`

NGFA-5

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

-CONTROL-

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

OPENING COMMENTS OF THE NATIONAL GRAIN AND FEED ASSOCIATION

Pursuant to the procedural schedule established by the Surface Transportation Board ("Board" or "STB") on August 18, 2026, the National Grain and Feed Association ("NGFA") hereby provides its opening comments on the Amended Railroad Control Application accepted for filing by the Board on May 28, 2026, as supplemented pursuant to Board directives and also through additional extensive "errata" filings (the "Revised Application"[1]). As set forth in more detail below, NGFA has concluded that the merger as proposed in the Revised Application is not "consistent with the public interest" as that standard set forth in 49 U.S.C. §11324(c) has been applied by the Board and is implemented in the Board's regulations at 49 C.F.R. Part 1180 adopted

[1] NGFA is using the term "Revised Application" to be consistent with the term the Board has applied to the Revised Control Application in its decisions.

`

in 2001.[2] These opening comments summarize NGFA's views on behalf of its members on how the merger of UP and NS as proposed will cause competitive and service harms to the railroad transportation of agricultural commodities, as well as broader harms to agricultural markets, that will far outweigh the limited benefits of expanded single-line service the merger will provide.

For the reasons set forth in these opening comments NGFA recommends that the Board deny the Revised Application and that UP and NS should remain separate Class I railroads. NGFA further recommends that instead of approving this merger the Board should return to focusing its attention on expeditiously addressing the current shortcomings in the Board's regulations and policies governing railroad rate reasonableness, the lawfulness of railroad tariff provisions and surcharges, rail service, facilitating railroad competition, the elimination of paper and steel barriers, and other areas that add cost, inefficiency and unreliability to the rail transportation of agricultural and other commodities.

Nevertheless, should the Board determine on the public record compiled in this proceeding that the merger of UP and NS can be made consistent with the public interest if conditions are placed on the Board's approval pursuant to 49 U.S.C. §11324(c), NGFA submits that the conditions imposed *must* be significant, material, and long-term, and they must, to the best of the Board's abilities, (1) preserve existing rail-to-rail competition, (2) enhance rail-to-rail and other competition, such as geographic competition,[3] indefinitely, and (3) protect and compensate shippers and end user customers from rail service deteriorating post-merger below current levels,

---

[2] Ex Parte No. 582 (Sub-No. 1) *Major Rail Consolidation Procedures* 5 S.T.B. 539 (2001) ("*2001 Rules*")

[3] Generally defined as whether the complaining shipper can avoid using the defendant railroad by obtaining the same product from a different source, or by shipping the same product to a different destination. STB Ex Parte No. 627, *Market Dominance Determinations – Product and Geographic Competition* (served December 21, 1998) at 1.

as well as impose real sanctions for the inevitable significant service disruptions that have *always* occurred after a major rail merger has been approved by the Board. Please note NGFA's mention of these conditions does not mean NGFA believes conditions exist that could make up for the loss of a Class I rail carrier to competition and service through this merger. Conditions would merely attempt to make the loss less harmful. Nor does NGFA believe that conditions exist that will make up for the additional loss of rail-to-rail competition and service reliability should approval of this merger lead to even further consolidation.

I. Identity and Interest of NGFA

The NGFA was established in 1896, and today consists of grain, feed, processing, exporting and other grain-related companies that operate facilities handling U.S. grains and oilseeds. Its membership includes grain elevators; feed and feed ingredient manufacturers; biofuels companies; grain and oilseed processors and millers; exporters; livestock and poultry integrators; and associated firms that operate over 9,600 grain and feed facilities nationwide providing goods and services to the nation's grain, feed and processing industry. NGFA's membership includes cooperatives and private companies employing 175,000 Americans and supporting over 1.16 million associated jobs nationwide with an annual economic impact of over $401 million for the economy.

NGFA has actively participated in this proceeding on behalf of its members since the original, eventually rejected Control Application was filed on December 19, 2025. NGFA has consistently argued that the Revised Application does not meet the threshold requirements of the *2001 Rules* and it should therefore be denied on that basis alone.

II. Summary of the Agricultural Industry's Use of the Nation's Rail System

Agricultural rail traffic is concentrated in bulk grains (corn, soybeans, wheat, sorghum,

`

etc.) moving from Midwest/Plains production areas to processors, livestock feed users, biofuel facilities, and export ports, plus inbound fertilizer and outbound processed foods. Agricultural demand for rail service can fluctuate significantly from year to year based on crop production, commodity flows, and market demand, making access to adequate, reliable, and competitively priced rail capacity critical to moving agricultural products when and where demand occurs.

Farm Products (STCC 01, which includes grains and oilseeds) is the 4th largest 2-digit STCC commodity on the rail system, by tonnage, and Food or Kindred Products (STCC 20) is 6th.[4] Roughly 26% of domestic U.S. grain movements and about 45% of grain export movements also move by railroad, with corn being the largest single grain by rail volume. Railroads carry about 1.6 million carloads of grain and grain-related products and 1.7 million carloads of food products each year. Freight railroads help make the U.S. a top global grain exporter.

Interchange of trains and railcars of Agricultural Commodities[5] between the eastern and western Class I railroads occurs primarily at connections in Chicago, Kansas City, St. Louis and East St. Louis. These interchanges handle the bulk of interchanges for grain originating in the Corn Belt, Great Plains, and Northern Plains moving to domestic processors, livestock feed markets (especially in the South and East), or export routes. Other Midwest points also handle meaningful agricultural commodity interchanges depending on the specific origin-destination pair and carriers involved.

---

4 https://agtransport.usda.gov/stories/s/Agriculture-on-Rail/25z9-isvp/

5 For this Opening Evidence NGFA defines the term "Agricultural Commodity" to include the commodities listed in Table 1 on page 5 of the attached Verified Statement of Karen M. Burchfield, Rail Industry Expert and Project Leader for PraxiChain Consulting ("Burchfield V.S.") which analyzes the potential effects of the proposed merger on Agricultural Commodities, in particular the Applicants' proposed "Committed Gateway Pricing" program. The listing includes commodities falling under the STCC codes for "Grain" but also grain-derived products and feed ingredients.

`

Three of these interchange "gateways" - Chicago, St. Louis, and Memphis - are among the four "watershed" areas emphasized in the Revised Application. These areas are defined by the Revised Application as markets within roughly 250 miles of Chicago, St. Louis, Memphis, and New Orleans. Rev. App., Vol. 1 at 13. These four areas are identified as "the central interchange gateways between UP and NS, where freight today must change hands, where delays and costs accumulate, and where railroads lose freight to trucking." *Id*. The proposed merger's elimination of interchanges between UP and NS in the "watershed" areas and resulting single line service over the merged system is touted as the "merger's central benefit". *Id* at 54. NGFA does not dispute that single-line railroad service can be preferable to joint line service. Taking extra movements and handoffs out of the overall transportation and streamlining operations can be beneficial to agricultural shippers, who often ship commodities by unit trains. However, the incremental benefits of increased single-line service that would be created by the merger of UP and NS are far outweighed by the harms the merger would cause in terms of reduction of competition, elimination of agricultural markets, rate increases, and service reductions and disruptions.

III. The Proposed Merger Will Not Preserve or Enhance Competition for the Rail Transportation of Agricultural Commodities

A. The Need for Rail-to-Rail Competition

Competition between Class I railroads is essential in the agricultural commodity industries. Having two or more railroads as alternative providers at origin and/or destination provides NGFA members with the ability to choose between multiple carriers for origin-destination pairs, enabling more flexible and efficient logistics planning. Multiple carriers competing for business establish market forces to constrain rail rates and prevent monopolistic pricing behavior. This is especially critical for Agricultural Commodity shippers, who do not have an accessible means to try to

`

constrain railroad rates through the STB rate reasonable processes. No captive agricultural shipper in the United States has ever successfully challenged a railroad rate at the Interstate Commerce Commission or STB. Consequently, even when rail rate increases are substantial, this history, combined with the cost, complexity, and time required to pursue a rate challenge under the Board's current rules make such cases strategically and economically impractical for agricultural shippers. The Class I railroads know this is an industry reality when setting rates and service terms for Agricultural Commodity shipments.

Competition can also incentivize carriers to provide better service, which can include faster transit times, more regularity with pickups and deliveries, better railcar availability, and responsiveness to customer complaints and questions. Access to more than one carrier also provides shippers with critical alternatives to try to mitigate costs and business losses when a railroad experiences service failures, system outages, labor shortages and/or disputes causing interruptions in service, equipment shortages, and network congestion. Competitive pressure can also incentivize carriers to invest in infrastructure, technology, and service enhancements to attract new customers and retain existing customers. Finally, access to multiple railroads provides agricultural shippers with the flexibility to reach multiple domestic and export markets and respond quickly to changing global grain flows and demand.

For all these reasons, the further reduction of the number of Class I railroads in the U.S. from six to five by allowing UP and NS to merge and accumulate around 40% of all rail transportation will, by definition, reduce rail-to-rail competition in the United States, which NGFA maintains is indisputably *not* in the public interest. As such, the bar for finding this proposed merger to be in the public interest despite that reduction in competition and concentration of market power should be set extremely high even before the Board analyzes the merits of the proposal,

`

which are lacking.

B. The Proposed Merger Would Not Enhance Competition for Agricultural Commodities

1. Enhancing Competition for Railroad Service is a Critical Requirement of the *2001 Rules*

The *2001 Rules* came on the heels of three major rail mergers in the 1990s and they were prompted by the announcement of BNSF Railway's predecessor and Canadian National Railway's intent to merge[6] In anticipation of the industry rapidly being reduced to two participants, *2001 Rules* at 545, the Board codified several substantive new merger policies future merger applicants would be required to adhere to and specifically address in their merger application to avoid further reductions to intermodal and intramodal competition in the railroad industry, and to prevent the re-occurrence of the significant, catastrophic, railroad service failures that had occurred in the major railroad mergers that immediately preceded the *2001 Rules.*

As to the former – competition - the *2001 Rules* are clear that a major merger application should contain specific and detailed information about how the merger applicants will not only preserve existing competition but also how it will enhance it. Specifically, under 49 C.F.R. §1180.1(c):

> Although further consolidation of the few remaining Class I carriers could result in efficiency gains and improved service, the Board believes additional consolidation in the industry is also likely to result in a number of anticompetitive effects, such as loss of geographic competition, that are increasingly difficult to remedy directly or proportionately. Additional consolidations could also result in service disruptions during the system integration period. Accordingly, to assure a balance in favor of the public interest, merger applications should include provisions for enhanced competition . . .

---

[6] *Canadian National Railway Company, Grand Trunk Western Railroad Incorporated, Illinois Central Railroad Company, Burlington Northern Santa Fe Corporation, and The Burlington Northern and Santa Fe Railway Company — Common Control*, STB Finance Docket No. 33842, Decision Nos. 1 & 1A (served Dec. 28, 1999)

`

While the Board declined the invitations of stakeholders to define the term "enhanced competition," it nevertheless took pains to set out in the *2001 Rules* the measures it expected applicants to consider and address when meeting this aspect of the rules. Primary among the measures was the enhancement of rail-to-rail competition. For example, the Board advised that:

> [c]ompetition can be enhanced in many ways. The focus of such a plan could be placed on enhancing intramodal (rail-to-rail) competition, for example, by the granting of trackage rights, the establishment of shared or joint access areas, the removal of "paper" and "steel" barriers, and other techniques that would enhance railroad-to-railroad competition.

2001 Rules at 554. Further evidence of the Board's emphasis on future merger applicants to propose means to enhance rail-to-rail competition, it further advised:

> [o]ur new rules reflect an intention on our part to offset, through conditions for competitive enhancements, those merger-related harms that cannot be directly or effectively mitigated. Such competitive enhancements could include, but would not be limited to, reciprocal switching arrangements, trackage rights, or elimination of 'paper barriers' on interchange by shortline carriers.

Id. at 547. Finally, the Board favored the fact that creating or enhancing competition between Class I railroads permitted competitive gains to "be realized immediately," and the Board assumed – based on the state of the rail industry in 2000 - such benefits would include "passing on the beneficial results of their merger efficiencies to the shipping public." *Id*. at 550, 549.[7] Consequently, the Board stated that "provisions for competitive enhancement will be given substantial weight as merger benefits and are likely to be extremely important to us in determining whether to approve a particular application." *Id*. at 554.

---

[7] Whether it can be assumed in 2026 that merger efficiencies will be passed on to the shipping public is questionable given that shortly after the *2001 Rules* were adopted Class I railroad rates and profitability skyrocketed. https://www.stb.gov/wp-content/uploads/Annual_Rail_Rate_Index_Study_2022.pdf. Moreover, the Revised Application does not commit to pass on any merger efficiencies to shippers in the form of lower rates.

`

2. The Revised Application Would Not Enhance Competition for Agricultural Commodities

The Applicants have proposed none of the measures to enhance rail-to-rail competition suggested by the Board in the *2001 Rules*. Indeed, the Applicants have proposed the Board adopt a definition of "enhanced competition" that does not even mention intramodal, rail-to-rail competition.[8] Instead, they define it as requiring merger applicants to address "competitive harms such as the loss of geographic competition" and "transitional service disruptions that might temporarily negate shipper benefits." Applicants' Second Response to Decision 21, filed July 27, 2026 ("Second Supplement") at 13-14, *citing* 49 C.F.R. §§ 1180.1(c) and (d). Applicants' exclusion of rail-to-rail competition from their definition of enhanced competition should prevent approval of the Revised Application showing by itself. But in any event, as discussed below and demonstrated in Ms. Burchfield's Verified Statement, the Revised Application's sole proposed means to enhance competition – Committed Gateway Pricing ("CGP") does nothing of the sort. Under CGP, only a small fraction of rail shippers specifically would be eligible to participate in CGP under its narrow criteria, and a much smaller subset would actually benefit from CGP. Burchfield V.S. at 8-12.

As for CGP's purported application to agricultural shippers, CGP would not enhance competition between any shippers, and agricultural commodity shippers specifically. Ms. Burchfield's analysis demonstrates how CGP is not conceptually or actually a means to enhance competition between railroads. Rather, it is a proposed proportional rate formula that would only

[8] The Revised Application continues to make the overall claim that competition would be enhanced simply by UP and NS merging, namely, by the merged railroad putting pressure on other railroads to adapt in order to remain viable entities, and through diversions of truck shipments to rail. Rev. App. Vol. 1 at 13, 23. NGFA submits Applicants have relied on a strained reading of 49 C.F.R. §1180.1(c)(2)(iv) as support that the merger regulations permit a showing of enhanced competition. *See*, Applicants' Response Regarding their Prima Facie Case, UP-94/NS-93 at 21.

temporarily preserve competitive options for a small fraction of shippers that include some agricultural commodity shippers. Specifically, of the 257,971 total eligible carloads calculated by the Revised Application using 2023 traffic data pursuant to CGP's restrictive eligibility criteria, only {{[redacted]}} Agricultural Commodity carloads out of the 3.3 million carloads of agricultural products shipped by rail annually – less than 2% - would be eligible to participate in the CGP program. *Id*. at 12. Of this pool, the number of Agricultural Commodity shippers who could potentially *benefit* from the CGP program from lower rates is much smaller, as only {{[redacted]}} carloads – substantially less than 1% - would potentially benefit. *Id.*

The same analysis conducted with more recent 2024 traffic data produces an overall CGP eligible pool of [redacted] eligible carloads. *Id.* at 6-8 (explaining reasons for using 2024 data). Of this reduced amount only {{[redacted]}} Agricultural Commodity carloads would potentially benefit from participating in the CGP program, which is less than half of 1% of the total carloads of Agricultural Commodities shipped annually. *Id*. The small number of Agricultural Commodity shippers who would potentially benefit is primarily due to the fact that the rates for most CGP-eligible Agricultural Commodities are, or would be, below the CGP 70th percentile rate floor, which means that to participate in CGP would mean an increase to pre-merger rates. This negative feature of CGP is illustrated graphically for Agricultural Commodities, certain agricultural commodity groups, and unit train grain carloads. *Id*. at 15-19.

For example, NGFA's analysis revealed that only {{[redacted]}} carloads of Agricultural Commodities transported by bulk (unit) trains (trains greater than 67 cars with a single commodity) would be eligible for CGP. *Id*. at 16. However the great majority of those carloads move at rates below the 70th percentile floor so they would not benefit from participating in CGP. Consequently, NGFA disagrees with comments in the Revised Application that modifications to CGP made by

`

Applicants in the Second Supplement – primarily the addition of "bulk" trains– adequately addressed the concerns with CGP held by agricultural shippers.[9] The merger combined with CGP as modified by the Second Supplement would not "open new markets" to "American agricultural shippers" through "single line routing possibilities." Second Supp. at 20. Similarly, Applicants' representations in their Second Supplement that "Committed Gateway Pricing will also create new head-to-head competitive options for shippers, including for agricultural shippers in the watershed region, who will also gain access to the merged railroad's expanded network of single line routing opportunities" (*Id.* at pages 8-9) greatly exaggerates the effects of CGP.

3. The Proposed Merger Would Result in the Elimination of Existing Gateways and Higher Rates

Not only would the proposed merger reduce competition for agricultural traffic by reducing the number of Class I carriers and not enhance competition for agricultural shippers by providing them access to additional transportation options or markets, the merger of UP and NS would also result in a reduction of existing competition and routings by creating an obvious incentive for UP and NS to foreclose existing interchanges. This outcome is plainly evident from the Applicants' own filings, which repeatedly tout their goal of maximizing the number of single-line movements of the merged railroad. *See, e.g.,* Rev. App., Vol. 1, pages 13, 19-20, 27, 34 and 38. Maximizing long, single-line rail movements is directly inconsistent with keeping existing interchanges with the remaining Class I railroads open.

[9] *See also*, Second Supp. at 19-20. "stakeholders representing agricultural interests observed that excluding bulk unit train traffic from Committed Gateway Pricing left their traffic entirely outside the program, significantly limiting CGP's practical value to them. In response, Applicants will extend CGP to bulk unit trains."

`

a. The CPKC Gateway Condition Has Been Ineffective

The Applicants propose to preserve competition at the vast majority of existing interchange points by using the methodology fashioned by the STB and made a condition of its approval of the CPKC merger. These conditions were adopted over the strong objection of NS and UP, the latter of whom ridiculed the concept of CP and KCS agreeing to keep gateways open on "commercially reasonable terms," and called the notion of arbitrating such questions "entirely illusory."[10] In a reversal of these objections for their merger, UP and NS have offered the same conditions imposed on the merged CPKC:

1. Keeping all "existing gateways"[11] open for "eligible traffic" on "commercially reasonable terms."

2. Provide a customer upon request a written justification for any rate increase above the rate of inflation for interline movements subject to the open gateway condition.

3. Commit to gateway-related reporting requirements analogous to those imposed in FD 36500.

4. The commitment to keep existing, major gateways open on commercially reasonable terms will apply in perpetuity and to all traffic, including intermodal and other traffic that is exempt.

5. The merged railroad would not take the position that the open gateway commitment does not apply because of a lack of market dominance or a revenue-variable cost percentage generated by the traffic is less than 180 percent.

---

[10] FD 36500, Union Pacific Railroad Company's Final Brief ("UP FD 36500 Final Brief") at 14. *See also,* CSX Transportation Inc.'s Motion for Summary Denial, CSX 19, at 27, note 18 ("In the CP/KCS proceeding both Applicants argued vigorously that these exact conditions would prove ineffective, even in the face of a much smaller merger. UP *CP/KCS* Comment 8-10, 68-71; NS *CP/KCS* Comment 43-46. Most starkly, UP senior commercial executive Kenny Rocker explained in detail why the core of the *CP/KCS* open gateway conditions was 'illusory and unenforceable.' UP *CP/KCS* Rocker-Turner V.S. 17-20 (emphasis added)").

[11] "Traffic that UP or NS interchanged with another carrier for which the transaction will create a longer UP/NS haul than was available on the UP or NS system pre transaction." Rocker V.S. at 348.

`

6. The railroad would commit to offer connecting carriers commercially reasonable rate divisions and to negotiate in good faith with the connecting carrier to seek to resolve any disagreements about the commercial reasonableness of proposed divisions.

7. The combined entity will not create any new regulatory "bottlenecks" that, as a result of the transaction, might limit a customer's ability to access relief via the STB's rate review processes.

Revised App., Vol. 1, Rocker V.S. at 348-350

As an initial comment, NGFA maintains that consideration of these voluntary gateway protections offered by UP and NS must be viewed by the Board with suspicion given (1) UP's and NS's positions in the CPKC merger proceeding that such conditions are illusory and unenforceable, and (2) the "central benefit" of their desire to merge is their goal to eliminate interchanges and maximize single line routings on the merged railroad, which is directly contrary to keeping existing gateways with other Class I carriers open. Additionally, the CPKC gateway conditions have been in place for over three years, but the Revised Application contains no evidence that the condition has achieved its objective of preserving gateways in existence when that merger was approved. Nor, in NGFA's view, can such an evaluation be reasonably made by shippers from the data reports provided to the Board by CPKC concerning gateways, which are submitted almost entirely under seal, and the redacted spreadsheets published on the STB"s website do not convey readily useful information.[12] NGFA submits that before the Board can even consider approving the CPKC gateway conditions for the merger of UP and NS it should at least satisfy itself that the conditions have (or have not) worked, and also improve the reporting requirement to enable industry stakeholders to monitor the condition and seek relief if necessary.

In addition, after their criticisms in Docket No. FD 36500 that the lack of a definition of

[12] *See, e.g.*, https://www.stb.gov/proceedings-actions/search-stb-records/?action=stb_hook_table_filings&current-page=1&per-page=50&sort-by&sort-order&docketNum_one=FD&docketNum_two=36500

`

"commercially reasonable terms" is a fatal deficiency of the CPKC merger gateway condition, *see* UP FD 36500 Final Brief at 15, the Applicants offer no definition of their own in their Revised Application. NGFA believes the fact that (to NGFA's knowledge) no gateway rate disputes have been submitted to the Board or an arbitrator post-CPKC merger, yet traffic has shifted to CPKC single-line movements is confirmation that the concerns of UP, NS, and others appear to have been valid.

In short, NGFA has no confidence that UP and NS's offer to adopt the CPKC gateway condition in exchange for approval of their merger will "ensure that the transaction will not result in any foreclosure of customers' opportunities to use existing interline routes that they might prefer to the new UP/NS single-line options." Rocker V.S. at 348. As discussed below, it is much more likely that the merger will result in vertical foreclosure of existing interchanges.

b. Vertical Foreclosure of Interchanges by the Merged Railroad will Drive up Costs and Rates

Where a shipment requires a competing connecting carrier, the merged UP-NS railroad will have the incentive and the commercial leverage to favor destinations on its own system. Gateway closure can occur economically even where the physical connection remains open. Burchfield V.S. at 32. By diverting traffic from shared gateways and shortening competitors' hauls through rates and service offerings, it can also raise those carriers' per-unit costs and weaken their ability to offer competitive alternatives by increasing pressure to raise rates. This illustrates the economic mechanism known as "raising rivals' costs" ("RRC"). *Id*. at 32-34. Pursuant to this theory, a vertically integrated firm need not eliminate a competitor or deny it physical access. It may instead weaken the competitor by increasing the cost of an input required to participate effectively in the market. The higher-cost rival may raise prices, accept lower margins, reduce output, curtail investment, or compete less aggressively. The firm controlling the input may then

`

increase its own prices or capture additional market share. *Id.* As the proportional rates rise, connecting Class I carriers must either absorb the cost, pass it through in the form of higher rates, or surrender traffic to the carrier favoring its single line route. *Id.* Under these circumstances, UP-NS would not need to lower its own rate to prevail. It would need only to increase the cost at which its competitor can assemble the alternative route. *Id.* at 34-35. NGFA believes such behavior on the part of a merged UP and NS would be a result of their merger as proposed.

Moreover, the Applicants' efforts to expand their single line movements will result in existing interchanges shifting as the combined carrier extends its overall system into the west and the east. Extending the merged carrier's haul will shorten the hauls of the remaining Class I carriers, which will result in increasing their burden of supporting shared infrastructure. *Id*. at 24. This will cause fixed costs transfers and linehaul revenue erosion. *Id*. at 24-25. The problem is exacerbated for Agricultural Commodity shippers because the merger of UP and NS would result in over half of them being dependent solely on the merged railroad for service. *Id*. at 25-29.

IV. The Revised Application's Service Assurance Plan Does not Comply with the *2001 Rules*

A. The Service Assurance Plan Provisions in the *2001 Rules* Contemplate Creating Real Incentives for Merging Railroads to Assure Service will not Deteriorate Post-Merger

The text and purpose of the *2001 Rules* were greatly influenced by the fact that the major railroad mergers that occurred between 1995 and 1999 had resulted in significant, systemwide service failures. *2001 Rules* at 545. The service failures after the merger of UP and Southern Pacific in particular were so widespread they caused billions of dollars in monetary losses (at 1996-97 levels) to rail shippers and the nation's economy, prompting several Congressional hearings.[13]

[13] Just one example was the hearing held on April 9, 1998 entitled *Rail Freight Transportation* held before the Senate Committee on Commerce, Science, and Transportation, Subcommittee on Surface Transportation and Merchant Marine Subcommittee (105th Congress,

`

Accordingly, when drafting and finalizing the *2001 Rules,* the Board rightfully assumed that "[t]ransitional service disruptions are likely," *Id*. at 557, and that "future mergers involving the remaining major carriers entail a risk of significant service disruptions that could be nationwide in scope . . . ." *Id*. at 558.

Consequently, the Board was intent on preventing the "serious transitional service problems that have accompanied recent major rail consolidations." *2001 Rules* at 546. It announced that "[w]e do plan to take a more skeptical, 'show me' attitude toward claims of merger benefits and toward claims that no transitional service problems would occur." *Id.* at 549. Importantly, the Board adopted the salutary approach of requiring merger applicants to provide a Service Assurance Plan with specific, measurable benchmarks of planned post-merger service accompanied by specific measures that would be taken to hold applicants accountable if the promised service levels failed to materialize. Accordingly, instead of mere promises, merger applicants are required to supply *assurances, i.e*., a "pledge or guarantee."[14]

As such, the *2001 Rules* state "[t]o ensure that applicants have no incentive to exaggerate [the] projected benefits to the public, the Board expects applicants to propose additional measures that the Board might take if the anticipated public benefits fail to materialize in a timely manner." 49 C.F.R. § 1180.1(c)(1). Applicants must submit a precise, detailed Service Assurance Plan that provides the Board and industry stakeholders in advance with a written plan to which the Applicants can be held to account when any post-merger service disruptions occur. Specifically, the Service Assurance Plan must identify "precise steps [applicants] would take to ensure adequate service, and to provide for improved service." 49 C.F.R. §1180.1(h)(1). Section 1180.10 also

---

2nd Session). https://babel.hathitrust.org/cgi/pt?id=uc1.b5183096&seq=1

[14] https://www.merriam-webster.com/dictionary/assurance.

`

requires the Applicants to provide a detailed description of where the potential service degradation might occur.

In order to establish a baseline to which post-merger service can be compared "applicants will be required to provide service benchmarks, describe the extent to which they have entered into any arrangements with shippers and shipper groups to compensate for service failures, and establish contingency plans that would be able to mitigate any unanticipated service disruptions." *2001 Rules* at 612. The plan must include "benchmarking" defined as "specific service levels before the transaction is implemented." *2001 Rules* at 579, note 50. The reason for mandating service benchmarks in the application was therefore clearly to be able to identify and address service reductions and disruptions that the Board anticipated would occur post-merger.[15] As the Board stated, "[w]e are acutely aware that, as we approach the "end-game," the price for any failure would be high. *Id*. at 560.

The intent and policy purpose of the Service Assurance Plan provisions of the *2001 Rules* is therefore clear: the Board in 2000-2001 expected service disruptions would occur after the next major merger and it was not going wait until after the merger was approved to start to attempt to resolve them. Rather the *2001 Rules* require pre-merger service benchmarks from which to objectively measure and deal with service deterioration post-merger in an objectively determined manner.

The Revised Application does contain some benchmarks for grain traffic. NGFA has not

[15] "We agree with many shippers that properly benchmarked performance measures would aid in our assessment of the progress of a transaction after implementation. The corridor performance measurements we are requiring as benchmarks include corridor mileage, elapsed time, and carload volume by traffic type (merchandise, intermodal, automotive, unit coal, unit grain or others that are of significance), for carload traffic moving to and from major origins and destinations." *2001 Rules* at 580-81.

conducted a complete analysis of the accuracy or reasonableness of the benchmarks for grain traffic. Rather, NGFA has focused these opening comments on the fact that the Service Assurance Plan is fatally deficient on the requirement that the Applicants propose meaningful, objective ways for them to be held accountable for service reductions and disruptions should the merger be approved. As discussed below, the Applicants' Service Assurance Plan violates both the foregoing letter and spirit of the *2001 Rules* in two primary ways.

First: The plan would apply to only a fraction of the shipper traffic that will be affected by the merger by expressly limiting its features to non-exempt traffic transported via common carrier tariffs. No service assurances of any kind would be provided to exempt commodities, intermodal traffic, and – very important for agriculture rail shippers – traffic that moves by contract. This and other excluded traffic would receive no assurances that their service would deteriorate or be disrupted post-merger.

Second, for the limited amount of traffic that is covered by the Service Assurance Plan, its terms provide no meaningful incentives for the Applicants to maintain pre-merger service levels and prevent service from declining post-merger. Indeed, the Applicants' proposal specifically contemplates *service will deteriorate post-merger* without penalty to the Applicants unless and until the deterioration reaches emergency levels. Even then, relief for such service reductions would only be available through litigation, with no reference to service benchmarks contemplated. Consequently, NGFA disagrees with Applicants that they have "demonstrate[d] that the proposed transaction is supported by a comprehensive framework for protecting shippers against any unforeseen service disruptions." Second Supplement at 11.

1. The Service Assurance Plan's Exclusion of Contract Traffic Is Improper

The *2001 Rules* do not eliminate contract traffic, or any other traffic from the Service

`

Assurance Plan.[16] NGFA maintains that the Applicants were required to include contract traffic in their Service Assurance Plan in recognition of established precedent regarding the Board's jurisdiction over rail transportation contracts in cases of service disruptions. Indeed, in response to service disruptions after the Board approved the merger of UP and Southern Pacific Lines the Board imposed remedies asserting jurisdiction over UP rail transportation contracts. *STB Service Order No. 1518*, *Joint Petition for Service Order* (STB served Oct. 31 and Dec. 4, 1997, and Feb. 17 and 25, 1998) (Service Order 1518). Subsequently, the Board has steadfastly refused to disclaim jurisdiction over contracts in such situations and has held that questions on this issue "are best left to a case-by-case examination." EP 628, *Expedited Relief for Service Inadequacies* (served December 19, 1998) at 10; *accord* Docket No. EP 762, *Revisions to Regulations for Expedited Service Emergencies* (served January 24, 2024) at 28. NGFA argues that under the intent and purpose of the *2001 Rules* Service Assurance Plan provisions, merger applicants should be required to address how their Service Assurance Plan would assure service to contract shippers affected by the merger. Excluding contract traffic is not consistent with applicable law. This is particularly relevant for shippers of agricultural commodities, who primarily ship by rail pursuant to rail transportation contracts.

2. The Service Assurance Plan Violates the *2001 Rules* Because it Would Permit Service to Substantially Deteriorate Post-Merger Without Consequences to the Applicants or Incentives for Them to Maintain Pre-Merger Service Levels.

[16] Applicants have also excluded exempt traffic under 49 C.F.R. Part 1039, which includes some agricultural commodities in Section 1039.1. None of these commodities would be afforded protections for poor service after the merger, absent a waiver or revocation of the exemption. *See* Second Supplement at 127 ("Customers shipping exempt traffic likewise have an established path for obtaining a remedy. Although the Board has determined that regulation of such traffic is not necessary, Congress preserved the Board's authority to revoke an exemption, in whole or in part, where regulation is warranted"). Any relief would be prospective, however. *Id.*

`

For the limited subset of affected shipper movements the Plan would apply to – common carrier tariff traffic - Applicants have made general promises of discussion of service issues with customers and creating teams to try to resolve service disruptions and compensate shippers for losses caused by poor service post-merger. Rev. App., Vol. 2 at 1036-1037. However, they have not proposed any procedures that would enable rail shippers to quickly and efficiently present, resolve, and be compensated for service-related claims as contemplated by the *2001 Rules*. Instead, UP and NS have proposed procedures that, at most, would hold them to the same standards for liability for poor service under the Board's emergency service regulations that would apply if they did not merge. This is hardly the higher level of "service assurance" intended by the Board and required by the *2001 Rules.*

More specifically, the Revised Application, as supplemented, proposes only two purported mechanisms by which a shipper could seek relief for service deterioration post-merger: the so-called "Damages ADR Program" and the "Targeted Access Program." Both violate the letter and spirit of the *2001 Rules*.

a. The "Damages ADR Program" Provides No Incentives to Assure Service to Any Shipper within its Severely Limited Scope

As envisioned by the Board, an arbitration system that complies with the *2001 Rules* should "identify in advance levels of service failure that would be construed as a failure to provide common carrier service and … stipulate a system for compensating shippers that are harmed by such failures." *2001 Rules* at 580. Further, "[w]ith those service levels in place, these disputes could be readily handled by an arbitrator if an affected shipper wishes to utilize such arbitration procedures." *Id.* Thus, the *2001 Rules* contemplate an objective, "readily handled" dispute resolution process that enables compensation to shippers for service failures to be easily calculated or stipulated. Such a process would alleviate the "incentive to exaggerate [the] projected benefits

`

to the public." *Id.* at 610. Pursuant to 49 C.F.R. § 1180.1(h)(5) applicants must "suggest a protocol for handling claims related to failure to provide reasonable service due to merger implementation problems."

In response to this directive the Revised Application includes what the Applicants call a "Damages ADR Program." Second Supplement at 119-128. In its prior filings in this proceeding NGFA has highlighted how the Applicants' proposal falls short of the Board's expectations and the *2001 Rules*.[17] Specifically, rather than propose a system whereby service claims to arbitration could be "readily handled" and compensation to shippers to be determined by measuring post-merger service against pre-established service levels, the Revised Application proposes to limit arbitration to questions of "whether the Carrier failed to provide reasonable service due to merger implementation problems during the statute of limitations period." Rev. App., Vol. 2, at 1141. NGFA presumes Applicants are referring to the 2-year limit under 49 U.S.C. §11705(c), which is nowhere mentioned in the *2001 Rules* as a limitation on claims under a Service Assurance Plan. Other restrictions on the scope of the Damages ADR Program (in addition to it applying only to common carrier tariff traffic) are as follows:

1. The program would only be available for three years after the merger was approved.
2. Shippers would have a limited right to appeal.
3. Relief would be capped at $2,000,000 and restricted to direct damages only; no right to lost profits.
4. The terms would be subject to any limits in UP and NS tariffs.
5. No injunctive or equitable relief.

Id. Contrary to the *2001 Rules*, the failure to "provide reasonable service" would not be objectively

[17] NGFA-3, Comments on Completeness of Application, filed December 29, 2025; NGFA-4, Comments on Completeness of Amended Application, filed May 8, 2026.

`

determined using benchmarks, nor would the merged carrier have any incentive to assure shippers that it will fulfill pre-merger promises. Rather, post-merger rail service to a customer would be considered "reasonable" under the Plan until it reached the level of "substantial deterioration," which the customer would then bear the heavy evidentiary burden to demonstrate in an arbitration before obtaining any relief.[18] *Id.* Moreover, in addition to apparently cutting any damages off via the two-year statute of limitations discussed above, Applicants' proposal would eliminate any compensation to a shipper for damages it incurs from "substantially deteriorated" rail service if the merged railroad "cures" the service issue within the 30-day period after notice of arbitration is provided. What level of deteriorated service would be considered a "cure" was not explained at first, but the Applicants nevertheless announced this would be "complete defense" to liability for damages previously incurred which triggered the arbitration in the first instance. *Id.*

In the Second Supplement, the Applicants responded to the Board's requests to clarify the arbitration proposal by first confirming that "substantial deterioration in service" was not to be based on any pre-merger service benchmarks, but rather on the narrow standard for emergency service in 49 C.F.R. § 1147.1(a); *id.* § 1146.1(a), which would require a finding of "serious, localized railroad service problems," not "minor service disruptions." Second Supplement at 121-122. In doing so, the Applicants confirmed that their Damages ADR Program would permit the merged railroad's service to be considered "reasonable" until it deteriorated post-merger to a point just shy of "substantial deterioration," which Applicants contemplate would be resolved in an evidentiary adjudication before an arbitration panel applying STB rules and precedent. This

[18] The complete standard would require a shipper to demonstrate via litigation that (a) it suffered a substantial deterioration in service that was not cured by the railroad prior to the commencement of arbitration, (b) that merger implementation was the proximate cause of that substantial deterioration in service, and (c) that the substantial deterioration in service caused direct damages to the customer." Second Supplement at 121.

`

proposal to litigate all service disruption disputes in individual adjudications on unspecified factual evidence instead of a "stipulated system for compensating shippers" or performance benchmarks is directly contrary to the letter and spirit of the *2001 Rules.*

Further, in response to the Board's question of what it would mean to "cure" a service deficiency after a notice of arbitration, the Applicants explained in the Second Supplement that whether the merged railroad has cured a service issue would also require litigation before an arbitrator. *Id*. at 124. Specifically, the determination would again not be based on any pre-merger benchmarks but would, in Applicants' view "necessarily depend on the nature of the service deficiency that gave rise to the claim and whether the carrier has restored service that is "reasonable under the circumstances." *Id*. Under this standard, the railroad would not even necessarily be held to the level of service that caused the shipper to invoke arbitration in the first place. This is conceivable if the merged railroad is having systemic service problems post-merger. In such case, the "cure" standard would permit a reduction in service to all customers without penalty, leaving aside that under Applicants' proposal the service could deteriorate to the point customers were enduring "serious, localized railroad service problems" for the duration of the arbitration.

In summary, the Applicants' Damages ADR Program arbitration proposal does not comply with the *2001 Rules*, rendering the Revised Application materially deficient as to a critical component of the *2001 Rules*.

b. The "Targeted Access Program" Is Also Inconsistent with the *2001 Rules*

NGFA also submits that the Applicants' proposed "Targeted Access Program"[19] also falls short. Under that proposal, a customer captive to the merged railroad located in a "terminal area"

[19] The Targeted Access Program is summarized in Appendix A to Applicants' Second Response to Decision No. 21. UP-80, NS-78, filed July 27, 2026.

`

could become potentially eligible for "expedited" reciprocal switching if, during the "three-year merger implementation period" after merger approval: (1) its Original ETA or Industry Spot & Pull performance as reported to the Board in *Updating Class I Rail Carrier Reporting Requirements*, Ex Parte 787 (served May 8, 2026) and codified at 49 C.F.R. § 1251.2, has deteriorated from pre-merger levels, and (2) that performance falls below 70% for Original ETA or 85% for Industry Spot & Pull. Service falling below these thresholds would create a rebuttable presumption of eligibility for reciprocal switching that the merged railroad could contest with certain "affirmative defenses" in litigation before an arbitrator.

However, like the Damages ADR Program, the Targeted Access Program would be subject to carrier-imposed limitations and would require overcoming onerous litigation hurdles. First, the proposal would only apply to reductions or deterioration of service after the merger is approved and for only a three-year period. Second, any switching ordered through the arbitration process proposed by Applicants would be limited to only six months. Third, disputes over compensation to the merged railroad would be determined through litigation. Fourth, like the Damages ADR Program. the Targeted Access Program would erect additional litigation barriers in the form of the carrier's right to "cure" and to raise multiple affirmative defenses, which include such vague standards as "materially degrade system fluidity," "customer's failure to increase its operations to help address surges in volume", and "otherwise unduly impair Carrier's ability to serve existing customers"[20] Finally, the Targeted Access Program is silent as to the participation of the carrier

[20] The program also would also exclude reciprocal switching relief if "The Carrier's failure to meet the performance standard was due to extraordinary circumstances beyond the carrier's control, including but not limited to . . . ., accidents, derailments, . . . and extraordinary surges in volume." These factors would create additional issues to litigate prior to obtaining relief since these occurrences are not necessarily out of a railroad's control.

that would provide the reciprocal switching. In summary, the Targeted Access Plan would not provide service assurance as envisioned by the Board in the *2001 Rules.*

V. Downstream Effects of Approving the Merger

Under the *2001 Rules* the Board no longer evaluates the merits of a major transaction in isolation. 49 C.F.R. 1180.1(i). Now, "[t]he Board must also consider the cumulative impacts and crossover effects likely to occur as rival carriers react to the proposed combination. The Board expects applicants to explain how additional Class I mergers would affect the eventual structure of the industry and the public interest. Applicants should generally discuss the likely impact of such future mergers on the anticipated public benefits of their own merger proposal." The regulations also state that "Applicants should anticipate whether additional Class I mergers are likely to be proposed in response to their own proposal and explain how, taken together, these mergers, if approved, could affect the eventual structure of the industry and the public interest." *Id*. at § 1180.6(b)(12).

NGFA concurs with the observations made by other parties of record in this proceeding that the Applicants in this proceeding have not complied with the Board's regulations, and that there will in fact very likely be cumulative impacts from their combination, including prompting further consolidation of the railroad industry. *See, e.g.,* Joint Shipper Associations Motion for Summary Denial, ACC-6 / ACD-6 / AFPM-6 / NITL-3 / TFI-6, filed August 6, 2026 at ("By denying even the potential for vertical foreclosure, the Applicants attempt to avoid discussing the downstream and cumulative effects of such foreclosure on the rail industry as required by the 2001 Merger Rules"); CSX Transportation, Inc.'s Motion for Summary Denial, CSXT-19, filed August 6, 2026 at 44-49; Letter on *prima facie* showing filed by Canadian Pacific Railway Company, d/b/a Canadian Pacific Kansas City and CPKC, CPKC-38, filed August 6, 2026 at 17 ("There are

`

only two plausible future states of the downstream rail world: (a) stasis, which would yield an unbalanced competitive landscape sharply dominated by UP, with each of the other Class I carriers reduced to a much smaller regional carrier, or (b) a full transition to a North American Class I duopoly. Another year of evidence-gathering is not needed for the Board to conclude that neither of these outcomes would be in the public interest.").

The NGFA concurs that a very real outcome of a merger of the UP and NS systems is the "end game" of two transcontinental railroads feared by the Board when it promulgated the *2001 Rules*. The Revised Application does not adequately consider this important issue.

VI. Summary of Impacts of the Merger as Proposed on Agricultural Shippers

While some agricultural shippers may benefit from the single line service the merger of UP and NS would create, the vast majority of agricultural rail shippers will be adversely affected. NGFA believes that approval of the merger as proposed, including the voluntary mitigation measures offered by the Applicants, would result in the following either immediately or over time as the two railroads are combined and assert their tremendous market power:

1. Very few Agricultural Commodity shippers would benefit from CGP, which is only temporary in any event.

2. The CPKC gateway preservation conditions are unlikely to preserve existing gateways.

3. The reduction in rail-to-rail competition and control of major interchanges will cause rates to increase as routing options decrease. Rate increases will occur mostly unchecked because currently there is not an effective regulatory backstop for Agricultural Shippers in the Board's rate reasonableness rules.

4. The Revised Application contemplates service levels declining post-merger and shippers being limited to action only when service substantially deteriorates. Service disruptions will be more likely to occur because the Applicants Service Assurance plan includes inadequate incentives to hold the merged railroad to account. Rather, as proposed, shippers would be required to engage in fact-intensive litigation, which the Applicants' know has never been demonstrated to be a way to achieve better service and compensation at all, let alone in a timely manner.

`

5. The elimination of market opportunities for Agricultural Shippers through the exercise of market power and inevitable further concentration of the railroad industry until there are only two transcontinental railroads.

VII. Potential Conditions on Approval of the Merger

For all the foregoing reasons, NGFA urges the Board to deny the Revised Application because it is not consistent with the public interest and there are no conditions that can be placed on its approval that would eliminate its anti-competitive and anti-service impacts. Nevertheless, in the event the Board concludes the Revised Application can be approved subject to Board-imposed conditions imposed pursuant to the broad authority granted the Board by 49 U.S.C. §11324(c), NGFA recommends that such conditions must include the following to partially protect agricultural shippers from the harms of the merger discussed above, and they must initially be in perpetuity, subject to adjustment by the Board under strict criteria:

1. The Applicants Should be Directed to Model Their Dispute Resolution Procedures on NGFA's Rail Arbitration Rules

The Board cannot adopt the Revised Application's arbitration proposal for the reasons set forth above. However, NGFA is strongly supportive of arbitration as a means to resolve disputes, and it has had an active arbitration program in place since the association's founding in 1896, usually handling dozens of cases each year.[21] NGFA adopted its Rail Arbitration Rules in 1998,[22] which are available to all NGFA members, including railroad members. Few cases are brought and they almost always are settled, but the mere existence of Rail Arbitration Rules and arbitration helps prevent or resolve disputes. NGFA urges the Board to consider mandating as a condition on

21 https://www.ngfa.org/arbitration-trade-rules/#arbitration

22 https://www.ngfa.org/wp-content/uploads/Oct.-2026-Rail-Arbitration-Rules-web.pdf

`

its approval of the merger that UP and NS develop a more robust arbitration program, using NGFA's Rail Arbitration Rules as a model, that complies with the *2001 Rules*' requirement that service reductions post-merger and appropriate compensation should be based on pre-merger benchmarks. Moreover, there should be no cap on damages from poor service, and damage claims could include direct as well as indirect and consequential damages. The arbitration program should also apply to rail rates, accessorial charges, and other terms in the carrier's common carrier publications.

The Board should not consider Applicants' belatedly proposed "Rate ADR Program" in the Second Supplement because it would not be available upon approval of the merger and might never become available to rail shippers. Rather, it would only become "operable" at the conclusion of a proceeding before the Board to resolve the extremely vague and open-ended question of whether "the anticipated public benefits fail to materialize in a timely manner," "with due regard" for the requirement of "flexibility to adapt to changing marketplace or other circumstances." 49 C.F.R. §1180.1(c)(1). Second Supplement at 113. Further citing this regulation, the Revised Application states in the alternative that the Board could have a proceeding to resolve the similarly subjective question of whether the Applicants "act[ed] reasonably in light of changing circumstances to achieve promised merger benefits" *Id.*, *citing* §1180.1(c)(1).[23] NGFA submits that under these terms just creating arbitration as an option to high rail rates post-merger would not occur for several years after the merger was approved, and would first require a factual and legal administrative process that could rival the process to approve the merger in the first place. In the meantime, Agricultural Commodity shippers would have no recourse other than the Board's rate rules.

[23] The program would again exclude contract and exempt traffic.

`

2. Requirement to Quote a Mileage-Prorated Rule 11 Rate

In order to keep existing joint line movements available to Agricultural Commodity shippers, the Board should require the merged railroad to make the individual portions of a single-line rate available on a Rule 11 basis at the gateway, with the rate to or from the gateway divided based on the mileage operated by each carrier. More specifically, where a combined UP/NS single line route competes with an interline route of another Class I carrier that includes a former UP or NS segment, UP/NS must, at a shipper's request, provide the shipper with a confidential Rule 11 rate for its segment calculated as a mileage-based prorate of the single line UP rate that the shipper can use to create a competitive interline alternative with a competing Class 1 railroad.

This is precisely the same condition that UP strongly urged the Board to adopt in the CPKC merger proceeding. UP FD 36500 Final Brief at 17-18:

> UP has proposed a concrete, enforceable rule for holding Applicants to their promise to set "commercially reasonable" gateway rates: Where a CPKC route competes with an interline route that includes a former-CP, -KCS, or -KCSM segment, CPKC must, at a shipper's request, provide the shipper a confidential Rule 11 rate calculated as a mileage-based prorate of the CPKC rate that the shipper can use to create a competitive interline alternative. This is the same condition requested by NITL, ACC and TFI.

NGFA submits that the emphasis of the *2001 Rules* on enhancing competition, combined with the greater potential for competitive harm, concentration of market power, and possibilities for vertical foreclosure presented by this merger, make the consideration of this condition stronger than when UP advocated for it to be applied to the smaller CPKC merger under the prior merger rules.

It is essential for Agricultural Commodity shippers that they continue to have access to existing gateways at Chicago, St. Louis/East St. Louis, and Kansas City given the volumes of Agricultural Commodities that are transported through them. Burchfield V.S. at 31-32

`

3. Service Assurance Plan

The Board should condition any approval on Applicants' adoption of the broadest, most shipper-oriented approach to implementing the Service Assurance Plan provisions of the *2001 Rules.* The Service Assurance Plan should apply to all traffic the merged railroad will transport: common carrier traffic, exempt traffic, and traffic moving pursuant to contract. In particular, the Board must understand and address the increased risk that the agriculture industry is taking from reduced service flexibility during disruptions the elimination of another Class I railroad will create. During past service meltdowns, shippers had the option to move products on other rail carriers to meet the needs of domestic and export markets. This relief should be permitted for service disruptions well short of a total meltdown. The Service Assurance Plan must include clear provisions that create incentives for the merged railroad to maintain pre-merger service levels by establishing meaningful, objectively determined consequences for service deterioration.

4. Favorably Act on Responsive Applications

The Board should favorably consider granting trackage rights to rail carriers to operate over the merged carrier's system in key regions to preserve and enhance rail-to-rail competition. NGFA intends to review and provide appropriate input on the responsive and inconsistent applications filed in this proceeding in accordance with the procedural schedule.

5. Reciprocal Switching

The Board should further condition any approval of the merger by directing Applicants to provide, in perpetuity, reciprocal switching for other railroads upon reasonable request by any rail shipper or railroad. There would be a rebuttable presumption that such switching is operationally feasible. There would be no limitations on eligibility and NGFA recommends that the rates associated with such service should be set using the procedures utilized in Canada.

`

Paper and Steel Barriers

Board should eliminate all paper and steel barriers on the merged railroad's system that provide disincentives to railroads who have acquired tracks from UP or NS through purchase or lease to interchange with railroads other than the merged railroad to transport agricultural commodities.

VIII. Retaliation Issues

Finally, on November 4, 2026 the Board issued Decision No. 45 in this proceeding. In part, that Decision addressed the overarching issue of retaliation, either real or implied, directed to rail shippers for appearing before this Board and expressing objections to the proposed merger. The Board stated "[s]takeholders, including trade associations, are invited to share with the Board any alleged instances of perceived, threatened, or actual retaliation relevant to these proceedings." Decision at 4. In response to this invitation, NGFA responds on behalf of its members that the fear of retaliation for opposing the merger - whether the merger is approved or denied – is real. In fact, UP's own CEO Jim Vena is on record and on video threatening increased rates for customers that do not support the merger in order to "teach them a lesson." The fear of retaliation has stopped individual NGFA member companies from participating in their own name in this and other Board proceedings. It also has caused them to decline to provide their individual data to NGFA that would quantitatively support NGFA's positions taken on their behalf. Finally, NGFA submits that in addition to factoring in the fear of retaliation into its conclusions about the number of individual shippers who publicly voice their concerns about the merger, the Board should similarly factor retaliation issues into its conclusions about the number of the letters of support for the merger it has received from individual shippers.

`

IX. Conclusion

For all the reasons set forth above, NGFA maintains that the proposed merger of UP and NS as set forth in the Revised Application would not be consistent with the public interest and should be denied. UP and NS should remain separate railroads and the Board should continue to revise its policies and rules to address significant outstanding matters, such as development of rate reasonableness procedures and standards that agricultural commodity shippers can practically use, and the further development of rules that facilitate rail-to-rail competition. Should the Board consider granting the Revised Application with conditions, NGFA has set forth above the conditions that must be adopted in order to try to partially protect against the harms the merger will cause to agricultural commodity shippers and the U.S. economy generally.

Respectfully submitted,

/ss/ Thomas W. Wilcox
Thomas W. Wilcox
Law Office of Thomas W. Wilcox, LLC
1629 K. Street, NW, Suite 300
Washington D.C. 20006
(202) 508-1065
tom@twilcoxlaw.com

Counsel for the National Grain and Feed Association

November 17, 2026

BEFORE THE

SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

---- CONTROL ----

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

Verified Statement of Karen M. Burchfield

November 18, 2026

PraxiChain

Contents:

I. Summary of Qualifications....3

II. Scope of Analysis and CGP Methodology....5

III. Committed Gateway Pricing Limitations....11

IV. Network Access and Competitive Alternatives....21

V. Endpoint Access Methodology and Findings....23

VI. American Farmers Pay for Merger Benefits....29

VII. Agricultural Commodities in the Watershed....29

VIII. The Implications of Applicants' Intent....32

IX. Summary of Conclusions....36

1. My name is Karen M. Burchfield. I am a Rail Industry Expert and Senior Project Leader for PraxiChain Consulting, a consulting firm that provides supply chain analysis and transportation advisory services. I have been asked by the National Grain and Feed Association ("NGFA") to provide this Verified Statement in support of NGFA's Opening Comments on the Amended Railroad Control Application ("Revised Application") filed in this proceeding that proposes the merger of Union Pacific Railroad Company ("UP") and Norfolk Southern Railway Company ("NS"). My testimony draws on 35 years of experience at BNSF Railway, including executive leadership responsibilities for transportation and grain operations, and my subsequent work on behalf of industries and other stakeholders that utilize railroad transportation. My qualifications are summarized below, and my complete résumé is attached as Exhibit A.
2. In this Verified Statement, I examine the proposed merger's effects on Agricultural Shippers (defined below) and the rail networks on which they depend. I address the potential loss of competitive routing and market options, the economic consequences of internalizing interchange and extending the merged railroad's linehaul, and the limitations of Committed Gateway Pricing ("CGP") as a means of preserving or enhancing competition. I also examine whether the proposed service protections provide meaningful accountability for service deterioration and timely relief for agricultural shippers.

I. Summary of Qualifications

3. My expertise and perspective comes from more than three decades working for Class I railroads and affiliated short lines.

4. In addition to my professional experience, my educational background includes a Master's Degree in Supply Chain Management from Penn State University, and a Bachelor's Degree in business administration in International Business from Texas Wesleyan University.
5. I held various positions with the Burlington Northern Railroad Company ("BN") and its successor BNSF Railway ("BNSF") between 1989 and 2025. This period included the merger of BN and Atchison, Topeka and Santa Fe Railway in 1995, which presented significant technical challenges of integrating the two railroads' operating systems, rationalizing classification yards, rolling stock, and locomotive fleets, and the equally important merging of workforce and culture. Despite planning for those merger complexities and challenges, the combination of BN and Santa Fe was accompanied by operating and supply chain disruptions that are inherent in Class I railroad combinations of that degree of complexity and variation.
6. From May 2005 to May 2011, I was employed by BNSF as General Director of grain operations and General Superintendent of the North Region at the BNSF Network Operations Center ("NOC"). These roles were sequential and required an understanding of grain harvest seasonality, car order fill, shuttle operations, grain fleet optimization, as well as train schedule design and execution. These two positions entailed the execution of grain plans throughout BNSF's network, including moving grain for export through the Pacific Northwest to Asia-Pacific Economic Cooperation ("APEC") members and China, and movement of grain to and through the Texas Gulf to Latin America, Europe and Africa.
7. Since my retirement from BNSF in April of 2025, I have provided railroad industry consultation services through PraxiChain Consulting.

II. Scope of Analysis and CGP Methodology

8. In this Verified Statement I have conducted an analysis, using the 2023-2024 confidential movement data in the administrative record, of the impact of the proposed merger on shippers of "Agricultural Commodities." For purposes of NGFA's Opening Evidence, "Agricultural Commodity" or "Agricultural Commodities" are defined as the 109 commodities listed by Standard Transportation Commodity Code (STCC) code in the following Table 1.[1]

Agricultural Commodity Groups

Five-digit STCCs | 109 distinct codes across all groups

Grain	
Grain	1131, 1132, 1133, 1135, 1136, 1137, 1139, 1142, 1144, 1149, 20411, 20412, 20413, 20414, 20416, 20418, 20419
Grain Products	
Grain Products I	20131, 20139, 20143, 20158, 20421, 20461, 20465, 20467, 20469, 20616, 20617, 20625, 20911, 20923, 20933, 20939, 20941, 20961, 28182, 28184, 28994, 29111, 29113, 29119
Grain Products II	1141, 1159, 1191, 1992, 20131, 20139, 20143, 20144, 20149, 20418, 20419, 20421, 20462, 20463, 20466, 20467, 20469, 20511, 20611, 20616, 20619, 20625, 20823, 20832, 20859, 20914, 20921, 20923, 20931, 20933, 20939, 20942, 20961, 28184, 28994, 50201
Food & Beverage	
Food & Beverage I	1131, 1134, 1143, 1149, 1152, 1159, 1341, 1342, 1343, 1915, 20339, 20342, 20343, 20419, 20441, 20442, 20443, 20449, 20471, 20611, 20621, 20713, 20831, 20994
Food & Beverage II	1151, 1159, 1197, 1298, 1919, 20231, 20233, 20259, 20322, 20331, 20332, 20333, 20336, 20339, 20343, 20352, 20359, 20391, 20412, 20471, 20472, 20521, 20622, 20713, 20719, 20821, 20841, 20851, 20861, 20871, 20993, 20994, 20995, 20996, 20997, 20999

Leading zeros omitted. Codes may appear in more than one commodity grouping.

137 group entries represent 109 distinct five-digit STCCs. Group assignments follow the supplied list.

[1] See Revised Application, Vol. 1, at 1-327, V.S. Novak ¶ 29 & n.4 (identifying Workpaper "CGP – Commodity-Based Segments and Associated STCCs.xlsx" as the listing of CGP commodity segments and associated STCCs); Applicants' Second Submission in Response to Decision No. 21, July 27, 2026, § II.A (expanding the categories of movements eligible for CGP). Thus, Novak's April 2026 workpaper provides the applicable commodity and STCC mapping, while the July submission modifies the program's movement-eligibility rules.

9. These commodities include the products falling under the STCC codes for Grain, as well as commodities under Grain Products, Food and Beverage, and other Agricultural Commodities that ship by rail.

CGP Eligibility and the Study Population

10. In a supplemental information filing in July 2026, Dr. Israel described an expanded program that included bulk unit trains originally excluded from CGP. Using 2023 movement data, he estimated that the expanded program would cover 257,971 carloads. However, my analysis identified 167,645 eligible carloads using 2024 movement data under the eligibility filters described in this statement. It was important to understand the difference in the Israel expanded estimate based upon 2023 volumes, and my estimate based upon 2024 volumes.[2]
11. Before proceeding, I audited the Bailey data sets. First, we compared the 2023 Bailey and Israel data sets and found the total carload measure nearly identical with a difference less than *{{[redacted]}}*. We then looked for the change year over year in the Bailey sets and found carload volume down by approximately *{{[redacted]}}*. We compared the year over year change in volume to the public STB reported volume to find a close correlation year / year, with coal leading the reduced volume for 2024. This audit process supported my decision to proceed with 2024 movement data. The comparison was a check on the underlying data, rather than a reconciliation of CGP eligibility.

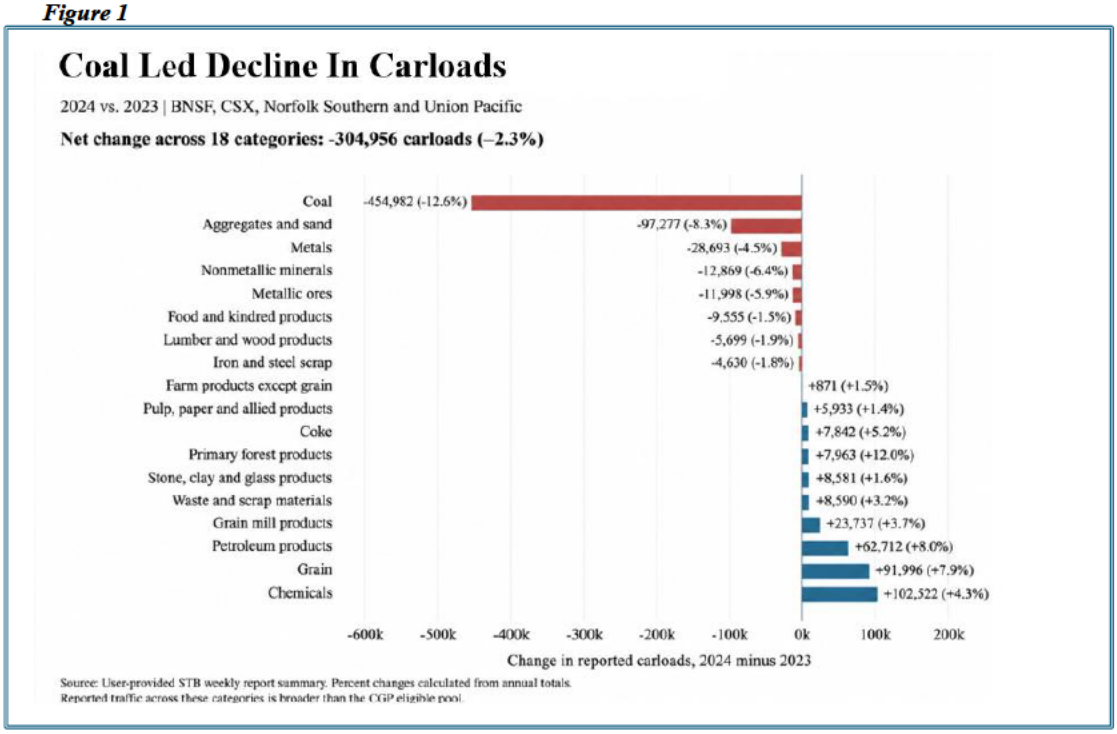
[2] See Revised Application, Vol. 1, Verified Statement of Katherine N. Novak ¶¶ 27–37, FD 36873 (Apr. 30, 2026) (describing the benchmark population, commodity and mileage groupings, and volume-weighted 70th-percentile methodology); see also Karen M. Burchfield, *Burchfield WP p70 Scatter.xlsx*, worksheets "All Commodities" (2024 CGP eligible Agricultural Commodities).

12. I selected 2024 for two reasons. First, using 2024 for the eligible population places the observed shipment rates and the proposed CGP factors on the same annual basis.

13. Second, 2024 will better reflect more recent traffic conditions as bulk commodity volumes changed materially between 2023 and 2024. These changes are relevant because the expanded CGP program includes bulk unit trains.

14. Figure 1 shows changes in reported carloads between 2023 and 2024 for selected bulk commodities. It uses weekly reports submitted to the STB by UP, NS, BNSF, and CSX. These carrier-wide totals provide market context, but they do not measure the change in CGP-eligible traffic directly.[3]

Figure 1



[3] Surface Transportation Board, "Rail Service Data," weekly Class I railroad reports of carloads originated and terminated by commodity. https://www.stb.gov/reports-data/rail-servoce-data/.

15. Limitations on carrier participation and closed access points on the merged carrier constrain Agricultural Commodities shipments that would be eligible to participate and the benefits.
16. Another limitation is the methodology that would be utilized to establish the UP-NS rate for its segment of a joint line movement eligible under CGP. Stated generally, CGP would calculate UP-NS's revenue requirements for eligible movements based on rates used to move similar shipments during the previous waybill year moving between the western and eastern portions of the United States that both originate and terminate on UP-NS or that are interchanged between UP-NS and BNSF or CSX. UP-NS rates for each eligible shipment will be stated as a rate per car mile, which will not include fuel surcharges and accessorial charges. The UP-NS revenue requirement for each category of eligible shipments —the CGP pricing applicable to shipments similar to those in each cell—will be calculated using the volume-weighted 70th percentile rate per car mile in each cell.
17. The formula accordingly establishes a 70th percentile floor for the UP-NS portion of a joint line CGP-eligible movement.

CGP Benchmark Methodology

18. My analysis addresses Agricultural Commodities carload eligibility for the CGP program, and whether participation would provide any benefits to the shipper. The distinction between eligibility and benefit is clearly demonstrated in Dr. Israel's verified statement in support of the April 30, 2026, amended merger application. Dr. Israel distinguished between shipments eligible for CGP and those that would "potentially" benefit from CGP.
19. Figure 14 from Dr. Israel's verified statement identifies 133,890 carloads as eligible for CGP before the later expansion of the program to bulk unit trains and to dual served BNSF and

CSX origins and destinations. This eligibility count is approximately 39% of the 344,608 carloads used to calculate the CGP rate benchmarks. The third column identifies 35,729 carloads that could "potentially" benefit from CGP, or approximately 27% of the eligible carloads.

Verified Statement of Dr. Israel, Figure 14

Figure 14
Estimated Potential Benefits from CGP in the First Year of Application

Commodity Group	Carloads Used for Calculation of CGP	Carloads Eligible for the CGP	Carloads Potentially Benefiting from the CGP	Estimated Potential Benefit from the CGP
Sand	20,950	6,664	5,026	$7,441,424
Refrigerated	6,968	4,732	2,294	$5,915,859
Specialized Markets	12,849	9,800	2,603	$5,102,265
Food & Beverage I	7,099	6,324	2,392	$4,209,673
Industrial Chemicals	59,670	16,779	3,567	$3,448,612
Grain Products I	21,851	5,161	2,319	$2,816,182
Plastics	60,301	25,889	2,885	$2,659,491
Fertilizer & Sulfur	15,470	4,976	1,660	$1,519,335
Petroleum	17,046	2,316	994	$1,277,412
Forest Products I	17,889	8,692	2,064	$1,266,632
Metals & Ores I	21,693	4,484	1,346	$1,089,483
OTE	2,403	732	155	$887,725
Grain	12,993	5,252	923	$860,941
Petcoke	1,141	709	688	$851,932
Food & Beverage II	8,199	8,338	905	$823,249
Soda Ash	8,291	5,554	2,970	$697,332
Forest Products II	7,359	4,375	951	$687,614
Metals & Ores II	10,383	2,302	683	$657,196
Grain Products II	11,452	6,392	838	$390,136
LPG	11,521	1,559	322	$304,108
Construction	4,066	2,859	144	$240,166
Auto Parts	4,898	0	0	$0
Coal & Renewables	96	1	0	$0
Total	**344,608**	**133,890**	**35,729**	**$43,146,765**

38%

27%

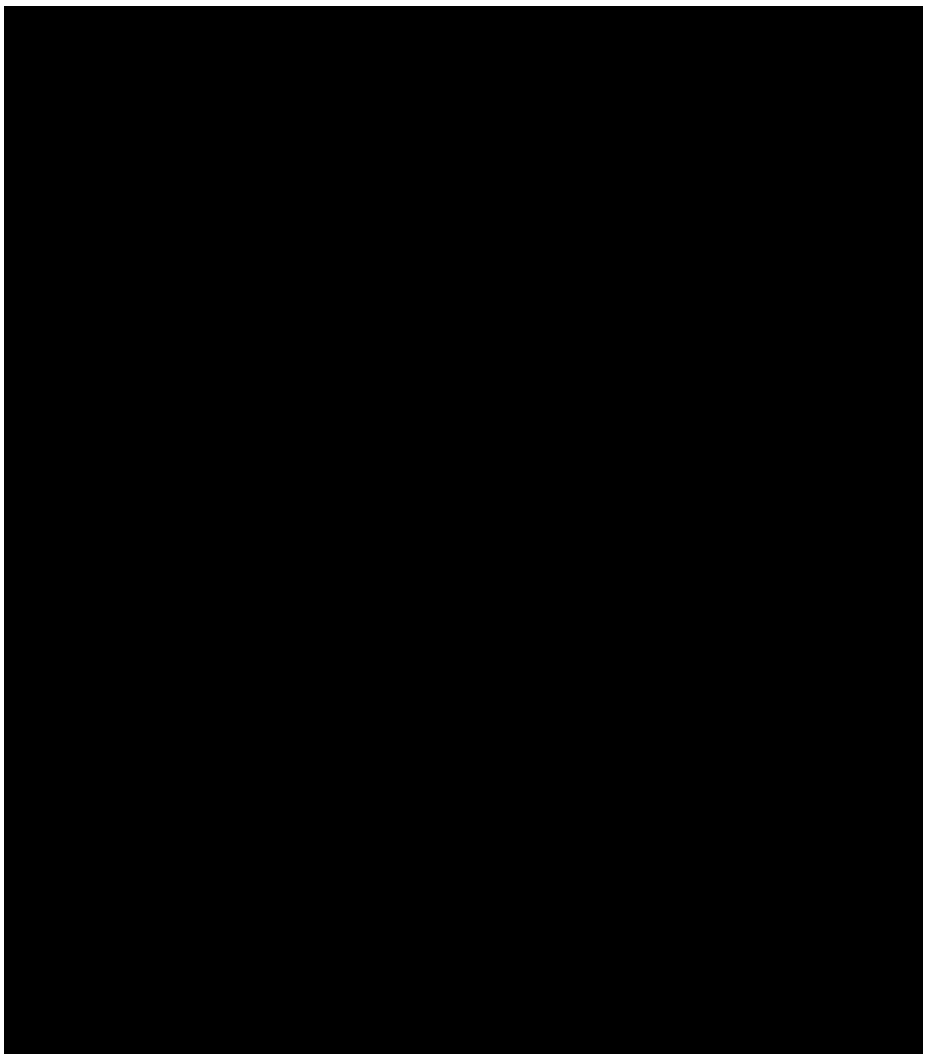
Sources: UP, NS, BNSF, and CSX Waybill Data 2024, AAR Centralized Station Master (CSM), Serving Carrier Reciprocal Switching Data (SCRS), UP Short Line Access Information
Note: The carloads used for calculating both the BNSF and CSX CGP include the same set of UP-NS interline shipments. To avoid double counting, duplicate shipments are removed when summarizing the total carloads used for the calculation

20. In Figure 14, there are 12,993 carloads of Grain used to calculate the CGP benchmark, with 5,252 carloads eligible for CGP and 923 carloads that could "potentially" benefit.

21. Applicants later expanded eligibility to bulk unit trains and other candidate traffic, purportedly expanding the CGP-eligible population from 133,890 carloads to 257,971.

22. Dr. Israel provided commodity detail for the expanded population of 257,971 carloads eligible for CGP in his confidential work papers supporting his verified statement in the amended application. I reproduced Dr. Israel's chart in Figure 2 to illustrate estimated CGP impact for all commodities, with Agricultural Commodities highlighted.[4]

Figure 2 *{{*



}}

[4] See Supplemental Verified Statement of Mark A. Israel ¶ 34 & fig. 8, "Summary of Shipments Affected by the Expanded CGP Proposal," FD 36873 (filed July 27, 2026); see also accompanying confidential workpaper, *CGP Results Summary - Expanded CGP Proposal.xlsx*.

23. To better understand the spread between eligibility and benefit, I used the 2024 movement data to compare CGP base "factors" to actual rates.

24. I screened movement data using the CGP eligible commodity list in Ms. Katherine Novak's verified statement from the amended application. Base factors and carload revenue per mile for the four CGP mileage bands were calculated using traffic currently moving between UP and NS[5]

25. My methodology was applied to the expanded CGP program that includes unit trains to identify eligible carloads.

26. My analysis shows the difference between "eligible" Agricultural Commodity carloads and the substantially smaller percentage of carloads that "benefit" from CGP is due to the CGP formula's requirement that each cell factor for eligible shipments must be set at the70th percentile level of the rate history for each commodity in the four mileage bands. What that means is that most rates set using CGP will be significantly higher than rates shippers are paying today.

27. I calculated benchmarks using 2024 UP–NS interline movements. These movements would become single-line traffic after the merger and would not qualify for CGP. These rates nevertheless provide the cell factors for the first-year CGP benchmark, according to CGP

[5] See Revised Application, Vol. 1, at 1-327, V.S. Novak ¶ 29 & n.4 (identifying Workpaper "CGP – Commodity-Based Segments and Associated STCCs.xlsx" as the listing of CGP commodity segments and associated STCCs); Applicants' Second Submission in Response to Decision No. 21, July 27, 2026, § II.A (expanding the categories of movements eligible for CGP). Thus, Novak's April 2026 workpaper provides the applicable commodity and STCC mapping, while the July submission modifies the program's movement-eligibility rules

cell factor calculation guidelines. I grouped these candidates into cells by commodity group and mileage band.[6]

28. Within each cell, I expressed rates in dollars per car-mile and ranked them from lowest to highest. Each rate was weighted by its associated unit volume. The 70th percentile is the first rate at which cumulative volume reaches or exceeds 70 percent of total measured volume.[7]

29. In Dr. Israel's expanded population, of 257,971 eligible carloads, there were *{{[redacted]}}*carloads of Agricultural Commodities or *{{[redacted]}}* of the eligible CGP population of all commodities, and of the eligible carloads only *{{[redacted]}}* would potentially benefit. The eligible population of *{{[redacted]}}* carloads is *{{[redacted]}}* of the estimated 3.3 million carloads of grain and food products transported annually nationwide. The *{{[redacted]}}* carloads potentially benefitting in Figure 2 is less than *{{[redacted]}}* of the total Agricultural Commodities carloads shipped annually.[8]

30. In my analysis using 2024 traffic data, of {{[redacted]}} eligible carloads, there were {{[redacted]}} carloads of Agricultural Commodities, or approximately {{1[redacted]}} of the

[6] See Revised Application, Vol. 1, Verified Statement of Katherine N. Novak ¶¶ 27–37, FD 36873 (Apr. 30, 2026) (describing the benchmark population, commodity and mileage groupings, and volume-weighted 70th-percentile methodology); see also Karen M. Burchfield, *Burchfield WP p70 Scatter.xlsx*, worksheets "P70," "Fallback," and "CGP Final" (calculating 2024 UP–NS interline P70 benchmarks and reporting reconstructed rates by commodity group and mileage band).
[7] See Revised Application, Vol. 1, Verified Statement of Katherine N. Novak ¶ 35, FD 36873 (Apr. 30, 2026) (describing the volume-weighted 70th-percentile rate per car-mile); see also Karen M. Burchfield, *CGP Calculations vs 3.xlsx*, worksheet "P70" (calculating cumulative unit volume within each commodity and mileage cell and identifying the first rate at which cumulative volume reaches or exceeds 70% of the cell's total measured volume).
[8] Association of American Railroads, *Freight Rail Facts & Statistics*, (reporting that, in a typical year, railroads haul approximately 1.6 million carloads of grain and other farm products and more than 1.7 million carloads of food products, totaling approximately 3.3 million carloads annually).

eligible CGP population, and of the eligible carloads only {{[redacted]}} would potentially benefit. The eligible population of {[redacted]}} carloads is approximately only {[redacted]}} of the estimated 3.3 million carloads of grain and food products transported annually nationwide. The {{[redacted]}} carloads that could potentially benefit from CGP represent approximately only {{[redacted]}} of the total Agricultural Commodities carloads shipped annually.[9]

III. Committed Gateway Pricing Limitations

Competitive Limitations of CGP

31. Any limited benefits CGP provided to Agricultural Commodities shippers would be available only during the Board's oversight period, the length of which has yet to be determined. The harm to competition would be permanent. CGP allows UP-NS to raise the cost of rivals, with factors above the median of current rates. Through this strategy the UP-NS becomes more competitive without lowering rates. There is no rate benefit to the shippers with this strategy. Instead, there is latitude for UP-NS to increase rates just below the increase in rival's costs.

32. CGP is flawed from a shipper or rival railroad perspective in part because the merged road may achieve operating efficiencies, but the CGP rates do not reflect those efficiencies.

[9]Karen M. Burchfield, *Original Data.xlsx*, worksheets "Origin Study," "Destination Study," and "Both Ends"; *CGP Calculations vs 3.xlsx*, worksheets "Eligible Combined" and "CGP Final"; Association of American Railroads, *Freight Rail Facts & Statistics* (reporting approximately 1.6 million carloads of grain and other farm products and more than 1.7 million carloads of food products transported in a typical year, totaling approximately 3.3 million carloads annually).

The Inability to Challenge or Audit CGP

33. Shippers would face uncertainty as to both the rate-escalation effects and the anti-competitive consequences of the CGP methodology. A shipper may receive a CGP factor that makes a competing carrier's total through rate too high to compete effectively with UP–NS single-line service because the underlying calculations depend upon confidential traffic and rate data that shippers cannot independently examine or reproduce. The shipper would be unable to verify whether the appropriate commodity-distance cell was used, the underlying observations met the eligibility criteria, or substitutions materially affected the result.

34. Without access to CGP calculation inputs, the shipper lacks the evidentiary foundation necessary to identify an error, quantify its effect, or frame a specific grievance for Board consideration. In the absence of a transparent audit trail, independent validation, and a defined procedure for challenging the calculation, it is unclear how an affected shipper could meaningfully test a CGP output or present an informed grievance to the Board.[10]

CGP Would Create Upward Pressure on Agricultural Commodity Rates

35. Of the CGP eligible Agricultural Commodities, only a portion would potentially benefit from participating in the program. This is because many Agricultural Commodities'

[10] *Union Pacific Corp.—Control—Norfolk Southern Corp.*, Docket No. FD 36873, Decision No. 21, slip op. at 20–21 (STB served May 28, 2026) (finding that policy choices underlying CGP and the Applicants' claims concerning its effects raised "substantial questions," requiring further information to facilitate meaningful public comment and Board review, and directing the Applicants to identify specific performance measures and enforcement mechanisms applicable to CGP); see also CN Comments 25–26, BNSF Comments 7 & n.5, CSX Comments 10–12, and NGFA Comments 2–5 (filed May 8, 2026).

shippers currently have rates below the 70th percentile benchmark. Figure 3 illustrates the relationship between 2024 UP–NS interline rates and the 70th percentile floor. The average of the projected CGP rates are illustrated by the red dotted lines. On average, 70th percentile CGP rates are *{{ }}* percent higher than the average 2024 UP-NS interlines rates[11] as shown in Figure 8 page 20.

Figure 3 *{{*



}}

[11] Source Confidential 2024 Movement Data, Burchfield Workpapers, *Burchfield WP p79 Scatter.xlsx*

36. Grain moving by unit train faces the greatest upward price pressure.

Figure 4{{



}}

37. As shown in Figure 4, almost all CGP eligible grain unit train movements would see rate increases relative to the UP-NS interline movements. Grain Products I is shown in Figure 5 and includes vegetable oils, animal fats, sweeteners, feed supplements, ethanol and other renewable fuels. This diverse and important commodity group faces extreme pricing pressure. Because of the nature of the commodities in this group, freight increases will likely influence inflation, harming consumers.

Figure 5 {{



}}

38. Price pressure on farmers for feed and agricultural inputs also impacts the price of food.[12] Grain Products II in Figure 6 is a basket of commodities particularly important to America's farmers. Grain Products II encompasses products that connect agricultural processing with livestock production and other markets.

[12] U.S. Department of Agriculture, Economic Research Service, "Farm Sector Income & Finances: Farm Sector Income Forecast," updated September 3, 2026.

Figure 6{{



}}

39. Grain Products II includes soybean meal, canola meal, grain screenings, forage, and prepared feeds. It also includes animal processing byproducts and certain fats and oils. Many of these products supply protein, energy or fiber for animal nutrition. Higher transportation costs for Grain Products II can lower commodity prices received by farmers, pressure livestock producers' margins, and contribute to higher food costs for consumers.

40. The final CGP chart examines Food & Beverage I and II in Figure 7, which are combined because of the limited number of observations. The distribution warrants closer attention as it is the only grouping that could potentially benefit from CGP because many eligible movements have rates above the 70th percentile. Across the eligible population, however, the net potential reduction is modest: [redacted].*}}*

Figure 7 {{



}}

41. It is important to note, that the potential price benefit represented in the chart above tells us two things about Food & Beverage transportation cost; on the UP-NS (the gold circles), transportation costs are higher on a price per car mile, than the UP-NS factor in interline service to BNSF and CSX (grey circles). Meaning that there are few in interline service with rival carriers that will get a reduced factor to the gateway due to the 70th percentile floor.

42. Protecting public interest requires considering the already heavy burden of food price inflation on households: USDA reports that the lowest-income households spent 32.6% of their after-tax income on food in 2023, compared with 8.1% for the highest-income households; if CGP increases transportation rates for Agricultural Commodities by 20.3% as estimated in Figure 8, the added costs could flow through to retail prices and further strain

families with limited incomes.[13] Transportation costs warrant attention because they affect products purchased by households already strained by high food prices.[14]

43. USDA's September 2026 farm income forecast projects farm production expenses rising 4.5 percent to $492.8 billion, while inflation-adjusted net farm income falls 5.5 percent. If implemented, CGP could further reduce farm income.[15]

43. When evaluating CGP over all Agricultural Commodities, it is clear CGP offers some degree of certainty that most rates will increase. Figure 8 depicts the upward price pressure on UP-NS rates (bottom half of chart), and on the UP-NS factor for the protected gateways to BNSF and CSX. The average increase in Agricultural Commodity shippers under CGP is *{{[redacted]}}*for factors from UP-NS to the BNSF and CSX at protected gateways. The increase to Agricultural Commodity shippers on the UP-NS is approximately *{{[redacted]}}The combined total in upward price pressure toward the70th percentile is approximately {{[redacted].}}*[16]

[13] U.S. Department of Agriculture, Economic Research Service, Victoria Davidenko, Megan Sweitzer, and Winfrey Norton, "Food Price Inflation Slowed in 2023 and 2024," *Amber Waves*, June 12, 2025, section "Food Is the Third Largest Component of Household Spending."
[14] U.S. Department of Agriculture, Economic Research Service, "ERS Data Products Show Food-At-Home Price Inflation From Producers to Consumers," *Amber Waves*, July 10, 2023, section "Industries Along the Food Supply Chain Impact Retail Food Prices."
[15] *Ibid*
[16] See V.S. Katherine Novak, Revised Application, discussion of CGP benchmark methodology and accompanying workpapers; Karen M. Burchfield, "Burchfield WP p70 Scatter.xlsx" (workpaper calculating carload-weighted 70th-percentile rate benchmarks from 2024 UP–NS interline movements).

Figure 8 {{



}}

44. The inherent harm in CGP is the effect of upward price pressure on ineligible carloads to create upward price pressure on eligible carloads. Although the Applicants expanded CGP eligibility to include bulk unit trains and certain additional movements, eligibility alone does not assure a competitive through rate or service offering.[17]

45. Freight rate increases can have dynamic impacts that ripple through the supply chain negatively impacting farmers, shippers, end users and consumers.

[17] Applicants' Second Response to Decision No. 21, at 8–10 (July 27, 2026), summarized at 91 Fed. Reg. 53927, 53928 (Aug. 20, 2026).

IV. Network Access and Competitive Alternatives

46. The CGP debate brings us back to the concern that gives gateway pricing its significance: an open gateway is useful only if shippers can afford to route traffic through it. A commitment to preserve interchanges does not by itself preserve effective competition. The price charged by the carrier controlling access can determine whether another railroad remains a practical alternative. This makes the broader distribution of exclusive access central to evaluating the merger. Figure 9 shows combining UP and NS would place approximately 54% of the station listings reported for these four carriers within one railroad's network.[18]

Figure 9

UP-NS North American Rail Access Concentration
As compared with nearest competition BNSF & CSX

Serving Carrier	Industry Open	Industry Closed	Industry Restricted	Industry Local	Four C1C(s) Total by C1C	Percent of Total % by C1C	Post Merger % by C1C
UP	345	3,613	815	2,750	7,523	30%	**54%**
NS	436	2,421	336	2,696	5,889	24%	0%
BNSF	417	1,872	214	1,984	4,487	18%	18%
CSXT	247	3,318	168	3,282	7,015	28%	28%
Updated 8/3/2026	**1,445**	**11,224**	**1,533**	**10,712**	**24,914**		

Open: Industry available to other carriers serving that station through switch fee by serving carrier
Closed: More than one carrier serves the station, but industry is not open to reciprocal switch
Restricted: Serving carriers allows access via switch under specific operating conditions, eg "unit train only"
Local: Station is only served by one carrier, no access by other roads
Post-Merger UPNS has 54% of all industry locations for the 4 carriers, and 54% of all "Closed" industry locations

47. The Open and Prepay Station List (OPSL) gives a comprehensive listing of rail access by all Class I carriers. Through RSI Logistics, shippers and other subscribers can verify their ability to reach receivers based upon rail access and serving carrier.

[18] See RSI Workpapers, Footnoted Materials (RSI.xls).
RSI_Listings_8_2026_Access_Concentration.xlsx, tab "RSI 8_3_26," cells B17:I23.

48. These access locations are legacy infrastructure that over time and consolidation in the rail industry become more concentrated. If the UP-NS merger is approved, they will bring together two legacy infrastructures with a highly concentrated network access compared to their rivals. Specifically, the UP-NS will control 54% of the access points on the U.S. rail network when measuring the four primary Class I rail carriers.[19]

49. This concentration jeopardizes the ability for competing carriers to offer commercially viable alternative service to Agricultural Commodities' shippers.

50. Immediately upon completion of the merger, the UP-NS will enjoy the incumbent carrier position for over half of the CGP-eligible carloads moving in the North American rail network. The increased concentration of "closed" points on the merged carrier will allow them to bundle their product offerings, and capture more of the competitive business, while raising rates for all traffic.

51. The promise of improved single-line service does not replace competitive pressure. The Applicants' proposed voluntary conditions do not establish that existing interline alternatives will remain competitive, and the new single line service comes at the sacrifice of a Class I carrier in a diminishing field of service providers.

Agricultural Shippers' Access to Markets

52. Where a shipment requires a competing connecting carrier, the merged railroad will have the incentive and the commercial leverage to favor destinations on its own system. Gateway closure can occur economically even where the physical connection remains open. By diverting traffic from shared gateways and shortening competitors' hauls through rates and

[19] Karen M. Burchfield, RSI industry access-point analysis based on RSI industry listings, see workpapers RSI_Listings_8_2026_Access_Concentration.xls,

service offerings, it can also raise those carriers' per-unit costs and weaken their ability to offer competitive alternatives by increasing pressure to raise rates. This illustrates the economic mechanism known as "raising rivals' costs" ("RRC").[20]

53. In this way the merged carrier can raise rates and remain competitive, as long as its rivals' costs increase faster than the merged carrier's rates. This pricing practice would increase freight costs to shippers, rendering them less competitive. Recently, in response to a rival's request for trackage rights as a condition of the merger, UP went on record that it is possible to charge enough for trackage rights to make them non-competitive.[21]

V. Endpoint Access Methodology and Findings

54. The methodology underlying my analysis is two-fold. First, I use confidential movement data to consider the concentration effects of a consolidation of rail access classified as "open" and "closed." My source for listings of open and closed industries is the OPSL and RSI Logistics platform. These directories of rail stations and the characterization of their shared access is the basis for evaluating the impact to competition of future consolidation of exclusive or "closed" access points on the North American rail network. By looking at the stratification of Agricultural Commodities on the existing network, and evaluating the concentration of closed access, it is possible to project downstream effects of continued consolidation.

[20] Steven C. Salop & David T. Scheffman, *Raising Rivals' Costs*, 73 **American Economic Review** 267–271 (1983) (explaining how a firm can gain a competitive advantage by increasing its rivals' costs without requiring those rivals to exit the market).
[21] Bill Stephens, "Union Pacific pans rival railroads' trackage rights requests," *Trains*, Sept. 16, 2026, https://www.trains.com/pro/freight/class-i/union-pacific-pans-rival-railroads-trackage-rights-requests/. The article reports Vena's statement that UP would impose a per-car-mile charge making the rival's movement more expensive.

55. The second aspect of my analysis is based on public data. I developed a model to estimate plausible downstream effects of the merger. The model, DERCE™ (Downstream Effects of Rail Consolidation Economics) is an illustrative estimate of how a merger's effects can extend beyond the merging railroads.

56. It uses explicit assumptions to show how traffic diversions and changes in interchange location can shift revenue between carriers and increase the burden of supporting shared rail infrastructure. Moving an interchange can give the merged railroad a longer revenue haul while shortening the competing carrier's participation in the same shipment.

57. That redistribution can occur without creating new traffic or additional transportation value. DERCE™ is not a predictive algorithm, nor does it forecast individual routing decisions or claim to calculate the merger's precise financial outcome. Rather, it illustrates the potential scale of these downstream effects under stated scenarios.

58. Its central distinction is between creating economic value and transferring existing value: a revenue gain for the merged railroad may represent a loss to another carrier, with consequences for the shippers and infrastructure that carrier(s) continue to serve. The chart below is an output using DERCE™ model, depicting calculated fixed-cost transfer and linehaul revenue erosion, as the merged carrier encroaches deeper into its interline partner's geography, shifting interchanges away from legacy infrastructure and to new interchanges more advantageous for the newly merged line.[22] {{

[22] See See Burchfield working papers DERCE Model 11_16_2026.xlsx, tab "Sensitivity Dashboard," cells L21:N31



59. This two-pronged analysis uses the Applicants' 2023 and 2024 traffic data provided in Katherine Bailey's verified statement submitted in support of the Revised Application. These files provide a manageable foundation for evaluating traffic flows. I also reviewed movement data from other Class I carriers produced in this proceeding to assess the broader network and potential effects on connecting carriers.

60. The underlying data production followed the Board's Decision No. 2, served August 25, 2025, which required the Applicants to provide their 2019–2024 traffic tapes. The Applicants supplied supporting documentation with the traffic tapes explaining the data fields, sources, and exclusions. Unless otherwise stated, my findings describe the traffic tape population submitted by the Applicants.

61. To identify carrier access at agriculture origins and destinations, I matched movement records to the OPSL, using station codes and geographic cross-references.[23] I used the available Freight Station Accounting Codes (FSACs), Standard Point Location Codes (SPLCs), and Bureau of Economic Analysis (BEA) areas. I also checked station counts and access categories against listings available through RSI Logistics.

62. Because the Bailey traffic tape data does not identify individual industries, I classified access at the station level. Agricultural Commodities' stations served by multiple carriers and identified as junctions were classified as "open." Stations served by one carrier with no junction designation were classified as "closed."

63. These analytical categories differ from industry-specific OPSL classifications. OPSL distinguishes between open, closed, local, and restricted access. Both closed and local classifications indicate service by a single Class I railroad. Open access permits service by another carrier through direct access or switching. Restricted access permits another carrier's participation only under specified conditions.

64. The station-level method has an important limitation. An open station may contain industries served exclusively by one carrier. Classifying the entire station as open can understate exclusive access for closed industries at otherwise open stations. My analysis therefore provides a conservative measure of closed access, subject to the accuracy and completeness of the station records. It does not establish access available to every individual shipper.

[23] *Official List of Open and Prepay Stations (OPSL 6000 Series*) (Dec. 2023).

65. I focused this study on the impact of the proposed merger on central corridor interchange and interline movements between four carrier pairs: UP⇔NS, UP⇔CSX, BNSF⇔NS, and BNSF⇔CSX. This framework allows comparison of existing flows across the principal eastern and western carriers.

66. The principal analysis focuses on Agricultural Commodities moving in both unit train and manifest service. The data was filtered to exclude intermodal. Agricultural Commodities moving in unit train and manifest service were analyzed together.

67. For each carrier pair, I grouped movements into four origin-to-destination access combinations: "closed–closed," "closed–open," "open–closed," and "open–open." I calculated unit volumes and distinct BEA-to-BEA lanes for each group, along with associated revenue measures. These definitional limits were used for the 2024 traffic flow analysis. For purposes of estimating the CGP charges in the first year of implementation, the "open " UP-NS points were excluded.

68. I examined eastbound and westbound flows separately to preserve the identity of the carrier controlling each endpoint. This distinction matters because a movement involving a closed UP or NS endpoint presents different competitive considerations from one involving a closed endpoint controlled by another carrier, or an "open" to "closed" combination.

69. The analysis connects actual traffic flows with the access conditions supporting them. It shows where Agricultural Commodities' shippers and connecting carriers depend on exclusive service and provides a basis for evaluating how combined UP–NS control could affect routing alternatives and negotiating leverage. BEA-to-BEA lanes describe regional flows and endpoint classifications describe station access. Neither alone establishes the competitive options available to an individual shipper.

70. Endpoint access provides a basis for evaluating how those competitive relationships could change after the merger. A movement between open points may have alternatives that are unavailable to a movement with a closed endpoint. Where an endpoint is closed to one of the Applicants, another carrier's ability to compete for the movement may depend on continued access through interchange with Applicant. Figure 10 shows the concentration of Agricultural Commodities' shipments with at least one closed endpoint, by commodity group.[24]

Figure 10 {{



}}

[24] Source: Burchfield workpapers, "ngaf-v05-all.xlsx," tab "EPFPIVOT"(2024 agricultural traffic endpoint access and distinct BEA-to-BEA lane analysis)

71. The data demonstrates that in 2024, *{{[redacted]}}* of all Agricultural Commodities had a "closed" origin, a "closed" destination, or both. If the merger is approved, UP-NS will own over half of the closed industry access between the four primary US carriers.

72. Grain and farm products show the greatest dependence on closed endpoints among the commodity groups examined. In 2024, *{{[redacted]}}*of grain carloads and *{{[redacted]}}* of farm product carloads moved to or from at least one closed point. Grain presents the largest exposure by volume, with approximately *{{[redacted]}}* million of its *{{[redacted]}}* million carloads touching a closed endpoint. More than one-quarter of grain carloads, *{{[redacted]}}*, moved between closed points at both ends. Closed-point dependence also affected *{{[redacted]}}* of food and kindred products and *{{[redacted]}}* of grain mill products. These patterns identify substantial Agricultural Commodities' flows for which control of endpoint access is central to the assessment of competitive alternatives.[25]

VI. American Farmers Pay for Merger Benefits

73. Agricultural Commody shippers will be harmed by the merger.

74. Movement patterns expose a fundamental vulnerability for grain shippers: more than *{{[redacted]}}* grain carloads depend on a closed endpoint, and more than one-quarter are closed at both ends. That dependence limits a shipper's ability to respond to higher rates or deteriorating service by choosing another railroad. Where UP or NS controls the closed endpoint(s), gateways, and routing choices, the merger's consequences must be assessed from the position of the shipper who cannot readily walk away. Promises of broader network reach do not resolve that vulnerability. The Board should demand enforceable protections

[25] Source: Burchfield workpapers, "ngaf-v05-all.xlsx," tab "EPFPIVOT"(2024 agricultural traffic endpoint access and distinct BEA-to-BEA lane analysis)

that preserve practical routing choices and competitive access for agricultural markets that depend on these movements.

VII. Agricultural Commodities in the Watershed

75. CGP would be limited to the interchanges of Agricultural Commodities through the so-called "watershed region, " which is defined in the merger as the geography within two hundred and fifty miles on either side of four major gateways in the US midcontinent river system: Chicago, St. Louis/ East St. Louis, Memphis, and New Orleans. Rail interchange takes place there and can be challenged by a length of haul split at river gateways and delivered within a short distance of the gateway. The Revised Application claims that single line service created by their merger would compete in the "watershed region" by providing single line service.

76. The watershed issue has direct relevance to agricultural market access. USDA explains that western wheat moving from Kansas or North Dakota to East Coast flour mills typically requires interchange between western and eastern Class I railroads at the watershed area of Chicago. [26]

77. In my assessment, the importance of these gateways also makes the preservation of competitive interline service essential. The claimed benefits of eliminating an interchange for UP-NS traffic does not establish that grain shippers using competing carriers will receive comparable benefits. USDA identified gateway closure as a principal competitive concern in end-to-end mergers. For Agricultural Commodities shippers, UP-NS's ability to bypass

[26] U.S. Department of Agriculture, Agricultural Marketing Service, "STB Update: Proposed Merger Between Union Pacific and Norfolk Southern," *Grain Transportation Report*, Feb. 12, 2026, at 4–6, https://www.ams.usda.gov/sites/default/files/media/GTR02122026.pdf.

legacy gateways for its own benefit does not ensure that routes through gateways will remain commercially viable for shippers who depend on them.[27]

78. Failure to preserve an economically viable interchange at Chicago and other riverside rail gateways would inflict competitive harm on every shipper using those gateways. With concentrated access gateways, UP-NS would control *{{[redacted]}}* of the Chicago interchange and *{{[redacted]}}* of the E. St. Louis interchange, and *{{[redacted]}}* of the Kansas City gateway.

79. The East St. Louis gateway warrants particular attention because UP and NS originate a large share of its carloads destined for the Terminal Railroad Association of St. Louis (TRRA), and UP-NS would be able to exercise leverage over gateway operations.[28] *{{*

[redacted]

}}

[27] U.S. Department of Agriculture, Agricultural Marketing Service, "STB Update: Proposed Merger Between Union Pacific and Norfolk Southern," *Grain Transportation Report*, Feb. 12, 2026, at 4–6,

[28] DERCE work papers

To the extent this traffic supports TRRA, decisions to retain, reroute or internalize those movements could materially affect TRRA's traffic base and the allocation of its infrastructure costs. The resulting dependence could weaken the competitive position of rival shippers and carriers by increasing the cost per unit of maintaining alternative interline routes for Agricultural Commodities' shippers.[29]

80. An open gateway is of little value if economics render it commercially unusable. Traffic diverted from shared facilities through newly formed single line routings can leave competing carriers and their Agricultural Commodities' customers supporting infrastructure costs over a smaller traffic base.

VIII. The Implications of Applicants' Intent

81. Gateway closure can occur economically even where the physical connection remains open. By diverting traffic from shared gateways and shortening competitors' hauls through rates and service offerings, the merged railroad can also raise competing carriers' per-unit costs and weaken their ability to offer competitive alternatives.

82. This illustrates the economic mechanism known as "Raising Rivals' Costs" or ("RRC").[30] The theory recognizes that a vertically integrated firm need not eliminate a competitor or deny it physical access. It may instead weaken the competitor by increasing the cost of an input required to participate effectively in the market. The higher-cost rival may raise prices,

[29] See Burchfield working papers DERCE Model 11_14_26.xlsx, see interchange volume history on tab "CONFIDENTIAL DATA".

[30] Steven C. Salop & David T. Scheffman, *Raising Rivals' Costs*, 73 **American Economic Review** 267–271 (1983) (explaining how a firm can gain a competitive advantage by increasing its rivals' costs without requiring those rivals to exit the market).

accept lower margins, reduce output, curtail investment, or compete less aggressively. The firm controlling the input may then increase its own prices or capture additional market share.[31]

83. Dr. Steven Salop, an expert presented by UP in the CPKC merger proceeding, co-authored the foundational RRC literature. Salop and Scheffman explained that it is more profitable to compete against higher-cost firms than lower-cost firms. Further, the higher cost rival need not exit for the lower cost firm to employ the strategy and succeed. A higher cost rival may reduce output, permitting the low-cost firm (which was successful in raising its rival's costs) to increase price or market share.[32]

84. The RRC concern does not depend upon complete foreclosure of an interline route. Partial economic foreclosure is sufficient. As the proportional rates rise, connecting Class I carriers must absorb the cost, pass it through, or surrender traffic. UP-NS does not need to lower its own rate to prevail. It needs only to increase the cost at which its competitor can assemble the alternative route.

85. The RRC principles apply to all interchanges and interlines affected by the merger, including the subset of traffic eligible for CGP pursuant to its narrow criteria. UP-NS would control an essential segment required by CSX or BNSF to reach UP-NS served endpoints. It would control the input rates, traffic classifications, pricing-cell assignments, and annual

[31] Steven C. Salop, The Raising Rivals' Cost Foreclosure Paradigm, Conditional Pricing Practices, and the Flawed Incremental Price-Cost Test, 81 Antitrust L.J. 371, 371-421 (2017).

[32] Steven C. Salop & David T. Scheffman, Raising Rivals' Costs, 73 Am. Econ. Rev. 267, 267-71 (1983); Steven C. Salop & David T. Scheffman, Cost-Raising Strategies, 36 J. Indus. Econ. 19, 19-34 (1987).

calculation used to establish the price of that segment. The competing carrier would then purchase the essential route segment from the same railroad against which it must compete for the shipper's traffic.

86. For Agricultural Commodities' shippers, the competitive consequences of RRC extend beyond the rate offered on an individual movement. Elevators, processors, feed manufacturers, and exporters compete through the delivered cost of their products. Their ability to reach customers depends upon the price and service available over the entire transportation route, including any connecting railroad. Where, for example, BNSF or CSX must rely upon the UP-NS segment to complete that route, the UP-NS proportional rate becomes a cost of competing for the shipper's business. If that charge makes the interline alternative uneconomical, the gateway may remain physically open while the shipper loses an effective transportation alternative. The resulting loss of competitive discipline can affect both the cost of reaching existing customers and the range of markets the shipper can access.

87. CGP compounds the disequilibrium with simultaneous effects on rival carriers and rival grain shippers. At the carrier level, the merged railroad can impose an escalating access cost on rival railroads, widening the operating-cost spread and reducing their ability to compete. At the shipper level, selective, temporary, or nonexistent eligibility criteria can widen the transportation-cost spread among shippers competing in the same downstream markets. CGP can therefore raise the cost of a subset of participants while reducing the competitive pressure it exerts upon others, creating an uneven playing field and reducing the competitive discipline exerted upon shippers in affected markets.

88. In my assessment, CGP is a tool designed to raise the cost of competing carriers in interline service, improving the merged railroad's own competitive position without lowering its own

rate. It creates a mechanism capable of producing the vertical foreclosure and competitive harm it purports to prevent.

89. The effects of further consolidating the railroad industry extends beyond reductions in the number of railroads directly serving a facility. The loss of connecting-carrier choices and restrictions on route and gateway access can also result in the foreclosure of markets to send agricultural products.[33]

90. In 2000, USDA asked whether shippers will retain practical alternatives for reaching competing markets, and whether changes in rail rates and service will diminish those alternatives. This question is even more relevant today as the railroad industry has become more consolidated and carriers exercise their market power: Evaluating the proposed merger of UP and NS requires examining how it could reduce or restrict the existing choices for grain producers and shippers, including those already dependent on a single railroad at one or both endpoints.

91. USDA identified several ways rail consolidation prior to the promulgation of the 2001 Merger Guidelines had adversely affected Agricultural Commodities' shippers. These included gateway closures, cancellation of joint-line rates, refusals to quote shorter hauls, and denial of service to carload shippers.[34] USDA also warned that further consolidation of the railroad industry could eliminate a shipper's choice of connecting railroads. Such

[33] U.S. Department of Agriculture, *Comments of the U.S. Department of Agriculture*, **Major Rail Consolidation Procedures**, STB Ex Parte No. 582 (Sub-No. 1), at 22–25 (May 16, 2000)("USDA EP 582 Comments"),

[34] U.S. Department of Agriculture, *Comments of the U.S. Department of Agriculture*, STB Ex Parte No. 582 (Sub-No. 1), *Major Rail Consolidation Procedures*, at 23 (May 16, 2000)

restrictions would increase transportation costs and reduce access to competing markets, even where a facility retained its existing rail connection.

92. USDA reports that more than one hundred million bushels of grain were stored on the ground during the Western rail crisis because of inadequate and discriminatory service. These concerns led USDA to recommend evaluating merger effects across the entire transportation system, including consequences for connecting railroads, short lines, and rural communities.

IX. Summary of Conclusions

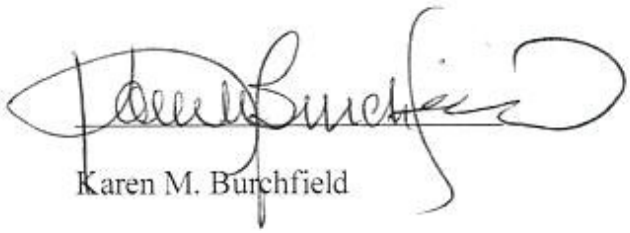
93. In this verified statement, I have examined the risks to Agricultural Commodities' shippers posed by the proposed merger of UP and NS. My analysis identifies how CGP would harm ineligible and eligible Agricultural Commodities' shippers. I also identified risks of greater control over gateways and how diverting traffic from legacy interchanges can leave the remaining carriers and their customers responsible for a larger share of fixed costs to preserve routes. The Applicants' claimed benefits do not account for the harm to Agricultural Commodities' shippers or the markets they serve.

94. Agricultural Commodities' shippers cannot protect themselves simply by choosing another railroad when their facilities lack competitive access. Their livelihoods depend on commercially viable routes and rates disciplined by meaningful alternative carriers. Before approving a permanent consolidation, STB should require durable, enforceable protections against the harms identified in this VS. Farmers and agricultural shippers should not be left to finance the merger's promised benefits through higher rates and fewer choices.

VERIFICATION

I, Karen M. Burchfield, state, under penalty of perjury, that the facts set forth in the foregoing Verified Statement are true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to execute this verification.

Executed: November 17, 2026



Karen M. Burchfield

Karen M. Burchfield
Principal, Supply Chain Acumen LLC
Rail Industry & *Supply Chain Expert*

Industry leader with an established record in people development, business strategy, cross functional alignment, market share growth, and profitable performance.



Strengths:
Proven strengths include leading through change, negotiating for mutual wins, rail operations, and market strategy innovation.

Personal:

kmburch01@gmail.com
112 San Jacinto Ct.
Southlake, Texas 76092
817 995 8018

Degrees & Certifications:
B.B.A International Business Texas Wesleyan Univ. 1984 G.P.A. 3.6/4.0

Graduate Certificate Supply Chain Mgt. Penn State University 2013

Masters Supply Chain Mgt. Penn State University 2014 G.P.A. 3.7/4.0

Public Speaker/Trainer:
Women's conferences
BNSF Leadership Training
Industry Panels

Principal, Supply Chain Acumen LLC
May 2025- Current

Strategic advisory services focused on complex rail-industry and supply chain challenges, serving shippers, industry associations, and stakeholders navigate operational, commercial, and regulatory issues across North American freight rail networks. Consulting engagements in network strategy, market access, transportation economics, interchange dynamics, and merger-related competitive analysis. Currently leading a multidisciplinary team evaluating the competitive, operational, and economic impacts of the proposed Union Pacific Railroad–Norfolk Southern Railway merger, with emphasis on interchange internalization, gateway displacement, shipper access, and the broader implications for rail competition and common carrier service.

BNSF Assistant Vice President (AVP) Industrial Products:
May 2020 - April 2025

Team leader for sales and marketing organization creating and executing strategies to optimize rolling stock while growing BNSF market share of industrial construction materials moving via rail. Portfolio responsibility for $1.9 billion in revenue and 660 thousand rail car movements annually. Increased in portfolio of 21% in volume, and 36% in revenue in 3 years.

BNSF AVP Coal Marketing:
February 2016- April 2020

Team leader focused on increasing market share in a mature commodity market challenged by regulation and product competition. Financial Impact; won competitive contracts valued at 188 million tons and $1.3 billion dollars annually and $4.9 billion dollars over the life of the contracts

BNSF AVP Industrial Products Sales:
March 2013 – February 2016

Team leader focused on profitable growth in the forest products, food and beverage, and dimensional equipment market sectors. Financial impact: Achieved revenue goals for $1.2 billion in annual revenues and improved contribution through market-based price increases and efficiency initiatives that reduced out of route miles and empty miles.

BNSF AVP Intermodal Equipment:
July 2010 – March 2013

Portfolio responsibility OPEX budget of $650 million. KPI accountability for right sizing and optimizing of intermodal and automotive fleets for efficiency. Financial Impact: $13 Million in annual cost savings through optimized mix, & favorable per diem arbitration decisions, and reduced operating expense. contribution over two years for increased number of shuttles and improved fleet cycle.

Karen M. Burchfield

Awards:

Influential Women 2026

Women in Operations
Northwest Division

Mentoring Award
Hispanic Leadership Council

YWCA Tribute to
Women in Business

North Region Transportation
Excellence

Texas Wesleyan University
Women in Leadership

Community:
Texas Wesleyan University
Board of Trustees

BBC
Finance Committee

Fort Worth Symphony
Executive Committee

LinkedIn Articles:

- Railroad Proud Series
- "Challenging the Status Quo: Supply Chain Evolution and Endurance"
- "Finding Clarity and Moving Forward"

https://www.linkedin.com/in/karen-burchfield-18b7325a/detail/recent-activity/posts/

Social Media:
LinkedIn
https://www.linkedin.com/in/karen-burchfield

Industry Experience (continued)

BNSF General Superintendent of Transportation North Region:
May 2007 – July 2010

Team leader focused on velocity and train plan execution on the BNSF North Region. Organization composed of 240 union and non-union employees Impact: $300 Million improved contribution over three years through fleet and velocity initiatives.

BNSF General Director of Grain Operations:
May 2005 – May 2007

Implemented operating changes to improve fleet velocity, increase fleet capacity, improve customer satisfaction. Impact: $186 Million improved contribution over two years for increased number of shuttles and improved fleet cycle.

BNSF Director Demurrage, Storage and Extended Services:
October 2002- May 2005

After five years of operating a successful rail industry consulting business, Burchfield returned to BNSF to lead a new team formed to improve velocity through reduced customer time and improved fleet utilization. Team results; improved accuracy of billing for cars dwelling at customer locations, improved collection of "demurrage" for customer time, reduced customer dwell, and improved velocity. $200 Million in contribution through improved billing accuracy, increased collection of assessorial charges, and reduced billing cycle through electronic dispute resolution and higher % billed:collected ratio.

Owner/Consultant, Priority Solutions:
1997-2001

For five years Burchfield served clients in the short line rail industry in the areas of marketing, training, research, and business process. Projects include line acquisition studies, market segment profitability analysis, market share growth projections, customer satisfaction surveys, and development of family friendly benefits. Interest and support of senior management maintained by timely communication throughout the process, and presentation of final proposed solutions at the senior level of client companies.

Burlington Northern Santa Fe Railway Company:
January 1989 – March 1997

Professional development and rapid progression through eight promotions in eight years; from Corporate Management Trainee through various positions in business analysis, logistics, marketing and operations culminating in a commercial position as the General Director of Forest Products Marketing, leading a marketing/sales team responsible for optimization of $240 million in annual sales.

`

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November 2026 a copy of the foregoing Opening Comments was served by electronic mail on all parties of record on the service list for Docket No. FD 36873 and Administrative Law Judge Soulikias.

s/ Thomas W. Wilcox

THOMAS W. WILCOX