313178

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Office of Chief Counsel
November 18, 2026
Part of
Public Record

BEFORE THE SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

Finance Docket No. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY
— Control —
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

Comments from the American Petroleum Institute (API)

The American Petroleum Institute submit these comments in response to the Application filed by Union Pacific Corporation and Union Pacific Railroad Company seeking authority to acquire control of Norfolk Southern Corporation and Norfolk Southern Railway Company. These comments address the competitive, service, and public-interest implications of the proposed transaction from the perspective of shippers of crude oil, refined petroleum products, blending components, liquefied petroleum gases, and other energy-related commodities.

Statement of Interest of the American Petroleum Institute

The American Petroleum Institute (API) is the national trade association representing all segments of the United States oil and natural gas industry, including exploration and production, midstream transportation, refining, petrochemical manufacturing, and fuel distribution. API's member companies produce, process, and transport the majority of the nation's oil and natural gas supplies and rely extensively on freight rail service to support safe, reliable, and efficient energy delivery.

API and its members submit these comments to help ensure that the Board's review of the proposed UP–NS transaction fully considers the impacts on energy transportation markets, particularly for hazardous materials and petroleum-by-rail movements where competitive alternatives are limited, and service reliability is critical.

Rail transportation is a critical component of the nation's energy supply chain. Petroleum-by-rail provides redundancy when pipelines are constrained, supports refinery balancing and fuel distribution, and enables rapid response to disruptions caused by weather events, infrastructure outages, or geopolitical instability. The proposed transaction would materially alter this landscape by concentrating control over energy-related rail traffic in a single transcontinental carrier.

As detailed below, the proposed transaction threatens to increase shipper captivity, weaken rail-to-rail competition, elevate service and reliability risks, and undermine the public interest in resilient energy transportation. Applicants have not met their burden of demonstrating that the transaction will enhance competition or provide enforceable, merger-specific benefits sufficient to outweigh these harms.

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I. Introduction

Oil and gas shippers rely on railroads to move large volumes of hazardous and time-sensitive commodities across long distances. Unlike many other bulk commodities, petroleum shipments are subject to strict safety regulations, require specialized equipment and terminals, and often move in unit trains or high-volume carload configurations that limit modal substitution.

These characteristics make competition among rail carriers essential. Even modest reductions in routing options or service reliability can impose significant costs on energy shippers and, by extension, on downstream consumers and manufacturers. The Board's analysis must therefore consider the specific realities of energy transportation rather than relying on aggregate or all-commodity measures.

II. Statutory and Regulatory Framework

Under 49 U.S.C. § 11324 and the Board's major merger regulations, Applicants bear the burden of proving that the proposed transaction is consistent with the public interest. This includes demonstrating that the merger will not create or enhance market power, will not unreasonably restrain competition, and will provide verifiable benefits that cannot be achieved through less anticompetitive means.

The Board's post-2001 merger policy emphasizes the protection of captive shippers and the need for credible, enforceable service assurance commitments. These principles are particularly important where, as here, a transaction would create a carrier with unprecedented geographic reach and market influence.

III. Characteristics of Petroleum-by-Rail Markets

Petroleum-by-rail markets are defined by fixed infrastructure and regulatory constraints. Origins and destinations are tied to specific production sites, refineries, terminals, and storage facilities. Switching access, interchange economics, and terminal capacity determine whether rail-to-rail competition is feasible in practice.

Unlike agricultural or general merchandise traffic, petroleum shipments cannot readily divert to trucking at scale. Hazmat regulations, driver availability, rack capacity, and safety considerations significantly limit the extent to which trucking can discipline rail pricing or service.

III.1 Petroleum Shipping Lanes, Terminal Reality, and the Practical Meaning of Captivity

A. Why petroleum shipping lanes are uniquely prone to captivity.

Petroleum and petroleum-product lanes are often anchored to fixed infrastructure: refineries, fractionators, blending facilities, storage hubs, and marine terminals. Unlike many commodities, a petroleum shipper cannot simply 'choose' a different destination without major operational and commercial consequences. Loading and unloading capability is specialized; tank car compatibility, vapor control, and safety management systems are required; and certain products face additional routing and handling constraints. As a result, the relevant competitive question is frequently whether a specific origin terminal or destination rack has two rail options in practice—not whether the broader region has multiple railroads somewhere within it. In addition, petroleum-by-rail movements frequently support contingency and emergency operations—such as supplying markets affected by hurricanes, pipeline outages, or refinery disruptions—where the value of rapid, reliable rail service cannot be replicated by other modes. Where a shipper is captive, the merged carrier can impose not only higher base rates but also higher demurrage, storage, and accessorial charges, and can shift risk to the shipper through service variability. These dynamics are directly relevant to the Board's public-interest obligations because they can affect regional fuel availability and price stability**.**

B. Examples of lanes where competition is illusory despite nominal geographic overlap.

API members commonly ship refined products and blendstocks between Gulf Coast refining and petrochemical centers and inland markets across the Midwest and Southeast. On paper, these movements may appear to have alternatives (e.g., interline options through various gateways). In practice, interchange terms, service priority, and terminal switching feasibility can make one routing economically or operationally infeasible. Even where an interchange exists physically, 'economic captivity' can arise if divisions, surcharges, or service practices render the alternative noncompetitive over time.

C. Unit trains and service cyclicality create high switching costs for energy shippers.

Crude and ethanol shipments frequently move in unit trains or dedicated carload cycles. The economic value of these moves depends on predictable cycle time:

origin loading, linehaul transit, destination unloading, and car return. A merger that increases terminal dwell or reduces service consistency can impose large effective costs on shippers, even if the nominal linehaul rate remains unchanged. These service-driven costs are difficult to capture in Applicants' competitive screens, which largely focus on the existence of nominal alternatives rather than the cost and feasibility of using them.

D. Interchange and gateway access are central for petroleum markets.

For many petroleum lanes, especially those involving smaller terminals or short-line-origin movements, interchange access is the mechanism that allows a shipper to reach an alternative Class I carrier. If the merged carrier controls the essential interchange or can set economic terms that disadvantage interline routing, the shipper's effective outside option collapses. This is a core reason 'vertical' combinations can still generate market power harms in rail: control over gateways, terminals, and service priority can raise rivals' costs and erode competition without a dramatic change in headcount of Class I carriers in a region.

E. Pipeline and truck are not universal substitutes.

Applicants' analyses often assume that truck competition disciplines rates. For petroleum movements, trucking capacity may be constrained by driver availability, hazmat compliance, and terminal rack throughput. Pipeline availability is similarly uneven; many lanes are not pipeline-connected, or pipeline capacity is fully subscribed, or the relevant product grade and scheduling flexibility do not align with shipper needs. Therefore, modal substitution should be treated as an empirical question, lane-by-lane, rather than an assumed screen that removes lanes from competitive concern.

III.2 Expanded Analysis of Petroleum Shipping Lanes and Competitive Harm

Petroleum-by-rail lanes are defined by fixed physical and commercial constraints that distinguish them from the generalized corridor analyses relied upon by Applicants. These lanes typically connect specific refineries, fractionators, blending facilities, and storage terminals to defined destination markets, often over long distances where intermediate routing flexibility is limited. Unlike consumer goods or agricultural traffic, petroleum shipments cannot be easily rerouted without material operational, safety, and economic consequences.

In many cases, a petroleum shipping lane is functionally captive even when multiple railroads operate within the broader region. Access to alternative rail carriers frequently depends on a single interchange point, a short-line connection, or a terminal with limited switching capability. If the merged UP–NS controls that interchange or can influence the economics of interline movements, the shipper's nominal choice becomes illusory.

For example, movements of refined products from Gulf Coast refining centers to inland Midwestern or Southeastern markets often require interchange at a limited number of gateways. Post-merger, the merged carrier would have enhanced ability to set divisions, prioritize traffic, or impose accessorial charges that make interline routings economically unattractive relative to merged single-line service**.**

The Board has long recognized that economic barriers can negate physical interchange. Where a shipper faces higher dwell, reduced service priority, or increased ancillary charges on an interline route, the presence of a theoretical alternative does not constitute effective competition. For petroleum shippers, these costs accumulate rapidly through demurrage, storage, and cycle-time degradation.

Unit train operations further magnify these harms. Crude oil, ethanol, and certain refined product movements are commonly conducted in dedicated trainsets whose economics depend on predictable cycle times. Any degradation in service reliability or interchange fluidity can effectively increase per-barrel transportation costs, even absent a nominal rate increase.

III.3 Commodity-Specific Competitive Impacts in Petroleum-by-Rail Markets

A. Crude Oil

Crude oil movements by rail are highly concentrated and operationally rigid. Crude-by-rail lanes often originate at production areas or gathering hubs with limited pipeline takeaway or at locations where pipeline capacity is fully subscribed or unavailable. Rail therefore serves as a critical outlet, particularly during periods of production growth, pipeline outages, or market dislocation.

Crude oil shipments frequently move in unit trains or dedicated shuttle service. These movements are especially sensitive to cycle time, crew availability, and terminal dwell. Any degradation in service or increase in accessorial charges can materially increase per-barrel transportation costs.

The proposed merger would consolidate control over key crude corridors and interchange gateways, reducing shippers' ability to discipline rates and service. In captive crude lanes, efficiency gains claimed by Applicants are unlikely to be passed through, while service risk and cost exposure increase**.**

B. Refined Petroleum Products

Refined product shipments—including gasoline, diesel, jet fuel, and blending components—are essential to regional fuel supply and price stability. Rail plays a vital role in balancing supply across regions, particularly where pipelines are constrained or where seasonal demand shifts occur.

Refined product lanes are often defined by fixed terminal infrastructure and regulatory requirements, limiting routing flexibility. Many destination terminals are served by a single Class I carrier or rely on short-line connections to reach alternative carriers.

By increasing concentration and weakening interchange discipline, the merger threatens to increase total logistics costs for refined products through higher rates, accessorials, and service variability, with downstream impacts on consumers and fuel distributors.

C. Liquefied Petroleum Gases (LPGs)

LPG shipments, including propane and butane, are critical for residential heating, agriculture, and industrial uses. Rail is often the only practical mode for moving large volumes of LPGs to inland markets not served by pipelines.

LPG-by-rail movements are subject to seasonal demand spikes, particularly during winter heating months. Service disruptions or capacity constraints during these periods can have immediate and severe impacts on consumers.

The merger would increase the risk that LPG shippers face reduced service priority or higher costs in peak periods, with limited ability to shift volumes to alternative carriers or modes.

D. Asphalt and Heavy Products

Asphalt and other heavy petroleum products are often moved by rail due to their weight, viscosity, and limited pipeline options. These commodities are essential for infrastructure projects and road construction, making reliable transportation a matter of public interest.

Asphalt lanes are frequently captive, serving fixed plants and terminals with little flexibility. Increased concentration in these lanes can directly raise construction costs and delay public projects.

Applicants' analyses do not adequately address the competitive impacts of consolidation in these specialized and often overlooked petroleum segments.

III.4 Supplemental Factual Record: Petroleum-by-Rail Volumes and Commodity Mix (2024 Data)

API and its members emphasize that petroleum-by-rail is not a niche segment of freight rail; it is a substantial and safety-critical component of the national logistics system for fuels and petroleum-derived products. Company-level STB commodity statistics for 2024 indicate that U.S. Class I railroads moved approximately 854,000 carloads (about 72 million tons) of crude oil and petroleum products. Of that total, crude oil accounted for

roughly 170,000 carloads, while refined petroleum products and other petroleum products accounted for roughly 684,000 carloads. (Source: STB company-level 2024 commodity statistics.)

The same 2024 company-level data show that Union Pacific carried approximately 28% of all crude and petroleum product carloads (about 239,000 carloads), while Norfolk Southern carried approximately 13% (about 112,000 carloads). Post-transaction, the combined UP–NS system would therefore control approximately 41% of all crude and petroleum product carloads moved by U.S. Class I railroads—consolidating an extraordinary share of energy traffic within one system.

For petroleum shippers, the competitive significance of this combination is heightened by category-level concentration. The combined UP–NS traffic would account for approximately 32% of all crude oil carloads; 43% of all petroleum product carloads; 56% of lubricant carloads; 45% of residual fuel oil carloads; 43% of LPG carloads; 44% of distillate carloads; and 48% of asphalt carloads originating from petroleum refineries. These category-level figures illustrate that the merger's effects are not uniform and that certain petroleum segments face especially acute concentration risk.

From a public-interest perspective, the Board should treat these data as a warning sign: petroleum-by-rail traffic includes hazardous materials movements where service reliability and operational discipline are essential to safety and energy security. Where market structure reduces shippers' ability to discipline service through competition, the public-interest risk is magnified. In petroleum markets, service problems can cascade: a missed unit-train cycle, extended dwell at a terminal, or an embargo can force operational changes at refineries, increase inventory costs, alter blending decisions, or create localized supply shortages. Those impacts ultimately reach consumers through price volatility and reduced supply resilience.

IV. Increased Market Concentration and Shipper Captivity

The proposed transaction would significantly increase concentration in energy-related rail markets. Combined, Union Pacific and Norfolk Southern would control more than forty percent of crude oil and petroleum product carloads moved by U.S. Class I railroads.

This concentration is even more pronounced for specific product categories such as asphalt, LPGs, distillate fuels, and lubricants. For many shippers, the merger would reduce the number of economically viable rail options from two to one or eliminate meaningful competition altogether.

Applicants' reliance on broad geographic screens understates these impacts. Captivity must be assessed at the level of individual terminals, corridors, and interchange points where energy shippers actually make routing decisions.

IV.1 Pre- and Post-Merger Market Concentration: Narrative HHI Analysis for Energy Corridors

Although Applicants present market screens suggesting limited competitive overlap, those screens mask substantial increases in concentration at the corridor and terminal level. For petroleum-by-rail markets, relevant concentration analysis must focus on specific origin–destination pairs and feasible rail routings, rather than on aggregated national or regional statistics. [Application, Vol. 1, "Effects on Competition," at 1-50 et seq.; Vol. 2, Bailey V.S., beginning at 2-4 (market-impact analysis).]

Pre-merger, many petroleum corridors are already highly concentrated, often with only two practical rail options once terminal access, interchange economics, and service feasibility are considered. In such settings, even a partial consolidation—such as the loss of an effective interchange option—can result in a dramatic increase in concentration, pushing markets well into the range associated with competitive concern under traditional antitrust principles.

Post-merger, the elimination or weakening of interline competition effectively collapses two-provider markets into de facto monopolies. Even where a second carrier remains nominally available, increased costs or degraded service can raise the effective HHI far beyond what Applicants' screens suggest.

For API members shipping crude oil and refined products, these increases in concentration translate directly into reduced bargaining leverage, higher total logistics costs, and increased exposure to service risk. The Board should therefore treat Applicants' aggregate HHI presentations with caution and require a more granular, lane-specific analysis**.**

IV.2 Gateway Foreclosure and Control of Essential Rail Facilities

A central competitive concern raised by the proposed UP–NS transaction is the potential foreclosure of critical gateways and interchange points that function as essential facilities for rail-to-rail competition. In many petroleum shipping lanes, access to a competing Class I carrier depends entirely on the availability of a small number of interchange locations. Control over these gateways can therefore confer substantial market power even where two or more railroads nominally serve a broader region. [Application, Vol. 1, "Conditions to Mitigate and Offset Merger-Related Harms," at 1-90 et seq.; Vol. 1, Rocker/Elkins Joint V.S. ¶¶ 166–169, at 349–350 (pinpoint cited elsewhere in API draft).]

Gateway foreclosure need not take the form of outright denial of access. More subtle mechanisms—such as setting unfavorable divisions, limiting interchange windows, deprioritizing interline traffic, or allocating insufficient yard resources—can be equally effective in undermining competition. Because these practices are often framed as operational decisions, they are difficult for shippers to detect and challenge in real time.

For petroleum shippers, gateway access is particularly important because many origin and destination facilities lack physical connections to more than one Class I railroad. Short lines frequently provide the only connection to the national network, making interchange terms determinative of whether a shipper has any meaningful rail alternative.

The proposed merger would increase the merged carrier's incentive and ability to engage in such foreclosure strategies. By internalizing traffic that would otherwise move interline, the merged UP–NS could increase revenue while weakening rival carriers' ability to compete for petroleum traffic over time.

To quantify the scale of this exposure, API undertook an independent analysis of the Serving Carrier Reciprocal Switch (SCRS) database that BNSF makes publicly available. That database records, for 37,817 rail-served facilities nationwide, which carrier or carriers serve each location and whether reciprocal switching applies. Using this data, API identified 3,553 facilities where BNSF and UP both maintain some form of independent access today, and 3,233 facilities where CSX and NS both maintain some form of independent access. API also identified 4,273 facilities where NS is the only carrier present, with no reciprocal switching arrangement to any other railroad, and 5,787 facilities in the same position with respect to UP. Together these four populations account for more than 16,800 documented facility records. This data represents something the Board can act on directly: a defined, verifiable population, built from the same public data any party could check, against which Applicants' own traffic records can and should be evaluated. The shipper base potentially exposed to this dynamic is not a handful of isolated locations. It is a substantial share of the rail-served industrial base of the entire country.

API applied a conservative facility-level screen in deriving these figures. The analysis included only facilities with an identifiable SCRS access configuration and excluded mixed or ambiguous carrier configurations. This conservative screen excluded an additional 399 facilities in which both BNSF and UP appear in the SCRS records and 94 facilities in which both CSX and NS appear. Facilities were evaluated at the CIF level, with all SCRS records associated with the same CIF considered together.

The reason this population matters is a structural asymmetry in how the merger would preserve, or fail to preserve, rail-to-rail competition. Take a facility with independent BNSF and UP access that ships to a destination NS alone serve. Today that shipper has two real routing choices. It can move the traffic BNSF to NS, or it can move it UP to NS, and BNSF and UP compete against one another for the price of their portion of the haul because either one needs NS to finish the movement on equal terms. Once UP and NS operate as a single carrier, the UP-to-NS routing stops being two companies transacting at arm's length and becomes one company moving its own freight. The BNSF routing does not disappear, but it now depends on that same merged carrier's willingness to hand off traffic on reasonable terms at the one point in the route BNSF cannot avoid. CGP may cap the price

of that segment on some lanes while it lasts, but Applicants propose that it end with oversight (Second Response at 37). A carrier that controls both the single-line alternative and the point a competitor must reach has little commercial incentive to price that handoff so as to keep the competitor's route attractive.

The same dynamic runs in reverse, and with identical force. A facility where NS alone is present today, shipping to a destination with independent BNSF and UP access, faces two competing routes out of the origin rather than into the destination. Once NS merges into UP, one of those routes becomes single-line and the other becomes dependent on the merged carrier's cooperation at the origin rather than the destination. The financial consequence for the shipper does not turn on which end of the haul the controlled segment sits. Either way, the shipper loses the benefit of two carriers bidding for its business and is left facing one carrier's price for the segment its remaining competitive option cannot avoid. This is precisely the condition the Board has long treated as the hallmark of harmful captivity, and it is measurable in terms the Board itself already uses. The Board treats a revenue-to-variable-cost ratio at or above 180 percent as a signal that a shipment may be captive, and a ratio above 300 percent as substantially in excess of that threshold. The Government Accountability Office has found that even as the overall incidence of captivity across the rail industry has declined since the Staggers Act, the share of traffic moving at rates far above the 180 percent threshold has grown rather than shrunk, meaning the shippers who remain captive are being charged progressively more for that captivity, not less. Every facility identified above is a candidate for exactly this outcome once the merger removes the second carrier from its routing options, and the Board should not assess this transaction's competitive effects without knowing how many of these facilities would cross that threshold as a result.

The mirror pair of scenarios arises in the East. A facility with independent CSX and NS access shipping to a destination UP alone serves faces the same loss of competitive discipline as the merger converts one of its two routes to single-line service, and an UP-only origin shipping to a destination with independent CSX and NS access faces it as well, with the controlled segment simply sitting at the front of the haul instead of the back. SCRS is a facility-access database, not a waybill database, and it was never designed to show which lanes carry traffic or at what volume and rate. That is precisely why this population is the right starting point for the Board's inquiry rather than its conclusion: it is a fixed, objective set of facilities, built entirely from carrier-published data, against which the one party that holds waybill-level traffic records, Applicants themselves, can and should be required to test its own data. The Board should not accept, on Applicants' assurance alone, that competitive harm from this mechanism is minimal or nonexistent. It should require Applicants to run their own traffic records against this population, report the revenue-to-variable-cost ratios that population is paying today, and show how many of these facilities ship on lanes covered by Committed Gateway Pricing. Applicants propose that program

only until the oversight period ends (Applicants' Second Response to Decision No. 21 (July 27, 2026), at 37). After oversight ends, the open gateway commitment continues, but it requires only commercially reasonable terms, and the commitment to justify rate increases above inflation ends (UP/NS Application, Volume 1, Joint Verified Statement of Kenny Rocker, and Claude E. "Ed" Elkins ¶¶ 166–169, at 349–350). In summary approximately 16,800 rail served locations will lose a competitive option, whether or not those facilities actively ship on certain routes today. This loss of competition can never be regained post-merger.

IV.3 Short Line Dependency and Vulnerability of Energy Terminals

Short line railroads play a critical role in connecting energy production sites, refineries, and terminals to the Class I network. For many API members, short lines provide the only physical rail connection to their facilities, making interchange terms with Class I carriers determinative of whether rail competition exists in practice.

The proposed UP–NS transaction would increase the merged carrier's leverage over short lines by consolidating control over interchange points and downstream routings. This leverage can manifest through less favorable interchange terms, reduced service priority, or increased costs that are passed through to shippers.

Short lines typically lack the bargaining power or financial resources to challenge adverse changes in interchange conditions. As a result, energy shippers connected via short lines are particularly vulnerable to competitive harm following consolidation among Class I carriers.

Because short-line-origin traffic is disproportionately associated with captive facilities, the Board should treat impacts on short lines as a proxy for shipper harm and incorporate these considerations explicitly into its public-interest analysis.

IV.4 Illustrative Lane-Level Case Study: Gulf Coast Refining to Inland Markets

To illustrate the practical competitive harms that may arise from the proposed transaction, consider a representative refined-product shipping lane from a Gulf Coast refinery to inland Midwestern markets. Such lanes are common for gasoline, diesel, and blending components and often rely on rail service to balance regional supply and demand.

In this hypothetical, a refinery has direct access to one Class I carrier and indirect access to a second carrier through an interchange gateway. Prior to the merger, the shipper can leverage this interchange option to negotiate rates and service commitments, even if the majority of traffic moves via the direct carrier.

Post-merger, if the merged UP–NS controls both the direct route and the interchange gateway, the shippers outside option is effectively eliminated. Even if interchange remains

technically available, increased dwell, higher divisions, or reduced service priority can render the alternative economically unviable. The result is functional captivity.

In this scenario, the shipper faces higher total logistics costs through a combination of increased accessorial charges, reduced service reliability, and diminished negotiating leverage. These costs ultimately flow through to fuel distributors and consumers, illustrating how localized rail competition issues can have broader economic consequences**.**

V. Anticompetitive and Foreclosure Risks

Even if the transaction does not eliminate competition in traditional horizontal markets, it increases the incentive and ability to engage in anticompetitive conduct. This includes raising rivals' costs, degrading interchange service, and imposing discriminatory accessorial charges.

These risks are particularly acute for energy shippers that depend on short lines and interchange connections to reach markets.

V.1 Anticompetitive Effects Beyond Traditional Market Screens

Even where a merger does not reduce the number of rail carriers serving a facility from two to one, it can still enhance market power through a variety of mechanisms that are particularly relevant to energy transportation. These include raising rivals' costs, degrading interchange performance, strategic capacity allocation, and discriminatory accessorial pricing.

Raising rivals' costs can occur when a merged carrier controls a critical interchange or gateway and sets divisions or service terms that disadvantage competing railroads. For petroleum shippers, even small changes in interchange economics can render an alternative route nonviable over time.

Strategic service degradation is another risk. A merged carrier may allocate crews, locomotives, and yard capacity in ways that favor its own single-line routings while interline movements experience longer dwell and less reliable service. Such practices are difficult for shippers to challenge and can be justified as operational decisions, yet they have profound competitive effects.

Accessorial charges—demurrage, storage, fuel surcharges, terminal fees—provide an additional avenue for exercising market power. These charges can be increased selectively on captive lanes or interline routes, shifting costs to shippers without altering published linehaul rates.

V.2 Mechanisms Through Which the Merger Could Increase Shipper Costs

The proposed transaction would increase shipper costs through multiple channels, even absent explicit rate increases. Reduced competition can lead to higher base rates over time, but more immediate impacts often arise from accessorial charges, service variability, and reduced operational flexibility.

For example, longer dwell times at origin or destination terminals increase demurrage and storage costs. Less reliable cycle times force shippers to hold additional inventory or charter supplemental transportation at premium rates. These costs are particularly acute for petroleum products, where inventory carrying costs and supply obligations are significant.

In captive lanes, shippers have limited ability to resist such cost increases. Negotiated contracts do not eliminate market power where the shipper lacks a credible outside option. Over time, the cumulative effect of these cost pressures can materially affect fuel prices and regional supply resilience.

API members have direct experience with a related pricing pattern that the Board should bear in mind when evaluating Applicants' proposed commitments in this proceeding. Following the phase-in of federal tank car safety requirements, Class I railroads told shippers that traffic moving in the newer DOT-117J specification cars would receive a rate discount relative to traffic moving in cars built to the older DOT-111 specification, framing the differential as an incentive to invest in safer equipment. In API members' experience, the railroads did not lower the DOT-117J rate below the rate that had applied before the safety requirements took effect. Instead, the rate applicable to DOT-111 traffic was raised, and DOT-117J traffic was priced at or near the prior baseline, so that the discount Applicants described was measured only against a newly created, higher alternative rather than against the shipper's actual prior cost. API raises this experience not as part of the record in this proceeding, but because it illustrates a pattern the Board should watch for in evaluating any commitment Applicants frame as a discount, rebate, or price protection in this transaction: the relevant test is not the spread between two options the carrier itself controls, but whether the shipper's total cost has actually declined relative to its pre-merger baseline**.**

VI. Evaluation of Applicants' Economic Analyses

Applicants' economists characterize the transaction as predominantly vertical and assert that the scope for anticompetitive harm is limited. This conclusion rests on assumptions that do not reflect the realities of energy transportation. [Application, Vol. 2, Bailey V.S., beginning at 2-4; Israel V.S., beginning at 2-177.]

Vertical integration can still increase market power where it eliminates interchange options and reduces shippers' bargaining leverage. For captive energy shippers, the loss of even a single routing alternative can have significant rate and service implications.

Similarly, claims that competition with trucking will discipline rates ignore the operational and regulatory constraints that limit truck substitution for hazardous materials and high-volume energy shipments.

VI.1 Expanded Analysis of Applicants' Economic Claims (Bailey and Israel)

Applicants' economic testimony asserts that the proposed transaction is predominantly vertical and therefore unlikely to result in significant competitive harm. This conclusion rests on aggregated geographic screens and all-commodity analyses that do not reflect the realities of petroleum-by-rail markets, which are defined by specific terminals, corridors, and interchange points (UP/NS Application, Vol. 2, Bailey V.S. ¶¶162–168, pp. 79–80).

Dr. Bailey's corridor analysis assumes that competition from trucking sufficiently disciplines rail pricing in many lanes. For API members shipping hazardous petroleum products, however, trucking is often not a practical substitute due to hazmat regulations, driver availability, equipment constraints, and terminal rack capacity limitations (Bailey V.S. ¶¶136–139, pp. 61–63).

Dr. Israel further argues that vertical integration will reduce double marginalization and exert downward pressure on prices. This theory presumes the continued existence of meaningful outside options. For captive energy shippers, the merger would eliminate interchange leverage and instead increase the merged carrier's bargaining power over rates, accessorials, and service terms (UP/NS Application, Vol. 2, Israel V.S.¶¶13–14, pp. 186–187).

VI.2 Why Rail-to-Truck Substitution Does Not Constitute Enhanced Competition

Applicants repeatedly rely on the assertion that competition from trucking disciplines rail pricing and service. This framing misstates the relevant competitive inquiry for a major Class I rail merger. The Board's merger standards focus on whether a transaction enhances competition between rail carriers, not whether railroads can collectively shift traffic to another mode. [Application, Vol. 2, Bailey V.S., beginning at 2-4 (competitive and modal analyses); Vol. 1, "Summary of Public Interest Considerations," at 1-16 et seq.]

For petroleum commodities, truck substitution is constrained by hazardous materials regulations, driver availability, equipment requirements, and terminal rack throughput. Even where trucking is technically possible, it may be feasible only for a fraction of volumes or only at significantly higher cost. These constraints mean that trucking does not provide a meaningful competitive discipline in many petroleum lanes.

Moreover, a merger that induces shippers to divert traffic from rail to truck due to reduced rail competition does not represent a public-interest benefit. Such diversion can increase highway congestion, emissions, safety risk, and total logistics cost. The Board should not credit modal displacement as evidence that a merger enhances competition.

The proper inquiry is whether the merger preserves or enhances rail-to-rail alternatives for shippers. In petroleum markets, the proposed transaction would eliminate or weaken precisely those alternatives by consolidating control over key corridors, gateways, and terminal access points.

VI.3 Failure of Claimed Efficiencies to Be Merger-Specific or Public-Interest Enhancing

Applicants assert that the proposed transaction will generate efficiencies through network integration, single-line service, and operational coordination. However, Applicants have not demonstrated that these efficiencies are merger-specific, verifiable, or likely to benefit shippers. [Application, Vol. 1, "Financial Considerations; Traffic, Revenues and Earnings Increases; Operating Economies," at 1-57 et seq.; Vol. 2, Gehringer/Orr Joint V.S., beginning at 2-601.]

Many of the efficiencies cited by Applicants—such as improved scheduling, better asset utilization, and enhanced coordination—are not dependent on common ownership. Railroads routinely achieve such outcomes through commercial agreements, joint service arrangements, or investments in technology without eliminating competition.

Moreover, where efficiencies do arise from consolidation, historical experience shows that they are often retained by the merged carrier rather than passed through to shippers. In captive markets, shippers lack the bargaining leverage necessary to ensure that cost savings translate into lower rates or improved service.

API members report a concrete illustration of this dynamic in their day-to-day dealings with Union Pacific. Members describe resolving even routine administrative and invoicing matters, such as correcting a statement of account or resolving a billing discrepancy, as unusually difficult and time-consuming. Members attribute this in part to reductions in UP's administrative staff over time, which has shifted many of these tasks onto commercial and marketing representatives who were not previously responsible for them and who now manage this work in addition to their existing duties. For smaller shippers in particular, an unresolved billing or statement-of-account issue can create real financial uncertainty, and API members report that such issues can remain unresolved for extended periods as a result. API offers this experience not as part of the formal record in this proceeding, but as an illustration of how claimed efficiencies from cost reduction can surface as degraded service in ways a shipper cannot easily document or dispute, and as a reason the Board should view Applicants' efficiency claims for the combined UP–NS system with appropriate skepticism.

API members have observed a related pattern across Class I railroads generally, including UP and NS, in the reduction of operations, track inspection, and mechanical workforces over roughly the past decade and a half. As these workforces have been reduced, API members report that Class I carriers have increasingly pushed tasks carriers previously

performed, such as certain railcar mechanical repairs and related work, onto customers at their own facilities, often without additional compensation or reimbursement for the added labor, equipment, or liability involved. Many customer facilities were not designed or built to perform this kind of work, and API members report that accommodating it can require diverting real estate, personnel, or production capacity the facility would otherwise use for its core operations and can raise workplace safety concerns for employees who are not trained or equipped for railcar mechanical work. API offers this experience for the same reason as the administrative and invoicing example above: it illustrates how reductions in carrier headcount, which the combined UP–NS system would have a strong financial incentive to pursue following the transaction, can shift real costs and risks onto shippers even when no increase ever appears on an invoice.

Applicants' economic testimony relies on model-based projections that assume competitive discipline will force pass-through of efficiencies. For petroleum-by-rail movements, this assumption is flawed. Where a shipper has no practical rail alternative, the merged carrier can capture efficiency gains without reducing prices or improving service quality.

The Board has consistently required that claimed efficiencies be merger-specific and cognizable in the public interest. Efficiencies that merely improve the profitability of the merged carrier, while leaving shippers worse off or no better off, do not satisfy this standard.

In this case, Applicants have not shown that any claimed efficiency would offset the competitive harm created by increased concentration, loss of routing options, and heightened service risk for energy shippers. The Board should therefore give little weight to these efficiency claims.

VI.4 Rebuttal to Applicants' Claimed Public Benefits

Applicants' public benefits narrative relies on broad assertions regarding efficiency, service quality, environmental performance, and supply chain resilience. When examined in the context of petroleum-by-rail markets and the Board's statutory standards, these claims are speculative, overstated, or unrelated to the proposed transaction. [Application, Vol. 1, "Summary of Public Interest Considerations," at 1-16 et seq.; "Calculation of Public Benefits," at 1-93 et seq.]

A. Single-Line Service and Network Efficiency

Applicants contend that expanded single-line service will reduce handoffs and improve reliability. For petroleum shippers, however, single-line service often comes at the expense of competitive alternatives. The elimination of interchange options removes a critical source of discipline over rates, service quality, and accessorial charges. [Application, Vol. 2, Gehringer/Orr Joint V.S., "Patterns of Service,"

at 2-629 et seq.; Turner V.S., "Service Improvements from Integration of Operations," at 2-857 et seq.]

Historical experience demonstrates that while single-line routings may reduce internal costs for railroads, those savings are rarely passed through to captive energy shippers.

B. Congestion and Network Fluidity

Applicants claim the merger will reduce congestion through better network optimization. Large rail integrations, however, often create new congestion points as operating practices and systems are merged. [Application, Vol. 2, Gehringer/Orr Joint V.S., "Capacity Needs of the UP/NS System," at 2-745 et seq.; Turner V.S., "Yard and Terminal Operations," at 2-877 et seq.]

Energy traffic is particularly sensitive to congestion, as delays directly affect refinery operations and downstream fuel supply. Petroleum shippers depend on predictable transit times, consistent terminal access, and reliable railcar cycle times to maintain efficient operations. Even relatively modest increases in terminal dwell, interchange delays, or inconsistent train scheduling can disrupt refinery production schedules, increase inventory requirements, and generate additional demurrage and storage costs. These impacts can extend beyond individual shippers, affecting regional fuel distribution networks and ultimately consumers.

The integration of two extensive Class I railroad networks presents substantial operational challenges, including the coordination of dispatching systems, crew assignments, locomotive utilization, terminal operations, and interchange procedures. While Applicants anticipate efficiencies from operating a unified network, those benefits are not guaranteed, particularly during the transition period. The history of major railroad mergers, including the Union Pacific–Southern Pacific merger, demonstrates that network integration can produce significant and prolonged service disruptions, notwithstanding initial projections of improved efficiency.

Furthermore, improvements in network fluidity do not necessarily translate into better service for all customers. The merged carrier may prioritize high-volume, long-haul movements or single-line traffic at the expense of smaller shippers, short-line connections, and interline movements. For petroleum shippers dependent on specific terminals and interchange gateways, such operational decisions could increase congestion and reduce service reliability even if overall systemwide performance metrics improve.

The Board should therefore require Applicants to demonstrate how projected improvements in network fluidity will translate into measurable, sustained service

benefits for individual shippers and commodity groups. This evaluation should include anticipated impacts on terminal dwell, interchange performance, railcar cycle times, and service reliability for hazardous materials movements. Applicants should also identify specific contingency measures to address integration-related disruptions and provide enforceable performance commitments rather than relying exclusively on projected systemwide efficiencies.

Absent such assurances, generalized claims of reduced congestion and improved network fluidity should not be considered sufficient to offset the competitive and operational risks associated with the proposed transaction.

C. Environmental Claims

Applicants' environmental arguments rely on speculative modal diversion from truck to rail. The Board's analysis should focus on rail-to-rail competition rather than on inducing traffic shifts through consolidation. [Application, Vol. 1, "Summary of Public Interest Considerations," at 1-16 et seq.; "Calculation of Public Benefits," at 1-93 et seq. (verify the specific modal-diversion calculation before final filing).]

While increased utilization of freight rail can provide environmental benefits compared to highway transportation, those benefits are not necessarily dependent on a merger. Both Union Pacific and Norfolk Southern can independently pursue investments, operational improvements, and commercial initiatives designed to attract additional freight from trucks. Applicants must demonstrate that any claimed environmental benefits are directly attributable to the proposed transaction and could not reasonably be achieved through less anticompetitive alternatives.

Moreover, the potential environmental benefits of increased rail traffic must be weighed against the consequences of reduced competition and network consolidation. If the merger results in higher rates, diminished service reliability, or reduced access to competitive rail options, some shippers may be forced to shift freight from rail to truck, undermining the very environmental benefits Applicants claim the transaction will produce. For petroleum and other hazardous materials shipments, such diversion could also increase highway congestion, transportation costs, and safety risks.

Accordingly, the Board should require Applicants to substantiate their environmental projections with verifiable, merger-specific evidence, including the underlying assumptions regarding modal diversion, anticipated changes in truck traffic, and potential impacts on affected communities. Environmental benefits that could be achieved independently of the merger should not be credited as justification for reducing rail-to-rail competition.

D. Investment and Innovation

Applicants have not demonstrated that claimed investments are merger specific. Both carriers are capable of investing independently without reducing competition. [Application, Vol. 2, Turner V.S., "Infrastructure Improvements – Capital Improvement Plan," at 2-895 et seq.; Vol. 1, "Public Interest Justifications," at 1-37 et seq.]

Rail infrastructure investment, technological innovation, and operational modernization are ongoing responsibilities of Class I railroads and should not be treated as benefits uniquely attributable to consolidation. Investments in track capacity, terminal infrastructure, locomotives, safety technologies, and improved operating systems can be undertaken independently or through commercial arrangements without eliminating rail-to-rail competition.

Moreover, competition itself provides a powerful incentive for railroads to invest, innovate, and improve service. By reducing the number of independent carriers and limiting shippers' transportation alternatives, the proposed transaction risks weakening the competitive pressures that encourage investment in network capacity, service reliability, and customer responsiveness.

The Board should therefore require Applicants to identify which proposed investments are genuinely dependent on the merger, demonstrate that those investments would not otherwise occur, and establish how the resulting benefits would be realized by shippers rather than retained exclusively by the merged carrier. General commitments to capital investment or technological advancement should not be credited as merger-specific public benefits absent concrete, verifiable evidence.

E. Supply Chain Resilience

True supply chain resilience depends on redundancy and competition. Consolidation that reduces the number of independent rail networks undermines these attributes.

For the oil and natural gas industry, a resilient transportation network requires multiple viable routing options, reliable access to critical infrastructure, and the ability to respond quickly to unexpected disruptions. Rail transportation serves an essential role in maintaining the movement of crude oil, refined petroleum products, liquefied petroleum gases, and other energy commodities, particularly when pipeline capacity is constrained or alternative transportation options are unavailable. The loss of independent rail networks and competitive interchange options reduces the flexibility that energy shippers depend upon to maintain reliable operations.

Applicants contend that combining the Union Pacific and Norfolk Southern networks will create a more efficient and resilient transportation system. However,

a larger, integrated network is not necessarily a more resilient network. Consolidation can create additional dependencies on common operating systems, dispatching functions, terminal infrastructure, and management decisions. Operational disruptions that might otherwise be confined to one carrier could have broader consequences when two previously independent networks operate under common control. [Application, Vol. 2, Gehringer/Orr Joint V.S., "Description of Combined Network – Optimized Plan," at 2-689 et seq.; Turner V.S., "Contingency Plans for Merger-Related Service Disruptions," at 2-1003 et seq.]

Moreover, independent rail carriers provide an important safeguard against service failures, capacity constraints, and other disruptions. When one carrier experiences congestion, equipment shortages, labor disruptions, or infrastructure outages, alternative carriers and interchange arrangements can provide shippers with critical transportation options. The proposed merger threatens to diminish those alternatives, particularly for captive petroleum shippers and facilities dependent on a limited number of gateways or short-line connections.

These concerns are especially significant for energy transportation, where disruptions can have consequences extending well beyond the railroad and its immediate customers. Delays in crude oil deliveries can affect refinery operations, while interruptions in refined products and propane shipments can constrain regional fuel supplies, increase transportation costs, and contribute to price volatility. During emergencies, including hurricanes, pipeline outages, and other infrastructure disruptions, the availability of independent transportation networks provides valuable flexibility that cannot readily be replaced once competition has been eliminated.

The Board should therefore distinguish between the operational efficiencies Applicants claim will result from network integration and the broader public-interest objective of maintaining a resilient national freight transportation system. Applicants should be required to demonstrate that the proposed transaction will preserve meaningful routing alternatives, protect access to competing carriers, and maintain reliable service during both routine operations and major disruptions.

Supply chain resilience should be measured not simply by the geographic reach or size of a railroad's network, but by the availability of independent transportation alternatives and the ability of shippers to maintain essential deliveries when disruptions occur. Without enforceable protections preserving those alternatives, the proposed transaction risks concentrating operational vulnerabilities rather than strengthening the resilience of the nation's energy supply chains.

VII. Limitations of Committed Gateway Pricing

Applicants propose Committed Gateway Pricing as a principal mechanism to extend competitive benefits to certain otherwise captive routes. However, CGP applies only to a narrow subset of traffic, excludes many energy-relevant movements and is temporary. [Application, Vol. 1, "Conditions to Mitigate and Offset Merger-Related Harms," at 1-90 et seq.; see also Applicants' Second Response to Decision No. 21 (July 27, 2026), at 19–20, 29, 32, 37 (subsequent revisions).]

Applicants' July 27, 2026, supplemental filing expanded CGP in two ways. It removed the categorical exclusion for bulk unit trains, and it extended eligibility to movements where one end is sole-served by UP/NS and the other end is served by BNSF or CSX, including where that end is competitively served (Applicants' Second Response to Decision No. 21 (July 27, 2026) ("Second Response"), at 19-20, 29). CGP protection remains limited, CGP rates apply only to future movements through one of four designated gateways (Chicago, St. Louis, Memphis, and New Orleans) (Second Response at 32); CGP limits unit-train eligibility to "UP/NS facilities and routes that can accommodate bulk unit train service" (Second Response at 20 n.12), an undefined standard that can function as a de facto exclusion; and CGP excludes shippers who have direct rail-to-rail competition at each end of the movement (Second Response at 19, 29). Applicants also propose that CGP end when the oversight period ends (Second Response at 37) but the new structure the merger creates does not end then.

VII.1 API Analysis of Committed Gateway Pricing (CGP)

Applicants rely heavily on Committed Gateway Pricing as a principal remedy for otherwise captive routes. CGP, even as expanded in Applicants' July 27, 2026, supplemental filing to include bulk unit trains and competitively served BNSF and CSX facilities, would give petroleum-by-rail shipments only limited and temporary protection. CGP rates apply only to future movements through four designated gateways (Second Response at 32). Unit-train eligibility is limited to "UP/NS facilities and routes that can accommodate bulk unit train service," a standard Applicants have not defined (Second Response at 20 n.12). CGP also excludes shippers with direct rail-to-rail competition at each end of the movement (Second Response at 19, 29).

Moreover, CGP relies on a narrow set of designated gateways that may not align with the physical and commercial realities of energy supply chains. Traffic that moves through other gateways today, such as Birmingham, would have to reroute through one of the four to receive CGP rates (Second Response at 32-33).

VII.2 Why Committed Gateway Pricing Cannot Cure Competitive Harm

Applicants propose Committed Gateway Pricing (CGP) as a primary remedy for competitive concerns arising from the transaction. However, its structural limitations, its limited duration, and historical experience demonstrate that CGP cannot adequately address the harms faced by petroleum shippers.

Structurally, CGP's remaining exclusions — the four-gateway limitation, the undefined unit-train capability standard, and the exclusion of shippers with direct rail-to-rail competition at each end — may continue to remove some of the shipments most likely to be captive and most sensitive to service reliability, even after Applicants' July 27, 2026, removal of the categorical bulk-unit-train exclusion (Second Response at 19-20, 29, 32). Toxic and Poison Inhalation Hazard (TIH/PIH) materials remain excluded outright (Second Response at 35); other hazardous materials, including crude oil and refined petroleum products classified as Class 3 flammable liquids, are not categorically excluded on hazmat grounds.

Historically, access-based remedies have struggled to preserve competition in rail markets. Disputes over eligibility, pricing, and service terms can delay relief for months or years, during which competitive alternatives erode. For energy shippers, such delays can permanently alter supply chains.

Even where CGP applies, it carries no service benchmarks. Applicants commit only to manage CGP traffic without discrimination relative to comparable UP/NS traffic, and they state that CGP "would not be as fast or reliable as single-line service" (Second Response at 43–44). As a result, CGP may fail to constrain the merged carrier's market power in practice. CGP is also temporary and Applicants propose that it end with the oversight period (Second Response at 37)**.**

VIII. Service Reliability and Integration Risks

Energy supply chains are extremely sensitive to service disruptions. Delays, embargoes, or inconsistent service can cascade through refinery operations, pipeline scheduling, and downstream distribution networks.

Applicants' Service Assurance Plan describes internal benchmarks and contingency planning, but does not provide enforceable, commodity-specific service commitments for energy and hazardous materials traffic. [Application, Vol. 2, Turner V.S., "Benchmarking," at 2-1089 et seq.; "Contingency Plans for Merger-Related Service Disruptions," at 2-1003 et seq.; "Alternative Dispute Resolution Program," at 2-1139 et seq.]

Past rail integrations demonstrate that large mergers carry significant operational risk, which must be explicitly accounted for in the Board's analysis.

VIII.1 Service Reliability Impacts on API Members

API members operate refineries, terminals, and storage facilities that depend on predictable rail service. Even short-term service disruptions can cascade through refinery operations and fuel distribution networks, amplifying price volatility, and supply risk.

While the Service Assurance Plan describes internal monitoring and contingency planning, Applicants' July 27, 2026, supplemental filing introduced a Targeted Access Program that ties switching relief to two measurable performance metrics, Original ETA and Industry Spot and Pull performance. The program is limited to sole-served customers located in a terminal area, excludes unit-train shipments and traffic moving under contract, and ends three years after Board approval takes effect (Second Response at 128 & nn.236-237; Second Response, App. A §§ 9.2, 13.1). As proposed, that relief becomes available only if a customer's performance has both deteriorated from pre-merger levels and fallen below a 70 percent Original ETA threshold or an 85 percent Industry Spot and Pull threshold. Even then, the railroad can defeat the request by proving an affirmative defense or curing the deterioration within 30 days. Any switching an arbitrator orders are effective for six months after the decision, and all switching ends automatically after one year (Second Response, App. A § 9.1 at 194). The Targeted Access Program is not commodity specific. It applies the Board's general Original ETA and Industry Spot and Pull metrics rather than benchmarks calibrated to the operational requirements of petroleum-by-rail service, such as cycle-time reliability for unit train and dedicated shuttle movements or the sequencing needs of refinery and terminal operations. A 70 percent Original ETA threshold means petroleum shippers would have to accept more than three in ten shipments missing their original estimated arrival before any switching relief becomes available at all, and that relief would end within one year (Second Response at 9, 23-24; App. A § 9.1).

VIII.2 Service Impacts and Risks to Energy Supply Chains

Reliable rail service is essential for energy supply chains. Petroleum shippers depend on consistent placement, predictable transit times, and rapid recovery from disruptions. Any merger-related degradation in service can have cascading effects.

Applicants' Service Assurance Plan describes internal benchmarks and contingency planning but does not commit to enforceable service standards for energy traffic. Without binding commitments, shippers bear the risk that service quality will deteriorate during integration or as the merged carrier optimizes its network.

VIII.3 Valuing Service Risk in Energy Transportation

Applicants' analyses largely omit the economic cost of service risk, focusing instead on nominal rates and theoretical routing alternatives. For energy shippers, however, service reliability is a core determinant of transportation cost and supply security.

Service risk can be valued by examining the costs associated with extended dwell, missed placement windows, and elongated cycle times. For petroleum shippers, these costs include increased demurrage and storage charges, higher inventory carrying costs, and the need to secure alternative supply or transportation at premium prices.

Merger-related integration challenges can exacerbate these risks. Even temporary disruptions during network integration can impose substantial costs that are not recoverable after the fact. Because energy markets operate continuously, shippers cannot simply defer shipments without consequence.

A comprehensive competitive analysis must therefore account for service-risk exposure as a form of market power. Where a shipper is captive, the carrier can impose service variability without fear of losing traffic, effectively transferring risk and cost to the shipper.

VIII.4 Why Service Assurance Plans Have Historically Failed to Protect Shippers

Applicants place significant weight on their Service Assurance Plan as evidence that the proposed transaction will not harm service quality. However, historical experience demonstrates that such plans, while useful as transparency tools, rarely provide effective protection for shippers.

Service Assurance Plans typically rely on internal benchmarks and discretionary corrective actions, rather than binding obligations enforceable by the Board or shippers. As a result, deviations from target performance can persist without meaningful consequence.

Past mergers illustrate that integration challenges often overwhelm voluntary service commitments. Network rationalization, crew reassignments, and system integration can produce widespread disruptions that persist long after the nominal transition period.

For energy shippers, the absence of enforceable service standards is particularly problematic. Hazardous materials shipments require consistent handling and predictable scheduling; service variability introduces safety and supply risks that cannot be mitigated through after-the-fact remedies.

IX. Lessons from Prior Rail Mergers

The shipper community's experience with prior rail mergers demonstrates the importance of robust, enforceable conditions and ongoing oversight. Where conditions are ambiguous or difficult to enforce, shippers bear the risk of service degradation and increased costs.

The scale of the proposed UP–NS transaction warrants even greater caution and stronger protections**.**

IX.1 Historical Experience Demonstrates That Large Rail Mergers Rarely Benefit Shippers

The Board’s experience with prior Class I rail mergers demonstrates that promised shipper benefits often fail to materialize, while competitive harms persist. Past mergers have been accompanied by service disruptions, extended integration challenges, and disputes over access and competitive remedies.

Shippers have repeatedly reported that merger-related efficiencies are captured by the merged carrier rather than passed through in the form of lower rates or improved service. Where competition is reduced, shippers lack the leverage to ensure that efficiency gains are shared.

The UP/SP merger provides a cautionary example. Despite conditions intended to preserve access and competition, shippers experienced years of service problems and prolonged disputes over interchange rights. The Board should be skeptical of assurances that similar issues will not recur at an even greater scale in the proposed UP–NS transaction.

API members have experienced a similar pattern following BNSF's 2024 assumption of rail operations previously conducted by Montana Rail Link. Following that consolidation, API members that ship over the affected lines report severe service degradation and that accessorial and demurrage charges increased substantially compared to the rates and rules previously in effect, notwithstanding public assurances made at the time of the transaction that shippers would experience continuity in their service arrangements and rates. API does not rely on any specific public filing or news account to establish how or why these changes occurred and offers this only as the experience of its members with a comparable consolidation of rail operations under a single carrier. The Board should treat this experience as a reason to require durable, enforceable rate, service, and accessorial protections in any conditions imposed on the proposed transaction, rather than relying on similar assurances of continuity that were made in the Montana Rail Link transaction.

More recent transactions have reinforced these lessons. Even where conditions are imposed, enforcement can be slow and resource-intensive, allowing competitive harm to occur before remedies take effect. For petroleum shippers operating in real-time energy markets, delayed relief is often equivalent to no relief at all**.**

Energy supply chains are less tolerant of disruption than many other commodities. A missed delivery window or extended embargo can force refinery throughput reductions, alter blending operations, or require emergency sourcing at significantly higher cost.

IX.2 Expanded Historical Experience with Major Rail Mergers and Shipper Outcomes

The Board’s modern merger policy is rooted in hard-earned experience. Prior waves of Class I railroad consolidation consistently demonstrate that large-scale mergers rarely deliver durable competitive or service benefits to shippers, while imposing substantial and long-lasting risks. These lessons are especially relevant where a transaction consolidates parallel networks, concentrates control over critical gateways, and increases the number of captive shippers—precisely the conditions present here.

The Union Pacific–Southern Pacific (UP/SP) merger remains the most prominent example. In that case, Applicants promised improved service, enhanced competition through access remedies, and operational efficiencies. Instead, shippers experienced years of service meltdowns, congestion, crew shortages, and prolonged disputes over access rights. Energy and chemical shippers were particularly affected, as service disruptions cascaded through refineries, terminals, and downstream markets.

Although the Board imposed extensive conditions in the UP/SP proceeding, enforcement proved difficult and slow. Access rights often required case-by-case litigation, and by the time relief was granted, competitive opportunities had been irreversibly lost. This experience underscores a fundamental principle: remedies that are not self-executing fail to preserve competition in fast-moving industrial and energy markets.

Subsequent mergers reinforced these lessons. Shippers have repeatedly reported that promised efficiencies were internalized by the merged carrier rather than passed through as lower rates or improved service. Where competition was reduced, shippers lacked the leverage to ensure that efficiencies benefitted customers rather than shareholders.

More recent transactions further demonstrate the limitations of conditional approvals. Even where the Board adopted service assurance plans and competitive access conditions, monitoring and enforcement often lagged behind real-world operational impacts. For petroleum shippers, whose logistics decisions operate on daily or weekly cycles, delayed enforcement is functionally equivalent to no enforcement.

These historical outcomes explain why the Board adopted its post-2001 major merger rules emphasizing enhanced competition, protection of captive shippers, and skepticism toward claimed efficiencies. The proposed UP–NS transaction should be evaluated against this backdrop of experience, not in isolation**.**

X. Public Interest and Energy Security

Reliable transportation of energy commodities is a matter of national economic and security importance. Railroads play a critical role in supplying fuel to regions that lack pipeline access or face temporary disruptions.

A merger that reduces redundancy and concentrates control over energy transportation corridors runs counter to the public interest in resilient and competitive infrastructure.

X.1 Energy Security, Energy Dominance, and the Public Interest

Reliable, efficient, and competitively priced transportation of energy commodities is essential to U.S. energy security, economic competitiveness, and the uninterrupted supply of affordable energy to American consumers. Freight rail plays a critical role in supporting domestic oil and natural gas production, refining, petrochemical manufacturing, and the

distribution of petroleum products throughout the country. Petroleum-by-rail provides essential transportation flexibility, particularly in regions where pipeline infrastructure is constrained, unavailable, or temporarily disrupted. Rail transportation also enables energy producers and refiners to access multiple markets, respond to changing supply and demand conditions, and maintain operations during emergencies. These capabilities depend not simply on the geographic reach of the rail network, but on reliable service, competitive transportation options, and meaningful access to alternative carriers and routes. A reduction in rail-to-rail competition threatens to increase transportation costs, diminish service accountability, and constrain the flexibility necessary to maintain a secure and responsive domestic energy supply chain.

The current Administration has emphasized strengthening American energy dominance through increased domestic production, infrastructure development, regulatory certainty, and reliable energy supply chains. These objectives require a transportation system capable of efficiently moving growing volumes of energy commodities while maintaining competitive market access and operational resilience. The proposed transaction must therefore be evaluated not merely on Applicants' projections of network efficiencies, but on whether it will strengthen or weaken the transportation infrastructure supporting American energy production and distribution. Consolidation that increases shipper captivity, concentrates market power, eliminates independent routing alternatives, or introduces additional risks of widespread service disruptions is inconsistent with these broader national objectives. Moreover, higher rail transportation costs and diminished service reliability can undermine the competitiveness of American refiners, manufacturers, and energy exporters, with consequences for domestic fuel affordability and U.S. participation in global energy markets. The Board should recognize that protecting competition, preserving transportation alternatives, and ensuring dependable rail service are fundamental components of national energy security and the public interest. API members question as to whether the Applicants have clearly demonstrated that the proposed merger will advance these objectives sufficiently to outweigh the competitive and operational risks it presents to the nation's energy supply chains.

X.2 Record Sufficiency and Judicial Review Considerations

In evaluating the proposed transaction, the Board must ensure that its decision is supported by a robust administrative record capable of withstanding judicial review. Courts reviewing merger approvals increasingly scrutinize whether agencies have adequately considered competitive harms, service impacts, and the effectiveness of proposed remedies.

A decision that relies heavily on speculative efficiencies, aggregated market screens, or voluntary commitments—without addressing substantial contrary evidence—risks being deemed arbitrary and capricious. This is particularly true where the record demonstrates heightened risk to captive shippers and essential industries.

For energy transportation markets, the Board must articulate a clear rationale for concluding that the transaction enhances competition or that conditions adequately mitigate harm. Failure to do so could expose the decision to legal challenge and undermine regulatory certainty.

By requiring detailed lane-level analysis, enforceable conditions, and ongoing oversight, the Board can both protect the public interest and strengthen the defensibility of its ultimate decision.

XI. Conditions Required if the Transaction Is Approved

IF the Board approves the transaction, it must impose comprehensive, enforceable conditions to protect energy shippers and preserve competition. Including but not limited the following:

- Mandatory reciprocal switching or terminal access for captive energy shippers.
- Physical and economic gateway protection requirements.
- Expansion and enforcement of CGP to cover energy-relevant traffic.
- Commodity-specific service performance standards with automatic remedies.
- Independent monitoring, transparency, and extended oversight (minimum of ten years) with a reopener provision.

XI.1 Comparative Remedies Analysis: Why Stronger Conditions Than Prior Mergers Are Required

Applicants argue that the conditions proposed in this proceeding are sufficient to address competitive concerns. However, a comparison with remedies imposed in prior rail mergers demonstrates that those conditions are inadequate in light of the scale and scope of the proposed UP–NS transaction. [Application, Vol. 1, "Conditions to Mitigate and Offset Merger-Related Harms," at 1-90 et seq.; Vol. 2, Turner V.S., "Service Assurance Plan," beginning at 2-845.]

In the UP/SP merger, the Board imposed extensive access and trackage-rights remedies in response to significant competitive overlap. Despite these measures, shippers experienced prolonged service disruptions and ongoing disputes over access and enforcement. This history illustrates the limitations of remedies that require continuous oversight and litigation to remain effective.

More recent mergers adopted service assurance plans and gateway protections intended to preserve competition. In practice, these remedies often suffered from ambiguity, narrow eligibility criteria, and delayed enforcement. For shippers, especially in energy markets, the practical effect was limited relief.

The proposed UP–NS transaction is larger and more complex than prior mergers, encompassing extensive east–west and north–south corridors and consolidating control

over a substantial share of energy traffic. As a result, remedies that may have been marginally sufficient in smaller transactions are plainly inadequate here.

Accordingly, if the Board approves the transaction, it must impose stronger, more comprehensive conditions, including mandatory reciprocal switching, robust gateway protection orders, enforceable service benchmarks, rate and accessorial stabilization, and extended independent oversight with a meaningful reopener provision.

XI.2 Detailed Conditions Recommendations for Any Approval

If the Board determines it will approve the Application, API urges the Board to impose stringent, enforceable conditions designed to preserve effective rail-to-rail competition, protect captive energy shippers, and ensure reliable service for hazardous materials traffic. These conditions should be self-executing where possible, minimize the need for case-by-case litigation, and include robust transparency, monitoring, and enforcement mechanisms**.**

A. Energy-Shipper Reciprocal Switching / Terminal Access Program

Create a mandatory reciprocal switching program (or comparable terminal access remedy) for captive energy shippers in defined geographic zones and at defined terminal areas where the transaction increases captivity or significantly increases the merged carrier's leverage. Eligibility must be objective and easy to verify (e.g., sole-served, or effectively sole-served terminals; documented inability to access an alternative carrier on commercially reasonable terms).

Implementation details matter. For any condition to function in the real world, shippers must be able to invoke it without undue delay, standards must be measurable, and enforcement must be timely. The Board should avoid conditions that require repeated litigation to obtain access, because delays effectively extinguish competition in fast-moving energy markets. The Board should also ensure that remedies address total logistics cost, including accessorials and service variability, not solely base linehaul rates.

Define switching service levels: maximum dwell and placement windows, minimum days-per-week switching frequency, and clear escalation protocols. Require the merged carrier to provide switching at regulated, transparent charges (or a Board-determined cap), with a fast-track dispute process.

Provide anti-retaliation protections: prohibit the merged carrier from penalizing shippers or terminals for invoking switching rights (e.g., through embargoes, reduced car supply, inferior service, or discriminatory accessorials).

B. Gateway Protection Order (Physical and Economic Openness)

- Require that designated gateways remain open on commercially reasonable terms. The condition must address both physical access (ability to interchange) and

economic access (divisions and pricing that allow interline routing to remain competitive).

- Set a parity requirement: service performance for interline routes through protected gateways must be comparable to performance for merged single-line routes, using standardized metrics (velocity, on-time performance, dwell, and cycle time).
- Prohibit discriminatory pricing and accessorial practices that disproportionately burden interline moves or short-line-origin energy traffic. Require annual public reporting and independent auditing.

C. CGP Expansion, Eligibility Safeguards, and Audit Requirements

If CGP is retained, the Board should require Applicants to (a) expand the four designated CGP gateways to include additional interchange points relevant to energy corridors; (b) define with precision the "UP/NS facilities and routes that can accommodate bulk unit train service" eligibility standard, so that it cannot function as an undisclosed exclusion; (c) provide that CGP remains in effect for the full oversight period, including any extension of that period; and (d) adopt anti-evasion safeguards: prohibit operational or classification changes designed to render shipments ineligible; require notice and Board approval for eligibility rule changes; require independent annual auditing of eligible vs. excluded petroleum traffic and reasons for exclusion. The Board should also decide, before CGP ends, whether to extend it for particular facilities or commodities, as Applicants acknowledge it could (Second Response at 39, 41). Applicants themselves offer an extension of CGP as their remedy if the merger's anticipated benefits fail to materialize (Second Response at 111–112).

Require transparency: publish a gateway list, commodity eligibility list, and a shipper-friendly process to verify eligibility and challenge denials.

D. Commodity-Specific Service Benchmarks with Automatic Remedies

- Adopt enforceable service benchmarks for energy and hazmat traffic, including placement windows at refineries and terminals, cycle-time targets for dedicated petroleum car fleets, maximum dwell thresholds, and embargo frequency limits.
- Tie benchmarks to automatic remedies: if the merged carrier fails to meet standards over defined periods, shippers should receive automatic bill credits or liquidated damages, without needing to prove harm through protracted litigation.
- Require operational data transparency for energy lanes: weekly reporting on key metrics for designated energy corridors and terminals.

E. Rate, Accessorial, Demurrage, and Storage Stabilization for Captive Energy Lanes

- Impose a stabilization condition for captive petroleum lanes and facilities, covering base rates and major accessorial categories (demurrage, storage, fuel surcharges, terminal-related fees) to prevent post-merger 'rate shock.'

- Establish objective thresholds (e.g., CPI-based caps or Board-determined limits) and a fast-track complaint process with burden-shifting where increases exceed thresholds.
- Prohibit discrimination between captive and non-captive lanes through cost allocation or accessorial structures.

F. Independent Monitor, Shipper Council, and Extended Oversight with Reopener

Appoint an independent compliance and service monitor with authority to access relevant operational and commercial data, including petroleum commodity flows, terminal performance, and interchange terms.

Create an Energy Shipper Advisory Council (as part of a broader shipper council) that includes API-member representation and short lines serving energy terminals, with authority to elevate issues directly to the monitor and Board.

Adopt an extended oversight period (e.g., minimum of 10 years) and an explicit reopener allowing the Board to strengthen or extend conditions if harms emerge or promised benefits do not materialize. The Board's rules require oversight for at least five years from approval (49 C.F.R. § 1180.1(g)), and Applicants propose no longer period (Second Response at 106). Applicants tie Committed Gateway Pricing to the end of the oversight period (Second Response at 37), and their Rate ADR Program becomes available only if the Board finds, during oversight, that the merger's anticipated public benefits have not materialized in a timely manner (Second Response at 9–10). The length of the oversight period therefore sets how long those protections last.

API requests that the Board evaluate the proposed transaction against the competitive realities of petroleum-by-rail transportation, including the facility-level evidence, commodity-specific service risks, and limits of the proposed access remedies discussed above. The Board should require Applicants to substantiate their claims using lane-level traffic and cost evidence and should not rely on temporary or difficult-to-enforce protections to resolve durable changes in market structure. If approval is granted, the Board should impose effective, independently monitored conditions that preserve meaningful rail-to-rail competition, protect energy shippers from service and pricing harms, and safeguard the reliability of the nation’s energy supply chains.

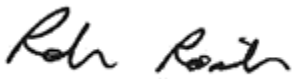
XII. Conclusion

API respectfully requests that the Board give due deference to the issues raised in this comment letter when considering the Application. API has expressed reservations that the transaction actually enhances rail-to-rail competition, protects captive shippers, and ensures durable service reliability for energy and hazardous materials traffic. If the Board approves the transaction, it must impose the conditions described above (and any additional shipper-protective conditions developed in the proceeding) to prevent the creation or

enhancement of market power and to safeguard the public interest in resilient energy supply chains.

API appreciates the Board's consideration of these comments and its careful review of the proposed transaction. API stands ready to work constructively with the Board throughout the application review process and would be pleased to provide additional information, analysis, or clarification at the Board's request, to the extent such information is reasonably available and feasible to provide.

Submitted by:



Robin Rorick
Vice President, Midstream

CC: Parties of Record"

Source References

1. Surface Transportation Board, Major Rail Consolidation Procedures, STB Ex Parte No. 582 (Sub-No. 1) (2001).
2. Surface Transportation Board, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, STB Finance Docket No. 32760, including the subsequent service disruption record.
3. UP/NS Merger Backgrounder (September 3, 2025), citing STB company-level commodity statistics (2024).
4. Letter from Senators John Hoeven and Amy Klobuchar to the Surface Transportation Board (October 30, 2025).
5. UP/NS Merger Application, Volume 2, Verified Statement of Dr. Elizabeth M. Bailey.
6. UP/NS Merger Application, Volume 2, Verified Statement of Dr. Mark A. Israel.
7. UP/NS Merger Application, Volume 1, Verified Statement of Katherine Novak, Appendix A (Competitive Gateway Plan).
8. UP/NS Merger Application, Volume 2, Service Assurance Plan.
9. American Chemistry Council, public statements, and materials concerning the proposed UP–NS transaction (2025).

10. BNSF Railway Company, public statements, and materials concerning the competitive and service impacts of the proposed UP–NS transaction (2025).