and eastern Class I connections. The rights would be nonexclusive, preserve existing services and ownership, and leave every carrier free to compete for traffic.

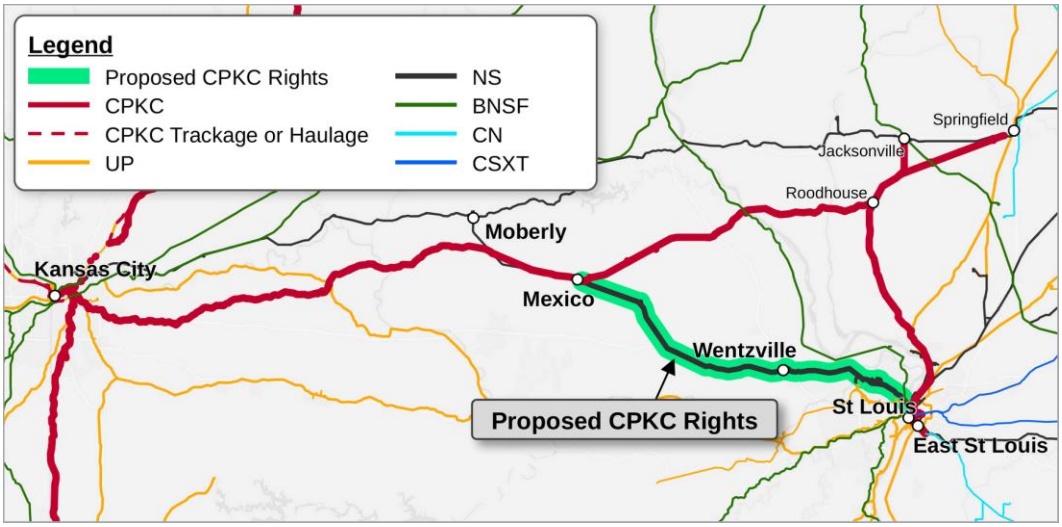
2. An Effective Competing Route Requires Overhead Rights and Authority to Serve Local Customer Facilities Between Mexico and St. Louis

To address the competitive harms identified above, the Board should require Applicants to grant CPKC overhead trackage rights over NS's line between CPKC's connection with NS at Mexico, Missouri, and NS's connection with the TRRA in St. Louis, Missouri, together with authority to serve shippers accessible from that route through reciprocal switching or direct local service, at CPKC's election.[899] Applicants should also be required to procure all necessary consents and assents. Those rights would combine CPKC's existing Kansas City–Mexico line with the more direct NS segment between Mexico and St. Louis, providing CPKC a shorter,

[899] Gameiro V.S. ¶¶ 188-89; Redd V.S. ¶¶ 218-21 & n.59.

faster, and more efficient route between the gateways than its existing route via Roodhouse, Illinois.[900] That route would improve CPKC's ability to compete both for traffic moving between the St. Louis area and CPKC's own network and as an independent bridge between BNSF at Kansas City and CSX at East St. Louis.[901] Because the requested rights begin at Mexico rather than extending west to Kansas City over NS, CPKC would not add the proposed operations to the NS segment west of Mexico.[902]

Proposed Mexico–St. Louis Trackage Rights[903]



The requested rights would provide an additional CPKC option at General Motors at Wentzville and other shipper facilities west of Wentzville.[904] CPKC estimates that local shipper access along this line would allow CPKC to compete for and win approximately [redacted] incremental annual loads by Year 3 steady state: approximately [redacted] newly handled loads at Wentzville and approximately [redacted] loads to and from shipper facilities west of Wentzville,

900 Redd V.S. ¶ 210.

901 Redd V.S. ¶¶ 214-16.

902 *See* Redd V.S. ¶ 207 & Figure 23.

903 Redd V.S. Figure 23.

904 Brooks V.S. ¶¶ 221-22.

comprising [redacted] newly handled and [redacted] extended-haul loads.[905] The forecast includes newly handled traffic and extended CPKC hauls. These local-access opportunities are distinct from any additional overhead traffic the more direct route might attract. CPKC would maintain service to customers on its existing lines east of Mexico, including the Mexico–Springfield and Roodhouse–East St. Louis routes. It would reroute manifest trains 258/259 and qualifying bulk trains over NS and coordinate existing K11/K12 local operations with those trains at Mexico and East St. Louis to preserve current customer-service frequency and quality.[906]

The Board should permit CPKC to operate overhead traffic over the entire Mexico–St. Louis segment and to serve current and future customer facilities located on, adjacent to, or served via that line through reciprocal switching or direct local service, at CPKC's election.[907] Eligibility should turn on the facility's location and connection to the identified corridor, rather than its inclusion in a current customer list or traffic forecast. Changes in a facility's name, ownership, or operator should not affect eligibility while it remains within that scope. General Motors at Wentzville illustrates the covered access; the grant should establish CPKC's authority to serve that and other eligible facilities without making that authority dependent on Applicants' later consent. Applicants should be required to provide reciprocal switching when CPKC elects that means of access. The rights should also include access to the NS trackage and facilities reasonably necessary to exercise that authority. That access should include the connections through which CPKC would enter and leave the route and the yard, switching, staging, interchange, siding, customer-access, and other incidental trackage necessary to support the

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905 Brooks V.S. ¶ 222; *id.* ¶ 205 & n.64.

906 Redd V.S. ¶¶ 211-14.

907 Gameiro V.S. ¶¶ 188-89; Redd V.S. ¶¶ 218-21 & n.59.

authorized overhead operations, reciprocal-switching access, and direct local service, interchange traffic, handle loaded and empty equipment, assemble, receive, and deliver operationally usable blocks, and interchange efficiently with the TRRA at St. Louis.[908] Applicants should be required to provide access to the facilities reasonably necessary to implement the Board-authorized service and should not retain a contractual or operational veto over an otherwise feasible service.

CPKC anticipates that customer access would be provided through Applicants' reciprocal switching services at Wentzville for customers between Mexico and Wentzville and at Luther Yard for customers between Wentzville and St. Louis, with CPKC trains receiving and delivering assembled blocks.[909] When CPKC elects reciprocal switching, eligible online traffic should receive switching at Luther Yard and/or Wentzville, where operationally appropriate, on reasonable, nondiscriminatory terms and under Section V's service standards. For such traffic, Applicants should perform the local customer pickups and deliveries and assemble the traffic into operationally usable blocks; CPKC would provide the competing line haul. CPKC would retain authority to serve eligible facilities directly at its election.[910]

To implement the Board-authorized access under Section VI.B, Applicants should execute new Mexico–St. Louis trackage-rights and operating agreements and any necessary Luther Yard and Wentzville switching and related facility or interchange arrangements. They should also amend or waive inconsistent restrictions in existing instruments. They should procure all required third-party assents and, if an assent cannot be obtained, secure Board approval of an operationally equivalent means of implementing the authorized access.

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908 *See* Gameiro V.S. ¶¶ 188-90.

909 Redd V.S. ¶¶ 218-21.

910 Gameiro V.S. ¶ 188.

The trackage rights should not carry origin-and-destination, commodity, connecting-carrier, train-type, or other restrictions inconsistent with CPKC's overhead operations and transportation of traffic received or delivered through reciprocal switching or direct access. Customers made competitive through the condition should also receive the benefit of the global contract-release condition in Section VI.A, so that volume commitments, exclusivity provisions, routing restrictions, minimum-volume penalties, or similar customer-contract provisions imposed on them in the past do not nullify the access ordered by the Board. Applicants also should be required under Section VI.B to amend or waive any carrier-to-carrier agreement inconsistent with the Board-authorized rights.

A formal grant of trackage rights would not protect competition if Applicants could administer those rights so that CPKC's service becomes too slow, unreliable, constrained, or costly to compete. The Board therefore should require Applicants to implement the rights on reasonable and nondiscriminatory terms sufficient to make the authorized overhead and local service and reciprocal-switching access commercially and operationally effective. Those terms should include equitable dispatching and train priority, operating limitations no less favorable than those applicable to comparable Applicant trains, appropriate maintenance of the route and its supporting infrastructure, timely provision of operating information, and nondiscriminatory access to the connections and incidental facilities necessary to exercise the rights. Applicants should not be permitted to use operating rules, charges, routing requirements, facility restrictions, or other operating practices to nullify or materially impair the Board-authorized service. Those obligations should be administered through the common service-assurance framework in Section V.

Applicants themselves have recognized that comparable protections are necessary for additional Class I operations in this corridor. The terms of their proposed settlement with CN contemplate equitable dispatching, train-length and tonnage limits equivalent to UP's, Class I maintenance standards, data access, and coordination concerning crew changes, fueling, and equipment maintenance.[911] Those protections provide an appropriate floor for CPKC's distinct Mexico–St. Louis service; Applicants should not provide their chosen settlement carrier more effective operating terms than another independent Class I carrier whose access is necessary to mitigate the same merger-related concentration.

Once granted the trackage rights, CPKC would pay reasonable and nondiscriminatory compensation for use of Applicants' trackage and facilities. For the NS segment, CPKC proposes applying the same trackage-rights fee negotiated for the Michigan Trackage Rights Agreement.[912] The rate and any related switching, terminal, or accessorial charges should not be structured or applied in a manner that nullifies the competitive value of the rights. Applicants should remain responsible for ordinary maintenance and renewal of the infrastructure they own or control. CPKC or a benefiting customer may appropriately bear reasonable costs of facilities constructed principally to support new CPKC service. Capacity required principally by Applicants' merger-related traffic or operating changes should remain Applicants' responsibility. Any implementing terms requiring agreement between CPKC and Applicants should be determined through Section V.B's 90-day good-faith negotiation and expedited Board-resolution process, applying the substantive standards prescribed here.

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911 *See* UP-80/NS-78 at Supp. 216-17.

912 Gameiro V.S. ¶ 191.

3. A Complete Route Requires TRRA Rights Between May Street and CPKC's East St. Louis Network

The Mexico–St. Louis rights described above would terminate at NS's connection with TRRA at May Street Interlock. To bridge the gap between those proposed rights and CPKC's existing network in East St. Louis, the Board should authorize full overhead trackage and operating rights for CPKC in both directions between May Street Interlock and CPKC's East St. Louis Yard, together with the rights described below necessary to interchange directly with CSXT at Rose Lake Yard.[913] Those rights should extend over the West Belt Subdivision to West Approach Interlock, over the Merchants Subdivision across the Merchants Bridge to SH Interlock, over the Illinois Transfer Subdivision to CP Junction, and over the onward TRRA trackage and connections necessary to reach CPKC's East St. Louis Yard through Valley Junction.[914]

The grant should also include full overhead trackage and operating rights between CP Junction and Q Tower and the connections necessary for CPKC to reach CSXT at Rose Lake Yard. The authorized rights should permit CPKC to move traffic in its own account between the new NS-route rights and its East St. Louis facilities and eastern interchange connections, without restrictions that would prevent those operations.

The grant should include the connections, interlockings, terminal trackage, yard and staging access, interchange tracks, and other incidental operating authority reasonably necessary to exercise those rights. Under Section VI.B, Applicants should procure amendments to the applicable TRRA trackage-rights, terminal-use, and interchange agreements, together with new agreements or grants where necessary, to secure the full overhead operations and direct

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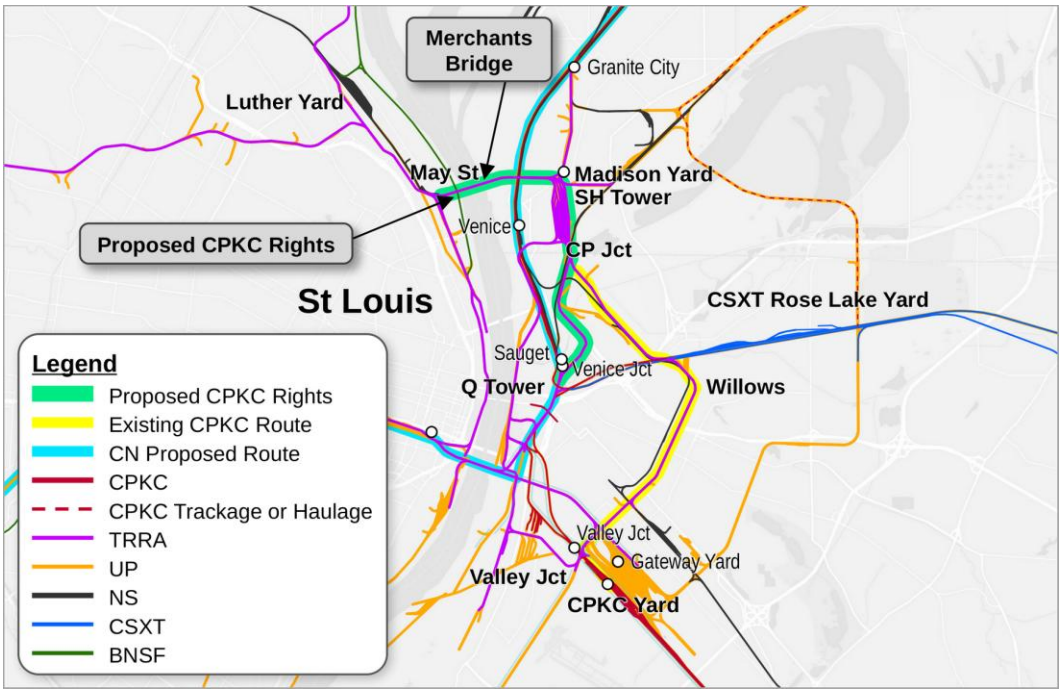
913 Redd V.S. ¶¶ 208-209, 224-26.

914 Gameiro V.S. ¶ 193; Redd V.S. ¶¶ 208, 226 & Figure 24.

interchange access. The resulting authority should provide complete, enforceable connections from the new NS-route rights to CPKC's East St. Louis Yard and to CSX's Rose Lake Yard.[915]

Proposed TRRA Connections from May Street to CPKC's East St. Louis Yard and CSX's Rose Lake Yard[916]



The Board should evaluate the Mexico–St. Louis and TRRA rights as one competitive route: without the terminal component, CPKC could not efficiently connect the NS service with its East St. Louis Yard, CSX at Rose Lake Yard, or other interchange partners.[917]

The close-the-gap rights should be administered on reasonable and nondiscriminatory terms sufficient to make the completed route commercially and operationally effective. They should be implemented consistently with the common service-assurance framework in Section V. Applicants should not be permitted to impair the route through terminal restrictions,

915 *See* Redd V.S. ¶¶ 208-09, 226; Gameiro V.S. ¶¶ 192-93.

916 Redd V.S. Figure 24.

917 *See* Redd V.S. ¶¶ 207-209, 224-26.

operating practices, or charges that leave CPKC with formal authority but no efficient means of connecting with its own network or eastern carriers. Compensation for the authorized TRRA service should be established through negotiated agreements or, if necessary, terms prescribed by the Board, using customary trackage-rights and terminal compensation principles, subject to reasonable, nondiscriminatory, and commercially effective terms.[918] Any implementing terms requiring agreement between CPKC and Applicants should be determined through Section V.B's 90-day good-faith negotiation and expedited Board-resolution process, applying the substantive standards prescribed here.

4. The Mexico–St. Louis and TRRA Rights Address Merger-Related Harm, Are Operationally Feasible, and Are Supported by Board Precedent

The requested conditions are narrowly tailored to complete an independent Kansas City–St. Louis route using CPKC's existing line west of Mexico and the NS and TRRA segments specified above, with authority to access and serve current and future facilities on, adjacent to, or served via the identified line via reciprocal switching or direct access at CPKC's election. The relief would preserve existing ownership and services, remain nonexclusive, and leave Applicants free to compete for every movement.

CPKC's existing operations and operating plan provide a concrete basis for implementing the proposed initial service. Redd anticipates that CPKC's exercise of the NS Mexico–St. Louis rights would add approximately two trains per day to that line, plus potential run-through trains with CSXT. Rerouted existing manifest trains and qualifying bulk trains would account for approximately one train per day. The plan builds on existing trains, facilities, and customer-

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[918] Gameiro V.S. ¶ 194.

service patterns.[919] CPKC would use existing manifest trains and qualifying bulk trains, retain crew changes at Mexico, stage eastbound trains on CPKC trackage when awaiting entry to NS, and coordinate westbound departures to permit prompt exit from NS at Mexico.[920]

As explained in Section VIII.H.1, CN's settlement access would leave UP in control of the premier routes and exclude NS-line customers from CN's local-haulage arrangement.[921] CPKC's remedy would therefore provide distinct customer access and network connections, including service to General Motors at Wentzville and a BNSF-CPKC-CSXT route. The CN settlement supports the feasibility of an additional Class I option but does not replace CPKC's proposed service or justify allowing UP to select the corridor's sole additional competitor.

The Board's merger precedents support the integrated approach proposed here. In *UP/SP*, the Board coupled nonexclusive trackage rights with terminal, interchange, and related operating protections necessary to make the replacement service commercially effective.[922] The same principle applies here: rights ending at the NS-TRRA connection would not provide effective competition unless CPKC can reach its own East St. Louis facilities and CSXT at Rose Lake Yard.[923] The requested access relief aligns with the 2001 Major Merger Rules' goals of preserving gateway options and enhancing competition through operationally feasible conditions that produce net public benefits.[924] The requested conditions therefore protect competition rather than CPKC from competition. They would create an additional independent network option

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919 Redd V.S. ¶¶ 211-14, 219-22.

920 Redd V.S. ¶¶ 213, 223.

921 *See* UP-80/NS-78 at Supp. 216-17; Majure V.S. Vol. II ¶¶ 69-70 & n.133.

922 *See UP/SP*, 1 S.T.B. at 403-09 & n.154, 419-21.

923 Redd V.S. ¶¶ 224-26.

924 49 C.F.R. § 1180.1(c)(2)(i), (iv), (d).

while leaving Applicants and every other carrier free to retain or win the traffic through superior rates and service.

I. Effective Competition Through the Chicago Gateway Requires Neutral Governance, Reliable Connections, and Shared-Facility Protections

1. The Merger Would Increase UP's Influence Over Shared Chicago Facilities and Create New Operating Risks

Chicago is the principal interchange point connecting the major eastern, western, and Canadian railroads and handles approximately one-third of the nation's rail freight.[925] Congestion there does not remain local: trains back up on routes approaching the gateway, crews and equipment fall out of cycle, and disruption spreads across interconnected railroad networks.[926] The national service consequences of the 2014 Chicago congestion crisis and the existence of the CREATE program confirm that preserving Chicago gateway fluidity is a national transportation concern.[927]

The Proposed Transaction would materially alter the ownership, operating incentives, and governance arrangements affecting CPKC's Chicago-Detroit service. Today, CPKC operates over NS-owned infrastructure between Chicago and Detroit while UP and NS remain independent carriers with distinct networks and economic interests.[928] After the merger, UP would acquire NS's control of the route and its operating connections. UP would also acquire or increase its influence over shared Chicago Gateway facilities on which CPKC depends, while

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925 Redd V.S. ¶ 138.

926 Redd V.S. ¶ 138.

927 Redd V.S. ¶ 138.

928 Majure V.S. Vol. II ¶¶ 73, 80; *see also* Brooks V.S. ¶ 212.

continuing to control the Techny Line and other infrastructure important to CPKC's Chicago operations.[929]

Applicants also propose a substantial redesign of their Chicago operations, although they have not fully specified it. Their plan would route additional traffic through the central Chicago terminal between UP's Proviso Yard and NS's Ashland Avenue Yard over BRC; replace some existing rubber-tire interchange with new steel-wheel movements; and alter the traffic NS delivers to BRC's Clearing Yard.[930] Applicants' filed operating plan also contemplates use of UP's preexisting EJ&E rights as an outside route connecting the UP and NS networks, but does not incorporate the full expansion of those rights under UP's later agreement with CN. Those changes would redistribute trains, blocks, yard work, and operating conflicts among facilities on which CPKC and other carriers continue to depend.[931] Those operating effects could impair the competitive interconnections on which other carriers depend, reinforcing the need to preserve their practical usability.[932]

Eliminating a corporate interchange does not eliminate the underlying railroad work. Railroads must still receive trains, route them through shared trackage, position them for work, inspect them, change crews where necessary, classify cars or exchange blocks, and dispatch trains onto constrained connecting routes.[933] Applicants also claim that their Optimized Plan will remove approximately 210 daily cars from BRC, rising to approximately [redacted] daily cars in the

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929 Redd V.S. ¶¶ 145-47, 253.

930 Rev. App. 2-695 to -96, 2-709 to -11 (Gehringer & Orr Second Errata V.S. ¶¶ 188, 204-09); Redd V.S. ¶ 139.

931 Elphick & Nelson V.S. ¶¶ 440-45, 462-66; Redd V.S. ¶¶ 139, 141-43.

932 *See* Majure V.S. Vol. II ¶¶ 73-75.

933 Redd V.S. ¶¶ 17-18, 74-76.

Growth Plan.[934] But the Growth Plan does not reduce the number of blocks BRC must maintain or the number of scheduled train departures, so a reduction in aggregate cars does not establish a corresponding reduction in yard complexity or departure-slot demand.[935]

The Board should evaluate those changes together. Additional trains and steel-wheel movements through the central terminal may increase conflicts on shared infrastructure, while expanded EJ&E access would give the combined UP-NS system an additional outside route as competing carriers remain dependent on Clearing, IHB, BRC, and central Chicago routes.[936] The merger therefore could reduce Applicants' dependence on the shared gateway infrastructure while increasing their influence over the very facilities on which competing carriers remain dependent. Indeed, UP's executive vice president of operations also [redacted][937] And NS's chief strategy officer, in an early merger assessment, likewise [redacted][938] That dynamic and the effect of UP's EJ&E agreement on its need for BRC and IHB routes should inform that assessment regardless of whether the agreement itself is characterized as merger-related. The relevant competitive consequence is that expanded access would change Applicants' dependence on, and incentives toward, the shared terminal facilities at the same time the merger increases their influence over them.[939]

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934 Rev. App. 2-711 (Gehringer & Orr Second Errata V.S. ¶ 209); Elphick & Nelson V.S. ¶ 441 & n.388.

935 Elphick & Nelson V.S. ¶¶ 442-43.

936 Redd V.S. ¶¶ 139, 141-46.

937 Gehringer Dep. Tr. at 320:13-321:3; *see also* Vena Dep. Tr. at 359:16-360:6 ([redacted]).

938 NS_00482221, at -226.

939 Gameiro V.S. ¶¶ 95-103.

CPKC's Chicago-Detroit service depends on reliable Chicago gateway connections as well as authority to traverse the NS main line. CPKC must be able to enter and leave the route through the Chicago Gateway, reach IHB points including Gibson Yard, use the shared terminal infrastructure through which its trains move, interchange efficiently at the Detroit end, and connect the route with its own network.[940] CPKC also depends on UP's Techny Line to connect Bensenville Yard with its core route between Chicago and the Twin Cities via Milwaukee.[941] A restriction or operational bottleneck affecting CPKC's Chicago-Detroit gateway connections could impair the reliability and commercial effectiveness of CPKC's through service despite its formal trackage rights.[942]

Those structural and operational changes create four interrelated risks to neutral access through the Chicago Gateway. Section VIII.J separately addresses the threats to CPKC's Chicago-Detroit route and Detroit-area competitive access.

First, the merger would increase UP's ability and incentive to impair the Chicago end of CPKC's MTRA route.[943] CPKC's current operations use both CP 502, for access to IHB's Gibson Yard, and the connection with BRC at CP 509.[944] Both connections support CPKC's existing service. If CPKC cannot move reliably between CP 502 and Gibson Yard or access the automotive interchange facilities there, the reliability and commercial value of that service would

940 *See* Redd V.S. ¶¶ 252-59.

941 Redd V.S. ¶¶ 147, 267.

942 *See* Redd V.S. ¶¶ 142-46, 252-55; Gameiro V.S. ¶¶ 144-47.

943 Gameiro V.S. ¶ 144; Redd V.S. ¶¶ 141, 252-54; Majure V.S. Vol. II ¶¶ 73-75, 80-82.

944 Redd V.S. ¶¶ 252-54.

be materially impaired.[945] Effective protection of CPKC's main-line rights therefore requires reliable access to the connections used by its protected services.[946]

Second, the Proposed Transaction would add to UP's influence over IHB and BRC.[947] Conrail holds 50.99% of IHB, and NS and CSX jointly exercise its IHB voting interests under their governing arrangements, subject to the applicable exceptions and dispute-resolution provisions.[948] Acquiring NS would place its role in that process under UP's control and could enable UP to delay or prevent Conrail support for an IHB investment, connection, operating arrangement, or access measure important to competing service.[949] For BRC, the merged carrier would combine NS's 25% ownership and three of twelve board seats with UP's 8.33% ownership and one board seat.[950] The merged carrier's four board votes would bring it within [redacted] of blocking a matter [redacted].[951] The Board should address the IHB governance risk through either separately exercisable CSX and NS voting interests or mandatory affirmative or negative voting direction based on the positions of a majority in number of the other independent owner groups. It should separately reduce Applicants' BRC voting power sufficiently that neither Applicants alone nor Applicants together with any single other independent owner group can defeat a matter requiring a [redacted] as specified in Section VIII.I.3(b).

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945 Gameiro V.S. ¶ 146.

946 Gameiro V.S. ¶ 146.

947 Gameiro V.S. ¶¶ 101-03, 106-13.

948 Gameiro V.S. ¶ 109; Rev. App. 1-164 to -65.

949 Gameiro V.S. ¶¶ 110-17.

950 Gameiro V.S. ¶ 101; Rev. App. 1-146 to -47.

951 Gameiro V.S. ¶ 101.

Third, Applicants' proposed changes threaten the neutral and efficient functioning of Clearing Yard and other shared Chicago facilities. Clearing performs important classification, block-building, and interchange functions for traffic moving among Chicago carriers.[952] CPKC depends on Clearing for interchange with CSXT and other railroads, and BRC's destination-blocking functions allow carriers to build one Clearing block upstream rather than construct multiple lower-density blocks for destinations throughout a connecting carrier's network.[953] Applicants' use of Clearing already consumes substantial shared capacity, and common ownership of UP and NS would not eliminate the necessary physical work of classifying traffic and building blocks.[954] UP habitually uses Clearing to switch UP's own traffic when UP cannot do so in its own yards.[955] This operation, referred to as re-humping, forces BRC to switch UP cars using the eastbound and then the westbound humps before returning them to UP, rather than performing Clearing's main function of switching cars for interchange to a different carrier.[956] Service-related disruptions from UP's attempt to merge operationally with NS increase the risk of UP sending cars to Clearing for re-humping, absorbing disproportionate capacity and limiting other carriers' interchange.[957] The Board should therefore guard against the risk that merger-related changes at other UP-NS facilities will shift additional work or congestion to Clearing.

Fourth, the merger would heighten the vulnerability of CPKC's Techny Line operations. CPKC uses the UP-owned Techny Line to connect Bensenville Yard with its core route toward

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952 Redd V.S. ¶¶ 60-66.

953 Redd V.S. ¶ 142.

954 Redd V.S. ¶¶ 63-68, 74-76.

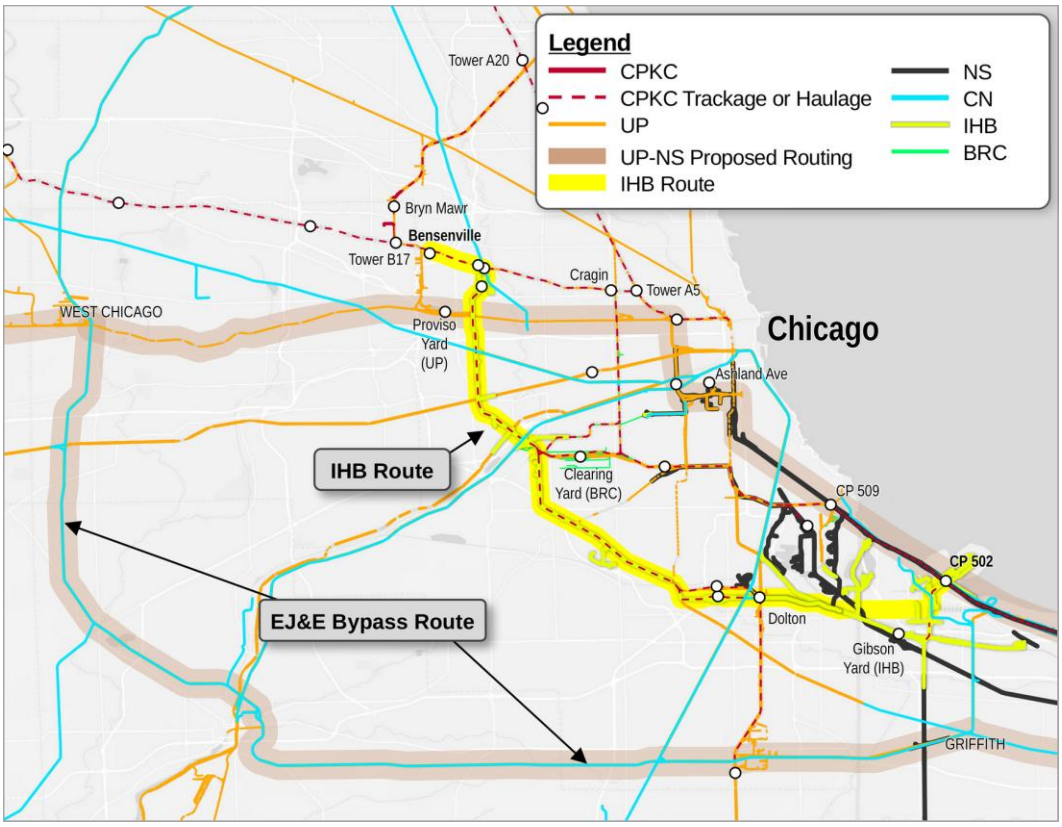
955 Redd V.S. ¶¶ 68-69.

956 Redd V.S. ¶ 68.

957 Redd V.S. ¶¶ 142-43.

Milwaukee and the Twin Cities. The line provides an efficient connection that avoids an alternative route with greater exposure to Metra and Amtrak passenger operations between Tower A5 and Tower A20.[958] Applicants' disclosed operating plan identifies no merger-related operational need to reduce or interfere with CPKC's Techny Line use. Any post-merger reduction in CPKC's practical access, available capacity, train frequency, or operating flexibility would therefore lack an identified justification in Applicants' own merger plan and could impair an efficient CPKC route linking Chicago with Milwaukee, the Twin Cities, and CPKC's broader network.[959]

Chicago Gateway Railroads, Shared Facilities, and EJ&E Bypass Route[960]



958 Redd V.S. ¶¶ 147, 267-68.

959 *See* Redd V.S. ¶¶ 147-48; Majure V.S. Vol. II ¶¶ 75-77.

960 Redd V.S. Figure 12.

Addressing these gateway harms requires three complementary sets of conditions:

1. **CP 502 and IHB Access.** The Board should grant and protect the operating, interchange, yard, connection, and incidental rights necessary for CPKC to enter and exit the Chicago-Detroit route at CP 502, reach Gibson Yard and other necessary IHB points, as specified in Section VIII.I.2. Applicants should also be required to support CPKC's use of IHB as a complete bypass route between Bensenville Yard and Gibson Yard or Southeast Michigan, on the terms specified in Section VIII.I.2.

2. **Neutral and Efficient Operation of IHB, BRC, and Clearing Yard.** The Board should require implementation of one of the IHB governance alternatives in Section VIII.I.3(a); prevent Applicants, acting alone or with any single other independent owner group, [redacted]; protect Clearing Yard's neutral interchange and classification functions; and require permanent Chicago-specific monitoring and corrective relief under Section V.

3. **Techny Line Rights.** The Board should require Applicants to preserve CPKC's practical access to and capacity on the Techny Line at no less than a representative pre-merger baseline and prohibit post-merger UP from terminating, restricting, narrowing, or materially impairing those rights. The condition should include enforceable service protections and a springing dispatching remedy.

These gateway conditions complement Section VIII.J's Chicago-Detroit protections: route and traffic authority require reliable terminal connections, while neutral governance must be accompanied by workable access, capacity, and service. The Techny Line condition further protects a distinct connection supporting CPKC's broader Chicago operations. The Board should therefore evaluate the package as an integrated response to the merger's combined effects on route control, customer and interchange access, terminal connectivity, shared-facility governance, terminal operations and capacity, and service reliability.

2. Effective IHB Access Requires Confirmed and Expanded Rights Between CP 502 and IHB Points, Including Gibson Yard

CPKC seeks rights sufficient to enter and leave the Chicago-Detroit route at CP 502 and to operate between CP 502 and points on IHB, including Gibson Yard, for all operating purposes. Reliable access there is essential to effective through service.[961]

[961] Redd V.S. ¶¶ 145, 252-54; Gameiro V.S. ¶ 146.

The operating and connection rights between CP 502 and IHB are essential to the Chicago-Detroit main-line rights: CPKC's competitive service depends on its ability to reach IHB points, including Gibson Yard, and to connect the Chicago-Detroit route with CPKC's broader network.[962] A restriction or operational bottleneck at that connection could impair the reliability and commercial effectiveness of CPKC's service through CP 502 and its automotive interchange at Gibson Yard despite its formal main-line trackage rights.[963] CPKC currently uses the CP 502 connection to carry finished automobiles [redacted] to Gibson Yard for interchange.[964] NS has previously disputed CPKC's use of the CP 502 connection and sought to restrict that access.[965] After the merger, UP would control the Chicago-Detroit route itself and would have a materially greater anticompetitive incentive to impair CPKC's access at its Chicago endpoint.[966] Restricting that connection could impair automotive interchange at Gibson Yard and reduce the reliability and practical value of CPKC's service using that connection.[967]

The Board should therefore require Applicants to confirm CPKC's existing authority to enter and exit at CP 502 and to continue to operate over NS track, via CP 502, to reach Gibson Yard and CP 509 or, to the extent that authority is disputed, terminable, or incomplete, grant CPKC permanent, nonexclusive operating rights over the Applicant-owned or controlled trackage necessary to enter and exit at CP 502 and operate over NS track via CP 502 to reach Gibson Yard and CP 509.[968] It should further require Applicants to support and procure the

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962 *See* Redd V.S. ¶¶ 252-54; *see also* Gameiro V.S. ¶ 146.

963 *See* Gameiro V.S. ¶ 146; Redd V.S. ¶¶ 252-54.

964 Redd V.S. ¶ 254.

965 Gameiro V.S. ¶ 146.

966 Majure V.S. Vol. II ¶¶ 73-75, 80-82; Brooks V.S. ¶¶ 169-75, 212.

967 Gameiro V.S. ¶ 146; Redd V.S. ¶¶ 145, 252-54.

968 *See* Gameiro V.S. ¶¶ 145-46; Redd V.S. ¶¶ 145, 253.

complementary rights and arrangements necessary to reach points on IHB, including Gibson Yard. The rights should be available for any traffic CPKC is authorized to handle under the Chicago-Detroit conditions and should not be limited to existing train symbols, automotive interchange, or historical operating patterns. The operating package should preserve the connections between CP 502, Gibson Yard, and CPKC's broader Chicago network.

The grant should include all authority reasonably necessary to make the CP 502-IHB access authorized in this subsection, including access to Gibson Yard, operationally complete, including the connections and trackage needed to enter and leave the Chicago-Detroit route; access to Gibson Yard and other necessary IHB yards, interchange tracks, sidings, and staging facilities; authority to pick up and set out loaded and empty equipment; and the terminal, data, and incidental rights necessary to perform the authorized service. Applicants should not retain the ability to defeat the grant by denying access to a necessary connection, yard function, interchange point, or supporting facility.

The Board should require Applicants and their controlled affiliates to amend, waive, or refrain from enforcing the MTRA and related NS-CPKC and IHB access, interchange, yard, terminal-use, crew/pilot and operating arrangements, tariffs, or other instruments to the extent inconsistent with the Board-authorized rights. They should implement the necessary amendments, new grants, and assents under Section VI.B. Applicants should provide any consent required for IHB to grant the authorized CP 502-Gibson rights. To the extent implementation requires action by IHB or another entity not controlled by Applicants, Applicants should exercise their ownership, governance, voting, contractual, and other rights in support of the access; refrain from opposing the necessary rights, connections, investments, and operating arrangements; and use commercially reasonable efforts to procure the required

agreements and assents. If a necessary third-party assent cannot be obtained, Applicants should propose and implement an operationally equivalent arrangement, subject to Board approval. The commercially reasonable efforts standard governs procurement of an independent third party's assent; it does not qualify Applicants' mandatory obligations to exercise their own voting, consent, governance, and other rights, including their duties under Section VIII.I.3(a). Applicants' support obligations under this subsection implement separately Board-authorized access relief and do not depend on the majority-owner support trigger in Section VIII.I.3(a). The implementation and operational-equivalence requirements in this subsection apply to the CP 502-IHB access authorized here, including access to Gibson Yard.

The Board should also require Applicants to support CPKC's access to IHB as a bypass route for trains operating between Bensenville Yard and IHB's Gibson Yard or Southeast Michigan, including the additional rights and operating arrangements needed to complete the route between Tower B12 and CP 502. Applicants should exercise their ownership, governance, voting, consent, contractual, and other rights in support of the necessary access, connections, investments, and operating arrangements; provide the votes, consents, approvals, and implementing actions within their control, including through Conrail or an intermediate holding company; and refrain from opposing or obstructing their implementation. Applicants should use commercially reasonable efforts to procure necessary agreements and assents from independent third parties, including CSXT. That efforts standard should govern procurement of independent-party agreements and assents, without qualifying Applicants' mandatory obligations concerning actions within their own control. This affirmative support obligation should apply under either governance alternative in Section VIII.I.3(a), independently of its majority-owner trigger and without requiring a prior service failure. The support obligation should be permanent and

enforceable under Section V. Establishing the complete bypass would remain subject to obtaining the necessary independent-party rights and agreements and any required regulatory approvals; this condition would not itself grant CPKC rights over CSXT-owned or other independently controlled trackage.[969]

The authorized rights should be exercisable using CPKC's own qualified crews and locomotives, subject to applicable qualification and safety requirements. Applicants also should not nullify the access through discriminatory dispatching, crew or pilot requirements, yard restrictions, operating rules, route assignments, charges, or denial of a necessary connection or interchange function.

Compensation for CPKC's use of IHB track should remain as provided in the existing agreements, including any adjustments those agreements prescribe.[970] Any proposal to charge separately for genuinely additional mileage, facilities, or services should identify and justify that increment, apply only to it, and provide reasonable and nondiscriminatory compensation; it should not reset the existing IHB compensation terms. Neither such compensation nor related terminal, switching, accessorial, or other charges should be structured or applied to circumvent those terms or defeat the competitive value of the rights. Any implementing terms for genuinely additional mileage, facilities, or services requiring agreement between CPKC and Applicants should be determined through Section V.B's 90-day good-faith negotiation and expedited Board-resolution process, applying the substantive standards prescribed here.

The service-assurance framework in Section V should govern these protections. Route-specific monitoring should measure access and dispatching delay at CP 502; transit between CP

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969 Redd V.S. ¶ 149.

970 Gameiro V.S. ¶ 121.

502 and the IHB points covered by the access grant, including Gibson Yard; yard and interchange dwell; crew and pilot availability where applicable; completion of scheduled interchange and terminal work; and treatment relative to comparable Applicant movements. The implementing arrangements should identify the carrier responsible for each segment and operating function and specify Applicants' corresponding service, reporting, and corrective-action obligations. Applicants should remain responsible for compliance with their own operating, access, contractual, and governance obligations, including the affirmative duties specified in this subsection and Section VIII.I.3(a). Where a remedy depends on Applicants' contribution to deterioration, Section V's contribution standards and evidentiary presumptions should apply, including to impairment on IHB caused or materially contributed to by Applicants' operations. Commitments requiring action or assent by IHB or another independent carrier should be addressed through the implementation procedures in this subsection and Section VI.B. Applicants should provide timely operating information and advance notice of material changes affecting the route, and disputes should receive expedited resolution with interim relief where continued impairment would materially disrupt CPKC service.

Temporary restrictions necessary for an actual emergency, infrastructure failure, safety condition, or planned maintenance event should remain permissible, provided Applicants give prompt notice, limit the restriction to the period reasonably necessary, and provide an operationally reasonable temporary accommodation where feasible. A non-emergency change reasonably likely to materially impair the authorized route or access should require CPKC's consent or prior Board authorization upon a showing that CPKC will retain equivalent commercially and operationally effective access.

The rights and non-impairment obligations should be permanent, survive the expiration of formal merger oversight, and remain effective unless affirmatively modified by the Board. They should bind any affiliate, successor, lessee, or other entity through which the affected trackage or facilities are owned, controlled, dispatched, maintained, or operated. Where a qualifying performance failure occurs on Applicant-controlled trackage, the springing dispatching remedy described in Section VIII.J.2(d) should remain available.

The relief in this subsection is route-specific and distinct from the governance and shared-facility protections in Section VIII.I.3. This subsection supplies the operating authority needed to make CPKC's Chicago-Detroit rights usable at their Chicago endpoint and to preserve access to IHB points, including Gibson Yard. Section VIII.I.3(a) separately requires either independently exercisable CSXT and NS voting interests in IHB or mandatory affirmative or negative voting direction based on the positions of the specified majority of other independent owner groups. Those alternatives address IHB governance generally, including access, investments, capital improvements, and operating arrangements. Those governance obligations supplement the independent access and implementation duties imposed in this subsection. The requested rights would be nonexclusive, would not transfer control of IHB or its facilities to CPKC, and would not displace any existing carrier operation.

3. Effective Chicago Competition Requires Neutral IHB and BRC Governance, Effective IHB Connections, and Protected Clearing Yard Functions

The operating-rights conditions in Sections VIII.I.2 and VIII.J.2 would not fully protect CPKC's Chicago-Detroit service if Applicants could use their post-merger influence over IHB or BRC to block the connections, investments, capacity, or operating arrangements needed to exercise those rights effectively. Nor would neutral governance alone protect Chicago Gateway users if Applicants responded to disruption on their combined network by shifting traffic and

work to IHB and BRC, consuming shared capacity and degrading interchange service for other carriers.[971] At Clearing Yard, additional processing or overflow traffic could also consume capacity needed for CPKC's classification and interchange movements.[972] The Board should therefore impose an integrated package of governance, voting, nondiscrimination, operating, and monitoring conditions governing IHB, BRC, and Clearing Yard. Those conditions should preserve IHB's neutral terminal, interchange, and connecting functions, prevent the merger from conferring disproportionate influence over shared terminal companies, and ensure that Applicants bear the operating consequences of their own post-merger train plan rather than shifting them to competing carriers.

(a) Neutral IHB Governance Requires Separate Voting Interests or Mandatory Voting Direction

IHB is an important shared Chicago carrier whose connections, terminal facilities, and interchange functions support competing service.[973] Preserving those functions would become particularly important after the merger because UP has obtained expanded access to CN's EJ&E route as an alternative means of connecting the UP and NS networks outside the central Chicago Terminal.[974] Without corresponding protection for IHB, the combined railroad could benefit from its own bypass while using merger-acquired influence to oppose the investments, connections, access rights, or operating arrangements needed for effective service by CPKC and other carriers.[975]

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971 Clements V.S. ¶¶ 89-90.

972 Redd V.S. ¶¶ 141-43.

973 Redd V.S. ¶¶ 145-46, 252-54; *see also* Gameiro V.S. ¶¶ 107-08.

974 Gameiro V.S. ¶¶ 97-99; *see* UP_3344397 ([redacted]).

975 Gameiro V.S. ¶¶ 106-16.

IHB also supplies terminal functions on which the competing railroads depend. Gibson Yard consolidates automotive shipments for onward movement over the routes chosen by customers.[976] UP's acquisition of NS would change the incentives governing NS's participation in IHB: UP could favor its own through routes while deprioritizing investment needed to maintain IHB's terminal and connecting functions or Gibson's interchange function. A general assurance of neutral traffic handling would not necessarily prevent deterioration caused by withheld investment.[977]

IHB's network connects CPKC and CN at Tower B12 with eastern connections, including CSXT-owned track at Dolton, CSX's Barr Yard, and NS at CP 502, an entry and exit point for CPKC's Chicago-Detroit trackage rights.[978] The conditions should preserve IHB's neutral terminal and interchange functions and the CP 502-IHB/Gibson access protected under Section VIII.I.2. Effective protection should also require Applicants' affirmative support for CPKC's use of IHB as a bypass between Bensenville Yard and Gibson Yard or Southeast Michigan, including completion of the route between Tower B12 and CP 502.[979] Section VIII.I.2 therefore requires Applicants to provide the votes, consents, cooperation, and other implementing actions within their control and to use commercially reasonable efforts to secure necessary independent-party agreements and assents. That obligation should apply independently of the governance alternatives below, while establishment of the complete route remains subject to obtaining the necessary additional rights, agreements, and regulatory approvals.

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976 Gameiro V.S. ¶¶ 107-08.

977 Gameiro V.S. ¶¶ 113-17.

978 Gameiro V.S. ¶ 107.

979 Redd V.S. ¶ 149.

Conrail holds 50.99% of IHB's shares, and CPKC holds 49%.[980] NS and CSXT jointly exercise Conrail's IHB voting interests under their governing arrangements, subject to the applicable exceptions and dispute-resolution provisions.[981] David Hughes, UP's Assistant Vice President for Joint Facilities and Interline Operations, [redacted][982] [redacted][983] [redacted]

[980] Gameiro V.S. ¶ 109; Rev. App. 1-164 to -65.

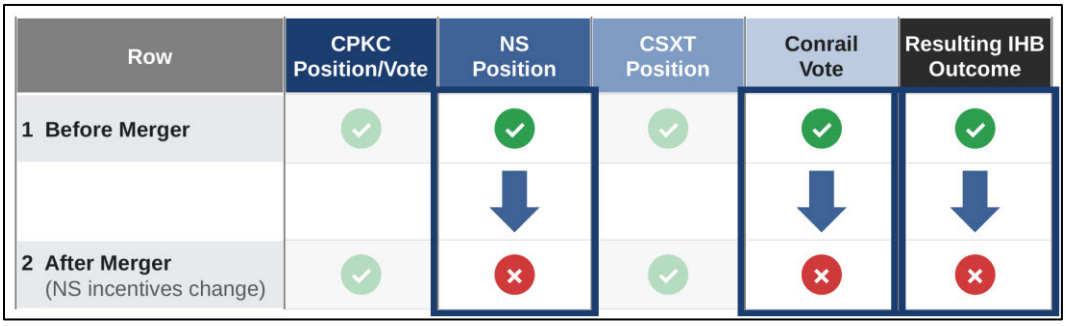
[981] Gameiro V.S. ¶ 109 & n.74; Lehlbach Dep. Tr. at 365:15-366:6, 366:22-24 (confirming [redacted]). As Mr. Gameiro explains, the agreement between CSXT and NS on Conrail's IHB interests provides a dispute resolution mechanism under which CSXT and NS are required to negotiate for 30 days to resolve a disagreement on how to cast Conrail's IHB share and, if no agreement is reached, the matter is submitted to binding arbitration. That mechanism, however, does not resolve NS's effective veto for two reasons. First, if NS, or UP standing in NS's shoes, prevails at arbitration, its position still controls. Second, the slow-moving and open-ended arbitration process provides NS, or UP-NS, with, in practice, a pocket veto. Not only must the 30-day negotiation period run before arbitration can begin, but if the parties do not agree on an arbitrator, another 30 days must run before one is designated. The agreement sets no deadline for an ultimate resolution. Accordingly, even where NS could not ultimately block an action, it could frustrate the action through delay.

[982] UP_0344233.

[983] NS_00075850, at 852-853 ([redacted]).

Acquiring NS would transfer NS's role in that process to UP and could enable UP to delay or prevent Conrail support for IHB action important to competing service.[984] An independent NS, like CSXT, has an interest in efficient and neutral IHB connections with western carriers. The merged carrier, by contrast, would have an incentive to use its power at IHB to push traffic to its new transcontinental network.[985] Thus, for matters requiring NS concurrence under the governing arrangements, UP could withhold support for an initiative that independent NS would have supported alongside CPKC and CSXT.[986] The merger therefore could impair action supporting interline service even though the positions of the other independent owners remain unchanged.[987]

How UP's Acquisition of NS Could Block an IHB Initiative Supported by CPKC and CSXT[988]



The Board should address that risk through one of the two alternative governance conditions proposed by Gameiro. First, before acquiring control of NS, Applicants should be required to enter into and implement a binding agreement with CSXT separating the exercise of

984 Gameiro V.S. ¶¶ 110-14.

985 Gameiro V.S. ¶¶ 113-16.

986 Gameiro V.S. ¶¶ 109-14.

987 Gameiro V.S. ¶¶ 113-16.

988 Gameiro V.S. Table 4. The depicted outcomes concern the concurrence stage and remain subject to applicable exceptions and dispute-resolution provisions. *See* Gameiro V.S. ¶ 109 & n.74.

the CSXT and NS interests in Conrail's ownership of IHB, so that the shareholder votes and board votes reflecting those interests can be cast separately, without requiring agreement or concurrence between CSX and NS.[989] Applicants should submit the final instruments for Board approval, identifying the voting power and board representation attributable to each interest and demonstrating that no retained concurrence, consent, proxy, or similar right permits Applicants to control the exercise of CSXT's IHB interests. The separation concerns the exercise of the respective interests in IHB.

Alternatively, the Board should require Applicants to vote in favor of a proposed IHB governance action affirmatively supported by a majority in number of the other independent owner groups, and against a proposed action affirmatively opposed by that majority.[990] A majority should mean more than half of IHB's direct or indirect owner groups unaffiliated with Applicants, counted by group without weighting ownership percentages or board seats. Each commonly controlled group should count once, and Conrail and other intermediate entities should not be counted separately from their underlying owners. Under the present structure, the other independent groups are CPKC and CSXT; both must affirmatively support or both must affirmatively oppose the same proposal to trigger the corresponding direction. If they disagree, or either abstains or states no position, this condition supplies no voting direction. The owners' authorized representatives should identify the proposed action and their support or opposition in a written notice to Applicants.

The voting-direction alternative should require Applicants to exercise all direct and indirect ownership, voting, consent, approval, contractual, and other governance rights within

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989 Gameiro V.S. ¶ 118.

990 Gameiro V.S. ¶ 118.

their control, including through their designated representatives, to give effect to the required direction. Their obligations should extend to corresponding action or approval concerning IHB at Conrail or an intermediate holding company. An affirmative direction should require the votes, consents, participation, and implementing steps within Applicants' authority necessary to support adoption and timely implementation. A negative direction should require opposing votes and the withholding of consent or approval within Applicants' authority necessary to oppose the proposed action. Applicants should not substitute abstention for a required affirmative or negative vote.

The voting-direction alternative should cover all matters submitted for IHB shareholder, board, committee, or other governance action, together with corresponding votes, consents, and approvals concerning IHB required at Conrail or an intermediate holding company. Coverage should include the following nonexclusive categories and should not depend on a separate showing of operational effects:

1. **Capacity and infrastructure**. Capital plans and capacity investments; construction, expansion, rehabilitation, repair, maintenance, replacement, acquisition, lease, use, or disposition of tracks, connections, yards, terminals, signals, communications systems, and other operating facilities or equipment; and preservation of routes and facilities needed for existing or reasonably anticipated service.

2. **Operating practices and resources**. Dispatching, train priorities, routing, scheduling, operating windows, yard and track allocation, switching, classification, blocking, interchange, staging, storage, and traffic acceptance; staffing, crew and pilot availability and qualification, locomotive and equipment deployment, maintenance windows, and operating rules.

3. **Access and service arrangements**. Trackage, haulage, switching, interchange, terminal, connection, and other access rights; service standards and performance commitments; and coordination with connecting carriers. This coverage should include proposals submitted after consummation for additional CPKC access between Tower B12 and CP 502 and associated operating, connection, and investment arrangements. When the majority-owner support trigger described above is satisfied, Applicants should provide the corresponding votes, consents, approvals, and implementing actions within their control, including those required through Conrail or an intermediate holding company.

4. **Safety and service continuity**. Safety programs, emergency response, service recovery, redundancy, resilience, cybersecurity, and continuity of operating systems and services.

5. **Operating information and systems**. Operating data, communications, technology and systems access, planning information, and performance reporting needed to conduct, coordinate, monitor, or improve the foregoing activities.

6. **Financial, commercial, corporate, and governance matters**. Operating and capital budgets, financing, owner contributions, distributions, cost allocations, rates, fees, charges and compensation, procurement and contracts, management appointments and delegations, and ownership or governance changes and amendments to governing instruments. This includes decisions to authorize, withhold, condition, defer, modify, or terminate resources, authority, or arrangements, whether or not separately characterized as operational matters.

Before consummation, Applicants should obtain and implement the amendments, approvals, assents, and binding arrangements necessary to give effect to the selected alternative throughout the relevant ownership chain, subject to Board approval and Section VI.B. Those instruments should include the relevant charters, bylaws, ownership and voting agreements, and board and committee arrangements of IHB, Conrail, and intermediate holding entities. They should bind Applicants and their designated representatives and address quorum, nonattendance, abstentions, recusals, vacancies, committee delegations, written consents, and related procedures. Applicants should exercise their director-designation and other governance rights consistently with the selected condition and should not defeat it through procedural delay, conditional consent, withholding necessary information, replacement of representatives, or obstruction of implementation.

The selected governance remedy should supplement Applicants' independent obligations under Section VIII.I.2 to support and implement the Board-authorized CP 502, Gibson Yard, and related IHB access protections and to support completion of the IHB bypass between Tower B12 and CP 502. Those separately imposed obligations should apply under either governance

alternative and should not depend on the majority-owner trigger under the voting-direction alternative.

The condition should remain effective for so long as UP and NS remain under common control or the combined system is operated by a successor, and shall bind Applicants' affiliates and successors. Applicants shall preserve the implementation instruments, proposals, notices of support or opposition, meeting and quorum records, votes, consents, and other records necessary to verify compliance with the selected alternative, and provide them to the Board and the unaffiliated railroad owners of IHB on request, subject to applicable confidentiality protections. Any proposed governance amendment, transfer, proxy, side agreement, restructuring, or other arrangement that would weaken or circumvent the condition or, where the voting-direction alternative applies, materially alter the owner-count trigger shall require advance notice and prior Board approval. Disputes over coverage, compliance, or an asserted legal impediment shall receive expedited Board resolution under Section V.B; seeking review shall not itself stay Applicants' obligations.

These alternatives address the merger's effect on IHB governance through different mechanisms. The first would separate the exercise of the CSXT and NS interests and eliminate the concurrence requirement associated with their joint exercise. The second would direct Applicants' exercise of their rights when the specified majority of other independent owner groups affirmatively agrees on a proposal. Their effects depend on the governing voting and approval rules and should not be assumed to be identical. Neither would guarantee that CPKC prevails whenever it disagrees with the other owners. The separate access, shared-facility, and service protections therefore remain necessary.[991]

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[991] Gameiro V.S. ¶ 120.

(b) BRC Neutrality Requires Protection Against UP's Acquisition of Disproportionate Influence

BRC and Clearing Yard perform train-building, destination-blocking, and interchange functions for Class I carriers and smaller Chicago-area carriers.[992] Combining UP's and NS's interests would give Applicants four of BRC's twelve voting directors.[993] [redacted]. [994] Four votes alone would not defeat a covered action requiring [redacted] affirmative votes, but Applicants would need only [redacted] to withhold support to prevent approval.[995] [redacted][996] UP's own assessment underscores the practical significance of that increased influence: [redacted][997]

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992 Gameiro V.S. ¶ 100.

993 Gameiro V.S. ¶ 101; Rev. App. 1-159.

994 Gameiro V.S. ¶ 101; BRC By-Laws, art. III, § 7 (June 7, 1990).

995 Gameiro V.S. ¶ 101.

996 Gameiro V.S. ¶ 101.

997 UP_0344233.

BRC Board Votes Before and After the Merger[998]



Applicants' changing operating incentives make that blocking position consequential. UP has described its desire to reduce traffic moving through Chicago in favor of other gateways, including Kansas City; Applicants plan to remove significant manifest traffic from Clearing; and UP's agreement with CN would expand its access to the EJ&E bypass. Those alternatives would reduce Applicants' dependence on BRC while competing carriers remain dependent on its effectiveness.[999] UP and CN could share an interest in resisting investment in BRC routes principally benefiting other carriers. UP could also resist capital work needed to maintain Clearing Yard or threaten to withhold support for a project to obtain its preferred blocking plan,

998 Gameiro V.S. Figure 10.

999 Gameiro V.S. ¶¶ 95-103.

work schedule, or other operating practice.[1000] A general neutrality obligation would not resolve those risks: harm could arise from withholding necessary investment, and the full range of future decisions cannot be reduced to a list of prohibited practices.[1001]

The Board should therefore condition approval on UP reducing its voting power on BRC's board post-merger sufficiently that no matter requiring [redacted] can be voted down solely through the votes of UP's directors, acting alone or together with the directors of any single other independent owner group. Applicants and entities under their common control should be treated as one group, and each other owner's affiliated entities should likewise be aggregated. This condition would preserve Applicants' equity interest and economic rights in BRC and would not dilute their voting power on matters [redacted]. Removing the specified blocking power would also remove the leverage it supplies to demand or prevent changes in other BRC policies without broader owner support.[1002]

Before consummation, Applicants should submit implementing arrangements demonstrating that the condition is satisfied under BRC's voting rules, including the applicable denominator and the treatment of quorum, abstentions, recusals, nonattendance, vacancies, proxies, and any committee or consent mechanism capable of preventing adoption of a covered matter. Applicants should amend the charter, bylaws, shareholder and voting agreements, and related arrangements as necessary, obtaining the approvals and assents required under Section VI.B. The Board should approve an implementation only upon finding that UP, alone or together with any single other independent owner group, cannot defeat a matter [redacted]

1000 Gameiro V.S. ¶¶ 102-03.

1001 Gameiro V.S. ¶ 105.

1002 Gameiro V.S. ¶ 104.

[redacted]. The separate Clearing Yard operating protections and Chicago-specific monitoring and corrective relief requested in Sections VIII.I.3(c)–(d) should remain independently enforceable.

Any later change to BRC ownership, voting, board representation, committee authority, quorum, consent or approval requirements, or related agreements that could restore the prohibited blocking power or evade the condition should require advance notice and prior Board authorization. Applicants should demonstrate continued compliance with the condition before the change takes effect.

The condition should be permanent and bind Applicants' affiliates and successors. Proxies, side agreements, coordinated voting arrangements, reacquisition rights, and other devices that circumvent the restriction should be prohibited. The Board should retain authority to enforce the condition and correct arrangements that circumvent it in practice.

(c) Clearing Yard's Neutral Role Requires Protection Against Impairment and Congestion Shifted to Other Users

Clearing Yard is an important processing and interchange hub for manifest traffic moving among Chicago carriers.[1003] CPKC depends on Clearing for interchange with CSXT and other railroads, and BRC's destination-blocking functions permit CPKC and other carriers to build efficient Clearing blocks upstream rather than construct numerous separate, lower-density destination blocks.[1004] Clearing's classification and block-building work is not an avoidable cost of interchange.[1005] It consolidates lower-density traffic received from multiple carriers into

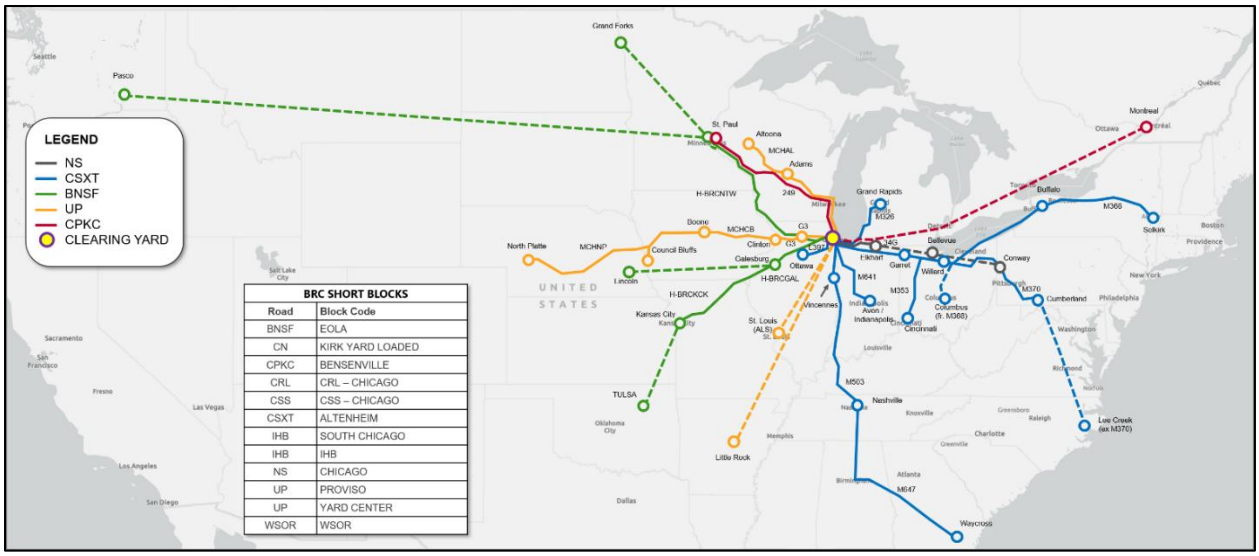
[1003] Redd V.S. ¶ 142.

[1004] Redd V.S. ¶ 142.

[1005] Redd V.S. ¶¶ 58-60.

efficient downstream blocks, performs work that would otherwise occur less efficiently elsewhere, and preserves routing options across the interconnected rail network.[1006]

Clearing Yard's Destination Blocks and Connecting Train Services[1007]



Re-humping requires a car to pass through Clearing's classification process a second time, consuming additional capacity before the car can depart. UP's use of Clearing as an overflow facility when its own yards become overwhelmed creates repeated handling and consumes shared classification capacity that also supports CPKC's interchange with other carriers and BRC's assembly of destination blocks for onward movement.[1008] First-quarter 2026 data illustrate the scale of that repeat processing. [redacted]

[redacted][1009] Following the merger, Applicants' new blocking patterns could strain their other facilities and lead them to shift additional overflow traffic to Clearing, consuming capacity

1006 Redd V.S. ¶¶ 60, 63-66, 70-71.

1007 Redd V.S. Figure 3.

1008 Redd V.S. ¶¶ 67-69, 142-44.

1009 Redd V.S. ¶ 69.

needed for competing carriers' classification and connections.[1010] Applicants' model also assigns traffic for separate Chicago interchanges to Calumet, creating artificial support for bypassing Elkhart. Absent substantial changes to that plan, the traffic would have to continue through Elkhart or be processed at BRC.[1011] A reduction in ordinary interchange traffic would not, by itself, establish that Clearing would have sufficient capacity to absorb that additional work.

Applicants' projected reduction in UP-NS-related cars therefore does not resolve the capacity concern.[1012] Indeed, David Lehlbach, NS's assistant vice president for strategic planning, confirmed that [redacted][1013] But Applicants' Growth Plan does not reduce the number of blocks BRC must maintain or the number of scheduled train departures; lower car counts therefore do not establish a corresponding reduction in yard complexity or departure-slot demand.[1014] BRC's response to a recent Board inquiry into congestion at Clearing illustrates why inbound car counts alone do not fully measure classification workload. BRC explained that increased traffic included cars requiring double handling through re-humps and that it was recalibrating its inbound car quota so that "cars requiring a second pass over the hump are counted against available capacity rather than treated as incidental."[1015]

1010 Redd V.S. ¶¶ 142-44.

1011 Elphick & Nelson V.S. ¶¶ 445-453.

1012 Elphick & Nelson V.S. ¶¶ 440-441.

1013 Lehlbach Dep. Tr. at 368:6-20.

1014 Elphick & Nelson V.S. ¶¶ 442-443.

1015 BRC Letter to STB re: Clearing Yard Service Performance—Response to the Board's Letter of August 3, 2026 (Aug. 10, 2026) at 1, 3.

The Board should prohibit Applicants from using Clearing or another shared Chicago facility in a manner that materially impairs neutral interchange, classification, block-building, or capacity functions for other carriers. The prohibition should encompass unnecessary storage, re-humping, repeated processing, or overflow handling of traffic that returns to the UP-NS system; displacement of functions on which other users reasonably rely; preferential allocation of yard tracks or resources; and circumvention through another facility or operating arrangement.[1016]

Legitimate, nondiscriminatory use of Clearing for interchange, classification, and temporary operating needs should remain permissible. But Applicants should provide advance notice and supporting data before materially increasing Clearing's use for traffic that will return to UP-NS. If Applicants' use causes or materially contributes to a service or capacity breach, they should promptly reroute or limit the affected traffic, restore displaced interchange and destination-blocking functions, supply additional crews, locomotives, yard tracks, or other Applicants-funded resources, and implement any other operating or capacity measure necessary to restore neutral and efficient service. Applicants should conform the applicable BRC/Clearing terminal-use, interchange, blocking, storage, and capacity-allocation arrangements and related tariffs to these obligations, and obtain the necessary approvals and assents under Section VI.B.

(d) Reliable Chicago Gateway Service Requires Permanent Monitoring and Corrective Relief

Because Applicants' Chicago operations may evolve after consummation, the Board should subject the Chicago Gateway to permanent, location-specific monitoring under the service-assurance framework in Section V.[1017] Indeed, NS's chief operating officer Brian Barr testified that [redacted]

1016 *See* Redd V.S. ¶ 149.

1017 Redd V.S. ¶ 149.

[redacted][1018] The Board should therefore require Applicants to establish a representative pre-merger baseline and provide data sufficiently granular to identify deterioration affecting a particular route, yard, interchange, train, block, or connection. Chicago-specific reporting should address CPKC transit between Bensenville Yard and CP 502 on NS's Chicago Line near Burns Harbor, Indiana, together with access to Gibson Yard; the availability and performance of the CP 502-IHB/Gibson connections protected under Section VIII.I.2; Applicants' use of Clearing Yard, including storage, classification, re-humping, track occupancy, dwell, and interchange performance; delays associated with Applicants' Proviso-BRC-Ashland and other post-merger operations; treatment of CPKC and other carriers relative to comparable UP-NS traffic; and material changes to blocking plans, yard assignments, EJ&E use, operating resources, maintenance, or capital plans.

The warning, breach, disclosure, corrective-action, and expedited-review procedures in Section V should apply. CPKC should not be required to prove that the merger is the sole cause of a failure; it should be sufficient to show that Applicants' post-merger train growth, rerouting, blocking practices, yard assignments, resource allocation, governance conduct, or use of shared facilities caused or materially contributed to deterioration from the baseline. Applicants should not be permitted to invoke a preexisting Chicago constraint to excuse a failure where their merger increases the demands on that constraint or reduces the resources available to manage it.

The operational-performance and causation standards described above should not qualify the independent governance obligations in Sections VIII.I.3(a)–(b). A breach of the separate-voting arrangements or, under the IHB voting-direction alternative, failure to give effect to a triggered affirmative or negative direction should be enforceable without proof of service

[1018] Barr Dep. Tr. at 299:18-300:3, 303:4-19.

deterioration or a separate showing of operational necessity. The same should be true of a breach of the BRC [redacted] blocking restriction. The Board should be able to order prompt compliance and interim relief under the expedited procedures in Section V.

If Applicants' operations materially impair gateway fluidity or competing service, the Board should be authorized to require changes to train routes, schedules, blocking plans, yard assignments, interchange practices, or Clearing Yard use; restoration or addition of terminal resources; Applicants-funded capacity improvements; and other operating, dispatching, capacity, or access relief necessary to restore performance. Interim relief should prevent material harm from continuing during expedited review. Independently of service impairment, the Board should enforce the selected IHB governance alternative and [redacted], correct arrangements that frustrate either condition, and, where warranted, provide for neutral administration of disputed governance rights. Those supplemental powers should not delay exercise of a specifically preauthorized remedy activated by notice under Section V.D. New or expanded authority outside the preauthorized grant should remain subject to a further Board order.

The monitoring, reporting, data-preservation, corrective-action, and retained-jurisdiction requirements should be permanent, survive the expiration of formal merger oversight, and remain effective unless affirmatively modified by the Board. The Board may modify the form or frequency of reporting upon a demonstrated material change in circumstances, but should retain authority to enforce, supplement, and modify the conditions and to impose additional Chicago Gateway remedies if the original protections prove inadequate.

These protections would supplement the route-specific rights in Section VIII.I.2, preserve the neutral and efficient operation of shared facilities, and prevent Applicants from using merger-created operating or governance leverage to impair competing service.

4. Reliable Techny Line Access Requires Protection Against Termination or Material Impairment and a Springing Dispatching Remedy

UP's Techny Line provides a critical connection between CPKC's Bensenville Yard and CPKC's core route toward Milwaukee and the Twin Cities.[1019] Under the operative agreements, CPKC uses approximately 10.24 miles of Bryn Mawr-Shermer trackage that connects with CPKC near Tower A20.[1020] That connection avoids both an alternative route via Tower A5 and additional Chicago Terminal connectivity constraints. The alternative route traverses Metra's MD-W and MD-N lines; Amtrak also uses the latter.[1021] For CPKC trains moving between St. Paul or Milwaukee and Chicago Terminal points beyond Bensenville, the Techny Line also provides a connection to BRC via E Junction without a reverse move. The Tower A5 alternative would require a reverse move to reach BRC, increasing the potential for interference with passenger and other operations.[1022] CPKC uses the Techny Line for approximately 90% of its traffic between points north of Chicago and Bensenville Yard.[1023]

[1019] Redd V.S. ¶¶ 147, 267.

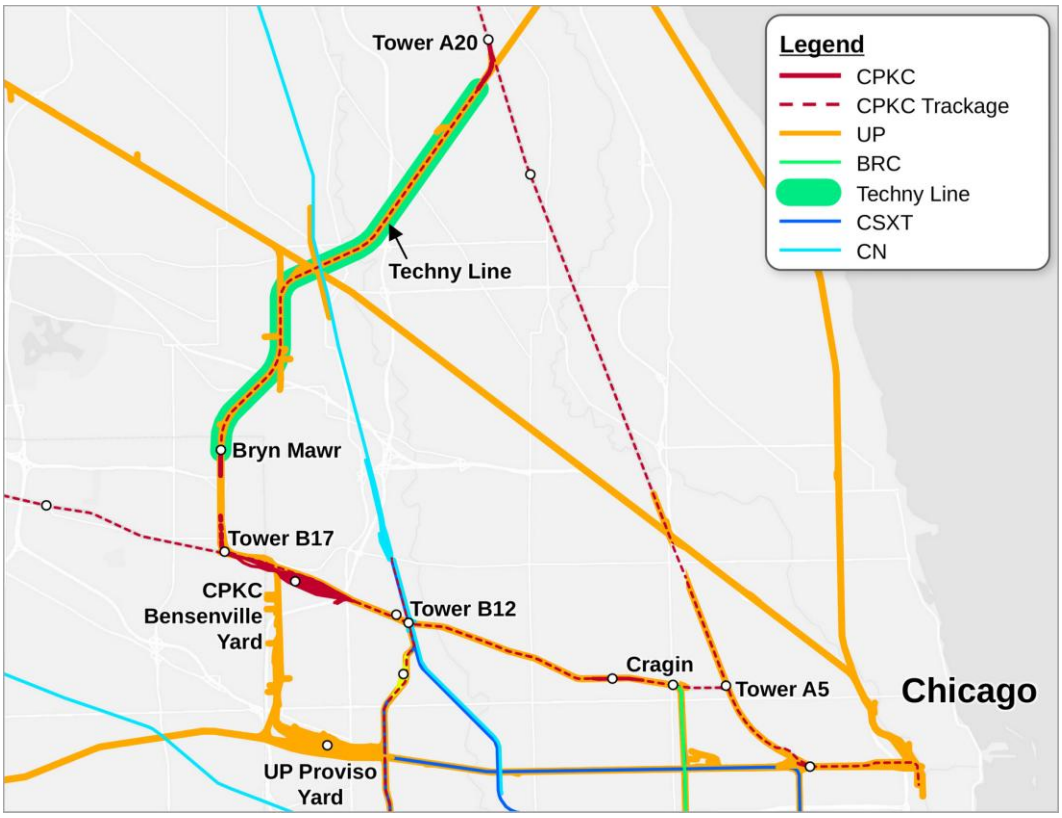
[1020] Gameiro V.S. ¶ 8; Responsive Application of Soo Line Railroad Company & Canadian Pacific Railway Company, Finance Docket No. 36873 (Sub No. 50) at 2, 13.

[1021] Redd V.S. ¶¶ 267-69.

[1022] Redd V.S. ¶ 269.

[1023] Gameiro V.S. ¶ 149.

Techny Line and Alternative Route via Tower A5[1024]



CPKC's experience demonstrates the practical consequences of unreliable access. UP's dispatching can stretch Techny transits of approximately 40 minutes northbound or 51 minutes southbound to as much as five or six hours, respectively.[1025] Delayed admission at Tower A20 also can block the adjoining C&M Subdivision, used by 54 Metra and 16 Amtrak trains on weekdays.[1026] The Proposed Transaction would give UP a greater incentive to impair CPKC's use of the Techny Line, an efficient connection between Bensenville Yard and CPKC's routes serving Wisconsin and the Twin Cities.[1027] At the same time, Applicants' disclosed operating

1024 Redd V.S. Figure 33.

1025 Gameiro V.S. ¶ 151.

1026 Gameiro V.S. ¶ 151.

1027 Redd V.S. ¶¶ 147, 267-68.

plan identifies no merger-related operational need to reduce or interfere with CPKC's Techny Line operations.[1028] The Board should therefore preserve CPKC's existing rights, require Applicants to maintain CPKC's practical access to the line's capacity at no less than pre-merger levels, and provide a springing dispatching remedy under the standards and procedures specified below.

The Board should prohibit Applicants and their successors from terminating, suspending, declining to renew, restricting, narrowing, or materially impairing CPKC's trackage and operating rights over the Techny Line. The operative Techny Line Agreement provides an initial [redacted]. That termination vulnerability arises [redacted][1029] Given the increased competitive incentive described above, the condition should remove that vulnerability by making CPKC's protected rights permanent, subject to modification by the Board.

To address that competitive harm, the Board should require Applicants to amend the Techny Line Agreement and relevant supplements and operating arrangements to conform their term, termination, dispatching, train-priority, maintenance, and remedial provisions to the protections imposed here, obtaining required approvals and assents under Section VI.B. That protection should be permanent, survive the expiration of formal merger oversight, and remain effective unless affirmatively modified by the Board. It should bind any affiliate, successor, lessee, or other entity through which the line is owned, controlled, dispatched, maintained, or operated.

1028 Redd V.S. ¶ 148; Rev. App. 2-708 to -11 (Gehringer & Orr Second Errata V.S. ¶¶ 201-209).

1029 Gameiro V.S. ¶ 149 & n.91.

The condition should preserve practical access, not merely nominal contractual authority. Applicants should not use dispatching practices, train-priority decisions, operating rules, maintenance or resource allocation, restrictions on operating windows, or changes to connections and terminal arrangements to materially reduce the frequency, capacity, reliability, efficiency, or commercial utility of CPKC's Techny Line operations. The Board should require Applicants to preserve CPKC's practical access to the line at no less than a representative pre-merger baseline, including the ability to operate trains of comparable frequency and length within commercially usable windows and with service reliability comparable to the pre-merger operation.[1030] Preserving the existing Techny operation would retain an efficient competitive option and avoid interference with passenger service, while the prospect of a dispatching transfer would strengthen UP's incentive to meet the governing performance standards.[1031]

Legitimate, documented, generally applicable, and nondiscriminatory safety and operating requirements should remain permissible. Applicants also may impose temporary restrictions necessary for an actual emergency, infrastructure failure, safety condition, or planned maintenance event, provided they give CPKC prompt notice, limit the restriction to the period reasonably necessary, provide an operationally reasonable temporary accommodation where feasible, and restore ordinary access promptly. Before implementing a non-emergency change reasonably likely to materially impair CPKC's rights or practical capacity, Applicants should obtain CPKC's consent or prior Board authorization upon a showing that CPKC will retain equivalent commercially and operationally effective access.

1030 Gameiro V.S. ¶¶ 152-53.

1031 Majure V.S. Vol. II ¶¶ 76-79.

Applicants should administer CPKC's Techny Line rights on reasonable and nondiscriminatory terms under the service-assurance framework in Section V and the permanent Chicago Gateway monitoring provisions in Section VIII.I.3(d). Ordinary compensation for use of the Techny Line should continue to be governed by the existing agreements.[1032] The Board should impose service terms that prevent Applicants from using arbitrary operating rules or inadequate performance to hinder CPKC's competitiveness. The Board should adopt standards through Section V.C that protect CPKC's practical ability to enter, traverse, and leave the Techny Line reliably. Those standards should address timely availability of a requested route, admission from appropriate staging locations, clearance at connecting lines, reliable passage through the protected segment, and holding or stopping that impairs CPKC operations or connections. They should also protect commercially usable operating windows and practical capacity and address treatment relative to comparable UP movements. Applicants should provide the available movement, route-request, dispatching, and other operating records needed to assess access delay and transit separately. Through the technical process, the Board should establish the applicable standards and measurement conventions and require collection of any additional information necessary to administer them before consummation.[1033] Systemwide or monthly averages should not be permitted to conceal repeated impairment of particular CPKC trains or operating windows, including concentrated periods of poor performance.

The Board should adopt the applicable standards and measurement conventions before consummation, and any implementing arrangements under Section V.B should conform to those

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[1032] Gameiro V.S. ¶ 154.

[1033] Gameiro V.S. ¶¶ 226-32; Redd V.S. ¶¶ 101-03, 149 & n.47.

requirements. That process should not restart the 90-day negotiation period or postpone the interim protections required by Section V.C.[1034]

The Techny standards should distinguish delay obtaining a requested route from the time needed to traverse the protected segment and should capture holding both before and after admission. The Board should determine the applicable thresholds and measurement conventions through Section V.C, with performance-based activation of dispatching relief governed by the common 30-day measurement and 30-day cure framework and the requirements below.[1035]

Applicants should provide timely operating information and advance notice of material train-plan, maintenance, work-window, dispatching, or infrastructure changes affecting CPKC's use of the line. A dispute over whether a proposed change would reduce CPKC's commercially effective use of the line below the governing baseline, or whether Applicants have complied with the applicable service standards, should receive expedited resolution under Section V, with interim relief where continued impairment would materially disrupt CPKC operations.

Persistent failure to meet the applicable Techny Line performance standards should be subject to a springing dispatching remedy.[1036] Failure to satisfy an applicable Board-adopted standard under Section V.C's 30-day measurement and 30-day cure framework should permit CPKC to activate the preauthorized dispatching remedy by supported notice under Section V.D. The approval order and advance implementing arrangements should identify the geographic and functional limits of the preauthorized remedy, including the relationship between the contractual Bryn Mawr-Shermer limits and the proposed Bryn Mawr-Tower A20 transfer limits. Subject to

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1034 Gameiro V.S. ¶¶ 228-30, 233.

1035 Gameiro V.S. ¶ 153.

1036 Gameiro V.S. ¶ 153.

the adopted Techny-specific requirements, Section VIII.J.2(d) should govern activation and implementation of the Techny dispatching remedy, including exercise commencing on the date specified in CPKC's supported notice without a further Board merits determination, neutral treatment of all authorized trains, and allocation of maintenance, capital, safety, and regulatory responsibilities. Section V.D should govern the duration, reversion, and reactivation of the Techny transfer. The performance-based trigger should not postpone enforcement of independent obligations or preclude interim operating or dispatching relief necessary to prevent material harm. CPKC could dispatch this segment in coordination with its adjoining lines and would welcome a voluntary transfer; the condition should provide a compulsory remedy if UP fails to meet the adopted requirements.[1037]

These conditions would preserve an existing efficient, passenger- and commuter-friendly routing.[1038] Based on Applicants' disclosed operating plan, there is no need for merger operations to interfere with CPKC's Techny Line use.[1039] Preserving the existing rights would not itself add trains or transfer ownership of the line, grant CPKC exclusive use, guarantee traffic, or require a change to Applicants' disclosed operating plan. The condition would ensure that Applicants cannot use their post-merger control of this connection to force CPKC onto a less efficient and more operationally constrained alternative.

5. The Chicago Gateway Conditions Address Merger-Related Harm, Are Operationally Feasible, and Are Supported by Board Precedent

The Chicago Gateway conditions address the additional governance influence and operating leverage UP would acquire, while protecting the connections, terminal functions, and

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1037 Redd V.S. ¶¶ 270-71.

1038 Redd V.S. ¶¶ 267-68.

1039 Redd V.S. ¶ 148.

reliable access needed for competing service. The IHB condition would require either separately exercisable CSXT and NS voting interests or affirmative and negative voting direction based on the specified majority of other independent owner groups. The BRC condition would prevent Applicants, acting alone or with any single other independent owner group, from defeating matters [redacted] while preserving their equity interest and voting rights on other matters. The CP 502-IHB, Clearing Yard, and Techny Line protections would preserve the connections, neutral terminal functions, and reliable access needed for competing service. Together, those measures would prevent Applicants from shifting the consequences of their post-merger operating plan to other Chicago Gateway users.

The conditions build on existing institutions and operations: CPKC already uses CP 502 and Gibson Yard and operates over the Techny Line.[1040] The governance and affirmative access-support obligations, including Applicants' obligation to support the complete IHB bypass, would be independently enforceable without a prior service failure. Performance-based operating and infrastructure remedies would remain subject to their applicable activation requirements. The requested access rights would remain nonexclusive, would not transfer ownership of the routes or shared facilities to CPKC, and would require reasonable, nondiscriminatory compensation for incremental use.

Board precedent supports combining gateway access with the arrangements needed to make it effective. In *UP/SP*, the Board coupled main-line and terminal rights with supporting connections, interchange access, operating coordination, nondiscrimination, and implementation protections.[1041] *CSX/NS–Conrail* likewise used shared-asset structures and related conditions to

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[1040] Redd V.S. ¶¶ 252-53, 267-69.

[1041] *UP/SP*, 1 S.T.B. at 421-26, 524, 547-48; *UP/SP*, 1 S.T.B. 591, 596-98, 617-21 (1996).

preserve competitive terminal service.[1042] Those decisions support addressing the practical operation of shared facilities alongside the formal rights to use them.

The Board's treatment of these terminals in *CSX/NS–Conrail* also explains why a different governance remedy is warranted here. The Board held the applicants to their representation that IHB would remain a neutral switching carrier, but rejected further divestiture relief because the record did not show threatened interchange options and IHB control would be less concentrated. For BRC, the Board relied on NS and CSXT having separate interests and on western owners retaining half the ownership.[1043] Here, UP would acquire an eastern carrier's governance rights while gaining alternatives to the shared terminals. Mr. Gameiro identifies the resulting incentives to withhold investment and impair interline options.[1044] The requested voting remedies address that changed structure; the earlier neutrality commitment does not establish that a general conduct assurance would suffice in these circumstances.

The monitoring and enforcement provisions draw on *CP/KCS*'s use of baselines, reporting, oversight, and retained authority to remedy merger-related service problems.[1045] Here, continuing protection is warranted because UP's control of NS and its joint-facility interests would endure beyond oversight. Any preauthorized dispatching transfer would become exercisable on the commencement date specified in CPKC's supported notice establishing a qualifying performance failure and satisfaction of the applicable activation requirements, remain proportionate to the failure, and obligate CPKC to dispatch all authorized trains neutrally; an activated transfer would continue unless affirmatively stayed, modified, or suspended by the

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1042 *CSX/NS–Conrail*, 3 S.T.B. at 250, 269-79.

1043 *Id*. at 292.

1044 Gameiro V.S. ¶¶ 101-05, 109-20.

1045 *CP/KCS*, Decision No. 35, at 77, 142-45.

Board. These gateway protections complement the Chicago-Detroit conditions in Section VIII.J while independently protecting shared facilities and connections used by competing carriers. They preserve competitive opportunity without displacing existing service or guaranteeing traffic to CPKC.

J. Effective Competition Between Chicago and Detroit Requires Permanent Route and Customer-Access Rights

1. The Merger Would Increase the Incentive and Ability To Impair CPKC's Chicago–Detroit Service

CPKC's existing Chicago-Detroit route provides an independent Class I option linking the Detroit region and eastern Canada with Chicago and, through CPKC's broader network, the western United States and Mexico. That service depends on CPKC's trackage rights over NS between Chicago and Detroit. [redacted][1046] The route also positions CPKC to compete for additional automotive, intermodal, transload, and other traffic through interchange with Conrail in Detroit, interchange with the Ann Arbor Railroad at Milan, and service to future CPKC-accessible facilities in Southeast Michigan.[1047]

First, the Proposed Transaction would transfer control of the infrastructure underlying CPKC's Chicago-Detroit route to a carrier with a materially greater incentive to impair CPKC's competing service.[1048] CPKC's current rights provide a platform for traffic moving among Detroit, eastern Canada, Chicago, the western United States, and other points on CPKC's

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1046 Redd V.S. ¶ 254.

1047 *See* Redd V.S. ¶¶ 256, 258-63; Brooks V.S. ¶¶ 212-15.

1048 Majure V.S. Vol. II ¶ 80; Gameiro V.S. ¶¶ 14, 175; Brooks V.S. ¶¶ 169-75, 212.

network.[1049] If UP acquires NS, UP would internalize the economic benefit of keeping that traffic on the combined UP-NS system rather than allowing CPKC to develop competing through or interline services.[1050] The Board should therefore protect CPKC against termination or narrowing of its rights, discriminatory treatment of its trains, and route administration that impairs the reliability or commercial effectiveness of its competing service.[1051]

Applicants' own documents illustrate the significance of NS's independent competitive role in automotive traffic. [redacted] [1052] That assessment reinforces the need for conditions ensuring that UP's acquisition of NS does not permit Applicants to diminish the commercial effectiveness of CPKC's competing Chicago-Detroit service. Likewise, [redacted] [1053] The Proposed Transaction would eliminate NS's independent incentive to pursue such traffic against UP. That lost competitive incentive reinforces the need for commercially usable alternatives through CPKC's existing Chicago-Detroit route and the requested interchange and facility rights.

1049 Redd V.S. ¶¶ 252-54.

1050 Majure V.S. Vol. I ¶ 61; Vol. II ¶ 80; Brooks V.S. ¶¶ 37-48, 167.

1051 *See* Majure V.S. Vol. II ¶ 80; Brooks V.S. ¶¶ 169-75, 212-15.

1052 UP_3141193, at -213.

1053 UP_0513900, at -901-02.

NS's own correspondence provides a concrete example of the independent commercial incentive the Proposed Transaction would eliminate. [redacted] [1054] The Proposed Transaction would place those partnership decisions under UP's control, eliminating NS's independent incentive to encourage competing western carriers to develop attractive service combinations. That loss reinforces the need to preserve CPKC's Chicago-Detroit operating route and remove the traffic, interchange, and facility restrictions that constrain its ability to offer independent service to Detroit-area customers.

The commercial value of CPKC's rights depends on effective access at its Chicago connections, including CP 502 and Gibson Yard, and reliable through service between Chicago and Detroit.[1055] But UP could impair the practical value of the Chicago-Detroit route without formally terminating CPKC's rights. CPKC's experience exercising trackage rights over other UP-controlled routes demonstrates why formal rights alone are insufficient to ensure commercially effective access.[1056]

For example, the MTRA governing CPKC's use of track in the corridor provides that, [redacted]

1054 NS_00134308.

1055 *See* Redd V.S. ¶¶ 252-54; Gameiro V.S. ¶ 146.

1056 Gameiro V.S. ¶¶ 12-15, 20-40.

[redacted][1057] UP could take advantage of that increase to make CPKC's rights less commercially effective. The automatic fee increase could undermine the commercial utility of the expanded rights. The Board should therefore require Applicants to amend the MTRA so that neither the grant nor the exercise of the automotive rights authorized by the Board's condition triggers that increase for any existing or newly authorized automotive traffic.[1058]

Protecting CPKC's existing through operations would address only part of the competitive harm. The Proposed Transaction would place NS's role in handling Detroit-area automotive traffic under UP's control and increase Applicants' incentive to favor their combined network over independent alternatives. And, as NS's Chief Strategy Officer recognized, [redacted][1059] Transferring that market power to UP would result in serious competitive harms: at Stellantis's Detroit-area plants, for example, NS currently handles traffic for its own destinations and forwards traffic to UP, BNSF, and CPKC; after the merger, UP would control that role and could favor its own routes over competing options for western and Mexico destinations.[1060] Preserving CPKC's existing trackage rights without expanding their permitted uses would leave in place contractual restrictions that prevent CPKC from offering additional independent services to affected shippers.

1057 Gameiro V.S. ¶ 173 & n.102.

1058 Gameiro V.S. ¶¶ 148, 175-76.

1059 NS_00482221, at -225.

1060 Brooks V.S. ¶ 54; *see also* Majure V.S. Vol. I ¶ 46; *id.* Vol. II ¶ 80.

The requested traffic-scope, interchange, and facility rights would address that problem by allowing CPKC to use its existing Chicago-Detroit route to compete for traffic that its current rights largely exclude. Removing the restrictions on Conrail and Ann Arbor interchange would permit CPKC to compete for finished-vehicle traffic originating at Detroit- and Toledo-area plants. Removing the related traffic and facility restrictions would also permit CPKC to develop additional intermodal and other services for Southeast Michigan customers.[1061] The intermodal opportunity illustrates the practical benefit: CPKC currently seeks Detroit-area automotive-parts traffic through offerings that require truck movements between Detroit and its Bensenville intermodal facility outside Chicago, and the resulting drayage costs impair its competitiveness. Access to a Detroit-area facility could reduce those costs and permit a more competitive rail offering.[1062]

Although the restrictions predate the merger, their removal would help offset the merger's reduction in independent competitive options by enabling CPKC to offer additional service over a route it already operates. That is consistent with the Major Merger Rules' provision for competition-enhancing conditions to offset harms that would otherwise remain unmitigated.[1063] The requested expansion would give affected shippers an additional independent carrier to which they could turn if Applicants raised rates or degraded service, placing competitive pressure on Applicants' offers.[1064]

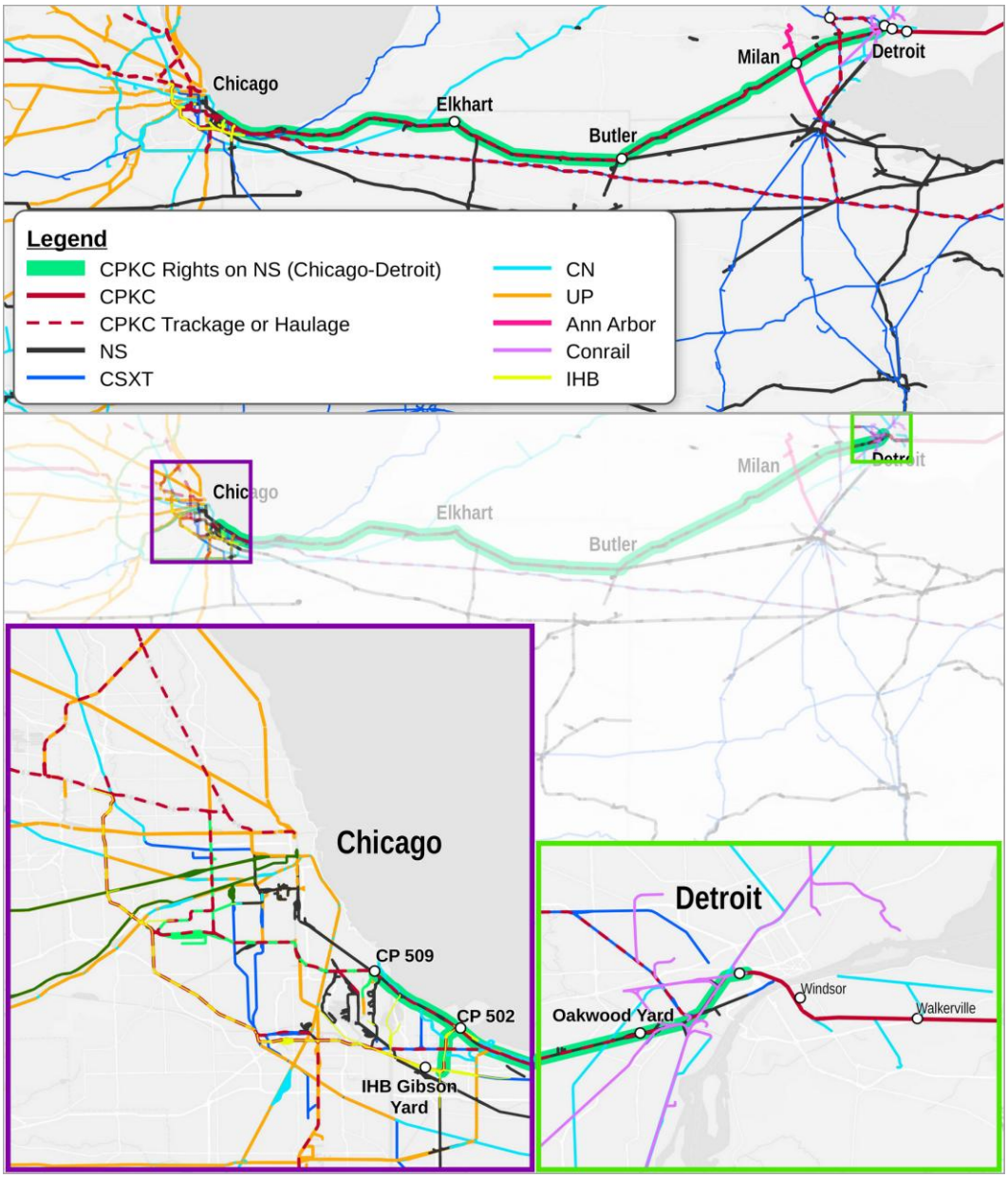
1061 Brooks V.S. ¶¶ 212-15.

1062 Brooks V.S. ¶¶ 214-15.

1063 49 C.F.R. § 1180.1(c)(2)(iv), (d).

1064 Majure V.S. Vol. II ¶¶ 81-82, 85.

CPKC's Chicago-Detroit Route and Terminal Connections[1065]



The Board should preserve CPKC's Chicago-Detroit rights, remove the traffic and facility restrictions and penalties described below, and require commercially effective operating terms backed by a springing dispatching remedy.

1065 Redd V.S. Figure 31 (route overview and terminal-detail maps).

2. Effective Chicago–Detroit Competition Requires Permanent Rights and Expanded Detroit-Area Access

CPKC's independent Class I service between Chicago and Detroit depends on its existing trackage rights over NS lines in that corridor. CPKC already uses those rights for regular manifest, automotive, and other operations, including Train 137 through CP 502 and Gibson Yard, trains 230/231 and 730 through CP 509, as-needed Train 731 through CP 502, and on-demand bulk trains.[1066] CPKC currently operates approximately four trains per day over the Chicago-Detroit route.[1067] But the governing rights do not provide the permanence, traffic scope, customer access, or operating protections necessary to preserve effective competition after UP acquires NS.[1068] CPKC therefore seeks an integrated set of modifications that would preserve the existing route, permit CPKC to use it for additional competitive services, and prevent Applicants from using operating practices to make the rights commercially ineffective. Section VIII.I.2 separately addresses the rights necessary to enter and leave the route at CP 502 and reach IHB points, including Gibson Yard.

(a) CPKC's Existing Chicago–Detroit Rights Require Protection Against Termination, Narrowing, and Material Impairment

The Board should prohibit Applicants and their successors from terminating, suspending, declining to renew, restricting, narrowing, or materially impairing CPKC's existing trackage and operating rights over NS lines between Chicago and Detroit. That protection should be permanent, survive the expiration of formal merger oversight, and remain effective unless

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1066 Redd V.S. ¶ 254.

1067 Redd V.S. ¶ 254.

1068 Gameiro V.S. ¶¶ 144-48, 171-80; MTRA §§ 2(d)-(e), 3(a)-(e), (i), (k)-(m), 4(a), 9(a); Brooks V.S. ¶¶ 212-14.

affirmatively modified by the Board. It should bind any affiliate, successor, lessee, or other entity through which the affected trackage is owned, dispatched, maintained, or operated.

The prohibition should extend to indirect as well as formal impairment. Applicants should not use dispatching, operating rules, maintenance practices, connection or terminal changes, or other measures to materially diminish the reliability, capacity, efficiency, or commercial utility of CPKC's rights. Legitimate, documented, generally applicable, and nondiscriminatory safety and operating requirements—and temporary deviations necessary for an emergency, safety condition, infrastructure failure, or planned maintenance event—would remain permissible, provided Applicants give prompt notice, provide an operationally reasonable temporary accommodation where feasible, and restore ordinary operations promptly. Before implementing any non-emergency change reasonably likely to materially impair CPKC's rights, Applicants should obtain CPKC's consent or prior Board authorization based on a showing that CPKC will retain equivalent commercially and operationally effective access.

(b) Effective Michigan Competition Requires Removal of Traffic and Service Restrictions and Expanded Interchange Authority

The MTRA restricts CPKC's ability to handle traffic between [redacted] [redacted].[1069] As a result, CPKC cannot compete for traffic opportunities for which its network would be particularly well-suited, including finished auto traffic moving between Detroit and Dallas and between Detroit and Mexico.[1070] The Board should require Applicants to amend or waive all MTRA provisions that would prevent or materially impair the traffic, interchange, local service, connections, facility access, and

[1069] Gameiro V.S. ¶¶ 171-74.

[1070] Gameiro V.S. ¶¶ 173-74.

incidental operations authorized by the conditions below. That relief should encompass inconsistent origin-and-destination, prior-and-subsequent-haul, commodity, intermodal, routing, entry-and-exit, and operating restrictions.

The Board should also require Applicants to amend the MTRA so that its [redacted] does not apply to any existing or newly authorized automotive traffic as a consequence of the Board's condition.[1071] Applicants should not reproduce that penalty through another trackage-rights, terminal, switching, accessorial, or other charge. Existing ordinary compensation provisions should continue to govern use of the underlying trackage except as expressly modified by the Board, with reasonable compensation for additional facilities or services addressed separately. Any implementing terms requiring agreement between CPKC and Applicants should be determined through Section V.B's 90-day good-faith negotiation and expedited Board-resolution process, applying the substantive standards prescribed here.

The modified rights imposed by the Board should permit CPKC to handle:

1. traffic interchanged with Conrail in the Detroit Terminal, including finished automobiles, regardless of origin or destination;
2. traffic moving to or from Ann Arbor Railroad through Milan, Michigan, including finished automobiles, regardless of origin or destination, whether interchanged directly at Milan or transferred between Milan and Oakwood Yard under the operating arrangement described below; and
3. local traffic originated or terminated at a future facility or facilities served by CPKC in Southeast Michigan and connected to the Chicago-Detroit trackage-rights line, as described in Section VIII.J.2(c).

The Board should further prohibit Applicants from recreating the eliminated traffic-scope restrictions through a revised origin-and-destination limitation, commodity restriction, routing

[1071] Gameiro V.S. ¶¶ 148, 173, 176.

requirement, interchange limitation, elevated fee, accessorial charge, or other device producing the same practical result.

The Board should also grant CPKC the right to use Applicants' trackage and facilities as reasonably necessary to make the expanded interchange authority effective. That authority should include access to an operationally appropriate Conrail interchange point in the Detroit area, including for traffic moving by reciprocal switching to and from Conrail-served customers, together with the yard, switching, staging, connection, and incidental rights needed to receive, assemble, and deliver traffic. CPKC proposes replacing existing Train 730 with a daily Chicago-Toronto train pair, trains 232/233, with NS's Oakwood Yard as the planned interchange point for Conrail and Ann Arbor traffic.[1072] Conrail already picks up and delivers cars at Oakwood Yard.[1073] For Ann Arbor traffic, the preferred plan would use Ann Arbor's Toledo-Milan service and NS haulage between Milan and Oakwood in CPKC's account; direct CPKC pickup and setout at Milan would remain an alternative, subject to providing an operationally appropriate existing or newly constructed track for work off the main line and any necessary siding investment to avoid interference with through operations.[1074] The implementing arrangements should permit the selected operationally effective option on reasonable and nondiscriminatory terms without limiting the granted interchange authority.

The traffic-scope and interchange reforms would allow CPKC to compete for finished-vehicle and automotive-parts movements using its Chicago–Detroit operating platform and the necessary terminal arrangements. CPKC forecasts a substantial benefit for shippers by Year 3

1072 Redd V.S. ¶¶ 258-60.

1073 Redd V.S. ¶ 260.

1074 Redd V.S. ¶¶ 259, 265.

steady state, when CPKC would compete to win approximately [redacted] annual intermodal container movements carrying automotive parts from Mexico to the Detroit area and [redacted] annual return-container movements carrying parts racks.[1075] Separately, expanded Ann Arbor interchange rights would permit CPKC to compete for approximately [redacted] annual autorack carloads and [redacted] annual automotive parts boxcarloads.[1076] The [redacted] incremental annual movements in CPKC's expected case comprise [redacted] newly handled movements and [redacted] extended-haul movements.[1077] The Conrail reforms would likewise permit CPKC to compete for finished-auto traffic from automotive customers through the proposed Oakwood interchange. Removing the MTRA's traffic-scope and interchange restrictions would permit CPKC to offer an additional independent service for that traffic.[1078] CPKC estimates that it can compete for and win approximately [redacted] incremental annual loads through the Conrail interchange by Year 3 steady state. These Conrail volumes are separate from the [redacted] movements described above.[1079]

The Board should require Applicants to implement the expanded rights through the necessary amendments, waivers, and new arrangements under Section VI.B, including the MTRA, related Conrail Detroit interchange and terminal-use instruments, and Ann Arbor/Milan interchange and any NS Milan-Oakwood haulage arrangement selected to implement the authorized service. Any implementing terms requiring agreement between CPKC and Applicants should be determined through Section V.B's 90-day good-faith negotiation and

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1075 Brooks V.S. ¶ 215 & nn.81-82.

1076 Brooks V.S. ¶ 215 & nn.83-84.

1077 Brooks V.S. ¶ 215.

1078 Brooks V.S. ¶¶ 212-13; Gameiro V.S. ¶¶ 176-78.

1079 Brooks V.S. ¶ 213 & n. 79; *id.* ¶ 215.

expedited Board-resolution process, applying the substantive standards prescribed here. Applicants should ensure compliance by controlled entities, procure required independent-party assents, and provide a Board-approved operationally equivalent arrangement if those assents cannot be obtained. These traffic-scope reforms govern what CPKC may handle under its carrier-to-carrier operating rights. Customers made competitive through the condition should also receive the customer-contract release in Section VI.A.

(c) Effective Detroit Competition Requires Connection and Service Rights for Automotive, Intermodal, Transload, and Other Facilities

The modified rights should permit CPKC to originate and terminate local traffic at a future facility or facilities in Southeast Michigan served by CPKC and connected to the Chicago-Detroit trackage-rights line. Such facilities could include an intermodal, automotive, or transload facility to be built by CPKC or otherwise accessible to CPKC. Eligibility should not depend on CPKC owning or funding the facility, or on the facility being immediately adjacent to the line, provided it is served by CPKC and connected to the trackage-rights route.[1080] CPKC should also have the right to connect its network or facilities with the trackage-rights line, including through construction of new connecting trackage where operationally appropriate and otherwise authorized.

The grant should include the incidental rights reasonably necessary to make that service operationally effective, including access to customer leads, yards, sidings, staging and interchange tracks, and other supporting trackage; authority to pick up and set out loaded and empty equipment; and access to the operating and shipment information necessary to provide the service. Applicants should not retain a unilateral contractual or operating veto over an otherwise

[1080] Gameiro V.S. ¶ 179.

feasible facility, including the ability to withhold access to a necessary connection, yard, or terminal function.

By removing Applicants' contractual or operating veto over an otherwise lawful and feasible project, the condition would permit CPKC to evaluate and, where commercially justified, develop or serve a facility covered by this subsection. It would not itself approve a particular site or construction project or dispense with any required construction authority or environmental review. CPKC would bear the costs of facility development it undertakes under this condition. That responsibility, however, should not displace Applicants' separate obligations under the Board's conditions to provide access, prevent discrimination, or remedy merger-related operating impairment.

[redacted] }[1081] Access to a Detroit-area intermodal facility could reduce those costs and permit CPKC to offer single-line service linking suppliers in Mexico with Detroit- and Toledo-area assembly plants.[1082] CPKC has identified a potential opportunity for the contemplated Detroit-area intermodal service to support approximately [redacted] annual loaded automotive-parts containers from Mexico and [redacted] annual return-container movements carrying parts racks by Year 3 steady state.[1083] These [redacted] annual container movements are included in the Chicago-Detroit forecast described in Section VIII.J.2(b). Realizing that opportunity would depend on suitable terminal

[1081] Brooks V.S. ¶ 214.

[1082] Brooks V.S. ¶¶ 214-15.

[1083] Brooks V.S. ¶ 215 & nn.81-82.

facilities and connections, necessary approvals, sufficient capacity, and successful competition for the traffic made accessible through the requested condition.[1084]

(d) Effective Rights Require Workable Commercial and Operating Terms and a Springing Dispatching Remedy

Expanding CPKC's formal traffic and customer authority would not preserve competition if Applicants could administer the underlying route so that service became too slow, unreliable, constrained, or costly to compete. The Board should therefore require Applicants to administer the Chicago-Detroit rights under the common nondiscrimination obligation and independent service standards in Section V to ensure they are commercially effective. Applicants should not use a rule, charge, route assignment, terminal practice, or facility restriction to nullify the competitive authority granted by the Board. Those duties should protect CPKC's ability to compete for existing and newly authorized traffic and should reach dispatching, train priority, route assignment, operating rules, maintenance, terminal functions, access to necessary information and facilities, and charges. Compliance with a comparative nondiscrimination standard should not excuse a failure to meet the applicable service floor.

The Board should require Applicants to amend or waive MTRA provisions governing the selection and administration of routings, NS's failure to accommodate CPKC's requested route, and transit-time guarantees and remedies to the extent they conflict with the route access, performance obligations, or remedies imposed by the Board. Any implementing terms requiring agreement between CPKC and Applicants should be determined through Section V.B's 90-day good-faith negotiation and expedited Board-resolution process, applying the substantive standards prescribed here. The Board should adopt standards through Section V.C that protect

[1084] Gameiro V.S. ¶¶ 179-80; Brooks V.S. ¶¶ 214-15.

reliable and commercially effective CPKC service over the NS-controlled Chicago-Detroit route. Those standards should address dependable passage over the route, dispatching and holding delays, slow orders and outages, timely connections and interchange, completion of scheduled work, and treatment of comparable traffic. Separate admission standards should protect trains that are ready and validly offered from Walkerville, where they may await clearance to proceed through the tunnel onto NS's line. Those standards should capture the time from the appropriate readiness and offer events to actual acceptance and admission, including waiting outside Applicants' tracks, and should distinguish that delay from transit over the NS-controlled route.[1085] The Board should establish the applicable thresholds and measurement conventions through the technical process. Failure to satisfy an applicable route-performance or admission standard under Section V.C's 30-day measurement and 30-day cure framework should permit CPKC to activate the preauthorized dispatching relief by supported notice under Section V.D, subject to the predicates and geographic and functional limits stated here. The two types of performance should be separately assessable; failure of both should not be required. More protective existing contractual duties and independent obligations should remain enforceable.

Upon failure to satisfy an applicable route-performance or admission standard under the measurement and cure requirements described above, CPKC should be entitled to activate the preauthorized transfer of dispatching responsibility by filing and serving a supported notice under Section V.D. The notice should identify the applicable performance standard, supporting evidence, satisfaction of the applicable measurement and cure requirements, and the affected preauthorized line or segments and dispatching functions necessary to provide an effective and proportionate remedy. The approval order and advance implementing arrangements should

[1085] Redd V.S. ¶ 149; Gameiro V.S. ¶ 147.

define the available territory and functions. The transfer should take effect on the commencement date specified in CPKC's supported notice, without a further Board merits determination. Applicants may challenge activation and seek expedited Board review or a stay, but their objection should not suspend activation or continuing exercise. The Board should retain authority to order interim operating or dispatching relief while a dispute is pending or before the cure period expires where necessary to prevent material harm.

The transfer should include the information, systems access, staffing coordination, qualification, maintenance-window coordination, and emergency communications necessary to make it effective. CPKC should dispatch all authorized trains neutrally and without discrimination under objective, Board-approved protocols. Applicants should retain ownership and their applicable maintenance, capital, and regulatory obligations. CPKC should remain responsible for the safety and regulatory duties applicable to its dispatching function, and each operator should remain responsible for its own applicable duties.

An activated transfer of dispatching authority under the MTRA should remain in effect for the remainder of the MTRA term, including any extensions of that term. Restoration of compliance or expiration of a remedial, review, or oversight period should not shorten that duration. The Board should retain jurisdiction to determine whether the applicable activation requirements were satisfied and to enforce the transfer and its governing terms.[1086]

3. The Chicago–Detroit Conditions Address Merger-Related Harm, Are Operationally Feasible, and Are Supported by Board Precedent

The Chicago–Detroit conditions would protect existing CPKC operations and enable additional independent service for Detroit-area shippers. Permanent route and service

[1086] Gameiro V.S. ¶ 147.

protections would secure the operations already permitted under CPKC's rights. The traffic-scope, interchange, and facility provisions would permit CPKC to compete for additional movements that remain contractually restricted, helping offset the merger's elimination of NS's independent role and increased incentive to favor the combined UP-NS network.[1087] Together with the effective Chicago connections protected in Section VIII.I, those conditions would preserve an independent Class I route linking Detroit, eastern Canada, Chicago, the Twin Cities, Mexico, and western markets. The requested authority also builds on CPKC's existing manifest, automotive, and bulk operating platform. Preserving those operations would not create a new railroad route or itself add traffic.[1088]

The relief would also remain nonexclusive. It would not transfer ownership of the route, give CPKC control over another carrier's customers, displace existing service, or guarantee traffic. CPKC would pay reasonable, nondiscriminatory compensation for incremental use of another carrier's trackage or facilities. Applicants could continue competing for every movement and redesigning their operations for legitimate reasons, subject to the permanent access and service protections. Any preauthorized dispatching transfer would become exercisable on the commencement date specified in CPKC's supported notice establishing failure of an applicable route-performance or admission standard and satisfaction of the applicable measurement and cure requirements, be proportionate to the identified failure, and require neutral treatment of all authorized trains. An activated MTRA transfer would remain in effect for the remainder of the MTRA term, including any extensions, as provided in Section

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[1087] Brooks V.S. ¶¶ 54, 212-15; Majure V.S. Vol. II ¶¶ 80-82, 85.

[1088] Redd V.S. ¶¶ 252-54.

VIII.J.2(d). The underlying access and service protections and availability of the remedy would remain permanent.

The requested package follows *UP/SP*'s treatment of operating rights, supporting terminal connections, interchange access, and implementation protections as complementary means of making competing service effective.[1089] It also advances the Major Merger Rules' objectives of preserving interline options and enhancing competition through operationally feasible conditions that produce net public benefits.[1090] The conditions would protect competition by preventing Applicants from using merger-acquired route control to disable an otherwise viable alternative.

K. Effective Competition Around Rosemount, MN and Fairmont, MN Requires UP Not to Enforce Paper Barriers Restricting Service to Local Shippers

Existing paper barriers limit CPKC's ability to offer competitive service to shippers in the Rosemount and Fairmont areas of Minnesota. At the Roseport industrial park in Rosemount, CPKC has rights via UP to serve shipper facilities, subject to geographic restrictions. The 1968 Roseport Trackage Agreement prohibits CPKC from [redacted][1092]

1089 *UP/SP*, 1 S.T.B. at 421-26, 524, 547-48; *UP/SP*, 1 S.T.B. at 596-98, 617-22.

1090 49 C.F.R. § 1180.1(c)(2)(i), (iv), (d).

1091 Gameiro V.S. ¶ 184 & n.110.

1092 Gameiro V.S. ¶ 184; Brooks V.S. ¶ 233.

Today, CPKC moves a relatively small number of carloads annually of [redacted] traffic to Eastern connections reached via Chicago, in direct competition with UP. Directing UP not to enforce the geographic restrictions that serve as a paper barrier would permit CPKC to compete for substantially more of [redacted] outbound traffic, [redacted] and give [redacted] an additional independent rail option for moving that traffic in competition with UP.[1093]

[redacted][1094]

[redacted]

[1093] Brooks V.S. ¶ 233; Gameiro V.S. ¶ 184.

[1094] Gameiro V.S. Figure 13.

The Proposed Transaction would increase the competitive significance of that restriction. The combined UP-NS network would extend east of Chicago and would include [redacted] of the traffic CPKC moves over Chicago, increasing UP-NS's ability to bundle and lock out competition.[1095] UP-NS would therefore combine UP's ability to restrict CPKC's [redacted] with control over important eastern destinations, increasing its ability to link commercial terms across those movements and impair competing CPKC routes.[1096] Removing the Roseport restriction would give Flint Hills an additional independent option for the affected southbound traffic and help offset that increased leverage.[1097]

CPKC's existing route between Fairmont and Welcome presents the same problem. CPKC operates on UP trackage rights through town but does not have access to local customers, including [redacted][1098] Contractual restrictions on CPKC's use of that route [redacted]}[1099] Those restrictions prevent CPKC from using its existing route to provide the competitive local service sought here, and thus those facilities have effectively no rail alternative to UP.[1100] CPKC has preliminarily identified meaningful opportunities to attract traffic to/from these facilities were CPKC enabled to compete. If CPKC were able to compete, it could offer

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1095 Brooks V.S. ¶ 234; *see* Majure V.S. Vol. II ¶¶ 86-87.

1096 Brooks V.S. ¶¶ 233-34; Majure V.S. Vol. II ¶¶ 87-88.

1097 Brooks V.S. ¶ 233; Gameiro V.S. ¶ 184; Majure V.S. Vol. II ¶ 88.

1098 Brooks V.S. ¶ 235; Gameiro V.S. ¶ 185.

1099 Gameiro V.S. ¶ 185 & nn.112-13.

1100 Brooks V.S. ¶ 235.

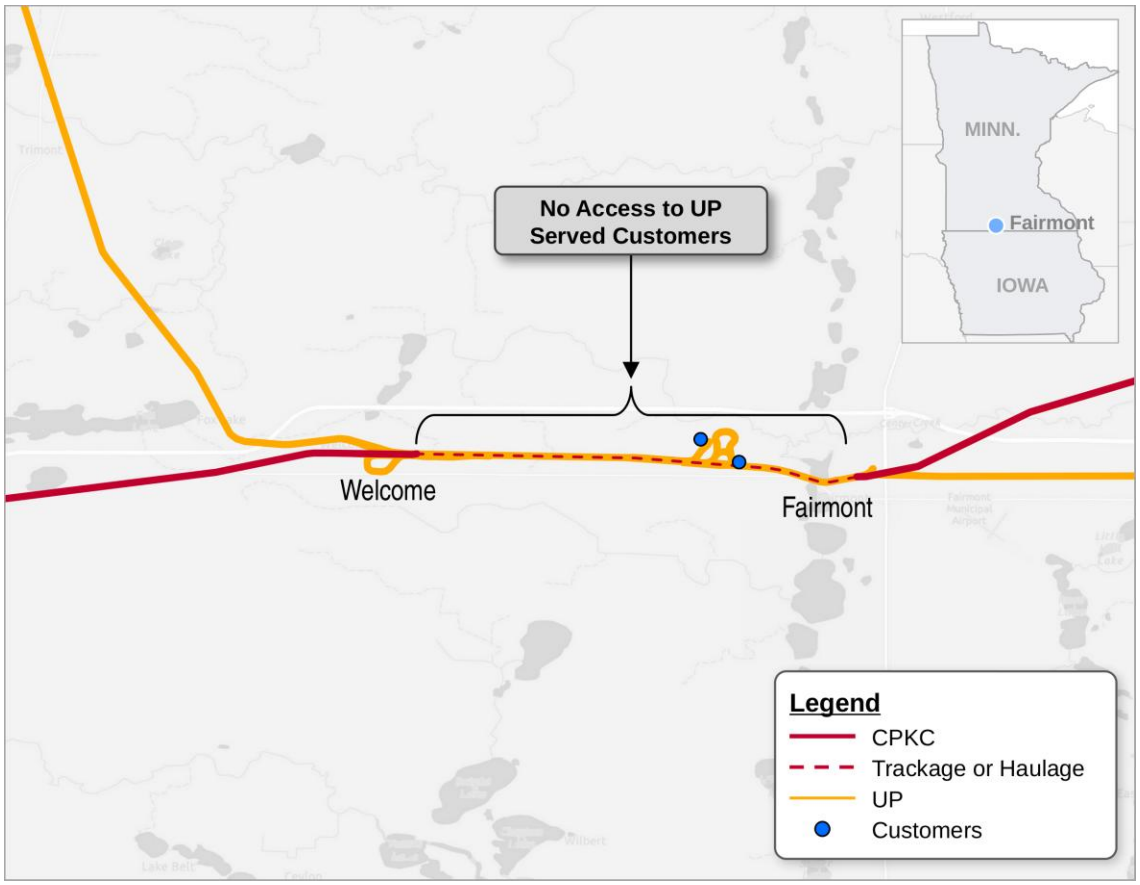
these shippers a real competitive alternative, giving them leverage with UP and giving CPKC access to markets that only UP can reach today.[1101]

The proposed Minnesota conditions offer two related economic benefits: an independent CPKC option would constrain foreclosure of competing interline service and partially offset UP-NS's increased bargaining power by reducing affected customers' dependence on the combined carrier in negotiations across their facilities and movements.[1102] Targeted removal of the identified restrictions would make CPKC's existing infrastructure available for additional competitive service while leaving UP free to compete for the same traffic.

[1101] Gameiro V.S. ¶¶ 185-86; Brooks V.S. ¶ 235.

[1102] Majure V.S. Vol. I ¶¶ 196-202; Vol. II ¶¶ 86-88.

Fairmont-Welcome Corridor Subject to Local-Service Restrictions[1103]



If the Board approves the Proposed Transaction, it should condition that approval on UP's targeted non-enforcement of the Rosemount and Fairmont paper barriers. For Rosemount, the condition should permit CPKC to serve otherwise eligible customers in the Roseport industrial park, including [redacted], without the existing restrictions based on the direction or geographic origin or destination of the traffic, including movements over the legacy KCS network.[1104] Applicants should be prohibited from enforcing those geographic or directional restrictions to prevent the pickups, setouts, switching, and

[1103] Gameiro V.S. Figure 14.

[1104] Gameiro V.S. ¶ 184; Brooks V.S. ¶¶ 233-34.

connecting industry-track movements necessary to provide that service under CPKC's existing arrangements.

For Fairmont, the condition should permit CPKC to provide the requested local service over its existing Fairmont–Welcome route, including the pickups, setouts, switching, and connecting industry-track movements necessary to serve the covered facilities. Applicants should not enforce the bridging limitation or any overlapping local-service, switching, pickup, or setout restriction to prevent that service.[1105]

At both locations, Applicants should also be prohibited from treating conduct expressly permitted by the condition as a contractual default or ground for terminating CPKC's existing rights. Necessary amendments or waivers should be implemented under Section VI.B, including arrangements for the industry-track access necessary to provide the authorized Rosemount and Fairmont services. CPKC's existing local service and other beneficial rights should remain fully effective. By making the identified restrictions unenforceable, the condition would allow CPKC to use its existing routes to offer covered shippers an additional independent transportation option and help offset the merger-related competitive harms described above.

The prohibition on Applicants enforcing the covered Roseport and Fairmont contractual restrictions should remain effective unless modified by the Board. UP should not treat CPKC's authorized local service on the Fairmont-Welcome line as a default or a ground for terminating CPKC's trackage rights. These protections would not relieve CPKC of payment, safety, or other obligations consistent with the condition.[1106]

[1105] Gameiro V.S. ¶¶ 185-86.

[1106] Gameiro V.S. ¶¶ 184-86.

That relief accords with the Board's authority to impose conditions that preserve or enhance competition and offset merger-related harm, including by preventing paper barriers from obstructing competition.[1107] For example, in *CSX/NS-Conrail*, the Board prospectively rendered contractual volume and trainset requirements unenforceable because they would impede the competition contemplated by its merger approval.[1108] Prohibiting UP from enforcing the identified Minnesota paper barriers would similarly make an independent competitive option available to the affected shippers.

CONCLUSION

For the reasons above and in Comment Volume I, the Board should reject the Proposed Transaction as inconsistent with the public interest. If the Board nevertheless approves the Proposed Transaction, it should impose the conditions requested in this Comment and, where applicable, grant the accompanying responsive applications. Taken together, those conditions are the minimum necessary to mitigate even part of the permanent and structural harms to the public interest threatened by the Proposed Transaction.

[1107] *See* 49 U.S.C. § 11324(c); 49 C.F.R. § 1180.1(c)(2)(iv), (d).

[1108] *CSX/NS-Conrail*, 3 S.T.B. at 1072-73.

Respectfully submitted,



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Dated: November 18, 2026

CERTIFICATE OF SERVICE

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

/s/ *Andrea L.R. Pillai*
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