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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873 (SUB-NO. 45)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

RESPONSIVE APPLICATION REGARDING
WYLIE INTERMODAL TERMINAL

APPLICATION AND EXHIBITS

PUBLIC REDACTED VERSION

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CPKC-77, FD 36873 (Sub No. 45)

RESPONSIVE APPLICATION OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

Pursuant to 49 U.S.C. § 11324(c) and 49 C.F.R. Part 1180, Canadian Pacific Railway Company d/b/a Canadian Pacific Kansas City and CPKC ("CPKC") submits this Responsive Application on behalf of its subsidiary The Kansas City Southern Railway Company ("KCSR" or "Applicant"). Specifically, this Responsive Application asks that the Board:

(1) Prohibit UP-NS from exercising or retaining any option or other right to acquire, control or operate the Wylie Intermodal Terminal[1] (the "WIT");

(2) In the event that Norfolk Southern Railway Company ("NS") (or Union Pacific Corporation and Union Pacific Railroad Company ("UP")) acquires any Covered Interests[2] before or through consummation of the UP-NS transaction, require UP-NS to divest and reconvey all such Covered Interests to CPKC at the purchase price actually paid to CPKC for the interests being reconveyed, to enable CPKC to restore, to the maximum extent practicable, CPKC's ownership and control of the WIT to maintain railroad competition in the Dallas market.

The Board has authority to grant each request pursuant to its statutory authority under 49 U.S.C. §§ 11321(a), 11322, 11323, and 11324(c) to order

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[1] As defined in the Fourth Recital and Exhibit A of the First Amendment to Dallas Terminal Marketing Agreement, effective September 28, 2016 (*see* App. B (Gameiro V.S. ¶ 214 & n.122)) ("1st Amendment"), and as may be interpreted by arbitral decision entered or taking effect prior to the Board's decision on this application.

[2] For purposes of the requested relief, "Covered Interests" includes the WIT and all ancillary CPKC operating, manifest, bulk, support, access and development interests in its vicinity acquired through the asserted option, an arbitration award or settlement. This definition does not concede the scope or validity of NS's asserted rights.

conditions including divestiture for approving the proposed UP-NS merger in Finance Docket No. 36873. Reconveyance should encompass all acquired Covered Interests, including any manifest and bulk yard, main-line siding, staging, access and development interests obtained through an arbitration award, settlement or other exercise of the asserted rights, without prejudice to CPKC's arbitration positions. The conditions should cover acquisitions through consummation of the UP-NS transaction. Release should occur before consummation, and reconveyance should occur before or contemporaneously with consummation. Upon reconveyance, CPKC would reimburse NS or UP for the purchase price actually paid to CPKC for the interests being reconveyed.[3]

EXECUTIVE SUMMARY

The WIT supports CPKC's intermodal service to and from the Dallas-Fort Worth area.[4] Together with the adjoining Wylie Rail Yard and other rail facilities, the WIT enables CPKC to offer a variety of freight rail services to customers moving freight to and from the Dallas-Fort Worth market.[5]

The WIT, along with the Wylie Rail Yard and other surrounding CPKC rail facilities serve as the western anchor of CPKC's east-west route extending from Alliance Junction near Fort Worth (where CPKC connects to BNSF) to Myrtlewood, AL (where CPKC connects with CSXT). In between, CPKC connects to its main north-south line at Shreveport, LA, serves customers along the Meridian Speedway,

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3 Release of an unconsummated purchase alone would not require reimbursement.

4 *See* Ex. 13 (Redd V.S. ¶¶ 272-76).

5 *See* Ex. 13 (Redd V.S. ¶¶ 272-76).

and connects in Meridian, MS to NS as well as to CPKC's lines to Myrtlewood and to Artesia, MS (with connections to Tuscaloosa and Brookwood, AL) and Counce, TN.

In 2006, the Dallas Terminal Marketing Agreement ("DTMA") granted NS an option to acquire KCSR's intermodal terminal serving the Dallas area, subject to the buyer's obligation to handle KCSR intermodal traffic at the terminal.[6] In 2016, the 1st Amendment to the DTMA specified that the option, exercisable in 2024-2025, applied to the WIT.[7] The 1st Amendment defined the WIT by a survey and narrative description.[8] NS filed a memorandum of the option with that description in the local land records.[9]

[redacted]

and NS has not yet acquired the WIT from CPKC.[11]

UP's successful acquisition of NS would place the WIT and any other KCSR operating property the arbitrators determine is subject to NS's option under the control of CPKC's principal competitor in Texas and elsewhere.[12] Unlike NS, to

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6 *See* App. B (Gameiro V.S. § VI).

7 *See* App. B (Gameiro V.S. § VI).

8 *See* App. B (Gameiro V.S. § VI).

9 *See* App. B (Gameiro V.S. § VI).

10 *See* App. B (Gameiro V.S. § VI).

11 *See* App. B (Gameiro V.S. § VI).

12 *See* App. B (Gameiro V.S. § VI); App. A (Brooks V.S. § VI.F).

which KCSR granted the option, UP already operates two other Dallas-area intermodal terminals—Dallas Intermodal Terminal and Mesquite Intermodal Terminal—and directly competes with CPKC for Dallas-Midwest traffic.[13] Indeed, NS's Assistant Vice President of Strategic Planning testified that [redacted][14]

The DTMA's requirement that NS continue to handle existing CPKC intermodal traffic after acquiring the WIT would neither preserve nor promote competition in light of UP's potential acquisition of the WIT through the proposed merger.[15] CPKC's competitive effectiveness depends on its independent control of the facilities, trackage, capacity, operating priorities, and development opportunities in serving the Dallas-Fort Worth area.[16] When the option was granted in 2006, it was granted to NS, which had no operations in or near Dallas. UP's acquisition of NS and acquisition of the WIT through exercise of NS's option or acquisition of NS after NS's option is consummated would have vastly different competitive impact than when the option was granted in 2006.[17] The Board should therefore preserve or restore CPKC's ownership, operation, and independent control

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13 *See* App. B (Gameiro V.S. § VI); App. A (Brooks V.S. § VI.F).

14 Lehlbach Dep. Tr. at 340:20-342:13

15 *See* App. B (Gameiro V.S. § VI).

16 *See* App. B (Gameiro V.S. § VI).

17 *See* App. B (Gameiro V.S. § VI); App. A (Brooks V.S. § VI.F).

of the WIT by terminating the option if not yet consummated or, if UP/NS has acquired the WIT, require UP/NS to reconvey covered interests acquired and preserve or restore lawful pre-exercise commercial and operating arrangements, subject to the traffic reforms ordered here, while unwinding acquisition-dependent conversions inconsistent with restoration.[18]

SPECIFIC INFORMATION REQUIRED BY THE REGULATIONS

For applications filed under 49 U.S.C. § 11324(c), applicants must include the information specified in 49 C.F.R. § 1180.6. KCSR has provided the required information below, separated by the section and/or subsection of the regulations to which it responds and subject to the Board's decision waiving CPKC's obligations for certain of the regulatory requirements.[19] The specific regulatory language is provided in bold before each response.

KCSR believes that this Responsive Application should be classified as "minor" because it "clearly will not have any anticompetitive effects," or, to the extent any anticompetitive effects did exist they would "clearly be outweighed by the transaction's anticipated contribution to the public interest."[20] Nonetheless, KCSR has also provided all required information for "significant" transactions, should the Board determine that the application should be evaluated under that standard.

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18 *See* App. B (Gameiro V.S. § VI); App. A (Brooks V.S. § VI.F).

19 *See* Decision No. 46 at 3-4 (STB served Nov. 4, 2026).

20 *See* 49 C.F.R. § 1180.2.

1. General Information Supporting the Transaction

1180.6(a)(1) ***A description of the proposed transaction, including appropriate references to any supporting exhibits and statements contained in the application and discussing the following:***

The proposed transaction would, in the event that NS (or UP) acquires any Covered Interests before or through consummation, require UP-NS to divest and reconvey any such property to CPKC to restore, to the maximum extent practicable, CPKC's ownership and control of the WIT.[21] This would preserve the competitive status quo from post-merger anticompetitive harm by preventing the WIT from falling into the hands of UP (which already operates two of the three other Dallas-area intermodal terminals).[22]

The supporting maps, proposed agreement, impact analysis, operating plan, and density charts are identified in Exhibits 1, 2, 12, 13, and 14. Pursuant to Decision No. 46, Exhibits 8, 10 and 11 are not included.

1180.6(a)(1)(i) ***A brief summary of the proposed transaction, the name of the applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.***

The applicant is The Kansas City Southern Railway Company ("KCSR"), a wholly owned subsidiary of CPKC. The requested transaction consists of the KCSR and NS contractual and property rights summarized above.[23] KCSR's business

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[21] *See* App. B (Gameiro V.S. § VI); App. A (Brooks V.S. § VI.F).

[22] *See* App. B (Gameiro V.S. § VI); App. A (Brooks V.S. § VI.F).

[23] *See* App. B (Gameiro V.S. § VI).

address and telephone number, and the contact information for its counsel, are stated on the signature page of this Responsive Application.

1180.6(a)(1)(ii) The proposed time schedule for consummation of the proposed transaction.

The proposed transaction would have no impact on current operations.[24] KCSR requests that the Board direct the parties to transfer all acquired Covered Interests back to KCSR and terminate any easements or other rights granted UP-NS under the option in the DTMA, as amended, within 90 calendar days after the effective date of the Board's approval order. KCSR also requests that the Board retain jurisdiction to resolve any issues that remain after that period.[25] If UP-NS has not consummated acquisition of the WIT and the easement, KCSR requests that the Board terminate the DTMA option on the effective date of the Board's order. In all events, release must occur before consummation, and reconveyance before or contemporaneously with consummation of the UP-NS transaction.[26]

1180.6(a)(1)(iii) The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

The purpose of the proposed transaction is to safeguard effective CPKC competition against merger-related disruption in the Dallas-Fort Worth region.[27]

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24 *See* Ex. 13 (Redd V.S. ¶¶ 276, 284).

25 *See* App. B (Gameiro V.S. § VII).

26 *See* App. B (Gameiro V.S. § VI).

27 *See* App. B (Gameiro V.S. § VI); Ex. 13 (Redd V.S. ¶¶ 272-76).

KCSR's WIT is essential to CPKC's Dallas-Fort Worth intermodal service.[28]

[redacted] and many others. Together, the WIT and the Wylie Yard serve myriad Dallas-area customers and are the western anchor for CPKC's intermodal service that extends to Mexico, Chicago, Jackson and Meridian, MS and Myrtlewood, AL.[29] CPKC and UP directly compete for Dallas-Midwest and Dallas-Mexico intermodal traffic and, as described above, UP already operates two other terminals in this area.[30]

1180.6(a)(1)(iv) The nature and amount of any new securities or other financial arrangements

There will be no new securities or other financial arrangements as a result of the proposed transaction.

1180.6(a)(2) A detailed discussion of the public interest justifications in support of the application, indicating how the proposed transaction is consistent with the public interest, with particular regard to the relevant statutory criteria, including:

1180.6(a)(2)(i) The effect of the transaction on inter- and intramodal competition, including a description of the relevant market (see § 1180.7). Include a discussion of whether,

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28 *See* App. B (Gameiro V.S. § VI); Ex. 13 (Redd V.S. ¶¶ 272-76).

29 *See* Ex. 13 (Redd V.S., § XII); App. A (Brooks V.S. ¶ 230).

30 *See* App. B (Gameiro V.S. § VI); App. A (Brooks V.S. § VI.F).

> ***as a result of the transaction, there is likely to be any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.***

The relevant market includes intermodal service for Dallas-area shippers' moves to/from Chicago, Mexico and elsewhere, along with various types of merchandise, bulk and unit train traffic to/from points across CPKC's network. The UP-NS merger threatens competition in that market because if UP acquires NS and NS acquires or has acquired the WIT, UP would—alongside UP's Dallas Intermodal and Mesquite terminals—control facilities, trackage, capacity, operating priorities, and development opportunities at three of the four Dallas area intermodal ramps.[31] The fourth, BNSF's Alliance intermodal facility, lies on the western side of the Dallas-Fort Worth metroplex, approximately fifty straight-line miles west of the WIT.

The anticompetitive effects of coupling a UP-NS merger with an NS acquisition of the WIT would be amplified [redacted][32]

Because the proposed transaction would preserve (or restore) the current status quo by preventing UP from acquiring control of the WIT and possibly adjacent CPKC non-intermodal facilities, the transaction would preserve existing

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[31] *See* App. B (Gameiro V.S. § VI); App. A (Brooks V.S. § VI.F).

[32] *See* App. B (Gameiro V.S. § VI); App. A (Brooks V.S. § VI.F).

competition from CPKC.[33] No traffic or routing changes are anticipated as a result of granting this application.[34] Accordingly, the effect on the relevant market would be minimal—existing arrangements would remain unchanged.[35]

Failing to grant this application would facilitate a reduction in competition.[36] Granting this application would be procompetitive.

1180.6(a)(2)(ii) The financial consideration involved in the proposed transaction, and any economies, to be effected in operations, and any increase in traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from the consummation of the proposed transaction.

If NS or UP has acquired Covered Interests, upon reconveyance, CPKC would reimburse NS or UP for the purchase price actually paid to CPKC for the Covered Interests being reconveyed; release of an unconsummated purchase alone would not require reimbursement.[37] The requested transaction is not expected to give KCSR access to new traffic.[38] Accordingly, no new traffic-related revenue, profit, or earnings are projected.[39]

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33 *See* App. B (Gameiro V.S. § VI); App. A (Brooks V.S. § VI.F).

34 *See* Ex. 13 (Redd V.S. ¶¶ 276, 284).

35 *See* Ex. 13 (Redd V.S. ¶¶ 276, 284).

36 *See* App. B (Gameiro V.S. § VI); App. A (Brooks V.S. § VI.F).

37 *See* App. B (Gameiro V.S. § VI).

38 *See* Ex. 13 (Redd V.S. ¶¶ 276, 284).

39 *See* Ex. 13 (Redd V.S. ¶¶ 276, 284).

1180.6(a)(2)(iii) The effect of the increase, if any, of total fixed charges resulting from the proposed transaction.

None. Applicant presently has no plans to take on additional debt or incur any fixed charges in connection with the transactions contemplated by this Responsive Application.

1180.6(a)(2)(iv) The effect of the proposed transaction upon the adequacy of transportation service to the public, as measured by the continuation of essential transportation services by applicants and other carriers.

The proposed transaction would preserve the adequacy of transportation service by preventing UP from using its newfound market power to acquire a substantial advantage over its competition for Dallas-Fort Worth traffic.[40] It would prevent UP from monopolizing three of the four intermodal ramps in the Dallas-Fort Worth area.[41] And it would preserve effective CPKC competition in the region by keeping CPKC's intermodal operations independent of the merged UP and by preventing the merged UP from acquiring CPKC's rail yard and facilities surrounding the WIT that serve hundreds of customers shipping non-intermodal freight to and from the Dallas area.[42]

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40 *See* App. B (Gameiro V.S. § VI); App. A (Brooks V.S. § VI.F).

41 *See* App. B (Gameiro V.S. § VI); App. A (Brooks V.S. § VI.F).

42 *See* App. B (Gameiro V.S. § VI); App. A (Brooks V.S. § VI.F).

1180.6(a)(2)(v) The effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached.

CPKC does not anticipate that the requested condition will adversely affect its employees during the first three years following implementation. As the requested condition will preserve CPKC's status quo access to the WIT, CPKC does not presently anticipate any transaction-related workforce reduction or relocation. Any employee affected by implementation would receive the protections required by applicable law and Board precedent.[43]

1180.6(a)(2)(vi) The effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads in the territory, under 49 U.S.C. 11324.

No other railroad must be included as an applicant for the requested divestiture to produce its intended competitive benefit. The condition would leave current access and interchange rights intact, but it would reverse NS's purchase of the WIT pursuant to the agreement in question if that acquisition had been consummated before the Board's decision becomes effective.[44]

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[43] In the event CPKC's responsive application were granted by the Board, CPKC anticipates the Board would impose the protective conditions set forth in *Norfolk & Western Ry. - Trackage Rights - Burlington Northern*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.- Lease & Operate - California Western R.R*, 360 I.C.C. 653 (1980) (*Mendocino Coast* conditions).

[44] *See* App. B (Gameiro V.S. § VI).

1180.6(a)(3) Any other supporting or descriptive statements applicants deem material.

CPKC incorporates by reference the Comments it submitted in Finance Docket No. 36873 and the accompanying testimony and evidence.

1180.6(a)(4) An opinion of applicants' counsel that the transaction meets the requirements of the law and will be legally authorized and valid, if approved by the Board. This should include specific references to any pertinent provisions of applicants' bylaws or charter or articles of incorporation.[45]

The opinion of counsel is set forth below.

1180.6(a)(5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

In accordance with Decision No. 46, CPKC is providing on a consolidated basis the list of the following states in which its U.S. subsidiaries, including The Kansas City Southern Railway Company, operate CPKC's combined U.S. network of approximately 8,800 route miles:

- Alabama,
- Arkansas,
- Delaware,
- Illinois,
- Iowa,
- Kansas,
- Louisiana,

[45] An opinion of counsel is not required in a control transaction for the party sought to be controlled, or in a responsive application for the party against whom relief is sought.

- Maine,
- Michigan,
- Minnesota,
- Mississippi,
- Missouri,
- New York,
- North Dakota,
- Oklahoma,
- South Dakota,
- Tennessee,
- Texas,
- Wisconsin.

1180.6(a)(6) ***Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.***

Exhibit 1 contains a map that depicts the WIT, its connection to the UP and CPKC networks and UP's two competing intermodal terminals.

1180.6(a)(7)(i) ***Describe the nature of the transaction (e.g., merger, control, purchase, trackage rights), the significant terms and conditions, and the consideration to be paid (monetary or otherwise).***

The proposed transaction consists of an order requiring, in the event that NS (or UP) acquires any Covered Interests through consummation, UP-NS to divest and reconvey any such property to KCSR to restore, to the maximum extent practicable, KCSR's ownership and control of its existing facilities and properties at Wylie.[46]

The terms of the proposed transactions are detailed in Exhibit 2 (with placeholders as necessary to address the specific circumstances of the acquisition that would require divestiture). The condition would be implemented within 90 calendar days after the effective date of the Board's approval order. If the parties cannot agree on the terms of the reconveyance, KCSR requests that the Board prescribe terms that make the competitive remedy effective. In all events, release must occur before consummation and reconveyance, and before or contemporaneously with consummation of the UP-NS transaction.[47]

1180.6(a)(7)(ii) ***Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction. In addition, parties to exempt trackage rights agreements and renewal of agreements described at § 1180.2(d)(7) must submit one copy of the executed agreement or renewal agreement with the notice of exemption, or***

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46 *See* App. B (Gameiro V.S. § VI).

47 *See* App. B (Gameiro V.S. § VII).

within 10 days of the date that the agreement is executed, whichever is later.[48]

Exhibit 2 contains copies of KCSR's proposed forms of agreement for (a) NS's (UP's) relinquishment of the option granted in the DTMA and the 1st Amendment to acquire the WIT and access thereto, and (b) in the event NS (UP) acquires Covered Interests through consummation, an agreement for NS (UP) to reconvey to KCSR all acquired Covered Interests. The proposed forms include the significant terms necessary to make the authorized rights commercially and operationally effective. A final signed contract is not required with this responsive application. Implementation terms would be negotiated within 90 calendar days after the effective date of the Board's approval order.[49] If the parties cannot agree on the terms of the reconveyance, KCSR requests that the Board prescribe terms that make the competitive remedy effective.[50]

1180.6(a)(7)(v) ***State whether the property involved in the proposed transaction includes all the property of the applicant carriers and, if not, describe what property is included in the proposed transaction.***

The proposed transactions do not include all the property of KCSR. The proposed transactions would consist of the WIT in Collin County, Texas, and any associated Covered Interests described above.

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48 A final signed contract or agreement need not be filed with a responsive application. However, a draft contract or agreement should be submitted containing the significant terms proposed.

49 *See* App. B (Gameiro V.S. § VII).

50 *See* App. B (Gameiro V.S. § VII).

1180.6(a)(7)(vi) ***Briefly describe the principal routes and termini of the lines involved, the principal points of interchange on the routes, and the amount of main-line mileage and branch line mileage involved.***

The proposed transaction concerns the WIT and any associated Covered Interests described above.

1180.6(a)(7)(vii) ***State whether any governmental financial assistance is involved in the proposed transaction and, if so, the form, amount, source, and application of such financial assistance.***

KCSR does not anticipate receiving or requesting governmental financial assistance for the proposed transaction. The rights would be implemented through compensation paid by KCSR under terms prescribed by the Board.

1180.6(a)(8) ***Environmental data (exhibit 4). Submit information and data with respect to environmental matters prepared in accordance with 49 CFR part 1105. In major and significant transactions, applicants shall, as soon as possible, and no later than the filing of a notice of intent, consult with the Board's Office of Environmental Analysis for the proper format of the environmental report.***

KCSR views the transactions contemplated by this Responsive Application as falling within the categorical exclusion of 49 C.F.R. § 1105.6(c). KCSR consulted with the Board's Office of Environmental Analysis ("OEA") and provided the information attached as Exhibit 4 at OEA's request.

1180.6(b)(3) ***Change in control (exhibit 8). If an applicant carrier submits an annual report Form R-1, indicate any change in ownership or control of that applicant carrier not indicated in its most recent Form R-1, and provide a list of the principal six officers of that applicant carrier and of any related applicant, and also of their majority-owned rail carrier subsidiaries. If any applicant carrier does not submit an annual***

report Form R-1, list all officers of that applicant carrier, and identify the person(s) or entity/entities in control of that applicant carrier and all owners of 10% or more of the equity of that applicant carrier.

The Board waived this requirement, so this information is not included.[51]

1180.6(b)(5) ***Issues (exhibit 10). Submit a discussion of any other issues relevant to the transaction.***

The Board waived this requirement, so this information is not included.[52]

1180.6(b)(6) ***Corporate chart (exhibit 11). Submit a corporate chart indicating all relationships between applicant carriers and all affiliates and subsidiaries and also companies controlling applicant carriers directly, indirectly or through another entity (with each chart indicating the percentage ownership of every company on the chart by any other company on the chart). For each company: include a statement indicating whether that company is a noncarrier or a carrier; and identify every officer and/or director of that company who is also an officer and/or director of any other company that is part of a different corporate family that includes a rail carrier. Such information may be referenced through notes to the chart.***

The Board waived this requirement, so this information is not included.[53]

1180.6(b)(7) ***If applicant is not a carrier, indicate (i) the type of business in which it is engaged, (ii) the length of time so engaged, and (iii) its present and prospective activities which have or may have a relation to transportation subject to 49 U.S.C. Subtitle IV.***

The Board waived this requirement, so this information is not included.[54]

1180.6(b)(8) ***Intercorporate or financial relationships. Indicate whether there are any direct or indirect intercorporate***

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[51] *See* Decision No. 46 at 4.

[52] *See* Decision No. 46 at 4.

[53] *See* Decision No. 46 at 4.

[54] *See* Decision No. 46 at 4.

or financial relationships at the time the application is filed, not disclosed elsewhere in the application, through holding companies, ownership of securities, or otherwise, in which applicants or their affiliates own or control more than 5% of the stock of a non-affiliated carrier, including those relationships in which a group affiliated with applicants owns more than 5% of the stock of such a carrier. Indicate the nature and extent of any such relationships, and, if an applicant owns securities of a carrier subject to 49 U.S.C. Subtitle IV, provide the carrier's name, a description of securities, the par value of each class of securities held, and the applicant's percentage of total ownership. For purposes of this paragraph, "affiliates" has the same meaning as "affiliated companies" in Definition 5 of the Uniform System of Accounts (49 CFR part 1201, subpart A).

The Board waived this requirement, so this information is not included.[55]

2. <u>Competitive & Market Information</u>

1180.7(a) ***For major and significant transactions, applicants shall submit impact analyses (exhibit 12) describing the impacts of the proposed transaction—both adverse and beneficial—on inter- and intramodal competition with respect to freight surface transportation in the regions affected and on the provision of essential services by applicants and other carriers. An impact analysis should include underlying data, a study of the implications of those data, and a description of the resulting likely effects of the proposed transaction on the transportation alternatives that would be available to the shipping public. Each aspect of the analysis should specifically address significant impacts as they relate to the applicable statutory criteria (49 U.S.C. 11324(b) or (d)), essential services, and competition. Applicants must identify and address relevant markets and issues, and provide additional information as requested by the Board on markets and issues that warrant further study. Applicants (and any other party submitting analyses) must demonstrate both the***

[55] *See* Decision No. 46 at 4.

> ***relevance of the markets and issues analyzed and the validity of their methodology. All underlying assumptions must be clearly stated. Analyses should reflect the consolidated company's marketing plan and existing and potential competitive alternatives (inter- as well as intramodal). They can address: city pairs, interregional movements, movements through a point, or other factors; a particular commodity, group of commodities, or other commodity factor that would be significantly affected by the transaction; or other effects of the transaction (such as on a particular type of service offered).***

Although KCSR believes the proposed transaction is a "minor" transaction, KCSR has provided Exhibit 12 in the event the Board concludes it is a "significant" transaction. Exhibit 12 contains a verified statement by W. Robert Majure that explains—with reference to Mark Redd's verified statement—that the proposed transaction will have no anticompetitive effects and will be procompetitive. In short, the proposed transaction preserves the competitive status quo and prevents UP from using its newfound market power and incentives to eliminate a competitor of NS (the company UP would own if its application in the lead docket in this proceeding is granted).[56]

3. <u>Operational Information</u>

1180.8(b) ***For major and significant transactions: Operating plan (exhibit 13). Submit a summary of the proposed operating plan changes, based on the impact analyses, that will result from the transaction, and their anticipated timing, allowing for any time required to complete rehabilitation, upgrading, yard construction, or other major operational changes following consummation of the proposed transaction. The plan should make clear the gains in service, operating***

[56] *See* Ex. 12 (Majure V.S., Vol. II § 2.6.4).

efficiencies, and other benefits anticipated from the merger.

Although KCSR views the proposed transaction as "minor," KCSR has provided operational information compliant with the requirements of § 1180.8(b) as Exhibits 13 (Operating Plan) and 14 (Density Charts) in the event the Board determines that the proposed transaction is "significant." KCSR has not included a minor operating plan as Exhibit 15 because Exhibits 13 and 14 more than satisfy the requirements of § 1180.8(c). CPKC Chief Operating Officer Mark Redd has verified both exhibits.

4. <u>Transnational Issues</u>

1180.11(a) ***For applicants whose systems include operations in Canada or Mexico, applicants must explain how cooperation with the Federal Railroad Administration would be maintained to address potential impacts on operations within the United States of operations or events elsewhere on their systems.***

KCSR operates only in the United States. Its affiliates operate in Canada and Mexico. CPKC operates an integrated rail network in Canada and, through its subsidiaries, in the United States, and Mexico, and CPKC maintains the programs and procedures necessary to cooperate with the Federal Railroad Administration on cross-border safety and operating matters. The requested rights are located wholly within the United States and would not change CPKC or any of its affiliates' existing cross-border regulatory relationships. CPKC would continue its current FRA reporting, inspection, qualification, security, and emergency-coordination practices after implementation.

1180.11(b) ***All applicants must assess whether any restrictions or preferences under foreign or domestic law or policies could affect their commercial decisions, and discuss any ownership restrictions applicable to them.***

KCSR is not aware of any foreign or domestic legal restriction or preference that would prevent or materially affect its use of the requested rights. The transaction would not change the ownership or control of KCSR or its affiliates. KCSR and its affiliates would remain subject to the laws and regulatory requirements applicable to their operations in Canada, the United States, and Mexico. KCSR will supplement this response if a relevant restriction is identified.

CONCLUSION

CPKC respectfully requests that the Board deny the proposed UP-NS merger. If the Board nonetheless approves the merger, CPKC respectfully requests that the Board grant this Responsive Application in its entirety and impose the transactions contemplated herein as a condition of that approval in Finance Docket No. 36873. CPKC seeks this relief only as partial mitigation of the merger-related competitive harm described above and does not waive its opposition to the primary transaction.

OPINION OF COUNSEL
FOR APPLICANT
SECTION 1180.6(a)(4)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

As counsel for The Kansas City Southern Railway Company ("KCSR"), the applicant in this proceeding, I am generally familiar with the proposed transaction described in this Application. It is my opinion that the proposed transactions described herein, to the extent they involve KCSR, meet the requirements of the law, are within the corporate powers of KCSR, and will be legally authorized and valid if approved by the Surface Transportation Board, and the other requirements set forth in the agreement governing the proposed transactions are satisfied or waived.

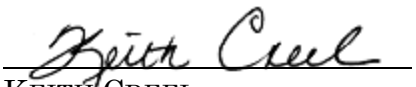
CASSANDRA P. QUACH
CHIEF LEGAL OFFICER
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

Dated this 18th day of November, 2026.

SIGNATURES, OATHS AND CERTIFICATIONS OF APPLICANTS' EXECUTIVE OFFICERS SECTION 1180.4(c)(2)(i)

CANADIAN PACIFIC RAILWAY COMPANY
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

I, Keith Creel, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct: that I am the President and Chief Executive Officer of The Kansas City Southern Railway Company ("KCSR"), applicant herein, as well as Canadian Pacific Railway Company d/b/a Canadian Pacific Kansas City and CPKC, the parent entity to KCSR; that I am duly authorized to sign, verify, and file this Application on behalf of CPKC and KCSR; that I have knowledge of the matters contained in this Application to the extent they relate to CPKC and KCSR; and that the statements made in this Application are true and correct to the best of my knowledge and belief.



KEITH CREEL
PRESIDENT AND CHIEF EXECUTIVE OFFICER
CANADIAN PACIFIC RAILWAY COMPANY
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

Executed on this 18th day of November, 2026 in Kansas City, Missouri.

SIGNATURES, OATHS AND CERTIFICATIONS OF APPLICANTS' EXECUTIVE OFFICERS SECTION 1180.4(c)(2)(i)

CANADIAN PACIFIC RAILWAY COMPANY

I, Cassandra P. Quach, certify that I am Secretary and Chief Legal Officer for Canadian Pacific Railway Company d/b/a Canadian Pacific Kansas City and CPKC, the parent entity to applicant herein, and that Keith Creel is duly authorized to sign, to verify, and to file this Application on behalf of CPKC.

CASSANDRA P. QUACH
SECRETARY
CANADIAN PACIFIC RAILWAY COMPANY

Dated this 18th day of November, 2026.

SIGNATURES, OATHS AND CERTIFICATIONS OF APPLICANTS' EXECUTIVE OFFICERS SECTION 1180.4(c)(2)(i)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

I, Tyler Robinson, certify that I am Secretary for The Kansas City Southern Railway Company ("KCSR"), applicant herein, and that Keith Creel is duly authorized to sign, to verify, and to file this Application on behalf of KCSR.

TYLER ROBINSON
SECRETARY
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

Dated this 18th day of November, 2026.

Respectfully submitted,



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Attorneys for CPKC

Dated: November 18, 2026

CPKC-77, FD 36873 (Sub No. 45)

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing responsive application in Finance Docket No. 36873 (Sub-No. 45) to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding and all parties required to be served by Decision No. 3 herein and 49 C.F.R. § 1180.4(c)(5):

a. The Governor (or Executive Officer), Public Service Commission, and the Department of Transportation of each State in which any part of the properties of the applicant carriers involved in the proposed transaction is situated;

b. The Secretary of the United States Department of Transportation;

c. The Attorney General of the United States;

d. The Federal Trade Commission;

e. Administrative Law Judge Jenifer J. Soulikias; and

f. All other parties of record.

Kiera S. Judge
Kiera S. Judge

November 18, 2026

Appendix A

Verified Statement of John Brooks

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION &
UNION PACIFIC RAILROAD COMPANY

– CONTROL –

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED STATEMENT OF JOHN BROOKS

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VERIFIED STATEMENT
OF
JOHN BROOKS

1. I am John Brooks, CPKC's Executive Vice President and Chief Marketing Officer. Previously, I was Executive Vice President and CMO at Canadian Pacific. I held senior marketing responsibilities at CP since 2007, when CP acquired DM&E, where I was Vice President of Marketing. I began my railroading career at Union Pacific and later helped start I&M Rail Link, LLC, which DM&E acquired in 2002.

2. Over the course of my railroad career, I have had senior responsibilities across all lines of business, including coal, chemicals, merchandise products, grain, and intermodal. As a lifelong resident of the Upper Midwest and a graduate of the University of Northern Iowa, I have particularly deep knowledge of the transportation needs of customers across the Midwest states served by CP—the Dakotas, Minnesota, Iowa, Illinois, and Wisconsin.

3. I submitted verified statements in support of the *CP/KCS* combination in 2022. In those statements, I explained the many customer benefits that would result from combining the two smallest Class 1 railroads in a north-south transportation marketplace dominated by much larger railroads, including UP and BNSF, with which they sought to compete more effectively. Since the merger, I have been involved in designing, pricing, selling, and implementing CPKC's service offerings, including both new single-line and interline services. I am proud to report that, as we outlined in our 2022 Application and supporting evidence, the creation of CPKC through the combination of CP and KCS has unlocked an expanded set of competitive options for rail customers without eliminating any of the options that shippers had before. As I explain further in this statement, the same cannot be said about the highly certain impacts from combining UP and NS.

4. I am submitting this statement to explain, from the perspective of someone who interacts with rail customers daily and works hard to find ways to develop rail transportation service offerings that meet customer needs, why the UP-NS merger, unlike the *CP/KCS* combination, would not serve the public interest. I will address six main points.

5. *First*, a combined UP-NS would be able to use its vast network to bully shippers into less competitive agreements. UP and NS would have both the ability and incentive to push shippers to their lanes even where customers may prefer the offerings of other railroads. This competitive harm will likely materialize in a few different ways. For example, where a shipper is solely served by UP on one side of the gateway, but enjoys competition on the other side of the gateway, a combined UP and NS would be able to exert pressure to force that shipper to use UP and NS for both portions of the haul even if the customer would prefer not to accept the full bundle of services UP was insisting upon. To be sure, not every customer will be harmed. Those already captive to UP and without a current presence in NS territory might see little risk in the merger. But they are not the majority. Shippers nationwide would be unable to avoid the combined UP-NS Colossus, and a subsequent downstream consolidation is not likely to be able to restore competition to current levels.

6. *Second*, a merger is unnecessary to achieve growth. Applicants flatly assert that they are unable to grow because of interchanges in the middle of the country. That is not true for a few reasons. First, CPKC has first-hand experience with UP's strategy to maximize price increases over volume growth. Second, the *CP/KCS* combination has little bearing on the likely effects of this merger. CP and KCS had exhausted interline opportunities over their single point of connection pre-combination. UP and NS, by contrast, have vastly more points of connection between them and have not maximized their potential for interline service. Third, technology is

making interline service more efficient by the day, removing some of the logistical barriers that might once have hindered railroads from providing their interline customers with a seamless, truck-like experience on issues like customer interfaces, shipment visibility, and many others. Ultimately, growth comes from railroads that are willing to innovate with their interline partners, investing together in services that put the customer first, demonstrating that their services will be there for the customer and operate reliably. Today's industry structure encourages exactly that kind of innovation, as evidenced by the joint CPKC-CSXT Southeast-Mexico Express Service that I discuss below.

7. *Third*, Applicants' projected growth is the result of a third-party expert-driven study that has no resemblance to how railroads actually grow in the real world. Probably for that reason, it is heavily weighted toward finding diversions in the pool of traffic currently moving by truck, rather than shifting rail traffic from CPKC and other railroads to the UP post-merger network. That is not how railroad sales work in practice. In my experience, the industry's muscle memory when it comes to selling is to take share from other railroads rather than to win new freight from the highway. When you are the largest railroad, using your leverage to pull traffic away from competitors is the easiest sale to make, and a combined UP-NS would have more of that leverage than any railroad has ever had. Apart from all of the defects in that expert-driven analysis, which are addressed by other witnesses, the Board should be skeptical of the bottom-line conclusion. As I explain below, CPKC knows first-hand how difficult truck conversions are, and there is serious doubt that what Applicants are claiming would be realistic or achievable.

8. *Fourth*, Canada has nothing to do with the UP-NS merger. Canada's rail system bears little resemblance to the United States rail network. And Canadian ports do not have any sort of structural advantage over U.S. ports because of the current rail network.

9. *Fifth*, no set of conditions could preserve the competitive outcomes that the current industry structure provides. At best, the Board would have to adopt an entirely new and onerous set of regulations that would fall short of replicating today's world, while simultaneously adding an entirely new set of regulatory layers to even attempt to offset the likely harms of the merger. As I explain below, the commitments Applicants have made—their "open gateway" commitment, their "Committed Gateway Pricing" program, their "Targeted Access Program," and their rate arbitration proposal—fall far short of what would be necessary. And even if one imagined such a regulatory regime, built of conditions and perhaps new backstop industry-wide regulation, being useful if scrupulously adhered to by post-merger UP, the experience of CPKC and others should stand as a warning that UP and NS will do everything that they can to thwart the real-world effectiveness of any such regulatory strictures.

10. *Sixth*, if the Board does approve the merger, CPKC's requested conditions are critical to give us the best chance to preserve our ability to compete with UP and NS on the merits of price and service.

I. THE UP-NS MERGER WILL MEAN WORSE COMPETITIVE OUTCOMES FOR RAIL CUSTOMERS AND THE AMERICAN ECONOMY

11. The vision of American railroading over the next century that Applicants offer in their Application is one in which the U.S. rail network is weaker and less capable of meeting the needs of transportation customers and the American economy. That is because, even if further rail consolidation stopped with just one more merger rather than several, eventually leading to a

Continent-wide duopoly, the competitive options available to rail customers would be severely diminished.

12. Applicants have acknowledged that there is some competitive overlap between UP and NS in certain geographies, and they are proposing to fix those problems by providing additional rail access to certain facilities. It is not clear to me that Applicants' chosen recipients for that access will come close to replicating what shippers lose, especially given the relatively small reach of CN's network compared to that of UP and NS. What is clear to me, however, is that the competition issue UP is proposing to address is just one among several much more significant and systemic ways in which the UP-NS transaction will reduce the competitive options available to rail customers.

13. Based on my experience in railroading and with UP and NS in particular, I see shippers being harmed by a loss of competition in at least four ways: (1) reduced ability to benefit from head-to-head competition on one or more sides of a gateway where UP previously connected with an independent NS; (2) elimination of the competitive leverage resulting from UP becoming more indispensable to shippers, such as through UP's greater control of solely served origins and destinations; (3) reduced opportunities to benefit from the competitive options to UP that may remain because of UP's greater ability to "bundle" competitive traffic in contracts covering movements for which UP will be indispensable; and (4) reduced competition between UP and NS for a greater portion of the routing where their networks offer alternative paths between origin and destination.

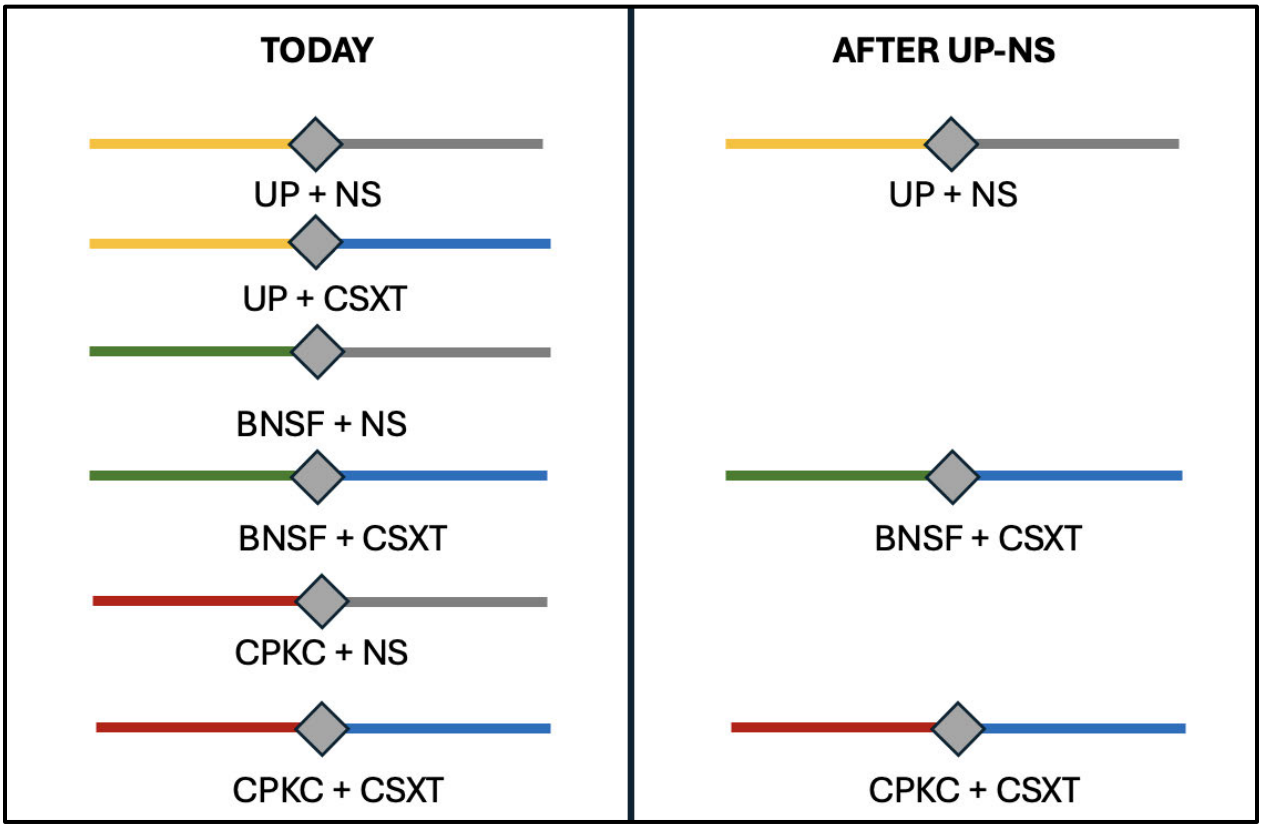
A. The UP-NS Merger Would Disrupt Today's Interline Optionality, Leading to Higher Prices, Fewer Service Options, and Poorer Service

14. First and foremost, by its very design the UP-NS merger will restructure the way the rail network handles East-West traffic flows across the important Mid-Continent gateways,

substituting today's world, in which shippers have numerous interline options, for a future in which shippers have at most two options (and many times just one): UP-NS's single-line offerings and, maybe, an interline or single line option via BNSF and CSX. As a practical matter, rail customers would no longer have any ability to negotiate with two Eastern options or with two Western options, taking advantage of competition between those railroads in the East and West, and then choose the pairing of Eastern and Western carriers that offer them the best deal. The Board should not underestimate the degree to which this transformation would extinguish a competitive dynamic that today lets shippers with options be in the driver's seat when negotiating with their railroad service providers.

15. As a practical matter, except in situations where post-merger UP has compelling incentives to continue interlining with another Class 1 (perhaps including CPKC-UP movements between North Dakota, where UP's network would not go, and the Pacific Northwest), the likely array of realistic shipper options will be reduced to those entailing movement on the UP network, and those that are fully independent of that network. In other words, the world will transform from the (admittedly oversimplified) competitive picture in the left-hand panel of Figure 1 to the much less competitive environment depicted in the right-hand panel. Today, each of the three Western carriers—UP, BNSF, and CPKC—can be paired with either of the two Eastern carriers—NS and CSXT—giving shippers six combinations to play off against one another. After UP-NS, only three would remain: UP-NS itself, BNSF-CSXT, and CPKC-CSXT.

FIGURE 1
THE PERMANENT TRANSFORMATION OF TODAY'S INTERLINE OPTIONALITY



1. The Merger Will Collapse the Ability Shippers Have to Negotiate Better Competitive Outcomes with Rail Competitors on One Side of a Gateway

16. As today's network is structured, shippers routinely play carriers off against one another when multiple options are available to, or from, a gateway, even when only one carrier can serve the origin or destination on the other side. This practice transcends commodity. Shippers of chemicals and industrial commodities, of bulk commodities like grain and ethanol, of automotive shipments, and of intermodal shipments all benefit from the ability to have confidential and separate negotiations with their Eastern carrier options and with their Western carrier options, knowing that they can combine those options via a well-functioning gateway connection in the middle of the country.

17. To illustrate using just one among many dozens of applicable scenarios, take a situation where a receiver of frac sand at a solely served facility in the East is looking to source that commodity from a rail-served facility in the West. Despite being captive in the East, the shipper has real options in the West, and can harness the benefit of competition: both among alternative sources of frac sand and the alternative railroads that serve those mines. The rail carrier in the East does not need to be privy to those negotiations. Shippers know how to use Rule 11 pricing mechanisms to secure from the Eastern carrier a rate that can be combined with another Rule 11 rate in the West that is the product of a truly competitive negotiation for that portion of the transportation need.

18. CPKC participates in these kinds of negotiations routinely. For example, this dynamic benefits many chemicals customers. Even if their facilities across the country might be served by a single railroad, they have the benefit of shipping to receivers that have rail options, or the situation may be reversed, with the receivers sourcing from dual-served origin facilities. The opportunity for competitive negotiations between rail carriers in the East or in the West unlocks tremendous value for these shippers today, but that will go away if UP-NS effectively removes the interline optionality that makes this dynamic work, and transforms all negotiations for transportation on the legacy-UP or legacy-NS part of the merger network into a conversation the customer must have with UP executives in Omaha.

19. The same dynamic applies when the competition on one side of the gateway is between alternative sources and destinations. For example, in the frac sand realm, CPKC-served mines in Wisconsin and Iowa are direct substitutes for UP-served mines in Wisconsin. In order to win the business, we need to sharpen our pencils on rates and offer fast and reliable cycle times in conjunction with the Eastern carrier (usually NS in this scenario), because it is the sole

railroad reaching many of the important destinations in Pennsylvania, Ohio, and Southern Tier New York. We know what will happen if UP and NS merge. UP will have full visibility into both sides of this negotiation and control what it offers for movement over the legacy-NS portion of its merged network. UP will have an array of tools to ensure that the "best" and maybe only option for this receiver is the UP-NS option even if that option is inferior to what would have been available to the shipper in the pre-merger world because of real competition in the West.

20. In my experience, once UP controls NS it would have many levers to tilt this choice. In the frac sand context, for example, it could direct destination bids only to UP-served locations, it could use unloading incentives to control the delivered price, or it could degrade the CPKC-UP option by discontinuing NS's practice of cooperating with CPKC on unit train service and substituting manifest train service, which is all that UP supports today. There would be dozens more tactics UP could employ, some subtle and others more explicit.

21. An infinite array of similar scenarios will play out across all of the East-West commodity flows. The exact same scenario I described relating to frac sand will be repeated across an array of bulk commodities: grain, ethanol, potash, and others, including chemicals and forest products. Intermodal customers that previously could pair their preferred Eastern carrier with their preferred Western option will see their choices reduced from four to just two: the UP option and the BNSF-CSXT option in most cases.

22. I describe a number of these scenarios in more detail below.

(a.) Frac Sand Moving to NS Destinations Via Chicago

23. Source options in the Upper Midwest remain a key competitive advantage for frac sand customers. CPKC works with frac sand facilities in Wisconsin and Iowa to ship

approximately [redacted][1] carloads annually over Chicago to NS, providing East Coast consumers with access to a wide range of competing supply sources. Eastern consumers of frac sand have multiple options in the Upper Midwest to source from; key frac sand originations come from approximately 14 facilities across Wisconsin, Iowa, and Illinois that are served by multiple railroads, including CPKC, UP, BNSF, and CN. For example, UP serves [redacted] CPKC serves Pattison Sand's facility in Clayton, IA, [redacted]

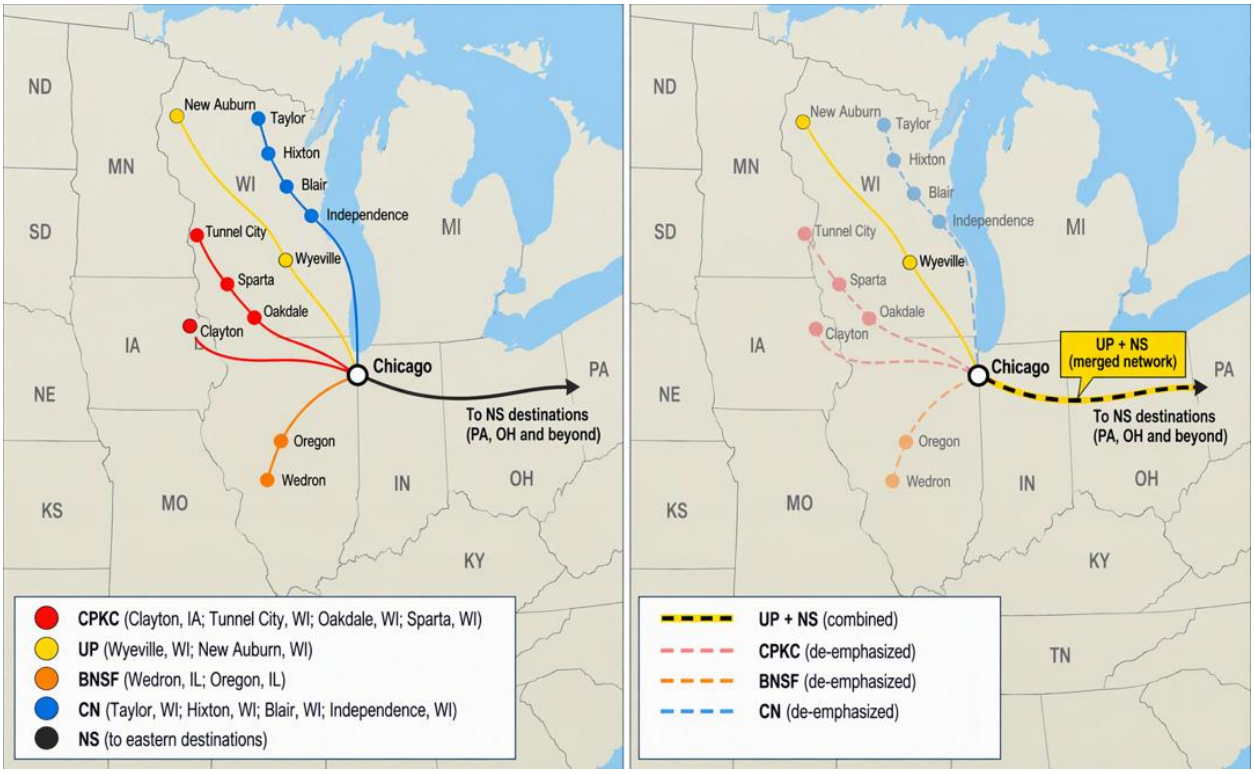
24. This diversity of rail-served origins creates meaningful competition among suppliers and transportation providers, helping discipline prices west of Chicago and benefiting customers. However, the majority of the destinations in Pennsylvania and Ohio are solely-served by NS. This traffic typically is bid and moves under Rule 11 pricing to Chicago, which preserves competition at origins and gives receivers access to multiple supply options and lower delivery costs. After the merger, UP would have visibility into the entire equation and would use its market power to raise overall prices. For example, UP could keep the traffic on UP-served origins west of Chicago for itself and to commercially discourage the use of other supply sources served by competing railroads. CPKC volumes from [redacted] origin and Pattison Sand's Clayton, IA origin are among those most exposed to that displacement. This would harm both receivers by limiting their array of available choices and shippers by effectively

[1] *See* (HC) Brooks Data Point Workpaper.xlsx, tab "Data Points," cell F4.

eliminating the entire Eastern market for frac sand producers served by anyone other than UP-NS.

25. The likely anticompetitive effect of the merger on these lanes is illustrated in Figure 2 below.

FIGURE 2[2]
IMPACT ON FRAC SAND SHIPMENTS TO NS-SERVED EASTERN REGIONS VIA CHICAGO



(b.) Ethanol Moving to Eastern Distribution Terminals.

26. CPKC currently handles approximately [redacted][3] annual carloads of ethanol moving to NS destinations via interchange at the Chicago gateway, primarily from origins in Iowa, Minnesota, and North Dakota. Today, competition among Western railroads for volumes

[2] *See* (HC) Brooks Visuals Workpaper.xlsx, tabs "Figure 2," "Figure 2 Data Dictionary," "Figure 2 Raw Data," and "Figure 2 Map Support."

[3] *See* (HC) Brooks Data Point Workpaper.xlsx, tab "Data Points," cell F5.

moving to Chicago and competition among Eastern carriers beyond Chicago provides producers and receivers with multiple transportation and sourcing options that help discipline prices.

27. These NS-served destinations cannot easily be replaced by CSX-served ones.

[redacted] Those terminals mostly serve local and regional distribution in the Southeast. Because the two groups serve different markets and different end users, a shipper or receiver whose product must reach a New York area terminal cannot simply switch to a CSX-served southeastern terminal if rates or service on the NS route get worse. That makes competition among Western carriers for the haul to Chicago, where CPKC now competes, the main check on rates for this traffic.

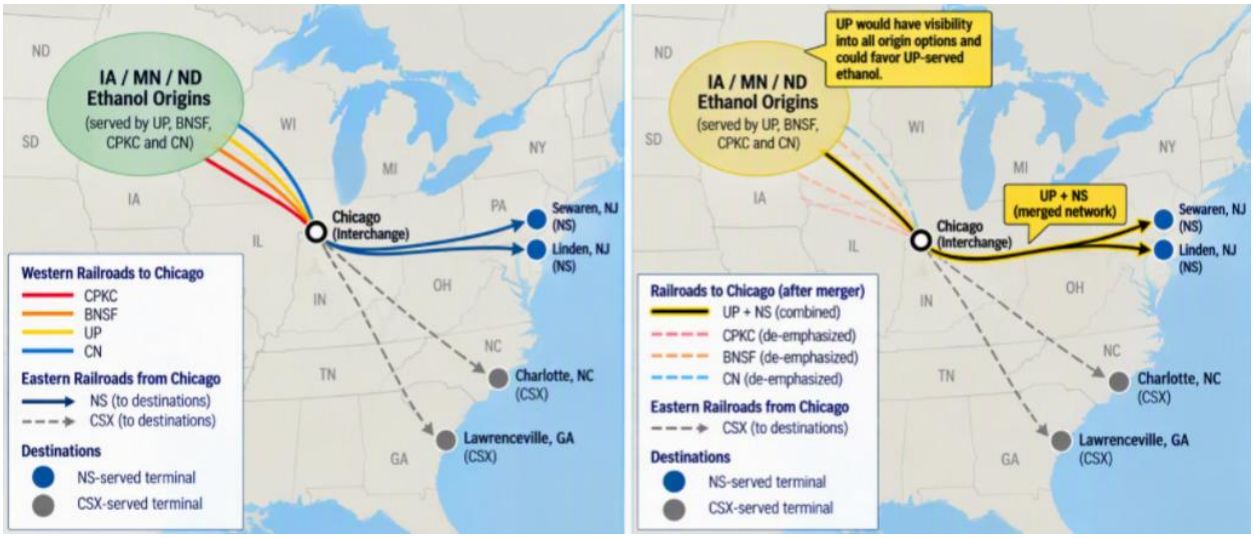
28. The proposed transaction puts that check at risk. CPKC's NS-bound and CSX-bound ethanol both come from the same origins in Minnesota, Iowa, and North Dakota and are handed off at Chicago. UP has a large footprint in those same regions. After the merger, UP-NS could offer single-line service from UP-served origins straight to NS-served destinations. CPKC and the shippers on its lines would then have to compete against that service while relying on interchange with the merged carrier at Chicago. In a merged UP-NS system, the incentive would be to move NS-destination ethanol from UP-served origins rather than CPKC-served ones. That could push CPKC-origin volumes out of these destination markets. Since CSX-served destinations are not a real alternative for this traffic, receivers at the NS terminals would have few ways to respond.

29. Following a merger, UP would have visibility into the entire movement and could capture the full value associated with controlling the route from origin to destination. [redacted]

[redacted] The proposed transaction thus limits market access for ethanol producers served by competing railroads while reducing transportation options available to East Coast blending and storage terminals.

30. The likely anticompetitive effect of the merger on these lanes is illustrated in Figure 3 below.

FIGURE 3[4]
IMPACT ON ETHANOL SHIPMENTS TO NS-SERVED REGIONS OF EAST VIA CHICAGO



(c.) Chemicals and Plastics Moving to NS Destinations.

31. Chemicals also face significant origin displacement risk. CPKC currently interchanges approximately [redacted][5] annual carloads of chemicals traffic with NS, primarily

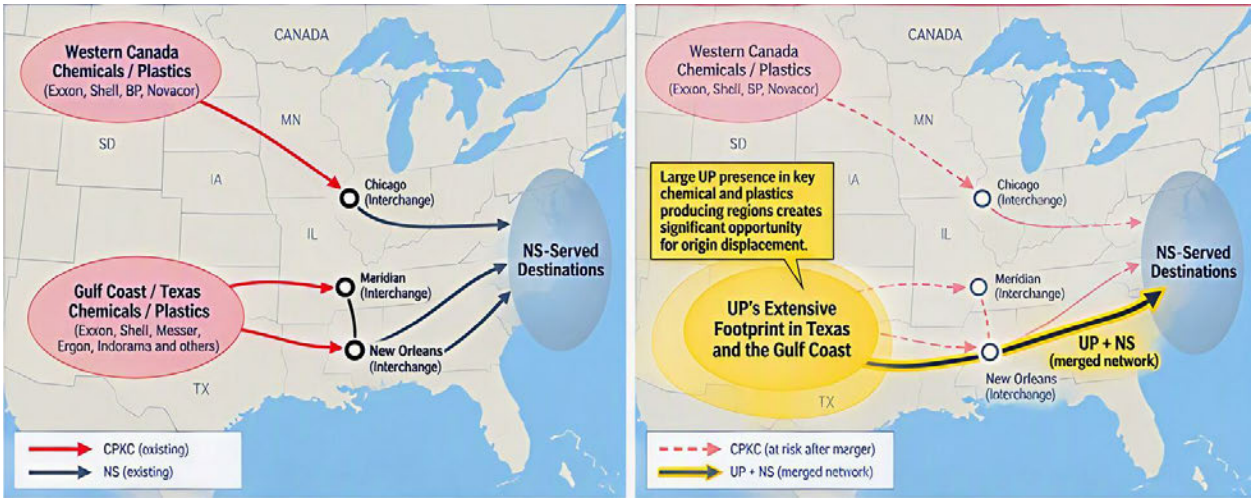
[4] *See* (HC) Brooks Visuals Workpaper.xlsx, tabs "Figure 3," "Figure 3 Data Dictionary," "Figure 3 Raw SCRS," "Figure 3 Raw CPKC Waybill," and "Figure 3 Map Support."

[5] *See* (HC) Brooks Data Point Workpaper.xlsx, tab "Data Points," cell F6.

from origins in the Gulf. Given UP's extensive origin network in both commodities, a combined UP-NS would likely favor UP-origin traffic, reducing the transportation alternatives that exist today through interline service. [redacted]

32. The likely anticompetitive effect of the merger on these lanes is illustrated in Figure 4 below.

FIGURE 4[6]
IMPACT ON CHEMICALS SHIPMENTS TO EAST



(d.) Forest Products Moving to NS Destinations.

33. Forest products also face significant origin displacement risk. CPKC currently interchanges approximately [redacted][7] annual carloads of forest products with NS, primarily from Louisiana origins. A combined UP-NS would likely favor UP-origin traffic, reducing the

[6] *See* (HC) Brooks Visuals Workpaper.xlsx, tabs "Figure 4," "Figure 4 Raw CPKC Waybill," "Figure 4 Map Support," "Figure 4 Data Dictionary," and "Figure 4 Raw UP Footprint."

[7] *See* (HC) Brooks Data Point Workpaper.xlsx, tab "Data Points," cell F7.

transportation alternatives that exist today through interline service for forest products from jointly served sites such as [redacted]

(e.) Grain and Feed Ingredients Moving to Eastern Consumers.

34. The same dynamic can arise for grain and feed ingredients moving to Eastern consumers such as poultry and livestock feeders, including feed grain, soybean meal, DDGS, and corn sources from the West. UP will want to control grain moving into the East, and it will have the power to do so, depriving NS-served receivers of the optionality that supports more competitive outcomes. CPKC currently interchanges approximately [redacted][8] annual carloads (FY 2025 basis) of grain and grain products with NS, with approximately [redacted][9] moving through Chicago. This wheat originates primarily in Minnesota, Nebraska, and the Dakotas and moves to NS-served milling destinations across Pennsylvania, New Jersey, North Carolina, South Carolina, and other northeast locations. UP also has significant wheat origination locations in Kansas and Nebraska serving Eastern milling markets. Similar to the concerns identified for frac sand and ethanol, a combined network would give UP the ability and incentive to favor its own origins for movements to these Eastern destinations, potentially displacing CPKC-served origins and reducing the competitive sourcing and routing options available to Eastern receivers. That would also reduce competitive outlets for farmers and grain producers in CPKC-served regions.

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[8] *See* (HC) Brooks Data Point Workpaper.xlsx, tab "Data Points," cell F8.

[9] *Id*. at cell H9.

(f.) Domestic Intermodal Moving Between Dallas Market and the East Coast.

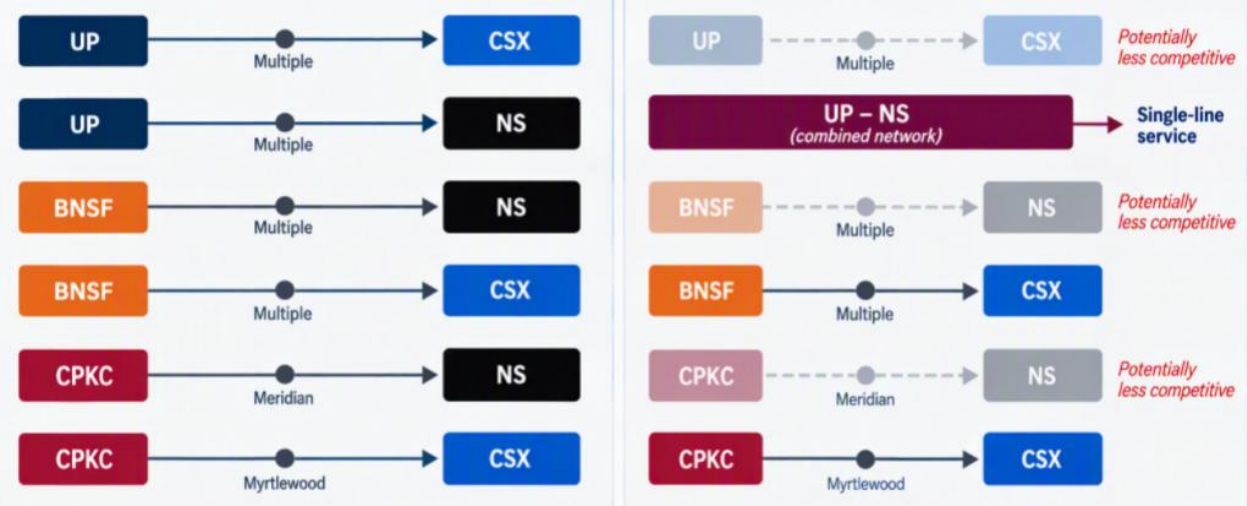
35. Domestic intermodal traffic moving from the Dallas market to East Coast stations, for shippers such as [redacted] faces the same risk: a combined UP-NS could control the routing decision and keep that traffic on its own network. The same is true in the other direction for traffic originating at Atlanta and other population-dense East Coast stations, for shippers such as [redacted] Here, the routing decision typically rests with intermodal marketing companies and other channel partners, which choose among competing rail options by lane. That partner optionality is what disciplines the railroads. Schneider's choice is illustrative: although a UP channel partner, Schneider (a North American truckload and intermodal carrier) elected to move traffic on CPKC's Mexico Midwest Express, a choice available only because Schneider recognized the potential value of CPKC service to and from Mexico. Schneider's letter filed with the Board on November 11 confirms the importance of this optionality. Schneider says that it "today negotiates with at least two major rail providers in each relevant geography." Although Schneider also says that "that competitive choice will remain following the transaction," I am concerned that Schneider is overlooking an important aspect of the future competitive dynamics after a UP-NS combination.[10] If the UP-NS merger is approved, in the future when rail customers like Schneider are looking to negotiate with two railroads in the East and two in the West, they will find that they have to negotiate with Omaha for a UP-NS service and have no realistic way to combine a legacy-NS network in the East with BNSF in the West, or a legacy-UP network in the West with CSXT in the East. A combined UP-NS would remove two independent railroads from this market at once, reducing alternatives. A

[10] Schneider National Carriers, Inc. Statement in Support of the Proposed Union Pacific and Norfolk Southern Merger, Finance Docket No. 36873 (filed Nov. 11, 2026) at 2-3.

combined UP-NS could steer its channel partners to UP-NS single-line routings. For smaller intermodal marketing companies, which often depend on access to railroad-owned equipment in the EMP and UMAX pools, UP-NS also would have incentives to eliminate or degrade the UMAX container program that supports UP-CSXT interline service, for the same reasons that UP kicked CPKC out of the EMP program when CPKC started competing with it for Mexican traffic.

36. The likely anticompetitive effect of the merger on these lanes is illustrated in Figure 5 below.

FIGURE 5
IMPACT ON DOMESTIC INTERMODAL SHIPMENTS TO EAST: SIGNIFICANT REDUCTION IN AVAILABLE ROUTING OPTIONS TO SHIPPERS



2. Experience Shows that Post-Merger UP Will Be Far Less Interested in Supporting Interline Services with CPKC and Other Railroads

37. There is no doubt that UP's expansion of its network through the acquisition of NS will sharply curtail the combined carrier's incentive to support efficient interline options. UP

said this itself in 2001 when the Board's new merger rules were under consideration.[11] And UP's CMO, Kenny Rocker, said it again in 2022 when CP proposed a combination with KCS.[12]

38. CPKC has first-hand experience with UP in situations where UP has a choice whether to support interline services that might compete with its single-line options over all or some part of a route—analogous to the situation the UP-NS merger will create for virtually every East-West lane in the United States. The pattern is stark: UP does not cooperate, and instead, UP uses every tool in its toolkit to remove such options—and the competitive dynamic they would have fostered—from the customers' set of choices.

39. The Board should also consider how UP has responded to competition from CPKC's expanded network by forcing traffic over gateways that give UP the longest possible haul. Traffic moving to the Gulf states from CPKC origins in the Upper Midwest provides a prime example. When CP was independent of KCS, the most efficient handoff from CP to UP was at St. Paul or Chicago.

40. The *CP/KCS* combination gave CPKC the ability to offer improved services via its combined network deeper into the Gulf States. There are many cases where CPKC sought to offer solely-served UP customers a better economic deal by taking their traffic further on the CPKC network to an interchange with UP closer to the destination—e.g., Kansas City, Shreveport, Baton Rouge, or Beaumont—but UP acted to thwart those initiatives. UP effectively

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[11] Union Pacific's Reply Comments on Proposed Merger Rules, *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1) (filed Dec. 18, 2000), at 8 ("The Board will choose between a future in which two huge transcontinental systems develop single-line services in isolation from each other and a future in which all remaining railroads strive to develop more efficient services over remaining interline routes.").

[12] *Canadian Pac. Ry. Ltd. – Control – Kan. City S.*, Finance Docket 36500, UP Comments, Rocker/Turner V.S. at 2, 10-11 (filed Feb. 28, 2022) ("A combined CPKC would be emboldened to *force* shippers to use CPKC single-line routes, rather than *allow* them to use competitive interline routes with UP and BNSF.") (emphasis in original).

forced the interchange to remain at St. Paul or Chicago, where UP would retain its long haul despite the customer being better off with a different interchange.

41. The specific facts vary from case to case, but the basic pattern is this: to encourage the shipper to use more of CPKC's network, CPKC offered to charge less per mile for movement via a more southerly point of interchange with UP. Had UP simply maintained the rate per mile it charged for movement on UP south of St. Paul or Chicago, the shipper would have realized a rate reduction. Instead, UP took action to make any gateway shift uneconomical for the shipper.

42. Sometimes UP demanded *the same* rate division for movement via the more southerly gateway. For example, in 2025, UP thwarted CPKC's effort to [redacted]

The CPKC-Baton Rouge route would have materially shortened the total transit time, saving the customer money by reducing privately owned equipment cycle times. UP responded by quoting the *same* rate for the 79-mile haul as it had historically charged for the 1,065-mile haul. That pricing decision shocked the shipper which reported that UP had previously—until the *CP/KCS* transaction—published much lower tariff rates for movements from Baton Rouge to the destination (reflecting the limited nature of the services UP would provide via that routing). By demanding the same rate for nearly 1,000 fewer miles, UP prevented the shipper from realizing the savings available from CPKC's proposed route. With UP demanding its Chicago rate for a Baton Rouge interchange, CPKC would have had to *charge zero* for the 1,000 miles the traffic

would move on CPKC's network to get to Baton Rouge. Not surprisingly, the effect was to prevent the shipper from benefitting from CPKC's proposed rate reduction.

43. UP has used the same tactic in other instances to resist routing shifts that would shorten its long haul. For example, in July 2025 for [redacted] (a destination served by both UP and BNSF), UP gave the same [redacted] division over Kansas City and St. Paul for through-rate pricing. In many other cases, UP has maintained some differential between the rate it offers for a shorter length of haul but sharply increased the premium (in rate-per-mile terms) it demanded for movement via a more southerly gateway relative to the rates it charged via St. Paul or Chicago. To illustrate, in one situation, UP nearly doubled the rate-per-mile premium it charged for movement via Kansas City instead of St. Paul from [redacted] per mile to [redacted] per-mile to keep that traffic moving through St. Paul. In another, UP quoted a rate for movement via Dallas that was over [redacted] per mile (for a UP haul that would still have been more than 500 miles), while offering a rate via Chicago of [redacted] per mile. The practical effect was to preclude the customer's access to any route other than one via the Chicago gateway where UP would retain its long haul.

44. There are many other similar examples. All of these instances make clear to me what will happen if UP is allowed to control NS. UP will not be eager to continue supporting CSXT initiatives to compete for traffic to/from a legacy-NS customer in the East via an interchange with UP, or BNSF initiatives to compete for traffic to/from a legacy-UP customer in the West, just like UP has not been eager to support CPKC initiatives to compete for traffic with UP's longer-haul routes. Whereas UP or NS today have no incentive to manipulate which carrier on the other side of a gateway wins the traffic, after the merger, UP's incentive to keep the traffic

on its own network will be strong, and CPKC's experience shows the lengths to which UP will go to force that outcome whether or not it is in the best interest of the customer.

45. Another illustration of UP's approach toward railroads that have a competitive relationship with UP in some lanes is UP's decision in 2022 to kick CP (on the eve of its combination with KCS) out of the EMP container program. EMP is a shared pool of railroad-owned domestic containers that move freely across participating railroads, and CP was a contributing member. Through EMP, CP and UP jointly served domestic intermodal moves between UP-served U.S. points and Canada, and CP handled the largest portion of EMP volume moving to/from Canada. This decision effectively eliminated the CPKC domestic intermodal option from interline lanes connecting Canada with the UP network because UP now saw CPKC as a more formidable competitor for shipments between Mexico and the United States. The effects followed quickly thereafter. Domestic volume shifted from CP to CN, with Hub Group making CN its primary Canadian carrier. UP-CP and NS-CP volumes disappeared, and I believe substantial rail traffic opportunities went unmet as a result of this self-serving move by UP. Shippers were left with fewer carriers, weaker rate competition, and less container capacity in these lanes.

46. UP had the leverage to do this because it knew that CPKC had no effective options. UP controlled roughly 80,000 of the approximately 111,000 railroad-owned domestic containers in North America (and roughly 20,000 EMP containers that were in storage at the time). UP never asked CP to pay more to use the boxes and never tried to negotiate different terms; it simply cut off CP's access, stripping capacity from the market and many customers. It is likely that UP will do the same with UMAX following the merger, which supports CSXT's participation in domestic CSXT-UP intermodal lanes. Without access to a domestic CSXT box

program for small and medium-sized shippers, UP and its EMP program would become even more dominant in East-West intermodal lanes.

47. This is not to say that UP and NS never cooperate with CPKC to support effective and competitive interline services. They do, but only when it suits their financial interest, typically only when they do not have *their own* long-haul routes reaching all the way (or a greater portion of the way) between origin and destination. Some of that cooperation might well continue after the merger, because it would continue to serve UP's interests. For example, UP and CPKC cooperate to move grain and potash from origins that UP does not serve to destinations in the Pacific Northwest that CPKC does not reach. And UP, CPKC, and NS cooperate to offer best-in-class intermodal service between California and the Southeastern states by tapping a route (the Meridian Speedway) that UP does not own. In lanes like these, UP needs CPKC's participation to handle the traffic at all, and the merger would not change that.

48. Many other interline services, however, exist only because NS today has every incentive to cooperate with CPKC, and those services likely would not survive the merger. These include the services discussed above, such as NS's close cooperation with CPKC on interline shipments of ethanol and frac sand from origins NS does not reach, to destinations CPKC does not reach. After the merger, UP's and NS's incentives to support interline initiatives will be sharply diminished when the Transcon UP can force all of this traffic to its own network without involving interline partners. CPKC (and other railroads) will have diminished ability to compete for these traffic opportunities, but the real losers will be rail customers who would have benefited from that competition for one or more legs of their business.

B. The Merger Will Result in UP Becoming More Indispensable than UP or NS Pre-Merger for Many Shippers, Reducing Shippers' Bargaining Power, and Leading to Worse Marketplace Outcomes

49. The combination of UP's and NS's networks would make the resulting UP Transcon a much more important and unavoidable part of most rail customers' portfolio of transportation providers. To put it simply, it would be much harder for shippers to avoid having to deal with *both UP and NS* than it currently is to avoid UP *or* NS. UP would exploit its greater bargaining power to the disadvantage of rail customers.

50. Post-merger UP would have many sources of additional leverage. For a great many shippers that already have facilities solely served by UP, UP would augment its power by adding facilities solely served by NS, making the customer more dependent on UP. In addition, for customers on the legacy UP, UP would acquire the ability to control their access to parts of the legacy-NS network that the customer views as distinctly superior in meeting its needs. And, of course, for customers on the legacy-NS, UP would have a new ability to wield its control of their access to the legacy UP network. This leverage would take many forms, including access to geographic regions, access to alternative sources of supply of key commodities, and access to alternate destinations for such commodities. On top of all this, by virtue of its size and network scope UP would account for a vastly greater overall share of wallet or book of business it holds with a customer.

51. Automotive customers provide key examples of how the merger would increase customer dependence on UP. GM's Wentzville, MO assembly plant is directly served by NS rather than UP. Therefore, GM has the ability to rely on NS as an independent railroad to originate traffic from this Wentzville facility, even though GM also relies on UP elsewhere in its automotive network, including at western destination facilities. Following the merger, the NS rail access serving Wentzville would be controlled by UP. As a result, GM would no longer have

NS as an independent railroad option for traffic originating at Wentzville and would instead have to work with the combined UP-NS for that access.

52. Another example is the Rivian manufacturing facility in Normal, IL, which is directly served by NS rather than UP. Today, Rivian relies on NS independently of UP for direct rail service to and from the facility. Following the merger, that NS access would come under UP's control, *i.e.,* even though Rivian is not directly served by UP at Normal today, it would become dependent on the combined UP-NS for the rail access that NS independently provides today.

53. [redacted]

54. Stellantis's plants in the Detroit Shared Assets Area present a related concern. On paper, those plants are served by Conrail. In practice, CSXT handles its share of the volume by trucking it to CSXT's New Boston, MI facility, while NS handles the volume for its own destinations and forwards traffic directly from the plants to UP, BNSF, and CPKC. After the merger, UP would control NS's role at these plants and could favor its own routes over BNSF, CSXT, and CPKC options for Western and Mexico destinations.

55. These examples show the broader concern for auto customers. Where an assembly plant is served by NS today, the merger would not simply make UP a larger railroad, it would eliminate NS as an independent provider of the customers' existing rail access. For those facilities, customers that today can negotiate with and obtain service from NS independently of UP would instead have to negotiate with the combined UP-NS, increasing UP's leverage over their transportation options.

56. Armed with its increased post-merger leverage, UP will be able to demand more from its customers and they will have fewer ways to avoid that result by taking their business elsewhere. Consider the situation where shippers have solely-served facilities on both UP and NS today. Today, a facility solely-served by NS is not beholden to UP for its rail transportation options, and vice versa. The customer can credibly tell NS (or UP) that anticipated volumes to/from the captive plant will be influenced by the reasonableness of the rate and service that NS is offering, because NS does not control what the shipper pays at plants served by UP (and vice versa). After the merger, that would change and the shipper would have no choice but to negotiate with Omaha for all of these captive facilities.

57. I expect that many chemical and plastics producers with Gulf Coast facilities, automobile manufacturers like GM, and many others, would be vulnerable to enhanced UP market power in precisely this way. Post-merger, UP could drive an even harder bargain, knowing that the options these shippers had to shift traffic from UP-served facilities to NS-served facilities would achieve nothing in a negotiation with UP.

58. For example, UP today is the sole rail carrier at a number of ExxonMobil facilities in the West and along the Gulf Coast, including Parachute, CO; Anchorage, LA; Baytown, TX; Chiasson, TX; Amelia, TX; Dayton, TX; & Mont Belvieu, TX. NS, in turn, is the

sole rail carrier at ExxonMobil's Paulsboro Refinery in Gibbstown, NJ. Today, ExxonMobil deals with UP and NS separately, and neither railroad can use its hold over Exxon's captive traffic to influence how Exxon routes traffic on the other's network. The merger would change that. A combined UP-NS would control Exxon's captive facilities in both the East and West, giving it considerably greater leverage over Exxon than either railroad has today and can use that leverage to capture Exxon traffic it does not serve today. CPKC originates substantial volumes of Exxon plastics at Baton Rouge, a facility that UP does not reach. On several major plastics lanes, CPKC hands that traffic off at New Orleans, where [redacted] After the merger, UP-NS can link rates and service at Exxon's captive facilities, on both legacy-UP and legacy-NS lines, to Exxon routing that traffic over NS. Exxon would have little choice but to comply, and CSXT would lose the traffic, because UP-NS controls Exxon's captive business, not because of better service or rates. Likewise, [redacted] and UP-NS could use the same leverage to push that traffic onto NS.

59. The same dynamic applies more broadly than UP's expansion of its solely-served facilities. UP will also come to control the available rail transportation options for access to alternative origins and destinations across both the UP and NS networks. Shippers' ability to discipline UP by turning to an alternative source of supply served by NS (or threatening to do so) would go away when UP controlled the pricing for NS-served origins as well.

C. Post-Merger UP Will Have a Greater Ability to Compel Customers to Choose UP Services Even Where Competitive Alternatives Continue to Exist

60. In addition to directly reducing shippers' bargaining leverage, the merger would also give UP a greater ability to extend UP's market power to a broader array of traffic as to which customers would in theory retain competitive options. In other words, even where

customers might have competitive rail options for some subset of their traffic, UP's expanded reach would give UP new power to undermine shippers' access to those options as well.

61. CPKC has extensive experience with this phenomenon today. UP is able to use its often-dominant position in the West to demand that shippers deal with UP exclusively. This is true even where CPKC might offer services in certain lanes that are objectively superior from a pricing or service standpoint, but CPKC nonetheless is frozen out by UP's multi-lane bundled contracting practices. For example, UP has considerable leverage over Westlake. While Westlake's Lake Charles/Mossville facility is competitive with BNSF and CPKC, UP is the only rail option at several other Westlake facilities including Allemania, Dayton, Longview, McPherson, and Kellogg. So, even though CPKC can compete for certain Westlake moves, UP has a significantly broader relationship and captive business it can use as leverage. Another example is Exxon. UP is the sole rail carrier at many Exxon facilities, including Baytown, Mont Belvieu, Dayton Storage, and others. Even though CPKC competes for Exxon business at other locations, UP will have the ability to bundle across a much larger portfolio and influence traffic that would otherwise be competitive.

62. This kind of leveraging of UP's (or NS's) strong market position in one area to force outcomes in another area where there would otherwise be more competition (effectively denying customers the benefit of that other competition) is commonplace and takes many different forms. Sometimes UP will mitigate its demand for high rates for service to a solely-served facility on the condition that competitive origins/destinations are included in the bundle. Sometimes contracts contain incentive provisions that are triggered by aggregate volumes or market shares that provide strong incentives for shippers to give UP or NS all of their volumes, including in cases where the shipper might otherwise choose an alternative rail transportation

offering for some part of its portfolio. And the leverage need not be explicit: shippers reasonably fear that turning to a competing railroad for competitive traffic would invite retaliation on their captive traffic, leaving them worse off overall.

63. The UP-NS merger would magnify the universe of situations where this kind of foreclosure can occur. The merger would add more NS-served locations and lanes to relationships like Westlake's and Exxon's, and, more broadly, would increase nearly every shipper's "touch points" with a UP Transcon. That would massively expand the scope for UP to hold captive rate and service offerings hostage to shippers acquiescing in UP's preferred outcomes, even where BNSF, CSXT, or CPKC alternatives exist, further reducing shippers' ability to take advantage of competitive rail options to improve their rate and service outcomes. These effects would be pervasive.

D. UP and NS Will No Longer Compete with One Another to Carry Traffic Further on Their Own Network

64. Finally, I would highlight another, perhaps under appreciated, way in which railroads compete even when they do not serve the same origins or destinations. In some situations, two connecting rail networks have alternative routes (via alternative gateways) that are reasonably equivalent in their ability to move shippers' traffic from origin to destination, but which offer the participating railroads very different profit opportunities.

65. This issue is analogous to the situation I describe above where UP resisted CPKC's efforts to offer shippers a better deal by moving traffic farther on CPKC's network via a more southerly gateway for interchange with UP. CPKC was motivated in that case by the potential to earn hundreds of dollars of additional contribution on every carload. In effect, CPKC was competing with UP to serve the portion of the haul between St. Paul and Kansas

City/Shreveport/Baton Rouge/Dallas by offering the shipper a better deal for moving the traffic over those miles.

66. The same competitive dynamic plays out all of the time when two connecting carriers connect at alternative gateways, as UP and NS do. In the UP-NS context, there are numerous opportunities for NS and UP to seek greater profits for themselves by handling a greater portion of the origin-to-destination movement. An obvious example is traffic between Texas and the Northeast and Mid-Atlantic states. UP would earn more via St. Louis or Chicago whereas NS would earn more via New Orleans. Each would like to win the contribution associated with moving the traffic farther on its own network. A way of thinking about this is to see that UP and NS compete for the extra miles that interchange over a gateway giving them a longer haul would provide: (a) for NS's long haul, the miles roughly between New Orleans and Birmingham, AL; and (b) for UP's long haul, the miles roughly between Livonia and East St. Louis.

67. This form of competition would be destroyed if UP and NS were allowed to merge. They would no longer compete against one another for the longest portion of their haul. UP would get 100% of the haul no matter what. And shippers would thus have even less ability to negotiate for better rates and service.

E. The Board Should Not Be Misled by the Silence of Some Shippers, or the Views of Some Supporting the Merger

68. The kinds of competitive concerns I have outlined here are not inventions of mine or of others at CPKC. They reflect themes we have heard from our customers. I do not know how many of those customers will end up filing comments in this proceeding or what those comments will end up saying. I do know, however, that the customer concerns are very real, but there is also great fear in coming forward because, one way or the other, after this proceeding is

over, these customers will have to deal with today's UP or a much-expanded UP, and customers are very reluctant to say anything that might cause UP to be unhappy about what they said in this proceeding.

69. As a result, I expect that a meaningful number of shippers will make decisions to stand on the sidelines of this proceeding or perhaps even provide a letter of support, despite the fact that the transaction would have a devastating impact on the future competitive landscape of American railroading. I see these decisions falling into a number of potential categories:

- Some, especially smaller, shippers will be so scared of the repercussions for their future relationships with UP, NS, or UP-NS if they oppose the merger, that they will never state publicly (in a way that can be traced back to them) their honest view of the impact of the transaction (retaliation fears);
- Some may fear rate increases or other adverse outcomes, but take solace in the fact that those impacts will affect all of their competitors as well, so it would not be worth burning bridges with UP-NS to stake out a public position on the transaction;
- Some may want to minimize expenses and therefore rely on associations to which they belong to articulate their concerns (protection through trade associations, industry associations, etc.);
- Some may be focused on short-term time horizons and willing to accept a favorable multi-year contract with UP in exchange for their silence or support of the merger, and will be less concerned about the long-term implications of the transaction; and

- Some, including large customers, may already be so dependent on UP that the benefits of supporting the transaction in exchange for UP agreeing to a favorable contract, or forbearing from demanding short-term rate increases, is too valuable a concession to pass up, especially in light of the alternative of facing retaliation from UP.

70. I have heard these concerns personally from a number of customers, and my team has heard them from many more. Customers have articulated some version of each of these explanations for their decisions not to participate in this proceeding directly, despite conveying to CPKC their view that this merger is not in the public interest.

II. THE UP-NS COMBINATION IS NOT NECESSARY TO ENABLE RAILROADS TO DELIVER COMPETITIVE OFFERINGS CAPABLE OF GROWING RAIL TRAFFIC

71. Fortunately, the Board need not expose rail customers and the U.S. economy to the anticompetitive risks of a UP-NS merger. The merger does not need to be approved in order for America to have a first-class freight rail network—it already does. And there is no need for a merger to support the delivery of rail transportation services—whether single line or interline—to meet the needs of rail customers.

A. The Fact that UP and NS Are Independent Today Is Not Why They Have Faced Growth Challenges in Recent Years

72. Applicants are wrong to suggest that the absence of a transcontinental U.S. railroad is holding back the American economy or a meaningful impediment to traffic growth for UP, NS, or other U.S. railroads. Some of the challenges facing railroads like UP and NS are real, but allowing further consolidation is not the solution, and it is certainly not the *right* solution.

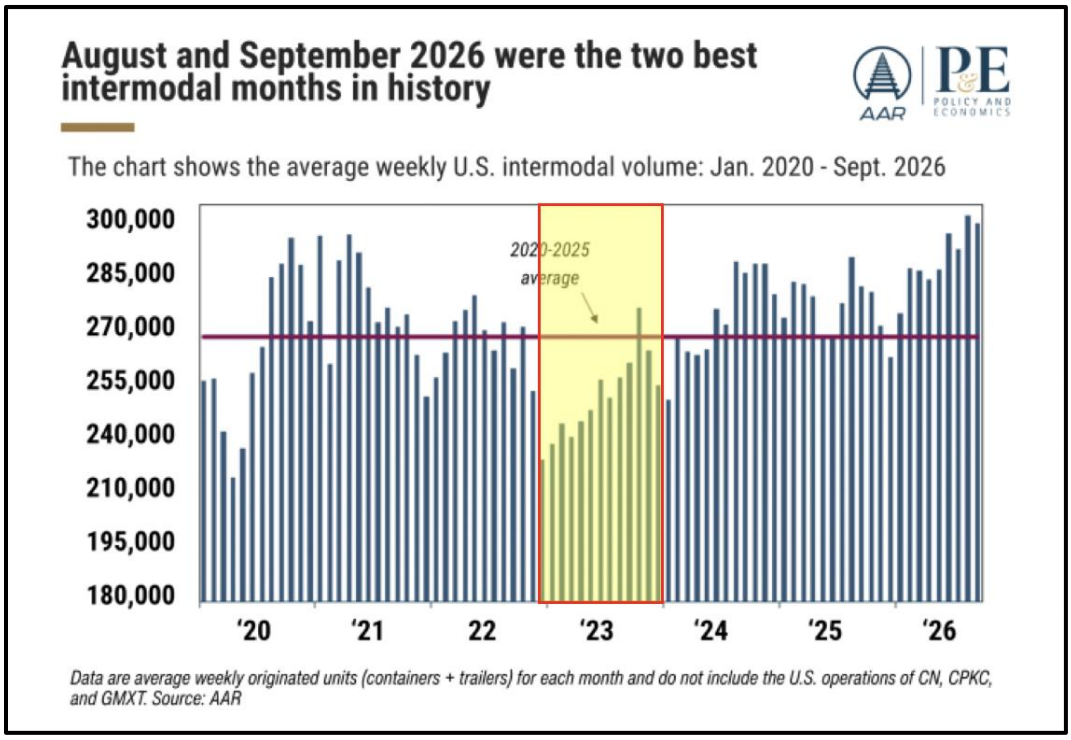
73. The Application presents a narrative built upon the traffic trends leading up to 2023, which is the "base year" on which Applicants' projections about the growth potential of

their proposed combination are based. Accordingly, I offer a few thoughts about how the Board should think about UP's and NS's growth trajectories leading up to 2023. For a whole host of reasons, some macroeconomic and some self-inflicted, 2023 was a particularly poor year for rail traffic levels at UP and NS. Rail traffic volumes are up substantially since then, including on UP and NS.

74. Some of the reasons for growth between 2023 and today are macroeconomic. For intermodal traffic in particular, high diesel fuel prices, coupled with the post-COVID tightening of the truck driver market, have provided a highly favorable environment to attract truck traffic to railroads, and the data backs up this causation. Rail intermodal solutions are more economically attractive in these conditions, as shown in Figure 6 below. As AAR's Chief Economist summarized in his October 2026 newsletter, "[r]ecord-high diesel prices, an exodus of truck drivers driven by both market and regulatory factors, and generally strong railroad service levels have made intermodal an increasingly attractive option for shippers."[13] AAR's chart depicting this growth is Figure 6 below, which graphically depicts how different 2025 and 2026 have been relative to 2023.

[13] AAR Rail Industry Overview (Oct. 2026) at 1.

FIGURE 6[14]
INTERMODAL GROWTH SINCE 2023 DRIVEN BY MACROECONOMIC FACTORS

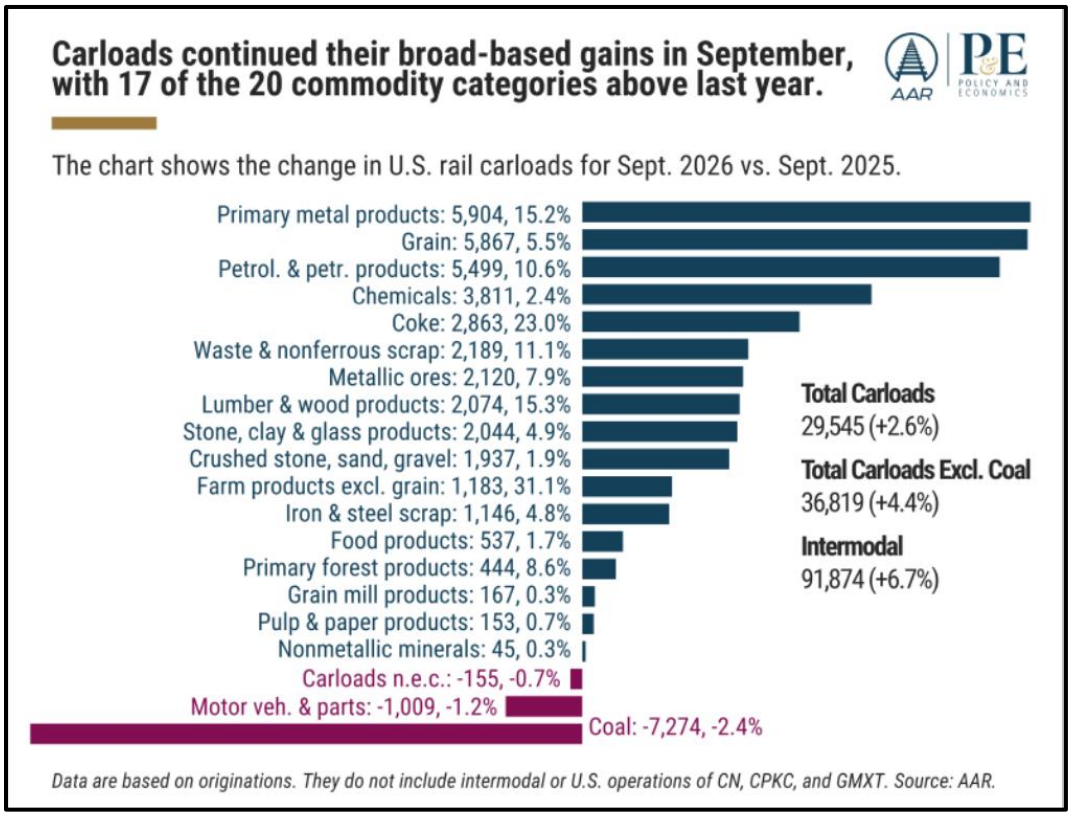


75. Growth since 2023 has not been limited to intermodal, as AAR's reporting shows. Figure 7 shows recent carload growth across a broad base of commodities. The report calls out chemicals in particular: "[c]arloads of chemicals rose in September for the eighth time in the past nine months. They averaged nearly 33,200 per week in September, which is a September record. Chemical carloads are on pace to set a new annual record this year. U.S. chemical output is being spurred by manufacturing growth and by low natural gas prices relative to elsewhere in the world."[15]

[14] AAR Rail Industry Overview (Oct. 2026), at 1.

[15] *Id* at 2.

FIGURE 7[16]
RECENT CARLOAD GROWTH



76. Importantly, this growth has come without there being any rail merger and without any radically new "single-line" rail services in the market. Based on my long experience, this is strong evidence that the current structure of North American railroading—with two major railroads in the West and two in the East—is not holding back growth. To the contrary, as I explain below, that structure actually supports more growth by encouraging innovation and initiatives to improve intermodal services and attract more freight to the rails. The services interline railroads are able to provide are fully capable of meeting customer needs, and when macroeconomic factors are favorable, customers switch to rail in large numbers as the recent trends demonstrate.

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[16] AAR Rail Industry Overview (Oct. 2026), at 3.

77. Some of the reasons why 2023 is a particularly poor benchmark of railroads' capabilities—and especially so for UP and NS—involves what I would characterize as self-inflicted wounds flowing from decisions that UP and NS took in relation to how to run their railroads.

78. Any customer choosing a transportation provider will ask a basic set of questions: can this provider's offerings meet my needs, do so reliably, and do so at a price that is economical? As of 2023, many customers would have looked at UP's and NS's recent track records and struggled to see the value proposition associated with their services. Why? Not because offerings in transcontinental lanes required a handoff between independent railroads. (As I explain below, we know from experience that such handoffs do not need to get in the way of fast and reliable transit times that shippers expect.) Instead, a potential customer in 2023 would have considered the repeated waves of service problems at both railroads over the prior decade and questioned whether they could be counted on to provide reliable service. And a potential customer in 2023 would have looked at how these railroads priced their services and persistently increased those prices over time, and asked whether they were an economical choice, or could be counted on to remain one over time as their rail rates escalated year after year. Without confidence about the answers to these questions, customers would rationally and rightfully have hesitated to make the investments necessary to switch from truck options that were already meeting their needs to a speculative new rail option.

1. UP's and NS's History of Unreliable Service

79. Let's start by examining service reliability. Foundational to CPKC's success has been our commitment to delivering what we promise to shippers. For a customer, reliable service means more than a published transit time. It means shipments that arrive within the

delivery window promised, equipment that is returned on schedule for reloading, first-mile and last-mile handling that works with the cut-off times and hours at the customer's docks, freight that arrives safely and undamaged, and a railroad that recovers quickly and communicates clearly when something goes wrong. Above all, it means trust that the railroad will keep those promises year after year. UP and NS have track records that, understandably from shippers' perspectives, have led to a reluctance to make the commitment and investments necessary to shift their traffic from tried-and-true truck options to UP and NS rail options.

80. The collapses in service reliability at UP and NS in recent years are well known across the industry. In 2014, of course UP and NS suffered along with the entire industry from the congestion associated with the Polar Vortex. At both UP and NS, however, challenges continued over the ensuing decade. To a significant extent, service problems at UP and NS stemmed from their particular approach to implementing Precision Scheduled Railroading ("PSR") (which in their approach was centered on running fewer, longer trains on fixed schedules and cutting locomotives, railcars, yard capacity, and crews to reduce operating costs), which left them shorn of sufficient resources to keep their networks fluid through exogenous shocks like post-COVID crew shortages, disruption from the East Palestine episode, and others. Consider what those years meant for a rail customer weighing a transition from trucks to rail service provided by UP, NS, or UP-NS interline service: shipments that could not be tendered at all, deliveries that arrived days late, railcars and containers stuck in yards instead of cycling back for reloading, and production lines and supply chains left waiting on freight that was not showing up reliably.

81. For a customer examining this track record and asking herself what she could expect from next year's UP or NS, it is not hard to understand why so many made choices not to

switch to rail. No railroad can expect to attract new traffic from trucks or grow its volumes with rail-served customers in an environment where shippers have well-founded concerns about the railroad's ability to deliver the service level it had promised that shippers require to meet their needs, and that trucks are consistently capable of providing. The UP and NS track records over the decade or more leading up to 2023 gave shippers many well-founded concerns about the ability of these railroads to meet customer needs.

82. CPKC experienced the unreliability of UP and NS service firsthand through our interactions with UP and NS on interline traffic flows. CPKC has seen multiple NS service disruptions impacting crude and frac sand customers, including [redacted] Locomotive shortages have resulted in trains being held for days; reduced equipment cycles and delays in product reaching customers; and, just recently (October 2026), Smart Sand has experienced delays in receiving empty equipment that can force plant shutdowns, resulting in lost production that in many cases cannot be recovered. The fear is on a wider scale, with a combined UP-NS network controlling approximately 40% of total North American rail miles, that the ability for service issues, including cycle-time delays and power shortages, could expand into serious repercussions for both shippers and interline railroads.

83. More recent experience has only reinforced the "muscle memory" of unreliable service. During late 2025 and early 2026, there were many red flags of another collapse in NS service reliability. CPKC saw spikes in the cycle times for the return of equipment delivered to NS in interchange, indicating a major decline in network velocity and associated difficulties in getting shipments into the hands of customers on a timeline that meets their expectations. These

problems were widely reported based on observable Board data.[17] As Chief Marketing Officer for a railroad that prides itself on building trust with customers based on our ability to deliver the service that we promise, it is no surprise to me that UP and NS have faced impediments to growth arising from their reputations for disappointment over the years.

2. UP's Emphasis on Price Maximization and "Growth" Through Price-Based Revenue Expansion Rather than Volume Gains

84. I have also been struck by UP's (and to a lesser extent, NS's) frequent public emphasis on growing by *increasing price* rather than by increasing volume.

85. When a railroad defines growth as growth in "revenue," there are two ways to achieve that goal: by charging higher prices for existing traffic or going after additional volumes and the revenues that come from them. Every railroad pursues a balance between these approaches. Price increases are often warranted as a reflection of inflation in the cost of providing services or to reflect the higher value of services that do a better job of meeting certain customers' needs. CPKC, for example, offers multiple tiers of premium services in certain lanes, enabling customers to choose the most expedited services at a premium price with associated service promises or a less expeditious (but still reliable) handling at a lower price point.

86. That being said, UP in particular has publicly positioned itself in the marketplace as adopting growth strategies that are heavily weighted toward price as opposed to volume growth. The examples are too numerous to mention of UP talking publicly about how it seeks to "maximize price" and its revenue growth through pricing increases in lieu of attracting new carloads to the railroad. Many of these statements are delivered to investors on earnings calls.

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[17] *See, e.g.*, Rick Paterson, "*NS Network Precarious; Needs Memorial Day Assist*," The State of the Rails (May 28, 2026), (Exhibit 1 hereto).

but customers receive these messages loud and clear. When UP delivers this message, customers understand the unspoken premise that UP can afford to raise prices because of its position in the market. UP's market position means that many of its customers have nowhere else to go.

87. CPKC has seen evidence of UP's price maximization approach over and over again when attempting to present customers with interline transportation service offerings that involve movement over both CPKC and UP. UP's insistence on a certain level of price has on many occasions been an obstacle to providing rail customers with proposals of interline transportation that meet their needs. From our vantage, UP appears to approach interline opportunities (and I presume single-line ones as well) with an eye towards extracting as much revenue as possible, rather than jointly designing an interline service that can win new traffic while earning a reasonable economic return. In my experience, when interline parties focus on service first and revenue second, the shipper and both railroads are left better off. That is not UP's approach.

88. Our attempts to work with UP on multiple occasions illustrate the point. On numerous occasions, UP's or NS's insistence on a certain price level was the obstacle that kept more freight from moving via interline routes.

89. To be sure, UP does not only increase price. Sometimes UP does lower its prices when necessary to avoid losing significant volumes to other railroads or other modes. For example, [redacted] to protect interline volumes. But the pattern we have seen is very clear. UP pushes price very aggressively, even when doing so stands in the way of attracting new traffic to the railroad.

90. In each of those instances, a focus on service first and revenue second would have supported a more competitive interline rate offer and a better opportunity to grow rail volume.

B. Railroads Do Not Need to Merge in Order to Provide Services that Better Meet Customer Needs Reliably and Economically

91. Tying these points together, it ought not to be surprising that UP and NS might have been frustrated with their volume growth trajectories as of 2023. They were doing extremely well financially, but their strategies and execution, coupled with macroeconomic setbacks, like COVID, had left them with less traffic than they might have preferred.

92. Nothing about their volume situation as of 2023 was a consequence of their operating independent rail networks rather than coming together as a single transcontinental juggernaut. Certainly real-world volume increases at UP and NS since 2023, on a pace that nearly matches what Applicants say their merger would achieve (starting from a 2023 base year that does not embed those increases), cannot be credited to any merger (or advance merger planning). Nor would a merger correct any of the impediments to growth that UP and NS faced leading up to 2023. So what explains those traffic increases?

93. The short answer is that, in addition to the macroeconomic trends I noted above, railroad transportation has proven itself capable of meeting customer needs when railroads focus on offering quality service at a fair price. And that proposition holds whether the rail services on offer involve only a single railroad from origin to destination or multiple railroads working together to offer an interline service. In either case, when those baseline conditions—quality services at a fair price—are present, they support growth whenever the macroeconomy is supportive.

94. To put a finer point on this idea, Applicants are wrong to suggest that a merger is the only viable pathway to increasing the role played by railroads in moving America's freight.

Growth comes from building services that customers want, which requires a reliable operating plan, competitive rate levels, customer outreach, and consistent improvement over time. CPKC's own experience shows how interline partners can work together effectively to meet demand where it exists and to stimulate demand by offering new, more effective transportation solutions. Interline offerings can be quite competitive with both single-line service and trucking, both operationally and commercially, and interline traffic opportunities can support investments made by multiple railroads working together provided there is sufficient density in the relevant lanes to support cost-effective and high-quality service.

1. CPKC's Experience Shows that Railroads Can Grow by Offering Interline Services that Meet Customer Needs

95. My discussion above highlights a key point about all of Applicants' claimed merger benefits. A merger is not necessary to achieve many, if not all, of those benefits, particularly potential post-2027 traffic gains associated with UP or NS, or both offering shippers a better value proposition independently or as interline partners working more effectively together.

96. To facilitate interline cooperation, Class 1s have developed many arrangements to make handoffs reliable and seamless from the shipper's perspective. Illustrations of "what is possible," to borrow UP CEO Jim Vena's phrase, are many: ranging from handoffs between Class Is and smaller railroads that are motivated to grow their on-line business, manifest interchange services built to compete against other railroads' single-line services, and long-haul run-through intermodal trains like CPKC's interline service with CSXT, the Southeast Mexico Express (SMX), and the UP-Shreveport-CPKC-Meridian-NS intermodal trains between California and the Southeastern United States. Each of these examples illustrates aspects of what

can lead to railroad growth success stories, but which UP and NS do not seem interested in investing in so long as they are pursuing their own merger proposal.

97. Where sufficient traffic density exists, and even where it does not, railroads know how to deliver interline service in ways that ensure that need for an "interchange" does not negatively impact the shipper's experience. For example, CPKC and other Class 1 railroads regularly support run-through blocking to minimize work events at the interchange. Where customer demand is sufficient, we also operate run-through unit trains, effectively creating single-line service as far as the customer is concerned. In many markets, our interline offering is already competitive with trucks. All that is to say, if there is enough business to support the traffic, then interline partners are able to sufficiently align their incentives to serve that traffic. CPKC does so regularly:

98. ***The Southeast-Mexico Express ("SMX")***. SMX is CPKC's interline offering with CSXT to connect customers in Mexico and Texas, on the one hand, with the U.S. Southeast on the other, providing shippers in these lanes with more competitive optionality, greater efficiency, industry-best cross-border security, and truck-competitive transit times. SMX is a good example of how two independent railroads can work together via joint interline service agreements, and develop and grow a competitive service without the need for a merger. CPKC and CSXT both made substantial capital investments to upgrade this service to achieve truck-like transit times. For many origins and destinations, we are now competitive with trucks and have seen shippers start to shift to rail in great numbers. Doing all of this did not require us to merge with CSX.

99. CPKC and CSXT launched SMX in December 2024, creating new interline routing options between the U.S. Southeast and Texas and Mexico. Since then, CPKC and CSXT

have continued to invest in and improve the service. Improvements have included capital investments in track, bridges and signal infrastructure on the former Meridian & Bigbee Railroad, as well as continued investments across the corridor in Georgia, Alabama, Mississippi, Louisiana and Texas. This followed respective acquisitions of the former Meridian & Bigbee Railroad, which allowed creation of a direct CPKC-CSXT interchange near Myrtlewood, AL.

100. In May 2026, CPKC and CSXT launched a dedicated SMX train service with faster transit times and additional origins and destinations. These improvements reduced transit times to and from all SMX-targeted markets, including approximately one day between Atlanta and Dallas, and approximately 2.5 days between Atlanta and central Mexico. Overall, SMX transit times improved approximately 20 to 45 percent.[18]

101. Now, the SMX service provides two-day service between Atlanta and Dallas, three-day service from Monterrey to Atlanta and four-day service from central Mexico to Atlanta. CPKC and CSXT also expanded the product into additional Southeast markets, adding new SMX origins and destinations in Charlotte, Jacksonville, and Central Florida. These transit times are truck competitive and both railroads' marketing teams are actively and strongly highlighting the availability of these offerings to shift more freight from truck to rail.

102. CPKC's (and CSXT's) experience with the SMX service is especially relevant to UP-NS's claimed intermodal growth opportunities. The Application identifies seven new premium intermodal lanes identified, and estimated synergies on these seven new lanes are roughly 1.5 million annual intermodal container loads by the end of a three-year time period. Three of the seven growth lanes Applicants identify are into the Southeast: Southern California

[18] CPKC, CPKC, *CSX upgrade Southeast Mexico Express with dedicated train, faster transit times* (May 6, 2026), available at: https://www.cpkcr.com/en/media/SMX-May2026.

to Southeast, Houston to Atlanta, and Northern California to Southeast. These destination regions are exactly the ones that CPKC and CSXT are already successfully growing into without a merger, with their interline SMX service offering today, which now reaches Atlanta, Charlotte, Jacksonville and Central Florida.

103. In other words, the opportunity Applicants describe does not require a merger to begin capturing it. Three of the seven growth lanes they identify involve Southeast markets where the CPKC-CSXT interline model is already demonstrating that this type of growth can be done today.[19]

104. ***Transcontinental Intermodal Service via the Meridian Speedway***. The interline service UP, CPKC, and NS provide via the Meridian Speedway is another example. Applicants repeatedly emphasize that this service route is among the best in the industry.[20]

105. For the transcontinental interline service I am describing, CPKC's competitive role is limited. [redacted]

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[19] Class I railroads, including the Applicants themselves, continue to develop new interline services without merging. New coast-to-coast intermodal services announced by BNSF and CSX; and a bi-directional domestic intermodal service that UP and NS launched in September 2025, originating and terminating in the Louisville market and interchanging at Kansas City. *See* Press Release, CPKC, *CPKC, CSXT Upgrade Southeast Mexico Express with Dedicated Train, Faster Transit Times* (May 6, 2026), available at https://www.cpkcr.com/en/media/SMX-May2026; Press Release, CSXT Corp., *CSX, CPKC Upgrade Southeast Mexico Express with Dedicated Train, Faster Transit Times* (May 6, 2026), available at https://investors.csx.com/news-and-events/news/news-details/2026/CSX-CPKC-upgrade-Southeast-Mexico-Express-with-dedicated-train-faster-transit-times/default.aspx.; Press Release, CSXT Corp., *CSX, BNSF Announce New Intermodal Services, Offering Seamless Coast-To-Coast Rail Solutions* (Aug. 22, 2025), available at https://www.csx.com/index.cfm/about-us/csx-bnsf-announce-new-intermodal-services-offering-seamless-coast-to-coast-rail-solutions/; Union Pacific, *New Union Pacific and Norfolk Southern Intermodal Gateway Expands Market Access* (Sept. 15, 2025), available at https://www.up.com/news/growth/louisville-intermodal-service-it-250915.

[20] At NS's Q3 2025 earnings call, Ed Elkins, NS's Vice President and Chief Commercial Officer, referred to the UP-NS service over the Speedway as the best intermodal ride from the West Coast to the Southeast. *See* N.S. Earnings Call Transcript (Oct. 23, 2025) ("When I think about service from the West Coast into the Southeast, I think about UP and NS utilizing the Meridian Speedway as the fastest, shortest route between those two regions, period. There's not a better ride out there when it comes to that kind of freight for intermodal.").

[redacted] CPKC provides the crews, dispatches the line, and runs the trains, but NS and UP are solely responsible for pricing the transportation and going to customers to sell the service. Although CPKC earns only a haulage fee, the service it has provided is consistently excellent, and as noted, allows UP and NS to describe this route as best in class. As Mr. Redd explains, the fact that there are two interchanges—one at Shreveport and another at Meridian—does not get in the way of this service offering single-line levels of service or better.

106. When I look at the UP-CPKC-NS transcontinental traffic moving across the Speedway, I see two things. I see huge potential, proven by the fact that service levels are excellent and truck competitive, and I see disappointment. Traffic levels appear not to have grown to their potential. UP and NS have complained about this too, even pointing the finger at CPKC. I know that the root cause of any failure to exploit the advantages of the run-through transcontinental train service via the Speedway is the product of pricing, marketing, and routing decisions made by UP and/or NS. UP and NS together are solely responsible for pricing and marketing the service. And I also know that UP has made the operational decision, for reasons that make no sense commercially, to re-route a large portion of its West Coast-to-Southeast intermodal traffic via Memphis, imposing on shippers a serious routing disadvantage. There is no lack of capacity on the Speedway—indeed, CPKC has offered UP and NS [redacted] to accommodate growth volumes, but UP and NS have not taken the steps necessary to fill this capacity.

107. Ironically, Applicants say that one of the biggest benefits of their merger will flow from shifting the same traffic back to Meridian, saving days of transit time. This is not a merger

benefit, it is a decision UP could make tomorrow, and CPKC service would be ready, willing and able to support that shift with world-class service.

108. The Speedway provides another example of how two railroads can work together to provide seamless interline service. CPKC originates and terminates intermodal trains at its Wylie Intermodal Terminal ("Wylie") near Dallas and runs between there and Meridian, MS, where they are interchanged with NS. Like the UP-CPKC-NS transcontinental trains, these trains also operate seamlessly across the Meridian interchange via run-through service. There is no service disadvantage associated with the fact that CPKC's network does not extend all the way to Atlanta and these trains must be interchanged twice.

109. NS has also complained about this service as an example of how CPKC's interests are not perfectly aligned with NS's desire to keep all of the available intermodal volumes in this lane to itself. CPKC is acutely aware of the challenges attracting intermodal traffic in this lane. It is a poster child of "truck competitive." The Speedway is paralleled by Interstate 20 between Dallas and Meridian (as is NS's route from Meridian to Atlanta) and there is tremendous balance in truck traffic flows supporting aggressive pricing by truckers. As a result, intermodal volume opportunities are heavily influenced by ebbs and flows in the truck marketplace. This lane also shows that offering a service that is truck competitive on transit time and reliability does not by itself take trucks off the road. Even with excellent service, volumes in this lane rise and fall with truck market conditions.

110. Nonetheless, CPKC is, and always has been, highly motivated to build intermodal volumes in this lane and even more so following the *CP/KCS* transaction. What appears to be at the root of NS's complaints is that CPKC has not been working solely with NS to build volumes in this lane. We have also pursued efforts to work with CSXT to move intermodal traffic

between Dallas and the Southeast, via the Myrtlewood gateway and the new SMX Service. Our efforts are not exclusively focused on either option; rather, we seek to promote whichever of these options (CPKC-Meridian-NS or CPKC-Myrtlewood-CSXT) meets the customer's needs. I understand why NS would want all of this traffic to itself by "aligning" CPKC's interests with those of NS, but that alignment would not be in the interest of rail customers.

111. ***Other Initiatives***. These are just two of many examples of how railroads working together to provide interline service can deliver effective outcomes for rail customers. Other examples involving CPKC include the longstanding run-through interchange gateway in Kingsgate/Eastport, where UP and CPKC exchange multiple trains per day of potash, grain and general manifest freight, moving between the Pacific Northwest regions that CPKC does not serve directly and CPKC-served territory in Canada and the Upper Midwest.

112. Successful interline transportation does not require special initiatives or fancy run-through train services. The blocking and tackling of good railroading and effective marketing can deliver a lot, even in the so-called "Watershed" that Applicants say they need a merger to address effectively. CP and KCS (and CPKC now) have never resisted participating in interline traffic involving hauls that Applicants claim ought to be too short to motivate a Class I railroad to participate. Just as smaller railroads have proven how effective they can be at attracting traffic where they will participate in at most a relatively short haul, Class I railroads can too. In fact, I heard UP's CEO say on UP's most recent earnings call that UP can do everything a short line can do to grow traffic, implying that UP does not need a long haul to be motivated to try.[21]

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[21] Union Pacific Corp., Q3 2026 Earnings Call (October 22, 2026), Remarks of Jim Vena, Chief Executive Officer ("In fact, I found that short lines are really good at some things. But listen, if you take a look at the way short lines work and what they do, we should be able to do that ourselves."), transcript

113. Perhaps because CPKC's route network provided CPKC (and CP and KCS before it) with modest opportunities for long-haul East-West movements, CPKC has always pursued short haul watershed traffic opportunities aggressively, including:

- Frac sand, ethanol, U.S. Grain and Asphalt from Wisconsin and Minnesota origins to the East via Chicago (approximately [redacted][22] carloads per year);
- Chemicals from Baton Rouge and other Louisiana origin locations to the West via Shreveport or to the East via New Orleans or Meridian ([redacted][23] carloads per year);
- Forest products from northern Louisiana to the East via Meridian and to the West via Shreveport and Kansas City (approximately [redacted][24] carloads per year); and
- Steel from origin near Columbus, MS to the West via Shreveport and Kansas City (approximately [redacted][25] carloads per year).

114. These watershed traffic flows are depicted graphically in Figure 8 below, which shows them overlaid on top of Applicants' map of the Watershed region.[26] My takeaway: The best way to motivate railroads to pursue watershed traffic opportunities is not to let them grow so large that they have abundant long-haul traffic opportunities that compete for capital, capacity, and attention with the shorter-haul opportunities.

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available at: https://www.fool.com/earnings/call-transcripts/2026/10/22/union-pacific-unp-q3-2026-earnings-call-transcript/.

22 *See* (HC) Brooks Data Point Workpaper.xlsx, tab "Data Points," cell F12.

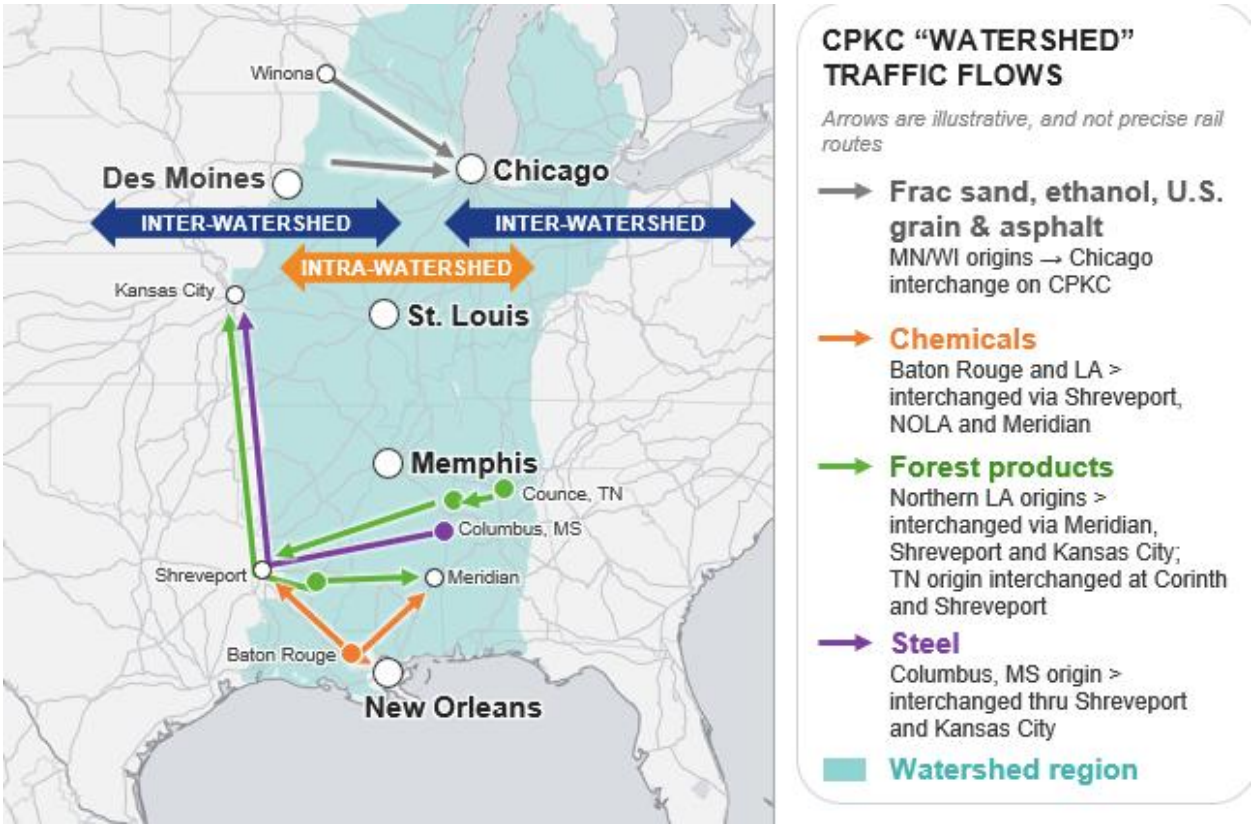
23 *Id*. at cell F13.

24 *Id*. at cell F14.

25 *Id*. at cell F15.

26 *See* Rev. App. 1-283 (Rocker/Elkins Second Errata V.S. ¶ 15, Figure 5).

FIGURE 8
CPKC "WATERSHED TRAFFIC"



115. Other railroads have similarly demonstrated the ability to offer effective interline services that do not depend on common control. For example, CN, UP, and FXE work together to provide their "Falcon Premium" service from Canada to Mexico. UP boasts that this service is the "fastest and most direct routing entirely by rail."[27] UP and NS work together to connect UP-served markets in the West with NS's Louisville intermodal terminal, squarely within Applicants' so-called "Watershed" region.[28] BNSF and CSXT have a number of collaborations offering seamless intermodal services between the West and the East, including service

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[27] *See* Union Pacific, *Falcon Premium Intermodal Service*, available at https://www.up.com/shipping/intermodal/mexico-to-canada.

[28] *See* Union Pacific, *New Union Pacific and Norfolk Southern Intermodal Gateway Expands Market Access* (Sept. 15, 2025), available at: https://www.up.com/news/growth/louisville-intermodal-service-it-250915.

connecting Southern California with Charlotte, NC and Jacksonville, FL; Phoenix with Atlanta; and East Coast ports with Kansas City. BNSF and CSXT have also teamed up to run BNSF intermodal trains intact through Chicago to CSXT's Northwest Ohio terminal at North Baltimore, OH, giving West Coast shippers a run-through service into the Ohio Valley that does not require a merger.[29]

116. UP and NS have not come close to exhausting the opportunities for improving their interline service. Each of the transcontinental run-through intermodal trains that Applicants say they will roll out if allowed to merge could be developed and implemented today, without any merger, if UP and NS truly believed there was a traffic bonanza at the end of the rainbow as soon as they launched those services. The fact that they have not launched those services is not a reason to authorize a merger of these railroads; it may be a reason to force them to make a serious effort to develop such services before proposing a transaction that will permanently alter a railroad industry structure that is not broken.

117. Finally, it is worth noting that in many fundamental respects, North America already has multiple Transcon options serving the intermodal marketplace, built by freight intermediaries like J.B. Hunt, Schneider, Hub Group, Amazon, FedEx, and others that have negotiated access to multiple railroads as part of offering an integrated web of nationwide rail and highway transportation services. These companies already offer a single point of contact with the same underlying freight shippers that UP and NS say can only receive that outcome if UP and NS are allowed to merge.

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[29] *See* Ohio Rail Development Commission, "State of Ohio Rail Plan," January 2019 at page 103, available at: https://dam.assets.ohio.gov/image/upload/rail.ohio.gov/publications/rail-plan/Rail-Plan.pdf.

2. The *CP/KCS* Experience Is Not Evidence that UP and NS Need to Merge to Achieve Growth

(a.) The Single Connection Between CP and KCS at Kansas City Presented Unique Challenges that a Merger Was Uniquely Suited to Addressing.

118. Applicants have drawn all the wrong lessons from the *CP/KCS* combination. When CP and KCS were independent railroads connecting at Kansas City, there just was not enough north-south traffic to support those kinds of initiatives. I know, because, as I testified in the *CP/KCS* proceeding, CP and KCS had tried to generate more interline traffic moving between them via the "Ice Pick" initiative and other efforts over the years, but that initiative failed in large part because the density of traffic flows did not support the kinds of services needed to attract the volumes that would in turn support the investments in improved services. Making matters worse for CP-KCS interline routes, CP was not remotely KCS's most important interline partner—UP was. And KCS had every reason to do what it could to keep UP satisfied, and it understandably was reluctant to work hard to build competitive (and speculative) interline services with CP when it faced the risk of driving UP traffic away. And, as we saw, UP aggressively did just that during and after the *CP/KCS* proceeding, as I will explain below.

119. Combining CP and KCS made a big difference in this setting, because it enabled decisionmakers at CPKC to build services that unlocked the full potential of CP and KCS networks in a sea of much larger single-line railroad rivals. CPKC Trains 180 and 181—what we call the Mexico-Midwest Express—illustrate how the *CP/KCS* combination was able to unlock new traffic opportunities for CPKC, winning traffic from other railroads and taking some trucks off the highway for us. We launched this new, through intermodal train between Chicago and Mexico the month after CP combined with KCS. That train started small, averaging only

[redacted][30] total containers over its first six months, or approximately [redacted][31] containers per day combined across both directions. Today, it is a successful service for customers, averaging [redacted][32] containers through the first half of 2026, or approximately [redacted][33] containers per day.

120. Let me emphasize the relevance of density, which helps explain why the UP-NS merger is so different from the combination of CP and KCS. *CP/KCS* combined the two smallest Class 1 railroads, which connected only at Kansas City. At Kansas City, there was very little traffic moving between CP and KCS. UP's witness in that case summarized the point well:

> "In their optimized operating plan, CP and KCS identify changes to the handling of *75 cars per day of traffic* interchanged between them at the common point, Kansas City. Applicants identify no operational consolidations at Kansas City because the Joint Agency yard is already a shared facility. The 75 cars per day are evidently handled today on a single pair of scheduled CP trains that operate north of Kansas City, trains 474 and 475, which also handle CP's interchange with the other railroads in Kansas City."[34]

121. UP was right about the volume of manifest traffic (loaded and empty) that CP and KCS interchanged in Kansas City before their combination—not even close to daily trainload volumes. A big part of the reason was that CP and KCS participated with one another in lanes already blanketed by the single-line routes of much larger railroads, especially BNSF and UP.

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30 *See* (HC) Brooks Data Point Workpaper.xlsx, tab "Data Points," cell F16.

31 *Id*. at cell F17.

32 *Id*. at cell F18.

33 *Id*. at cell F19.

34 *CP/KCS*, Finance Docket No. 36500, UP Comments, Haley V.S. ¶ 18.

(b.) The UP-NS East-West Transcon Context Is Completely Different from *CP/KCS*

122. By contrast, the UP-NS merger will combine two massive railroads that connect with one another at five major East-West gateways: Chicago, St. Louis, Kansas City, Memphis, and New Orleans (in addition to connecting via the Meridian Speedway). At each of these gateways, the volume of East-West traffic moving between UP and NS involves multiple trainloads of traffic every day. Those traffic flows generate tremendous opportunities for UP and NS to offer efficient *interline services* like run-through trains and deep blocking that can reduce dwell and improve reliability.

123. Today's interline traffic flows over the major Mid-Continent gateways are a stark contrast to this picture. Those flows give the major railroads serving those flows extraordinary opportunities to offer—on an interline basis—services that are both efficient and meet customer needs. UP and NS currently handle substantial East-West traffic that could readily support run-through blocks, trains, and other interline initiatives.

124. The CPKC MMX service took our combination to launch, but UP and NS already have a very similar service running today between Los Angeles and the Southeast via the Meridian Speedway, and there is nothing stopping them from establishing similar run-through services at other gateways and in other lanes.

3. The Rapid Evolution of Technology Will Make It Easier for Connecting Railroads to Meet Customer Needs Without Merging

125. Railroads currently cooperate to provide customers with transportation services that emulate what would be provided by a single end-to-end transportation provider. Ongoing developments from within the rail industry—such as through RailPulse and Railinc, among others—are rapidly improving the ability for all participants in an interline move to offer

customers full visibility into the status of their shipment. Progress in adding to equipment with GPS and other sensors has been accelerating, and UP recently announced that its EMP and UMAX container fleets are substantially equipped, supporting interline shipments among the participants in these ventures: UP; NS and CN for EMP; and UP and CSXT for UMAX.[35]

126. At the same time, advances in software, which will be accelerated by AI, are steadily improving the ability of railroads to connect their own proprietary platforms with one another and communicate with shared customers as seamlessly, or almost as seamlessly, as they can with a customer whose needs are local to one railroad. While some of this progress predates recent developments in AI, AI-enabled tools are likely to accelerate it further.

127. For example, CPKC's CLEAR customs system allows interline carriers to see and communicate data back and forth during an interline move, and carriers can also cooperate by swapping services (such as brake tests and fueling) to balance moves with one another. For CPKC's U.S.-Mexico services, CPKC provides border-crossing facilitation to make the service look and feel like a truck. This technology is advancing every day and has accelerated over the last five years, steadily eliminating the feeling of the interchange.

128. Finally, although not technology per se, the adoption by most railroads of many of the tenets of precision scheduled railroading will provide advantages with respect to interline services once railroads get around to paying more attention to interline opportunities. Any focus on scheduling and operating discipline is bound to make handoffs more efficient, not less, and the ability to communicate with customers about anticipated arrival dates (or times) better. In

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

other words, more truck like, just like Applicants are claiming about their future single-line services.

4. Applicants' Claim That "Joint Ventures" Cannot Succeed Because Incentives Will Never Be Broadly and Permanently "Aligned" Is Misguided

129. When Applicants explain why they believe cooperation among independent railroads cannot match a transcontinental rail merger in unlocking growth opportunities, they focus on the notion of incentives and argue that the only way to align incentives is to make the changes permanent and all encompassing. Applicants' view is both incorrect and a reflection of why their proposed merger is likely to be so harmful to competition and the long-term future of the U.S. rail network.

130. Applicants' argument rings hollow when considered against the backdrop of real-world facts. First, there is nothing that prevents railroads from collaborating successfully to attract interline traffic opportunities via agreements that leave the participants with flexibility to adapt to changing conditions. Take CPKC's collaboration with both UP and NS for traffic moving across the Meridian Speedway as a good example. It is not a merger, and CPKC retains flexibility to compete head-to-head with NS for certain traffic using the Speedway, including Dallas intermodal traffic. Does that flexibility and impermanence undermine CPKC's alignment of incentives with UP and NS to facilitate high-quality service between California and the Southeast? Absolutely not, as my review above of CPKC's track record shows.

131. At the same time, consider what it would mean for the rail network if CPKC's incentives were permanently and broadly aligned with UP and NS through a merger. To name a couple: (1) UP and CPKC would no longer compete with one another to move rail traffic between Mexico and the U.S. Southeast in conjunction with services NS provides east of

Meridian; and (2) CPKC would not have invested in an alternative to NS east of Meridian by working with CSXT to establish new Mexico-Southeast intermodal services via the Myrtlewood gateway. From UP's and NS's perspective, "permanent alignment" seems to mean "we keep the traffic without having to compete hard for it."

132. Unlike the structural change from a merger, which is literally permanent, formal and informal interline cooperation preserves railroads' freedom to adapt to changing market conditions, to innovate by offering customers other services that may better meet their needs, and to support shippers having multiple options rather than just the one that the "merged" railroad chooses to provide.

III. APPLICANTS ARE ALSO WRONG IN CLAIMING THAT THEIR MERGER CAN BE COUNTED ON TO DELIVER THE GROWTH THEY FORECAST

133. Applicants' presentation treats their merger as if it will magically transform their own growth trajectories by flipping a switch of service and rate improvements that cause shippers to flock to the new UP-NS network. Growth requires hard work, and the UP-NS merger will not provide a "quick fix" for UP and NS's shortcomings in this regard.

A. The Applicants Have Not Prepared for the Growth They Project

134. First, as my discussion above indicates, notwithstanding the traffic growth UP and NS have experienced since 2023, both railroads face growth challenges going forward if they continue past patterns of under-resourcing their railroads through wave after wave of service challenges and price to grow revenue rather than volume. Those patterns are dictated by today's industry structure; they are the product of UP's own choices about how to resource its own railroad. In my view, there is nothing about a merger that will overcome these hurdles for them, except perhaps, as I explain above, being able to wield increased market power and force more traffic to their networks because shippers have fewer real options.

135. Applicants don't appear to have a serious plan for attracting the millions of new intermodal shipments they claim will shift from the Nation's highways or supporting that traffic if it is attracted to the UP-NS network. Their merger will not automatically cause truck shipments to flock to the rails. In CPKC's experience, shippers have many reasons for using long-haul trucking rather than rail that have nothing to do with whether the rail option is single-line or interline. Some own their own truck fleets. Some have dispersed origins and destinations, irregular volumes, short lead times, time-sensitive delivery windows, or facilities that lack rail or efficient intermodal access. Others value truck reliability, flexibility, and recovery options enough to pay a higher price. None of those preferences—each of which would steer a rational shipper towards truck options and away from rail—disappear just because a single-line option is available. Yet nowhere in their Application do Applicants consider the obstacles these preferences will create for their simplistic "merge and get growth" hypothesis. In theory, when the commodities being shipped are susceptible to over-the-road trucking, rail has a better chance of attracting business with intermodal service offerings. But here too single-line service offers no panacea. Once a commodity is at a truck loading dock ready to be shipped, shippers face hard choices about whether they are better off sending it directly to the destination by long-distance truck or having it delivered by a drayman to the nearest intermodal terminal offering rail intermodal service to another intermodal terminal that is within dray distance of the ultimate destination. That is a difficult conversion to make because the intermodal option has to overcome the simplicity and flexibility of a direct truck move, while still making sense for the customer on an end-to-end basis. Shippers make those choices for lots of reasons, including economic ones. The customer has to consider not just the rail line-haul, but also the cost and availability of a dray at both ends, terminal locations and cutoffs, and the total door-to-door

transit and reliability. But those choices are not ones typically driven by small changes in the transit times, reliability, or pricing of the rail option. Even a marginal improvement in one part of the rail move doesn't necessarily change the overall equation. Even if a merger could affect these factors at the margin, which is by no means clear given the success of interline intermodal offerings in today's marketplace and the lack of evidence that UP-NS service will actually be cheaper, faster, or more reliable, the incremental changes will not change the fundamentals of the logistical choices shippers are making today.

136. Applicants' projected intermodal growth depends on investments that Applicants will not make and cannot compel. In the Supplement, Applicants say that no shipper investment is needed because the domestic 53' container fleet has enough excess capacity to absorb the growth they project.[36] I disagree, and I am not alone. Andrew Robertson, an industry consultant, has explained to the Board, under oath, that Applicants' plan assumes their "IMC partners will acquire the containers, chassis, dray tractors, yards, and drivers needed to double their operations, essentially creating a new JB Hunt, *on their own dime*," and that new carload shippers will make "multibillion-dollar investments in sidetracks and railcars."[37] He estimates that these third-party investments could approach $4.5 billion, and he believes even that figure may be too low.[38] My experience matches his. In intermodal, equipment on hand is not the same as capacity. An IMC that wants to grow in a new lane has to finance boxes, chassis, and tractors, and it has to find yard space and drivers at both ends. As Mr. Robertson puts it, that

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[36] Applicants' Second Response to Decision No. 21 (UP-80/NS-78) (filed July 27, 2026) at 101-102.

[37] Supplemental Verified Comments of Andrew C. Robertson, FD 36873 (filed May 8, 2026) at 4.

[38] *Id*. at 4 n.2.

kind of scaling up "will take years."[39] CPKC learned this firsthand. Building out MMX took years of capital, patience, and money-losing short trains before the density came. Applicants do not identify who will make these investments or when. Until they do, the diversions they project are an aspiration, not a forecast.

B. CPKC's Experience Shows that Truck Conversions Are Especially Difficult to Achieve

137. Second, CPKC's recent experience implementing an "end-to-end" merger shows that growth is hard work, and the permanent combination of connecting carriers via merger does not magically deliver it without the relentless attention to all the things that make any railroad successful: service that reliably meets customer needs at a fair price relative to the customer's other options and, even more important, demonstrating that customers can count on the railroad living up to those promises. As CPKC has experienced since 2023, accomplishing this is a matter of demonstrating to customers—showing them, not just telling them—on a customer-by-customer-by-customer basis, why they should put their faith in CPKC's network when (at least in CPKC's case) they have options.

138. Our flagship MMX service between Mexico and Chicago (CPKC trains 180 and 181) tells the tale of how hard it is to induce shippers to convert from truck to rail. We launched the service immediately after getting approval from the Board to combine, and we demonstrated our commitment to run the service daily no matter how quickly traffic levels grew. Many railroads launch a new service and abandon it within months if traffic does not materialize. CPKC's leadership made the opposite choice: we committed to the product and kept running the trains while we built density and customer trust, even though doing so was very costly. For a

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[39] *Id*. at 3.

long time, we ran very short trains, and even now, three years later, these trains often are under [redacted] feet long, a far cry from their 10,000-foot design standard. MMX launched in May 2023 and initially operated at very short train lengths as CPKC worked to build out customer adoption and density. In the first full year of service, 2024, average northbound train length was [redacted] feet,[40] which increased to [redacted][41] feet in 2025 and [redacted][42] feet through Q3 of 2026. Although CPKC has seen approximately [redacted][43] growth since 2024, average train lengths remain well below the 10,000-foot design standard. Service levels and reliability are stellar. On top of this, the service we offer is in many respects better than truck, because it avoids border inspections, customs friction, and cross-border driver regulations. Even with those tailwinds, we have struggled to convert traffic at the level we had expected.

139. The average train lengths of Northbound trains per year are illustrated in Figure 9 below.

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40 *See* (HC) Brooks Data Point Workpaper.xlsx, tab "Data Points 17-20," cell C9.

41 *See id*. at cell D9.

42 *See id*. at cell E9.

43 *See id*. at cell E11.

FIGURE 9[44]
MMX TRAIN LENGTH HISTORY (AVERAGE): NORTHBOUND TRAIN



140. CPKC's oversight reporting illustrates the point. In CPKC's most recent diversion submission to the Board, covering the November 2025-April 2026 period, CPKC identified approximately 11,500 carloads (or intermodal containers) that CPKC believed had been attracted from truck shipments that crossed the legacy-KCS and legacy-CP boundary.[45] This figure covered only a five-month period, and it did not adjust for the greater capacity of railcars as compared to trucks for that portion of truck-to-rail diversions that were to rail carloads. CPKC believes that these diversions are the equivalent of approximately [redacted][46] trucks diverted from the highways over the six-month reporting period ending in April 2026, or approximately [redacted][47] on an annualized basis over the 12 months ending in April 2026. As shown in Figure 10 below, CPKC has not achieved the level of truck-to-rail diversions that

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44 *See* (HC) Brooks Data Point Workpaper.xlsx, tab "Data Points 17-20."

45 CPKC's July 2026 Traffic Diversion Submission, CPKC-63, FD No. 36500 (Sub-No. 6), at 6 (July 15, 2026).

46 *See* (HC) Supporting file for Diversion Figures (Nov 2025 to Apr 2026 filing period).docx.

47 *Id*.

CP and KCS forecast in the *CP/KCS* proceeding, *i.e.*, 64,000 truck-to-rail conversions on an annual basis.[48]

141. Figure 10 below illustrates the forecasted truck conversions presented in the Application in gray, with the actual truck-to-rail diversions reported in CPKC's oversight reporting shown in red.

FIGURE 10
CPKC TRUCK-TO-RAIL CONVERSIONS RELATIVE TO APPLICATION FORECASTS

REPORTED FIGURES[49]



[48] Decision No. 21 at 25 n.29 (STB served May 28, 2026).

[49] *See* (HC) Brooks Visuals Workpaper.xlsx, tab "Figure 10 (Forecast)."

ADJUSTMENT FOR CARLOAD CONVERSION[50]



142. The hard truth is that every single truckload conversion is difficult work that requires incredible perseverance, and the details matter because getting a customer to shift away from a transportation solution with which it has long experience is very hard. Consider one real-world illustration: a manufacturer of metals products has a facility less than an hour's drive from a CPKC intermodal facility but, nonetheless, even though rail would make good economic sense for this customer, trucks its product all over the country. My team made eight to ten cold calls seeking to persuade this customer to shift some volumes to rail and got nowhere. I wrote a letter to the company's CEO introducing our products and lanes, and the CEO referred it to his team. We have now been at it for a year, simply building the customer's understanding of the product,

[50] *See* (HC) Brooks Visuals Workpaper.xlsx, tab "Figure 10 (Adjustment)."

answering questions like how loading 53-foot containers on rail is different from loading a truck, how border crossings happen on rail, and how container quality affects service. Our MMX and SMX service levels, and the consistency of those services, more than meet the customer's transportation needs, and our pricing is better than truck. Yet for a full year into the effort, we had not moved a single load, and to date have only moved a handful.

143. The challenges UP-NS will face in pursuing their desired truck-to-rail diversions will be even greater than what CPKC has confronted, for several reasons. First, Applicants' planned diversions involve rail movements entirely within the United States and so will not benefit from the tailwinds associated with rail's ability to reduce cross-border frictions. Applicants anticipate moving lots of freight between Mexico and the United States using UP's Port Laredo intermodal terminal, which means all of that freight will have to cross the U.S.-Mexico border by road, not by rail, and incur all of the border crossing frictions associated with highway crossings.

144. Second, Applicants' diversion plans are heavily reliant on intermediaries for the contemplated growth in rail intermodal shipments using their planned new train services. In CPKC's experience, so-called "channel partners" like Schneider, Hub Group, Amazon (which use their own private containers), and the non-asset owning Intermodal Marketing Companies that book intermodal service using rail-owned containers in the UP-NS EMP program are extraordinarily savvy businesspeople who make routing decisions based on a careful weighing of costs and benefits. They are not invested in using railroad services as an end goal, but only when the total logistics cost of rail optimizes their network. They are just as happy putting their trucks on the road as putting their containers on rail. In CPKC's experience, convincing these kinds of entities to invest in rail for the long run will be a challenge.

145. Much of CPKC's growth on its MMX service has involved appealing directly to the beneficial owners of the freight to demonstrate how CPKC's rail offerings can meet their needs reliably and economically. But that takes tremendous work, customer by customer, and opportunity by opportunity, as the example I described above shows. It is clear that Applicants do not anticipate investing in this kind of effort, as their plan to radically downsize NS's marketing department shows, as I explain in the next section.

C. Applicants' Personnel Plans Expose Their Overstated Growth Projections

146. Applicants' own pro-merger narrative reinforces that they have not learned the right lessons from the recent past. For example, among the "benefits" Applicants emphasize is their reduced overhead expenses. But consider the implications of Applicants' planned reductions for the growth narrative they are trying to advance for their proposed merger. At the same time that Applicants project astronomical traffic growth, they also propose shrinking NS's "non-operating" management personnel radically as part of their elimination of NS's Atlanta HQ. The public version of Applicants' submission shows an overall reduction of 347 positions, almost 20% of NS's pre-merger total at this location, with more reductions among field non-operating managers.[51] Figure 11 below reproduces Applicants' table.

[51] Rev. App 1-529 (Perkes VS ¶ 10, Table 1).

FIGURE 11[52]
APPLICANTS' PLAN TO DRASTICALLY CONTRACT NS'S MARKETING FORCES

Table 1[2]
Norfolk Southern's Management Employment by Classification

Locations	NS Mgmt Positions	NS Positions Reduced by Year 1	2	3	Total	NS Positions Retained	NS Positions Relocated to Omaha HQ	NS Positions Remaining at Current Location
Atlanta HQ – Operating	781	111	48	31	190	591	200	391
Atlanta HQ – Non-Operating	1,282	244	39	64	347	935	346	589
Atlanta HQ Totals	2,063	355	87	95	537	1,526	546	980
NS Field – Operating	1,853	137	106	19	262	1,591	-	1,591
NS Field – Non-Operating	258	35	14	10	59	199	-	199
Field Totals	2,111	172	120	29	321	1,790	-	1,790
Norfolk Southern Total	4,174	527	207	124	858	3,316	546	2,770

147. These force reductions must include NS's Marketing and Sales personnel, meaning that UP-NS will go into their post-merger period of claimed traffic growth while simultaneously firing a large number of the people who one would expect they would rely upon to sell customers on the services UP-NS can offer and hustle for new business. The plan to shed the very personnel that are most likely to have the established relationships with shippers makes any claims about growth especially suspect. Marketing and sales personnel have customer knowledge and relationships that cannot easily be replaced.

148. Taking trucks off the road is far more complex than offering a service and a competitive price. Commodities matter, relationships matter, and trust matters. So do loading complexities and damage risk, safety and theft, first-mile and last-mile details such as cut-off times and hours of service at customer docks, credit and liability. And the difference in rate is not all a benefit to the shipper: rail has to make many changes just to adequately incentivize customers to switch their investments from truck-oriented to rail-oriented logistics.

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[52] Rev. App 1-529 (Perkes VS ¶ 10, Table 1).

D. Applicants' Calculations of Shipper Cost Savings Do Not Support Applicants' Benefits Claims

149. Applicants assert that, if they attract as much truck traffic to rail as they claim, the shippers who switch will save approximately $3.5 billion, measured as the difference between some sort of average truck rates and some sort of average rail rates. I strongly disagree with Applicants' logic. That calculation is flawed because it treats the entire difference between truck and rail rates as a gain to shippers, when in my experience that difference largely reflects the value shippers place on the service advantages of trucks. Even if their math turns out to be right, the benefit to shippers would be nowhere close to $3.5 billion.

150. The fallacy is obvious when one considers why shippers are using trucks today if rail rates are so much lower. It is because of a wide variety of logistics, reliability, and other advantages that shippers perceive trucks to provide that railroads do not. In other words, the price difference between rail and truck accounts for a whole range of tradeoffs that, from a shipper's perspective, cause truck to provide more value than rail. Using trucks for a price of $3,000 may be deemed superior to using rail at a cost of $1,500.

151. In light of these tradeoffs, even if shippers decided to shift from truck to rail in response to a marginal improvement in rail transit times or rail pricing—as I understand Applicants' diversion study assumes—the shift would not mean that the shippers' outcomes would improve by the full amount of the price difference. To the contrary, the improvement would be only marginal because there would still be many tradeoffs, albeit with a slightly improved balance favoring the choice of rail under Applicants' assumptions.

152. As a result, the magnitude of the benefit would not be the full price difference between truck and rail, but at most a small fraction of that reflecting the marginal improvement in the relative value of truck and rail alternatives.

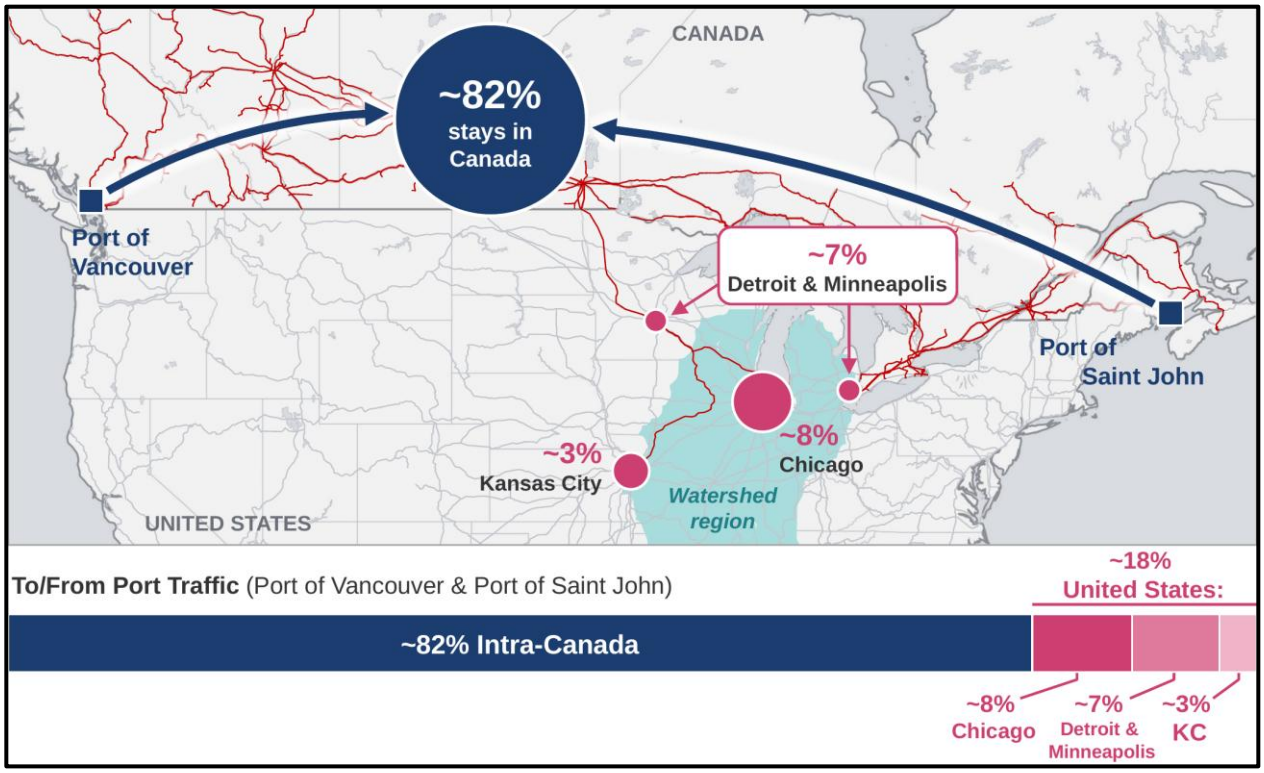
IV. THE MERGER WILL HAVE ZERO IMPACT ON THE COMPETITIVENESS OF U.S. PORTS AS COMPARED TO CANADIAN PORTS

153. Applicants have repeatedly invoked Canadian railroading and the Canadian railroad regulatory context as some sort of justification for approving the UP-NS merger. One line of argument has been that "transcontinental" Canadian railroads give Canadian ports an advantage over U.S. ports in getting goods to/from U.S. inland markets. Applicants suggest that their merger is needed to level the playing field so Canadian railroads and ports no longer have an advantage tapping U.S. markets.

154. Applicants' arguments are incorrect and nonsensical. First of all, a minuscule percentage of rail traffic entering and leaving the United States moves to/from Canadian ports. For example, as shown in Figure 12 below, the vast majority of the intermodal shipments that CPKC originates at the Port of Vancouver on the Pacific and the Port of St. John on the Atlantic move inland to points in Canada. Less than [redacted] ends up in the United States.[53]

[53] *See* (HC) Brooks Data Point Workpaper.xlsx, tab "Data Points," cell H24.

FIGURE 12 – CANADIAN PORT TRAFFIC TO THE UNITED STATES[54]



155. Second, to the extent traffic between Canadian ports and certain regions in the United States benefits from single-line routings on Canadian railroads, the U.S. rail network already provides single-line links between the same U.S. regions and competing U.S. ports. Traffic to/from Canadian ports almost never crosses the Mid-Continent, and when it does, it does so via interline connections. For example, CPKC handles intermodal containers from the Port of Vancouver to Chicago, and from the Port of St. John to Chicago. UP and BNSF both already have single-line routes to Chicago from U.S. West Coast ports—including Seattle/Tacoma, Oakland, and Los Angeles/Long Beach—and both NS and CSXT already have single-line routes to Chicago from New York/New Jersey, Baltimore, Hampton Roads, Charleston, and Savannah, among others. Likewise, UP and NS both have single-line routes between the ports they serve

[54] *See* (HC) Brooks Visuals Workpaper.xlsx, tabs "Figure 12 Calculation" & "Figure 12 – Raw Data."

and Kansas City, while UP reaches Minneapolis from its West Coast ports and NS reaches Detroit from its East Coast ports. As a result, it is just wrong to suggest that a transcontinental U.S. railroad is needed to match the single-line reach of Canadian railroads between the United States and Canadian ports. Moreover, most Canadian container traffic from both coasts is moving inland to Montreal or Toronto, and CP, for example, had sold its lines east of Montreal from 1991 to 2020.

V. NO SET OF CONDITIONS COULD PRESERVE THE COMPETITIVE STRUCTURE THAT EXISTS TODAY IF THE UP-NS TRANSACTION IS ALLOWED TO PROCEED

156. If UP acquires NS, the structure of America's interline rail network will be transformed in fundamental ways and forever. Applicants appear to believe that all of those changes will be for the better, but for reasons I and other CPKC witnesses explain, that is very unlikely to be the case. The UP-NS merger would reduce shippers' competitive options, squeeze out remaining competition, and increase the risk of systemic service failure.

157. I also believe that there is significantly less potential for single-line benefits flowing from the transaction than Applicants claim, especially given the ability to achieve many of those benefits through initiatives that do not permanently and fundamentally transform industry structure, like the relatively simple step of investing in new transcontinental run-through train service of the sort Applicants claim the merger will bring.

158. I understand that in some of the Board's past merger proceedings where there were clear harms and also the potential for some public interest benefits, the Board asked the question whether some set of conditions could be imposed that would prevent the harms while allowing the benefits to be achieved. I feel strongly that in this case the answer to that question is emphatically no—no set of conditions could come close to preserving the competitive and other benefits of the current industry structure. What Applicants have proposed would be

woefully inadequate and almost entirely temporary, whereas their transaction's effects would last forever. And any more extensive and permanent set of conditions would fundamentally immerse the Board in a protracted, centuries-long battle to try to regulate UP's future behavior against a backdrop of UP's well-established posture of defiance and resistance to any such regulation. Even if the Board managed to be completely successful at enforcing some set of conditions against UP over some period of time, a condition-regulatory regime could never come close to replicating the incentives that exist today for NS and UP to compete—both with one another head-to-head and as part of interline offerings (like UP-CSXT or BNSF-NS, or CPKC-NS) in conjunction with other interline partners.

159. In this section of my statement I explain why Applicants' proposed conditions are inadequate and then proceed to explain why no set of conditions would be able to protect the public interest if the UP-NS transaction is permitted to transform the rail network forever.

160. Applicants have highlighted four sets of commitments that they say will safeguard competition following their combination: their commitment to "keep gateways open on commercially reasonable terms" (the "Open Gateway Commitment"); their temporary "Committed Gateway Pricing" program; their temporary "Targeted Access Program;" and their temporary "ADR Program for Common Carrier Rates."[55] None of these proposed conditions could come close to replicating the competitive incentive structure of today's rail network.

A. Applicants' Open Gateway Commitment Will Not Preserve Today's Competitive Landscape

161. Applicants commit to abide by the same open gateway conditions that were proposed by Applicants in the *CP/KCS* proceeding and imposed with slight modifications as

[55] *See* Rev. App. 1-348-50 (Rocker/Elkins V.S. ¶¶ 164-173); *see also* UP-80/NS-78 at 8-9.

conditions on CPKC in that case. Applicants appear to suggest that whatever was good enough to guard against anticompetitive effects in *CP/KCS* ought to suffice here. I disagree.

1. CP-KCS Was Very Different from UP-NS

162. I am intimately familiar with gateway commitments imposed on CPKC as well as the similar gateway conditions that CPKC inherited from KCS that were imposed in *KCS/Tex Mex*. I know the latitude those conditions provide CPKC to encourage shippers to use CPKC single-line or extended haul routings. I also know, however, that the *CP/KCS* combination did not give CPKC any incentive or ability to use that latitude to act in anticompetitive ways. As a result, and as I told the Board in the *CP/KCS* proceeding, no gateway conditions *were needed* in *CP/KCS* in order to safeguard shippers' continuing access to all of the rail options they had before the transaction.[56]

163. That commitment made sense for *CP/KCS* because of the realities of that transaction. CP and KCS were the two smallest Class I railroads, and they only connected at Kansas City. The combination of CP and KCS occurred against the backdrop of much larger rail carriers that already had their own single-line routes surrounding CP's and KCS's separate U.S. networks. The combination created a new single-line option to compete with UP and BNSF single-line routes that already blanketed the territory we serve. CP and KCS in fact interchanged very little manifest traffic with one another, and neither of them had exclusive access to significant swaths of solely-served rail traffic.

164. CP-KCS did not give CPKC control of a route that UP or BNSF needed to compete. At Laredo, for example, Mexican regulation and other factors limit CPKC's ability to

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[56] *Canadian Pac. Ry. Ltd. – Control – Kan. City S.*, FD No. 36500, Brooks Reply V.S. at ¶¶ 10-14.

foreclose traffic heading to Mexico, and CPKC's KCSM Mexican concession prohibits a railway from charging different prices for the same origin-destination pair, equipment, and commodity based on the origin carrier or customer. In comparison to UP-NS, therefore, there was essentially no risk that a post-merger CPKC would have the incentive or ability to foreclose shippers' access to their preferred route.

165. This feature of *CP/KCS* has been borne out by experience. At the gateways where UP and BNSF complained that CPKC would force traffic to CPKC single-line or extended haul routes, the reality is that UP and BNSF shifted their own traffic elsewhere, primarily to the Eagle Pass and El Paso gateways. CPKC's interchange with UP at Laredo and with BNSF at Robstown is down since 2023, but that is largely because UP and BNSF and the customers they serve have shifted traffic to routes involving FXE in Mexico.

166. None of the above features are present here. A combined UP-NS would be the only single-line carrier spanning all of the Mid-Continent gateways—Chicago, St. Louis, Kansas City, Memphis, and New Orleans—and there is no comparable regulatory protection at U.S. gateways like what exists under Mexican regulation. For many of the shippers I described above, such as the frac sand and ethanol customers moving to NS-served destinations, there is no nearby gateway that would let them bypass the merged carrier. And UP-NS would be large enough to absorb the costs of making a competing interline route unattractive in a way that CPKC never could.

167. As a result, for vast numbers of shippers who are dependent on UP in the West or NS in the East, but where meaningful competitive alternatives are available on the other side of a Mid-Continent gateway, the merger will fundamentally change the incentives of the must-have railroad to continue working with all of the competing railroads across the gateway. Instead of

working with both CPKC and BNSF to deliver traffic to legacy-NS at Chicago, UP's incentives will usually be to win the long haul for itself, whether or not that is the outcome that best serves the interest of the customer. Were UP and NS allowed to combine, the only thing standing in the way of this anticompetitive outcome would be the conditions imposed by the Board aimed at requiring UP to work with those connecting carriers.

168. The problem is that, as UP strenuously argued, a commitment to keep gateways open on commercially reasonable terms is not up to the task in a context like UP-NS where such a commitment would be needed to counteract UP's quest to exert post-merger market power. A commitment to keep a particular gateway open cannot preserve the competition that exists in today's East-West interline world.

2. The Tools a Combined UP-NS Will Have to Steer Traffic Are Too Numerous and Too Subtle to Police

169. Based on my experience, a merged UP-NS would have an endless variety of ways to make a competing interline route less attractive without ever outright refusing to connect at a gateway, meaning that, at best, there might be an argument about what economic or service terms are "commercially reasonable." In the face of evaporating support for pre-existing interline options by UP, the most a shipper or connecting railroad might hope for would be a protracted dispute over whether UP's pricing or service changes were unreasonable. This environment would be a far cry from today's world, where UP is eager to work with CSXT (as well as NS), and NS is eager to work with BNSF and CPKC (as well as UP).

170. Today, NS cooperates with CPKC because it is in NS's own commercial interest to do so; the interline services CPKC offers with NS exist because both parties benefit from them. As I described above, NS works closely with CPKC on unit trains of frac sand and ethanol

moving from Upper Midwest origins that NS does not reach to Eastern destinations that CPKC does not reach. Gateway standards cannot replicate the competitive dynamics created by an independent NS.

171. That independence disciplines the terms UP can offer at every gateway where it interchanges with CPKC. When UP prices its portion of an interline movement or sets its service at an interchange, it knows that shippers can often turn to a CPKC-NS routing if UP's terms are not competitive. After the merger, that alternative would no longer exist at any of those gateways.

172. In my experience, the day-to-day cooperation that makes an interline service competitive cannot be overstated. This cooperation involves decisions about run-through blocks, how traffic gets switched and classified at the interchange, how quickly a partner returns equipment, whether a partner will hold a train for a connection, how a partner handles a service failure, and how it prices its portion of a movement when a customer is choosing between options. A partner that wants the business makes those decisions in a way that helps the joint service win. But a partner that would rather keep the whole movement on its own network can gradually degrade interline service until it is no longer competitive.

173. Among the countless tools UP would have to make a choice of an interline route comparatively unattractive, even if that route could (if supported) meet the customer's needs, include:

- Pricing UP's portion of an interline movement at a level that might be defensible on its face but is designed to undermine the attractiveness of that option relative to a UP single-line route or a longer-haul UP routing, so that there would be less

competitive pressure on the rates charged for the (formerly competitive) legacy-UP or legacy-NS portion of the move;

- Adjusting divisions or Rule 11 rates by gateway so that the gateway that preserves UP-NS's longest haul is always the most "economical" choice to the shipper;
- Reducing blocking, train frequency, or connection priority at the interchange;
- Allowing service to degrade as interline volumes fall, and then pointing to lower density as a commercially reasonable reason to reduce service further or even discontinue service; and
- Any number of other steps that reflect less eagerness to "sharpen its pencils" to compete hard for the interline traffic where UP now has an interline route or a longer haul.

174. Many of the above actions would be difficult for a customer (or the Board) to recognize for what they are: reduced competition. And they would be even harder to challenge as "commercially unreasonable" merger effects, as opposed to ordinary commercial judgments about what was in the best interest of UP. And the customers most exposed to this kind of manipulation would often be least likely to complain because they likely would already depend on UP (legacy-UP or legacy-NS or both) for other movements and fear the repercussions of suing to enforce a merger condition. Indeed, I would expect that in many cases such customers would, as a practical matter, have little real economic choice but to bundle as much traffic as possible with UP, despite the fact that, had UP and NS remained independent, the customer would be better off exploiting alternative interline options. UP's gateway commitment would not be able to police any of this effectively.

175. Moreover, because UP will design its post-merger operating plan to favor its own single-line services, shippers often would lack any benchmark interline traffic to point to in an attempt to demonstrate the unreasonableness of UP's post-merger conduct. Or, if there were such a benchmark, it would similarly reflect the same incentives on the part of UP to degrade the attractiveness of interline options, making it all the harder to show unreasonableness, particularly because UP/NS traffic on interline routes may be minimal or nonexistent.

176. There is also an overarching timing problem that I see constantly in the marketplace. Customers make routing decisions in RFP cycles and under multi-year contracts, and a competing interline offering that is lost in one bid cycle is very difficult to rebuild. By the time a customer or a connecting carrier could obtain relief through a Board proceeding, the traffic opportunity would have passed by, the interline service would have lost the density needed to support it, or the customer would have signed a new contract with UP-NS.

177. Many customers are also bound to their carrier by contract terms that make shifting traffic difficult, including minimum-volume commitments, exclusivity or percentage-of-traffic requirements, routing requirements, volume rebates, and shortfall penalties. A combined UP-NS could use those terms across a much larger network to limit how much traffic a customer can move to a competing interline route, even where a gateway remains open. Customers have also told us that they are reluctant to move traffic away from UP for fear that UP will respond on other lanes where the customer has no alternative. Again, a gateway commitment could not police any of this effectively.

B. Applicants' "CGP" Condition Will Not Preserve Today's Competitive Landscape or Enhance Competition

178. Applicants' Committed Gateway Pricing Program ("CGP") at first blush appears to be a more robust way to keep gateways open. It has some similarities to the gateway

conditions that UP and BNSF proposed in *CP/KCS*, and which I criticized as unnecessary and anticompetitive. But at least it would provide some structure for the rates that a connecting carrier could quote for interline movements that depended on access via a Mid-Continent gateway to the UP network.

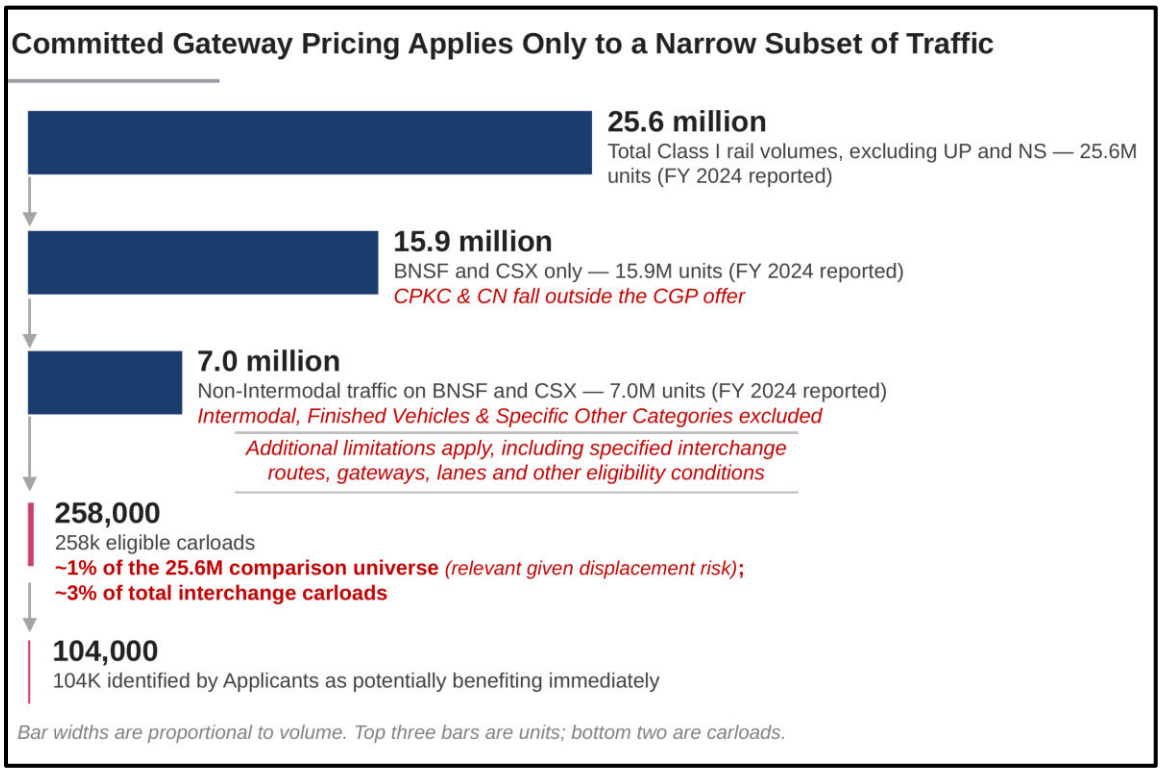
179. But Applicants are very clear that CGP is not intended to remedy any vertical competitive harms from their merger, and it is also clear that CGP would be completely ineffective were it offered for that purpose, for many reasons.

180. First, it is temporary, lasting only during the oversight period. The UP-NS merger and its effects on the interline rail options shippers have today will be permanent, not temporary.

181. A temporary program would not give customers or connecting carriers any meaningful ability to make long-term commitments. Shippers need to know what competitive options will still be there in five or ten years. A program that is scheduled to expire after a brief oversight period cannot serve this goal.

182. Second, the CGP proposal is riddled with huge holes that would make it inapplicable to a significant portion of potential UP interline rail traffic. Figure 13 below shows the tiny fraction of rail traffic to which CGP would apply at all.

FIGURE 13
LIMITED APPLICABILITY OF CGP PROGRAM[57]



183. Many of the limitations of the CGP program are core features of Applicants' design:

- CGP would not apply to any interline traffic interchanged with Class I carriers other than BNSF and CSXT. That list, of course, excludes CPKC, meaning that CGP would not provide CPKC with any opportunity to quote CGP rates for interline movements on the legacy-NS or legacy-UP networks. UP would be free to force that traffic away from CPKC routes, limited only by the theoretical potential for enforcement of the "open gateway" commitment.
- The CGP proposal would not apply to any interline traffic interchanged at a gateway other than Chicago, St. Louis, Memphis, and New Orleans. This

[57] *See* (HC) Brooks Visuals Workpaper.xlsx, tab "Figure 13."

limitation would sweep away any obligation to support a host of potential interline routing options that exist today via other gateways. For example, even if CGP did apply to CPKC, this limitation would mean that CPKC could not quote a CGP rate on the legacy-NS network for traffic moving between Mexico and the Southeast interchanged with NS at Meridian, MS, in direct competition with UP "single-line" FXE/UP routes between Mexico and NS-served points. UP would again be free to force traffic that depended on access to the NS network to its own single-line or longer-haul routes.

- The CGP proposal excludes a host of commodities, including intermodal traffic, finished vehicles, TIH/PIH materials, dimensional loads, and shipments to or from storage-in-transit facilities. Those exclusions cover much of the traffic CPKC interchanges with UP and NS today. Intermodal traffic is central to CPKC's business and to the interline services I described above, including our Meridian Speedway services with UP and NS. CPKC also handles significant volumes of finished vehicles and auto parts in interline service with NS, including [redacted] traffic described above.
- In 2025, CPKC interchanged [redacted][58] carloads with UP or NS. Even if CPKC were eligible for the CGP program, [redacted] of this would be excluded under the program as written in Applicants' filing.

184. Third, Applicants' proposed CGP framework is too coarse to track market conditions and is not nimble enough to allow rates to adjust rapidly to changing conditions, *unlike* how rates charged by an eager interline partner can adapt to those conditions.

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[58] *See* (HC) Brooks Data Point Workpaper.xlsx, tab "Data Points," cell F29.

185. The buckets used to calculate CGP rates are far too coarse. For example, "Industrial Chemicals" and "Metals & Ores I" span movements with materially different cost and demand characteristics. Mileage bands encompassing 500 miles (e.g., between 500 and 999 miles) ignore pricing differences between shorter and longer moves.

186. The rigidity of CGP also would preclude it from mimicking a competitive interline marketplace. An annual reset lags market conditions that often change quarterly or sooner. In today's marketplace, interline carriers adjust their rates and divisions continually in response to fuel and truck-market swings, seasonal demand, new competitive offerings, and individual bids. Under CGP, the legacy-UP or legacy-NS portion of the move would be fixed in advance, while UP-NS could price its own single-line alternative freely from bid to bid. By the time the annual reset caught up, the RFP would be over and the traffic would be gone.

187. Fourth, Applicants' decision to set CGP at the 70th percentile of "comparable" rates raises a further set of concerns. In the short run (which is the only period in which Applicants propose for CGP to exist), setting CGP so high in UP's post-merger rate distribution would tend to ensure that interline rates built on CGP were relatively uncompetitive, and certainly less competitive than the rates that an eager interline partner would charge "on average" (given that the 70th percentile is well above the median). And of course basing a CGP rate always on an above-median percentile rate would not mimic how interline pricing occurs today, where an eager interline partner can lower rates below the mid-point of the distribution in order to pursue attractive traffic opportunities.

C. Applicants' Targeted Access Program Will Not Preserve Today's Competitive Landscape or Enhance Competition

188. Applicants' Supplement added a new Targeted Access Program ("TAP") proposal, which would, during the oversight program, provide a mechanism for certain sole-

served customers within terminal areas that experience serious deterioration to seek temporary reciprocal switching access to another Class I railroad.[59]

189. I agree that, were UP and NS allowed to merge, providing shippers with additional access to competing rail carriers would be necessary to help mitigate the greater market power UP would achieve through the merger. But the TAP proposal is not a viable means of achieving that goal, for many reasons.

190. As with the CGP program, one of TAP's fatal defects is its explicitly temporary duration—it would expire just three years after Board approval. This limitation reflects Applicants' express intention that this mechanism *not be seen* as a means of remedying competitive harm. Instead, it is solely a short-term fix for potential near-term service disruptions arising from the merger.

191. Even if made permanent, however, TAP has major shortcomings.

- It excludes traffic moving under contract, intermodal traffic, and unit-train traffic.
- TAP's limitation to "terminals" creates ambiguity about the extent of its reach, and also would exclude large numbers of solely-served UP and NS customers.
- TAP's triggering mechanism—which requires a lengthy decline in service quality but can be avoided via a short-term improvement in service—would make it inaccessible for any purpose other than, potentially, addressing serious and persistent service problems on UP's post-merger network. But in the face of a service crisis, the ostensible remedy would still require shippers to rely on UP's first-mile or last-mile service (or both), undermining its effectiveness. A

[59] UP-80/NS-78 at 189-95.

customer experiencing poor service from UP-NS would still depend on UP-NS for the very service that is failing

- TAP's service-related trigger also means that it would be unavailable to provide any form of competitive hedge against UP's exercise of post-merger market power. TAP, for example, is utterly unlike the kind of access relief that rail customers have in Canada, where those within 30km of another carrier have access as of right.

192. Even if TAP were reconstituted as a competitive access remedy, its structural flaws would make it unworkable. TAP does not provide the predictable, durable access needed to support multi-year customer commitments and investment in competing service. Customers make routing decisions through bids and contracts, and they need to know an alternative carrier will be available for the life of a contract before they will invest the time to develop it. For example, CPKC has multi-year contracts across our Grain, ECP and Automotive businesses involving movements where some or all of the route is within the United States. Those agreements require CPKC and its customers to commit to a transportation plan covering multiple years, including rates, volumes and service expectations, and equipment and operating resources. Developing that business requires longer-term investment and infrastructure or track-maintenance decisions based on the continuation of the route. A customer cannot run an RFP around access that becomes available only after its service has failed badly enough to meet Applicants' thresholds, that may be contested through arbitration, and that ends after a short period.

193. Overall, customers don't make sourcing, routing, equipment, or facility decisions around a rail option that may only exist temporarily. Temporary access does not provide the

certainty that's needed for meaningful, lasting competitive alternatives, as the customer cannot know that the competing route will remain available for the life of its commercial commitment.

D. Applicants' Rate Arbitration Program Will Not Preserve Today's Competitive Landscape

194. Applicants' final "condition" enhancement in their Supplement is a mechanism for resolving regulatory rate reasonableness disputes. That proposal should be viewed against the Board's other recent rate-dispute mechanisms. The first, the Board's Final Offer Rate Review rule, UP challenged in court, criticizing it on the ground, among other things, that the approach was "unconstitutionally vague" because rail carriers "do not know how the Board will determine what is 'reasonable' in any given case. The court vacated the rule."[60] The second, the Board's Small Rate Case Arbitration Program, is voluntary for railroads, and UP and NS have never opted into it. Now, Applicants are willing to have their own rate dispute program in place for a few years, but only if their merger is approved.[61] As with CGP and TAP, Applicants' so-called "Rate ADR Program" is expressly temporary. It is also severely limited in scope and application. It basically would apply only when a shipper already would have a valid claim of rate reasonableness under ICCTA (in other words, not to contract rates, not to exempt commodities, not unless there is qualitative and quantitative market dominance, not to bottleneck rates, etc.), and using the program would require a shipper to accept a cap on its recovery and to relinquish any ability to assert a revenue adequacy theory of rate unreasonableness.

195. To my mind, this is a perfect example of how Applicants' proposed merger would convert today's relatively competitive market structure into one that was more reliant on regulation, with no serious effort to identify regulatory tools that could effectively rein in the

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60 *Union Pacific RR.* v. *STB*, 113 F.4th 823, 832 (8th Cir. 2024).

61 UP-80/NS-78 at 196-201.

conduct of a post-merger UP. And Applicants' program might never take effect at all. It becomes available only if the Board finds during oversight that the merger's anticipated benefits have not materialized in a timely manner, and it ends with oversight, or even earlier if UP-NS opts into the Board's Small Rate Case Arbitration Program. But merger benefits and competitive harm can exist side by side. The benefits Applicants promise could arrive on schedule while shippers suffer the harms I describe above, and in that case Applicants' program would offer those shippers no relief. Even if Applicants' proposed Rate ADR Program were permanent, it would not come close to replicating the competitive outcomes produced by today's pre-merger market structure.

196. Applicants' program also falls well short of the final offer arbitration ("FOA") that Canadian shippers have long had available. Under FOA, a shipper dissatisfied with a rate can submit the dispute to an arbitrator. The shipper and carrier each submit a final offer, and the arbitrator picks one. The decision comes within weeks and binds the parties. Applicants' program requires at least 30 days' advance notice and then allows 180 days after institution for a decision. It caps relief at an indexed $4 million, offers no relief below 180% R/VC, bars revenue adequacy arguments, excludes contract and exempt traffic, unless otherwise agreed, and expires when oversight ends.

VI. IF THE BOARD DOES ALLOW UP AND NS TO COMBINE, IT SHOULD IMPOSE CONDITIONS THAT AT LEAST ATTEMPT TO SAFEGUARD EXISTING INTERLINE RAIL OPTIONS AND FREE OTHER RAILROADS LIKE CPKC TO COMPETE MORE EFFECTIVELY

197. For the reasons I have explained, I do not believe that the UP-NS merger is in the public interest or that any set of conditions imposed on Applicants' proposed transaction could make it consistent with the public interest. The Board and the public would trade today's

competitive market structure for a more regulatory world that does a poorer job of meeting customer needs—even if regulatory mechanisms were up to the challenge of compelling UP's compliance with conditions.

198. If the Board concludes otherwise, however, it should impose a far more robust set of conditions than what Applicants have proposed, and ones less reliant on ongoing monitoring and enforcement by the Board.

199. I believe that the Board should at minimum try to achieve four objectives through conditions:

- The Board should impose a permanent and more robust set of protections for existing interline rail options, via haulage or other rate-making rights that would be as self-executing and self-enforcing as possible, perhaps modeled on a massively upgraded and permanent version of Applicants' "CGP" proposal;
- The Board should remove as many obstacles as possible to CPKC and other railroads competing more effectively against UP-NS, including by eliminating paper-barrier-like restrictions in trackage rights and other agreements between UP or NS, on the one hand, and CPKC, on the other. CPKC witness Gameiro reviews a number of the ways that such restrictions, unless removed, would block CPKC from offering competitive rail options that help mitigate the effects of the UP-NS transaction. I describe below how CPKC would be enabled to compete more effectively absent those restrictions;
- The Board should grant targeted access to solely-served UP and NS customers to help overcome the effect of the merger to place more of America's economy

under the sole control of the rail rate and service terms that UP deigns to offer; and

- The Board should grant specific additional relief to enhance CPKC's ability to mount effective competitive responses to UP's post-merger conduct.

200. I believe that even the full slate of conditions I outline above would not come close to restoring the full measure of competition supported by today's industry structure, but they would help make a bad situation less bad for America's rail network and its many stakeholders.

201. I have addressed above some of the core elements of any effective gateway-preserving condition, and other CPKC witnesses explain why the other categories of conditions are necessary to address harms from the UP-NS merger, or enable pro-competitive responses that help to offset harms that could not be remedied. In the sections below, I explain how CPKC would be well positioned to use additional rights it may obtain through conditions to provide shippers with effective alternatives to a post-merger UP Colossus.

A. CPKC's Proposed Conditions Providing Greater Scope for Competition in South Texas

202. As Mr. Gameiro explains, CPKC's ability to compete for chemicals and other traffic originating and terminating in South Texas is severely restricted today [redacted] Were CPKC freed of those restrictions, it would have greater access to solely-served UP shippers and the ability to pick up traffic served by PTRA in Houston and deliver it to points reached efficiently by CPKC's network. CPKC would be well positioned to act as an aggressive and motivated competitor of the post-merger UP.

203. The region between Houston and Corpus Christi contains a large concentration of shippers of many commodities for which rail plays an important transportation role—including chemicals, plastics, and refined products. The commodity flows fit CPKC's network well because we connect Texas with Mexico and, with the restrictions lifted, could connect Texas with the Midwest, Canada, and the East (via connections with CSXT, among others). As I explained above, many South Texas customers have facilities served by CPKC as well as facilities served only by UP, and a combined UP-NS would gain even more leverage over the latter.

204. With augmented rights, CPKC anticipates that it could, within three years, successfully attract significant volumes of newly competitive traffic, in three broad categories.

205. First, I anticipate that CPKC would attract approximately [redacted] loads: [redacted][62] in the Corpus Christi area and [redacted][63] in the Victoria-Bloomington area via reciprocal switching access to facilities near our lines in South Texas that UP alone serves

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62 *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cell C2.

63 *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cell C3.

today.[64] Of the [redacted] loads, I estimate that [redacted][65] would be newly handled by CPKC to/from points served by CPKC or reached via interline service, and [redacted][66] would involve traffic that CPKC participates in today via UP-CPKC interline service as to which reciprocal switching access would give CPKC an extended or single-line haul. Among the customer facilities where we anticipate competing hard for traffic and attracting some portion of current volumes, are the facilities of [redacted]

206. Second, the elimination of strict restrictions barring CPKC from using its UP trackage rights to serve transload facilities on our Victoria-Rosenberg line (our Rosenberg Subdivision, which CPKC owns outright) or serve customers who might desire to build into that line would unlock a formidable potential for CPKC to compete for significant traffic flows. It

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[64] My forecasts are based on the work of my marketing team in assessing the details of each marketplace opportunity to identify traffic that we could readily address if our requested conditions were imposed. We analyzed our own traffic history, RFPs from customers, and specific customer facilities that we are certain will use rail to ship their goods to create a universe of potentially addressable traffic. Then, we went through each opportunity and assessed how much of the addressable traffic we could serve if we were granted the rights that we are seeking. The resulting traffic projections are thus carefully calibrated to CPKC's ability to serve actual traffic that would be unlocked by the conditions.

Unless I state otherwise, each estimate reflects annual traffic in Year 3, the steady-state year after the applicable condition becomes effective. Our forecasts distinguish two kinds of traffic. "Extended-haul" traffic is traffic CPKC handles today for part of its route that CPKC would carry a longer distance on its own network if the condition were granted; because CPKC already handles that traffic, we assume that all of it would move to the longer CPKC haul. "Newly handled" traffic is traffic that CPKC does not handle today. Newly handled traffic is not necessarily new to the rail industry, and none of these estimates guarantee that CPKC would win the traffic. Some opportunities require more than one of the conditions we are requesting; where that is the case, I identify each condition the opportunity depends on, and the traffic is counted only once.

[65] *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cells E2, E3.

[66] *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cells D2, D3.

would be somewhat speculative to identify any particular opportunities, but CPKC knows from experience that shippers in this area are eager for rail transportation options that bypass UP's network, and CPKC would be eager to invest in serving those customers if opportunities arise.

[redacted] Based on our experience, I anticipate CPKC would attract [redacted] net new carloads if these barriers are removed.[67]

207. If the reciprocal switching rights were granted and these other restrictions were removed, CPKC anticipates earning [redacted] in revenues and [redacted] in net income.[68]

208. Third, I anticipate that CPKC's ability to move traffic of customers served by PTRA in Houston anywhere on CPKC's network, rather than being restricted to handling that traffic only to Corpus Christi and Mexico, would enable CPKC to attract approximately [redacted][69] loads—comprised of [redacted][70] newly handled carloads and [redacted][71] carloads for which CPKC would extend its existing haul. The newly handled traffic consists mainly of chemicals and plastics moving between Houston Ship Channel plants and CPKC-served points in

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67 *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cell C4.

68 *See* (HC) Brooks Incremental Revenue and Earnings Workpaper.xlsx 'Summary Pivot,' Cells B8, C8.

69 *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cell C5.

70 *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cell E5.

71 *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cell D5.

Canada and the Midwest. If this restriction were removed, CPKC anticipates earning [redacted] in revenue and [redacted] in net income.[72]

209. As I explained in the *CP/KCS* proceeding, the benefits from CPKC's expanded access would not be limited to the specific traffic opportunities that CPKC ultimately wins. In my experience, a credible competitive alternative changes the tenor of negotiations even for customers that stay with their existing carrier. When a customer can put a real CPKC option in front of UP-NS, they have more leverage to obtain better rates and service, and UP-NS has more reason to improve its own offerings.

B. CPKC's Proposed Conditions Providing Greater Scope for Competition for Rail Traffic in the Baton Rouge Area

210. For similar reasons, CPKC would be a motivated competitor for traffic moving to/from UP sole-served customers west of the Mississippi River near Baton Rouge. I anticipate that, with reciprocal switching or direct access to facilities between West Baton Rouge and Allemania, LA, as described in Mr. Redd's Verified Statement, CPKC would attract approximately [redacted][73] incremental annual loads [redacted][74] newly handled and [redacted][75] extended-haul loads). Among the shippers whose facilities we would compete to serve are [redacted] These are major producers of plastics and caustic soda, and CPKC could offer them competitive service to the Midwest, Mexico, and Canada. CPKC would not need to make significant new investments

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[72] *See* (HC) Brooks Incremental Revenue and Earnings Workpaper.xlsx 'Summary Pivot,' Cells B9, C9.

[73] *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cell C6.

[74] *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cell E6.

[75] *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cell D6.

or build out new capabilities to offer that service; we could begin competing for this traffic as soon as access is granted. We anticipate earning [redacted] in revenues and [redacted] in net income from this traffic.[76]

211. These facilities are served solely by UP today, and much of the chemical and plastics production west of the river near Baton Rouge is concentrated at them. CPKC already serves the Baton Rouge area and moves traffic from there via both Shreveport and New Orleans. Indeed, even today, [redacted] demonstrating that customers at these facilities value a CPKC routing option and would make greater use of it with direct access. Traffic we win from these facilities could move north via Shreveport to the Midwest and Canada or east via interchange with CSXT (or legacy-NS) at New Orleans or Meridian (or Myrtlewood for CSXT).

C. CPKC's Proposed Conditions Providing Greater Scope for Competition Using Its Chicago-Detroit Rights

212. CPKC currently depends on NS-owned infrastructure to serve traffic between Chicago and Detroit. Restrictions in our trackage rights agreement with NS largely preclude us from interchanging with other carriers via these rights or handling traffic moving between points in the United States and Mexico and points in Southeast Michigan.

213. The elimination of restrictions on interchange with Conrail and Ann Arbor Railroad (which connects the trackage rights lines to Toledo-area auto plants via Milan, MI), coupled with the removal of restrictions on handling certain traffic using our rights, would unlock the potential for CPKC to compete for finished auto traffic originating at Detroit- and

[76] *See* (HC) Brooks Incremental Revenue and Earnings Workpaper.xlsx 'Summary Pivot,' Cells B11, C11.

Toledo-area plants, as well as enable us to invest in facilities that would serve a broader group of customers in Southeast Michigan that today are inaccessible to CPKC because of trackage rights restrictions. I estimate that the removal of these barriers would allow CPKC to attract approximately [redacted][77] incremental annual movements. That includes approximately [redacted][78] movements of intermodal containers, automotive parts, boxcars, and autoracks, which I describe in more detail below, and a separate [redacted][79] finished-vehicle loads through the Conrail interchange. I anticipate CPKC earning [redacted] in revenues and [redacted] in net earnings from this traffic.[80]

214. Most of that opportunity would come from more effective intermodal offerings to Southeastern Michigan, which CPKC would pursue were it no longer blocked from doing so by NS-imposed contractual restrictions. Today, our intermodal rights on NS's lines are limited to movements between Canada and Detroit. CPKC attempts to participate in intermodal shipments of auto parts to/from Detroit via over-the-road movements between Detroit and our Bensenville intermodal facility outside Chicago, but drayage costs handicap our competitiveness. I estimate that the Detroit intermodal auto parts market encompasses approximately [redacted] of annual traffic, and UP-aligned intermodal marketing companies [redacted] Direct access for intermodal traffic to

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77 *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cells C9, C10.

78 *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cell C10.

79 *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cell C9.

80 *See* (HC) Brooks Incremental Revenue and Earnings Workpaper.xlsx 'Summary Pivot,' Cells B7, C7.

Detroit would lower drayage costs for CPKC's intermodal customers and allow CPKC to compete with a single-line solution from suppliers to OEM assembly plants.

215. Although CPKC has a very limited network as compared to larger Class Is and even more so compared with UP-NS, CPKC would be well positioned to offer an effective competitive service to UP-NS for auto parts shipments between Mexico and the Detroit area, but only if it is not prohibited from reaching Southeast Michigan by rail. With the removal of the outright prohibition on CPKC's handling of Detroit-bound intermodal loads using our trackage rights, CPKC would also evaluate developing its own auto ramp, intermodal terminal, and potential transload facilities adjacent to our trackage rights route. Southeast Michigan is the center of North American automotive production, and supply chains linking Detroit- and Toledo-area assembly plants with suppliers in Mexico are among the fastest-growing rail opportunities. With a terminal in Southeast Michigan, and the ability to connect that terminal with CPKC's network at Chicago, CPKC could offer a single-line rail solution from parts suppliers to assembly plants. CPKC believes that the intermodal opportunity described above would encompass approximately [redacted][81] loaded auto-parts containers moving annually from Mexico and [redacted][82] annual return containers carrying parts racks. Separately, expanded interchange rights with Ann Arbor would allow CPKC to compete for approximately [redacted][83] annual autorack carloads and [redacted][84] annual auto-parts boxcar loads by Year 3.

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[81] *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Volume Data," cells L56-58.

[82] *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Auto Parts Bid Volume INT," cell D23.

[83] *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Autos Production Forecast INT," cell J61.

[84] *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Volume Data" cells K54-55.

Together, these opportunities account for the [redacted][85] incremental annual movements identified above, consisting of [redacted][86] newly handled movements and [redacted][87] extended-haul movements. They are separate from the [redacted] finished-vehicle carloads through the Conrail interchange.

D. CPKC's Proposed Conditions Providing an Improved Route and Greater Customer Access Between Kansas City and St. Louis

216. Kansas City and St. Louis are two of the most important Mid-Continent gateways and major industrial hubs. Today, UP and NS each operate direct routes between those cities and compete for traffic in that corridor. CPKC's former Gateway Western route connects these cities via Roodhouse, IL, a materially less direct route. The merger would place the two best routes under common control.

217. I am aware that CN has reached a Memorandum of Understanding with UP pursuant to which it would receive haulage or trackage rights over UP's route between St, Louis and Kansas City. I am also aware that CSXT has indicated that it may seek a condition granting it the divestiture of, or trackage rights over, the same UP line.

218. To my knowledge, neither the CN proposal nor the CSXT proposal makes very much sense. Both would introduce a new carrier, and new complexity, into the Kansas City Terminal, as Mr. Redd explains. The CN proposal in particular appears to be a bit like a bridge to nowhere, much like CN's proposal to acquire CPKC's line between Kansas City and Springfield in the *CP/KCS* proceeding.

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[85] *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cell C10.

[86] *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cell E10.

[87] *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cell D10.

219. CPKC already operates an independent route between Kansas City and St. Louis, and with an improved route in the corridor, CPKC would be capable of remedying the loss of competition associated with the merger in a simpler and more straightforward way. CPKC's proposed rights over NS's line between Mexico, MO and St. Louis, and the related close-the-gap rights over TRRA to reach St. Louis, would enable CPKC to provide a faster and more efficient route connecting Kansas City and St. Louis. CPKC would eagerly pursue new traffic opportunities, including the potential restoration of CPKC-CSXT intermodal service between Kansas City and St Louis, for movement via CSXT to terminals across its network. Such traffic could include intermodal shipments bridged between BNSF and CSXT via CPKC's improved route.

220. CN's proposal, by contrast, could balkanize traffic flows in this corridor in a way that undermines effective competition against post-merger UP.

221. CPKC's access to GM's assembly plant at Wentzville (which is currently solely-served by NS) would make a particularly meaningful contribution to improving the post-merger competitive environment. GM is among the customers for which UP would become far more indispensable as a result of acquiring NS. By providing GM with a rail transportation option other than UP, CPKC's access to this facility would help counteract the increased stranglehold that UP would have over this important shipper. The proposed rights sought by CN and CSXT would not address this issue, because the UP line over which they seek rights does not serve Wentzville.

222. With local shipper access to customers on NS's St. Louis-Mexico line, I anticipate that CPKC would attract approximately [redacted][88] incremental annual loads: approximately [redacted][89] newly handled loads at Wentzville, MO and approximately [redacted][90] loads to/from shipper facilities west of Wentzville (comprised of [redacted][91] newly handled and [redacted][92] extended-haul loads). We anticipate earning [redacted] in revenue and [redacted] in net earnings from this traffic.[93]

E. CPKC's Proposed Conditions Removing [redacted] to Certain Transcontinental Intermodal Traffic Moving via the Meridian Speedway

223. As I described above, the Meridian Speedway shows what independent railroads can accomplish together. Under the agreements governing the Meridian Speedway joint venture,

[redacted]

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88 *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cells C8, D7 E7.

89 *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cell C8.

90 *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cells D7, E7.

91 *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cell E7.

92 *See* (HC) Brooks Traffic Volume Projection Workpaper.xlsx, tab "Sources of New CPKC Traffic," cell D7.

93 *See* (HC) Brooks Incremental Revenue and Earnings Workpaper.xlsx 'Summary Pivot,' Cells B10, C10.

224. Today, NS's primary interline partner for this exclusive traffic is UP. UP, CPKC, and NS operate highly effective and high-speed interline service between California and NS-served terminals in the Southeast on a daily basis. Mr. Redd explains this service in more detail.

225. NS is not limited to working with UP, however. Just as CPKC has developed good working relationships with both NS and CSXT for traffic moving via the Speedway between Dallas and the Southeast, and between Mexico and the Southeast, NS has the right to work with BNSF as well as UP for the so-called "NS Traffic" between California and the Southeast. (BNSF-NS traffic would move via Dallas and Meridian under haulage provided by CPKC.)

226. Were UP to acquire NS, that potential competitive option would be extinguished. UP would have no incentive to allow its arch-rival in the West (BNSF) to take advantage of the premier service route between California and the Southeast in direct competition with UP's service. In order to preserve the potential for the Meridian Speedway route to support competing transcontinental services following a UP acquisition of NS, NS's exclusive access to the Speedway would have to be relinquished, so that BNSF, CPKC, and CSXT could provide service via the Speedway in competition with UP-CPKC-NS routings.

F. CPKC's Proposed Condition Preventing UP from Gaining Control of the Wylie Intermodal Terminal

227. The Wylie intermodal terminal raises a related concern. As Mr. Gameiro explains, under the agreements that created the Meridian Speedway joint venture, NS acquired an option to buy CPKC's Dallas-area intermodal terminal, which today is located at Wylie, TX.

[redacted]

228. CPKC accepts the fact that NS, so long as it is independent of UP, is entitled to exercise its contractual option rights (though the scope of those rights is not without dispute).

However, UP's acquisition of NS would radically alter the competitive landscape. UP already controls two of the intermodal facilities serving the Dallas/Ft. Worth region, and if it is allowed to acquire NS, and [redacted] UP would own three of four Dallas-area terminals, and CPKC would own none.

229. In addition, though NS would be obligated to support CPKC's intermodal traffic at the Wylie Terminal, if NS comes to own that terminal, much of CPKC's traffic there would not be competitive with pre-merger NS. Thus far in 2026, [redacted] of CPKC's Wylie traffic volume moved to or from points for which NS does not currently compete, but UP does (e.g., Mexico and Minneapolis). Were UP to acquire NS, however, 100 percent of CPKC's intermodal traffic would be directly competitive with UP's Mexico-Dallas, Dallas-Chicago, and Dallas-Atlanta (legacy-NS) services.

230. In addition, CPKC's non-intermodal facilities at Wylie support substantial business that is also directly competitive with UP. CPKC moves a substantial amount of carloads through Wylie across a range of industries, including pulpboard and fiberboard, finished automobiles, trucks, Portland cement, kiln-dried lumber, and carbon dioxide. The scale and diversity of that business illustrates why NS's ongoing effort to acquire Wylie is concerning.

[redacted] If NS prevailed, it would threaten CPKC's ability to provide this non-intermodal service at Wylie.

231. A condition requiring that UP relinquish to CPKC any rights NS might ultimately acquire in the Wylie Terminal would restore the current competitive environment, in which CPKC supports CPKC-NS intermodal traffic but also is unfettered in its ability to compete with

UP for intermodal traffic using the Wylie Terminal, without simultaneously relying on UP to help CPKC compete with it.

G. CPKC's Proposed Condition Precluding Enforcement of Paper Barrier Restrictions at Rosemount and Fairmont, Minnesota

232. As Mr. Gameiro explains, CPKC's network reaches two important points in Minnesota where CPKC's ability to serve rail customers is restricted by provisions in agreements with UP: Rosemount, MN, southeast of the Twin Cities, and Fairmont, MN, west of the Twin Cities.

233. At Rosemount, Flint Hills Resources operates the Pine Bend Refinery, which has a capacity of [redacted] barrels per day and supplies more than 10 percent of U.S. asphalt demand. Today, CPKC moves a relatively small number of carloads annually of Pine Bend traffic to Eastern connections reached via Chicago, in direct competition with UP. CPKC's network is well positioned to compete for substantially more of Flint Hills' outbound traffic, but [redacted]

234. The merger would heighten the problem: the combined UP-NS network would extend east of Chicago and would include [redacted]

[redacted] of the traffic CPKC moves over Chicago, increasing UP-NS's ability to bundle and lock out competition.

235. Fairmont presents the same problem. As Mr. Gameiro explains, CPKC operates on UP trackage rights through town but does not have access to local customers, including [redacted] Those facilities have effectively no rail alternative to UP. CPKC has preliminarily identified meaningful opportunities to attract traffic to/from these facilities were CPKC enabled to compete. If CPKC were able to compete, we believe we could offer these shippers a real competitive alternative, giving them leverage with UP and giving CPKC access to markets that only UP can reach today. The paper barrier stands in the way.

236. Today, a shipper that is unhappy with one railroad can turn to an interline alternative, and that choice keeps every carrier honest, including UP and NS. The UP-NS merger would take that choice away, and no set of conditions can restore it. The Board should deny the application. If it does not, it should at minimum impose the conditions CPKC has requested.

VERIFICATION

I, John Brooks, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 18 day of November, 2026.



John Brooks

PUBLIC REDACTED VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

VERIFIED STATEMENT OF JOHN BROOKS

EXHIBIT 1

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May 28, 2026

The State of the Rails

This is a weekly report that monitors operational trends for the North American Class I railroads. This edition incorporates operating data through May 22.

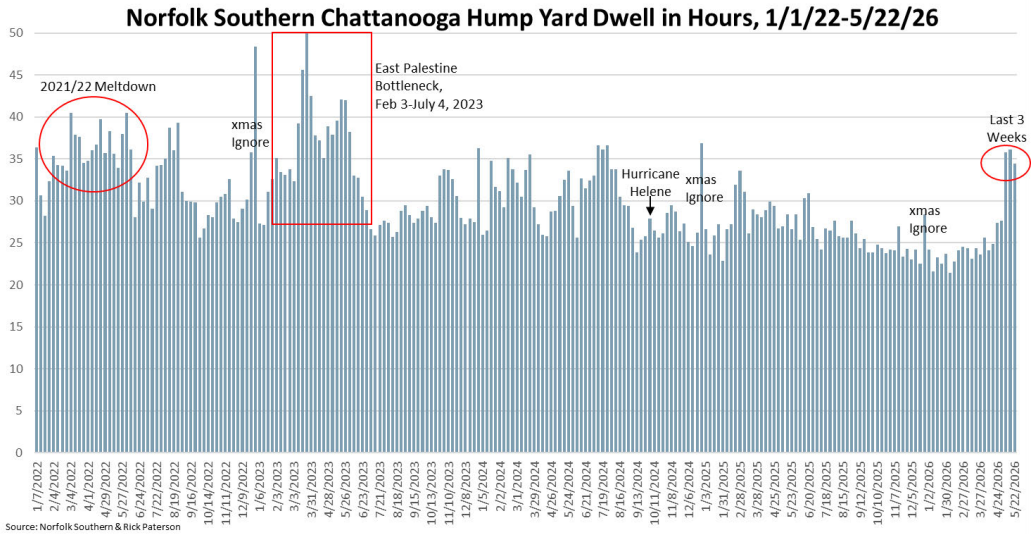
NS Network Precarious; Needs Memorial Day Assist

In our May 1 report we highlighted the network slowdown at Norfolk Southern and erosion in some of its other key operating metrics. If you've been reading the NS sections of subsequent reports you know things have gone from bad to worse, culminating in another bad batch of data for the week ending May 22. The negative operating momentum that has taken hold in this network has, at this point, become alarming. Pages 21-25 have all the charts and detail, but here are the main bullet points in terms of where we currently stand:

- **Velocity** lost another 0.2 mph to 19.4 in the week ending May 22. For perspective, it troughed at 19.7 during Hurricane Helene in September 2024, and we need to go back to an arctic blast in the last week of 2023 to find a lower number. Manifest network velocity of 16.8 mph is a low not seen since the East Palestine bottleneck in the first half of 2023, intermodal velocity lost another 2.4% last week to a new post-Hurricane Helene low, and average speed in the coal network is only 2.9% above its two-year low. The grain network is not much better. Merchandise trip plan compliance fell to a 3-year low 65% last week.
- **Terminal dwell** has been sequentially higher in nine of the 12 weeks since the end of February and now sits at levels not seen since early November 2023. Within this, average dwell for NS's six hump yards hit 31.8 hours last week, a two-year high.
- **Cars online** have grown by 7,120 (4.4%) over the last eight weeks and also sits at a two-year high. The proportion of this fleet that is slow-to-move (idle 48+ hours) has also been rallying for two months from 2.0% to 2.8%. It averaged 2.2% across 2024 and 2025.

We could go on, but you get the picture. Operationally, NS has been stuck in reverse gear.

The reason Class I railroads are the most difficult transportation networks to manage is due to the dedicated right-of-way. In a truck, air, or ocean network a problem can usually be contained, but in a rail network there's endless domino effects where Problem 1 creates Problem 2, which creates Problem 3, and so on. The latest nasty surprise has been the Chattanooga hump yard:



This is not a financial markets product and nothing in this report shall be construed as investment advice. All underlying data publicly available.

The chart starts in 2022 during the Service Crisis, which caused average weekly dwell at DeButts Yard in Chattanooga, TN to run between 35-40 hours, which was ~10 hours higher than normal. The next series of spikes was following the East Palestine derailment in early February 2023 and subsequent five-month bottleneck (one of two tracks out) on its critical mainline between Chicago and the northeast. Now fast forward to September 2025 through mid-April 2026 and yard performance was very good; averaging 24.1 hours.

Now look at the last three weeks: 36, 36, 34.

We're now on alert for contagion. The first place we checked was the Birmingham, AL hump yard, which was ground zero for NS's last two meltdowns in 2018 and October 2021. It's been processing cars five hours slower than normal over the last four weeks (versus 10 hours slower at Chattanooga). Dwell at NS's four other humps is, so far, within normal parameters.

How Did We Get Here?

We haven't spoken to anyone at NS about this, but we don't think this is an operating talent problem. COO John Orr and his team had this network running well in 2024 and 2025, so they clearly know what to do and how to do it. Our cynical view, of course, revolves around the resources made available to them.

Here we have a company in NS seeking an acquisition premium for its stockholders from Union Pacific. UP is running well and has a 7% lower operating ratio (59.5% vs. 66.8% in 2025). Consequently, there is immense pressure on NS to close the OR gap to UP, or at least not let it get any wider, which necessitates lower headcount. Where do 83% of NS employees reside? Operations.

If this was the case in late 2025, we then went into the weird, bifurcated, winter, where the eastern railroads were hit particularly hard. Then we had the freak March 7 derailment and ~48-hour mainline outage at Horseshoe Curve in Pennsylvania. There's always one more thing.

All guesswork, of course, but this would explain how the network has devolved into such a state. As usual, operations is expected to work daily miracles with not quite enough people and not quite enough capital.

What Happens Next – One Tailwind and One Headwind

Long-time readers are by now experts on the Memorial Day effect. Big public holidays are more than just a one day tailwind, with customer facilities less active on the other four days of the work week due to employee vacations. Add in the weekends on either side and the railroads have nine days of reduced volume pressure to work down yard backlogs (Chattanooga and Birmingham) and reposition crews and power. There's also often a "slingshot effect", where velocity accelerates in both the week including the holiday and the subsequent week. Obviously, NS needs to exploit this year's Memorial Day effect (and Fourth of July effect) to the max. Let's see how they do.

The headwind, ironically, relates to volumes. Volumes and operations usually move in oppositive directions. Weaker volumes = less volume pressure = better asset turns and network health, but it's the reverse we're now worried about. Given its weakened state, an unanticipated volume surge could sink NS, and that could well happen.

After a four year freight recession where a lot of truckload capacity exited, truck spot rates have been rallying since the last week of January and now sit at records not seen since January 2022 (according to FTR and Truckstop.com). This will soon feed into contract rates because the trucking industry, in general, operates on an annual bid cycle, versus a ~3 year average cycle at the railroads.

Fuel surcharges will have an even bigger effect in the short term. Given the spike in diesel due to the Iran War, trucking customers feel the pain immediately because most fuel surcharges in the trucking industry are marked-to-market weekly, versus a two month lag in the rail industry (the average price in May determines the surcharge for July, for example).

We're therefore in a situation where the typical ~15% price premium of truck over rail is rapidly expanding. All else being equal, this will shift some business from truck to rail until all the forces above reset and normalize. This volume windfall is already visible at BNSF, with intermodal loads up

7.5% QTD, and CSX, with intermodal volumes up 6.1% and carloads up 4.6%, netting to a gain of 5.3% at CSX. NS is running at +2.6% QTD, but volumes are also accelerating – up 4.2% YoY last week. Volumes are normally a good thing, but the associated volume pressure on the network is the last thing NS needs right now.

As an aside, a lot of big rail shippers, burned by the meltdowns between 2014-2022, have been wary of putting too much freight on the railroads until they can prove they're able to maintain adequate service levels during a period of rising loads. Here we go.

What to Look for Going Forward

There are basically three scenarios that could play out from here, and we'll know over the next three weeks which one we get:

Best Case. The Memorial Day and subsequent slingshot effects work, pulling NS out of the ditch and allows it to start spinning up again: better speed creates buffer capacity, which enables more speed, etc. This is the operating inflection that NS and UP need to happen to keep merger hopes alive.

Mid Case. The Memorial Day effect stops the bleeding, but the network remains stagnant in terms of recovery momentum and just starts going sideways. While it's not getting worse, the network remains fragile and vulnerable to the next volume surge, hurricane, derailment or bridge fire in the wrong place. The Fourth of July effect becomes the next best hope. This is the least likely scenario as rail networks under pressure rarely "hover" like this. They're more like concertinas: expand, inflect, contract, inflect, expand, etc.

Worst Case. We're already past the meltdown event horizon and nothing management does from here matters. Velocity will dead cat bounce for a week or two on the back of Memorial Day, but then the negative gravity in the network reasserts itself and the grinding slowdown we've been seeing since February continues. Union Pacific throws in the towel on the merger knowing the STB will translate imminent NS service failures forward as excessive integration risk. Customers say "I told you so" in terms of the ability of the Class I's to maintain service consistency. Industry credibility takes another beating. I give up.

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The State of the Rails

Running well (green): Union Pacific, BNSF, CPKC.

Running normally (yellow): Norfolk Southern, CSX, Canadian National.

Running poorly (red):

Service Matrix: **Equally-weighted Velocity + Terminal Dwell versus each Railroad's Post-recession Average**

	2010				2011				2012				2013				2014				2015				2016				2017			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
UP	5%	12%	8%	8%	4%	7%	-1%	2%	5%	9%	5%	5%	1%	2%	5%	-4%	-19%	-18%	-18%	-23%	-18%	-10%	-7%	-4%	1%	3%	-3%	-5%	-14%	-6%	-13%	-24%
BNSF	-5%	8%	1%	-2%	-9%	-5%	-14%	-9%	9%	12%	5%	7%	9%	0%	-3%	-20%	-31%	-29%	-27%	-21%	-7%	-1%	-1%	8%	15%	20%	5%	4%	-11%	-4%	3%	6%
CSX	-22%	-13%	-17%	-19%	-27%	-26%	-12%	-17%	-8%	-4%	-3%	-5%	5%	4%	6%	-1%	-28%	-30%	-27%	-27%	-34%	-21%	-21%	-17%	-22%	-18%	-22%	-27%	-26%	-13%	PSR -35%	-16%
NS	-4%	-2%	1%	-5%	-14%	-3%	0%	-4%	16%	19%	22%	22%	19%	21%	21%	18%	-2%	2%	-12%	-34%	-27%	-8%	-3%	5%	6%	11%	8%	4%	3%	-6%	-5%	-15%
CN	3%	11%	13%	7%	-3%	9.8%	9%	10%	9%	15%	16%	8%	-9.6%	16%	22%	4%	-27%	9%	6%	0%	-5%	14%	19%	21%	21%	26%	26%	16%	6%	14%	3%	-19%

Impact of 2014 Polar Vortex

CN Meltdown
Hurricane Harvey

	2018				2019				2020				2021				2022				2023				2024				2025				2026	L3M
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	
UP	-27%	-14%	-16%	PSR -4%	-8%	-5%	6%	11%	6%	20%	9%	14%	6%	8%	1%	-1%	1%	-3%	-3%	-2%	1%	3%	1%	8%	3%	3%	4%	9%	6%	10%	15%	22%	22%	19%
BNSF	1%	-4%	-8%	-8%	-16%	-14%	-8%	-1%	8%	19%	11%	13%	3%	3%	3%	-2%	-12%	-9%	-1%	1%	-6%	-1%	6%	6%	-7%	-1%	9%	15%	13%	19%	18%	19%	16%	13%
CSX	-9%	2%	15%	19%	28%	26%	27%	40%	40%	37%	20%	15%	11%	12%	8%	3%	-4%	-12%	-4%	18%	33%	30%	25%	24%	21%	19%	18%	9%	3%	11%	24%	24%	12%	9%
NS	-34%	-36%	-23%	PSR -20%	6%	25%	28%	29%	31%	37%	24%	7%	-7%	-2%	3%	-28%	-27%	-31%	-19%	-12%	-16%	-32%	-3%	-9.8%	-2%	3%	9%	9%	9%	4%	9%	8%	9%	-3%
CN	-45%	-16%	-15%	-14%	-28%	0%	-8%	-12%	-19%	-15%	-35%	-13%	-20%	-5%	-4%	-9%	-36%	1%	6%	1%	6%	9%	3%	6%	-1%	1%	1%	3%	-14%	4%	4%	3%	-8%	-3%
CPKC	< Pre-CP & KCS Consolidated Data >								21%	19%	12%	5%	-11%	-1%	15%	15%	-8%	-6%	-8%	-16%	-21%	-12%	-20%	1%	2%	7%	-4%	-4%	-4%	-1%	-1%	11%	8%	13%

CN & NS Meltdowns
UP & NS Adopt PSR
Midwest Flooding
Record industry service, aided by COVID lockdowns
COVID
2021 Polar Vortex
Omicron Spike
2022 Service Crisis
NS East Palestine KCSM Meltdown
CN Mini-crash
UPDATED

Railroad is turning assets *within* 10% of its post-recession average
Railroad is turning assets >10% *faster* than its post-recession average
Railroad is turning assets >10% *slower* than its post-recession average

How does the chart work?

e.g., Velocity 10% better than its post-recession average + dwell 10% better than its post-recession average = 20%.
Velocity 10% worse + Dwell 10% worse = -20%.
Velocity 10% better + Dwell 10% worse = 0%.

Post-recession defined as Q1 2010 through the present. L3M = Last 3 Months (last 13 weeks trailing average).

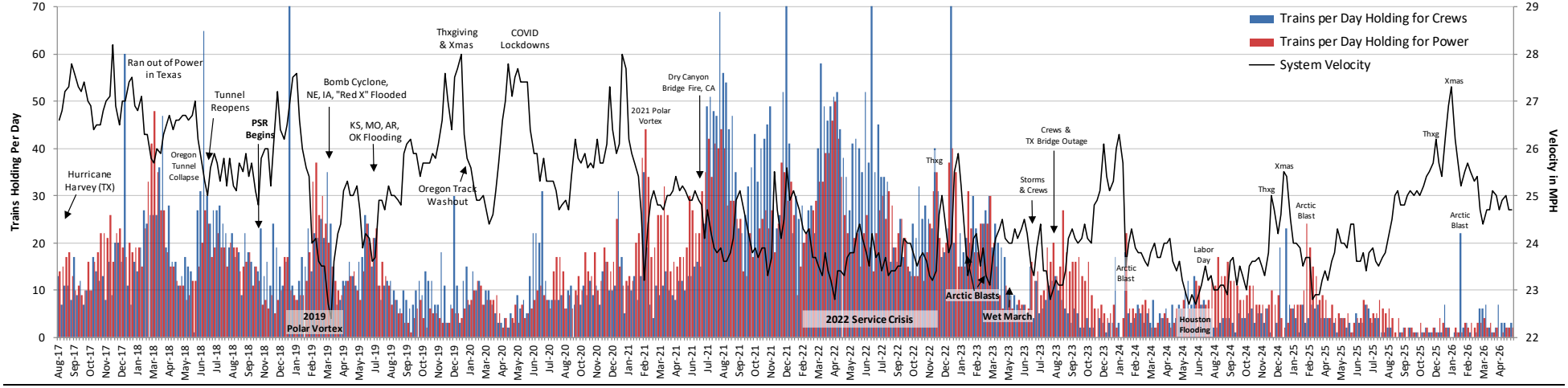
Source: Surface Transportation Board & Rick Paterson.

Union Pacific

Network Velocity and Trains Holding for Crews and Power

Velocity was unchanged in the week ending May 22, with current speed a little below the 25 mph historical efficiency benchmark we often refer to. Trains holding for crews increased by one to three per day while trains holding for power was sequentially flat at just two.

Figure 1: Union Pacific Velocity (higher is better) and Trains per Day Holding for Power and Crews (lower is better)

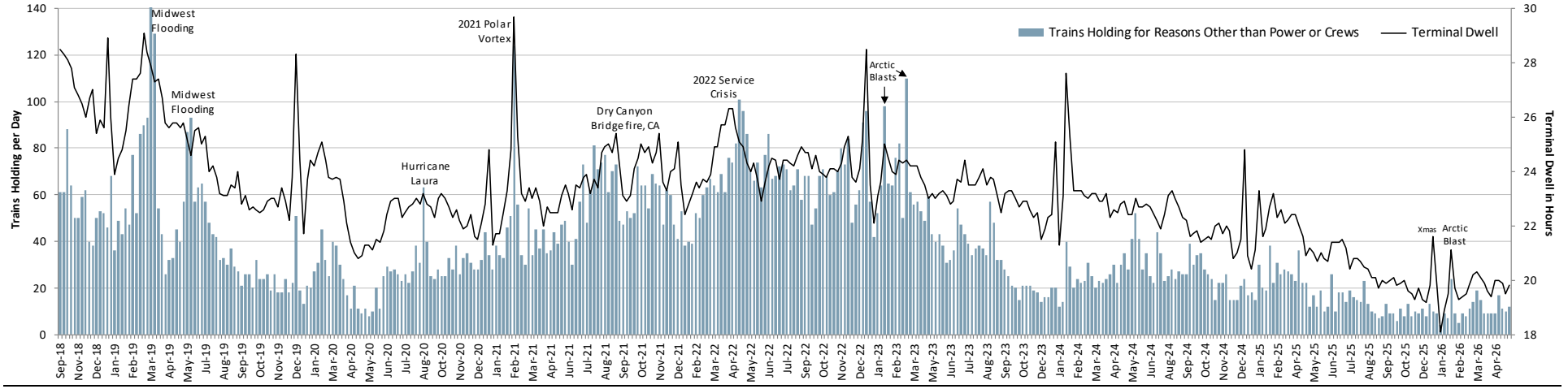


Source: Union Pacific & STB. UP trains holding is based on a daily snapshot that counts the number of trains delayed by four hours or more at a certain time every day.

Terminal Dwell and Trains Holding for Other Reasons

Terminal dwell remains strong at 19.8 hours on average across UP's yards. Trains per day holding for all reasons other than power and crews (e.g., weather) increased from 10 to 12 per day last week.

Figure 2: Union Pacific Terminal Dwell and Trains per Day Holding for Reasons Other than Power and Crews (lower is better for both)

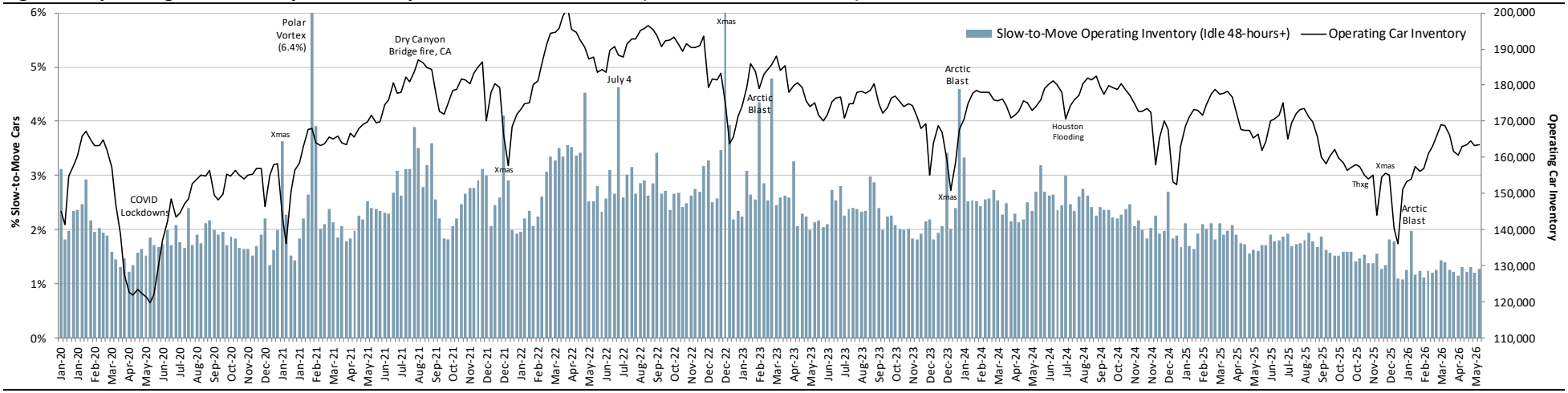


Source: Union Pacific & STB. UP trains holding is based on a daily snapshot that counts the number of trains delayed by four hours or more at the same time every day.

Operating Car Inventory and the Proportion Slow-to-Move

Operating inventory remains higher than it was in the back half of 2025, but still decent in absolute terms. The proportion of these cars idle for 48+ hours remains at good levels of 1.2-1.3% in most weeks.

Figure 3: Operating Car Inventory and the Proportion Idle for 48+ hours (lower is better for both)

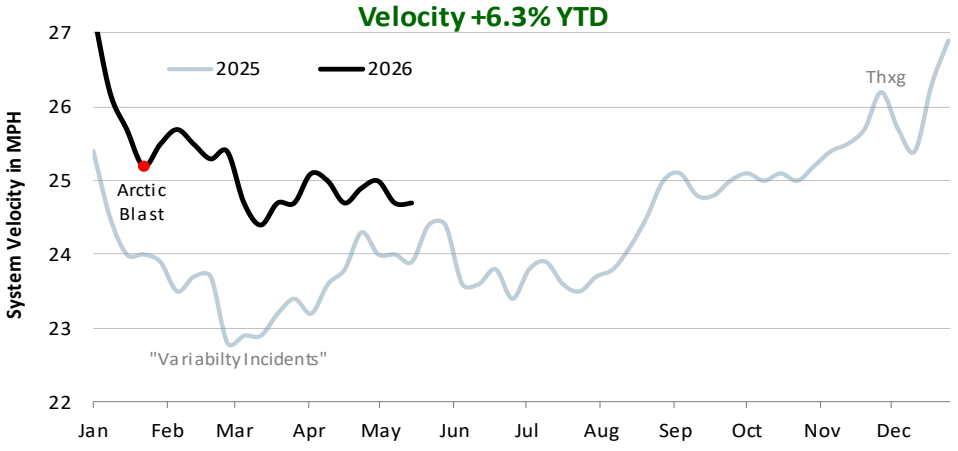


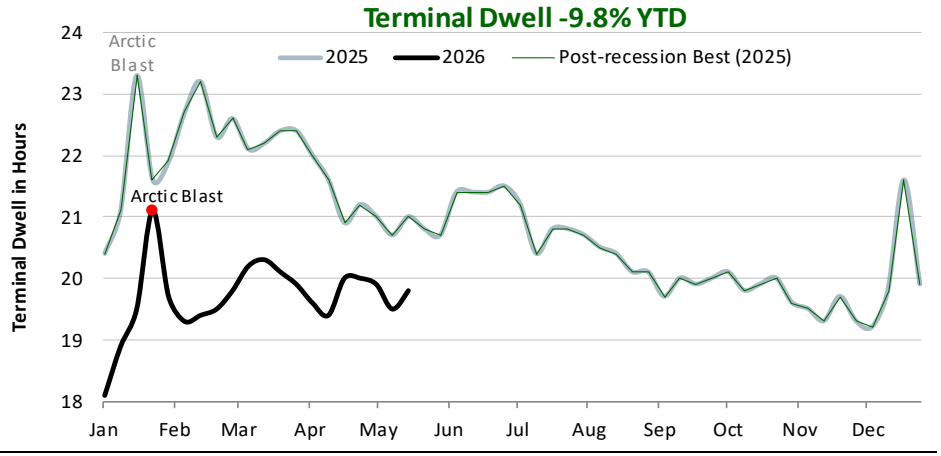
Source: Union Pacific & STB. UP Operating Car Inventory defined as "cars in normal movement, hold, or released at customer status. Excludes cars at industry for loading or unloading, offline or stored. Articulated well and spine cars counted individually. Excludes non-revenue cars."

Year-over-Year Network Velocity and Terminal Dwell

On a YoY basis these charts are strong and 2025 comps won't get tough until the second half of the year.

Figure 4: Union Pacific System Velocity and Terminal Dwell



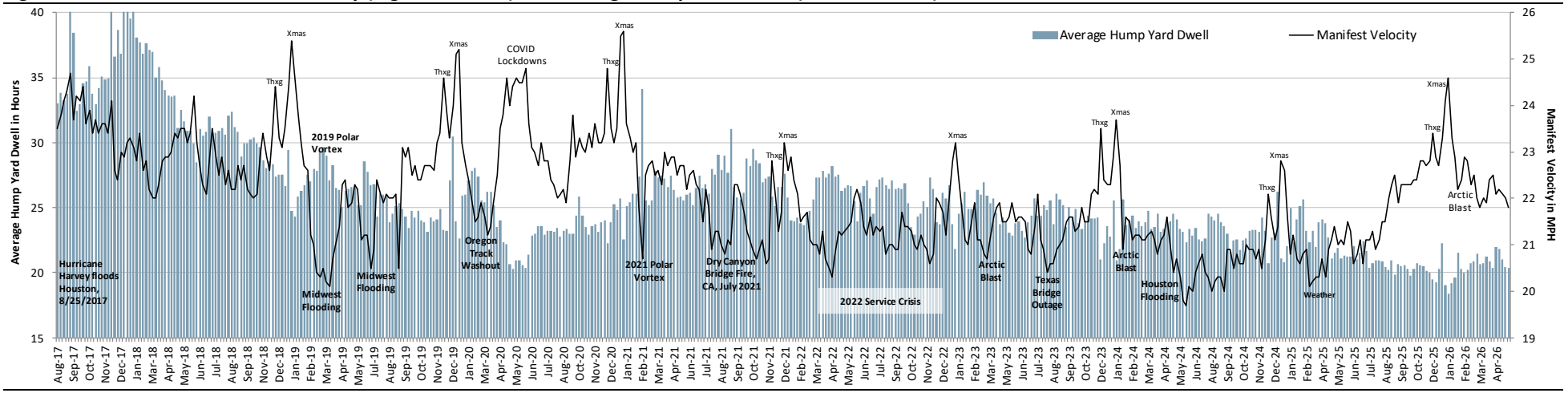


Source: Union Pacific & STB. Velocity post-recession best not shown, but it was a weekly average of 28.4 mph in 2012.

Manifest Network Efficiency

Manifest velocity downticked for a third week through May 22, but remains above its five-year trailing average. Average dwell for the seven hump yards that support this network improved slightly to 20.4 hours, which remains industry-leading.

Figure 5: Union Pacific Manifest Velocity (higher is better) and Average Hump Yard Dwell (lower is better)

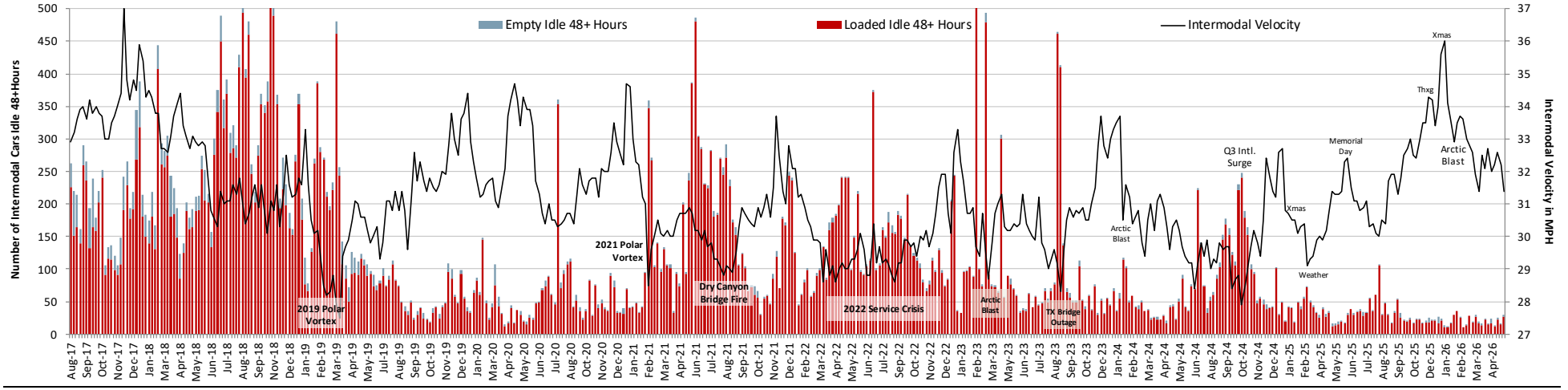


Source: Union Pacific & STB. Hump Yard Dwell is average dwell for Union Pacific's seven active hump yards. Note that North Platte in Nebraska, the biggest, is a dual hump and only dwell for the westbound hump is reported publicly; eastbound is not.

Intermodal Network Efficiency

Intermodal average train speed saw a material backstep last week; down 0.8 mph (2.5%). The number of slow-to-move platforms (columns) remains minimal, which suggests a wide breadth of fluidity.

Figure 6: Union Pacific Intermodal Velocity (higher is better) and the Number of Slow-to-Move Platforms (lower is better).

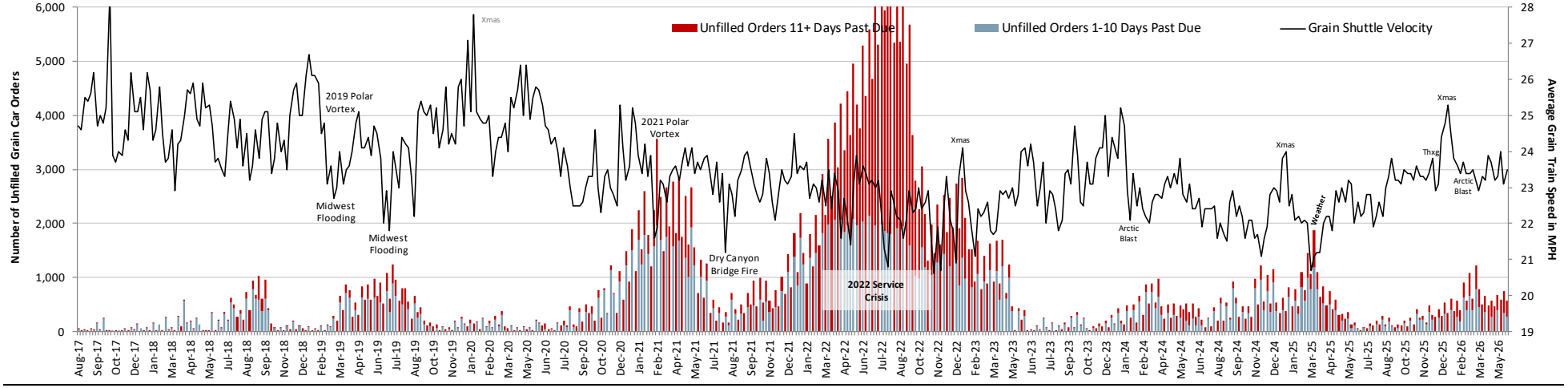


Source: Union Pacific & STB.

Grain Train Efficiency

Average grain train speed upticked in the week ending May 22. Unfilled grain car orders also improved, from 745 to 568, and remains in the normal range.

Figure 7: Union Pacific Grain Shuttle Velocity (higher is better) and Unfilled Grain Car Orders (lower is better)

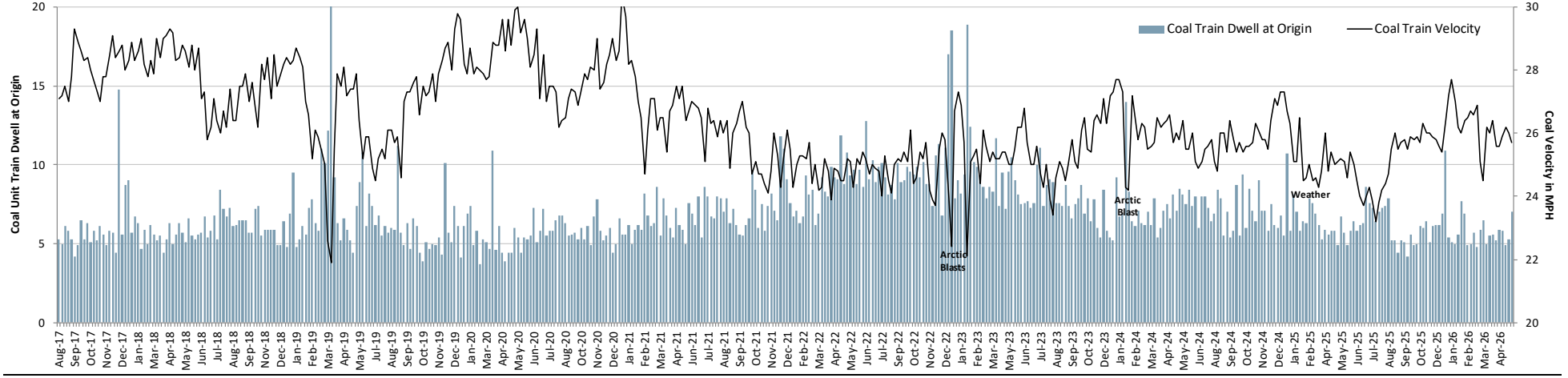


Source: Union Pacific & STB.

Coal Train Efficiency

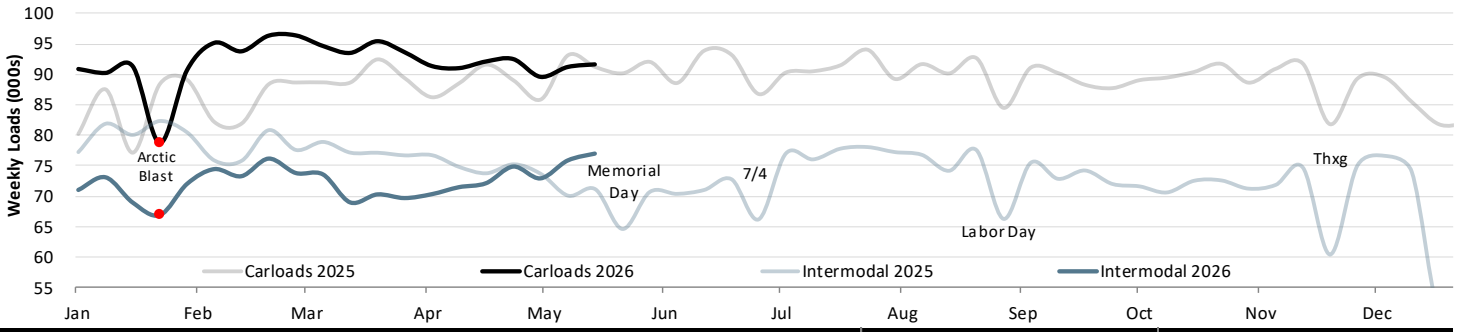
The coal network was slower in the week ending May 22. Dwell at original also spiked, but one week doesn't make a trend.

Figure 8: Union Pacific Coal Unit Train Velocity (higher is better) and Dwell at Origin (lower is better)



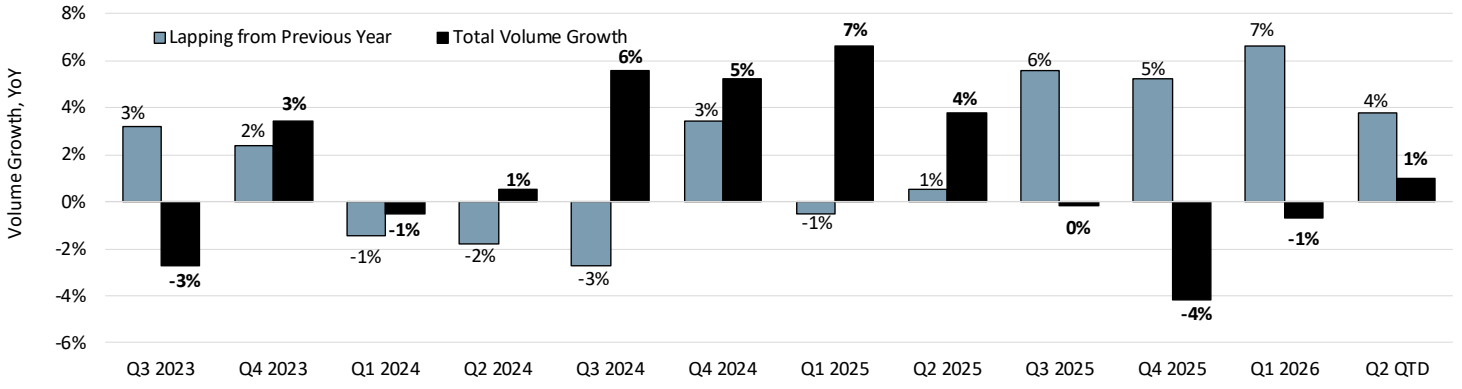
Source: Union Pacific & STB.

Union Pacific Volumes Through Week Ending 5/23/26



Union Pacific		Year-to-Date			Q2 Quarter-to-Date			Week Ending 5/23/26		
Reporting Segment	Commodity	2026	2025	Δ	2026	2025	Δ	2026	2025	Δ
Grain & Grain Mill	Grain	176.6	147.6	19.6%	65.0	57.6	12.8%	8.1	7.2	12.3%
(16% of Sales)	Grain Mill Products	87.0	81.4	6.9%	31.3	29.4	6.4%	4.3	3.9	8.2%
	Total Grain & Grain Mill	**263.6**	**229.0**	**15.1%**	**96.4**	**87.1**	**10.7%**	**12.3**	**11.1**	**10.9%**
Fertilizer (3% of sales)	**Nonmetallic Minerals**	**17.0**	**17.3**	**(1.8%)**	**8.8**	**8.8**	**(0.0%)**	**1.4**	**1.2**	**16.7%**
Food & Refrigerated	Food & Kindred Products	91.9	92.2	(0.3%)	35.4	33.5	5.8%	5.0	4.8	3.5%
(5% of Sales)	Farm Products, Ex. Grain	6.1	6.0	1.3%	2.0	2.1	(5.1%)	0.3	0.2	26.7%
	Total Food & Refrigerated	**98.0**	**98.2**	**(0.2%)**	**37.4**	**35.5**	**5.1%**	**5.3**	**5.0**	**4.5%**
Coal & Renewables	Coal	284.2	272.6	4.2%	87.0	102.4	(15.1%)	11.8	13.7	(14.2%)
(8% of Sales)	Coke	19.1	14.0	37.1%	7.4	5.9	25.6%	1.2	0.8	45.6%
	Primary Forest Products	7.7	9.1	(15.7%)	3.0	3.4	(12.3%)	0.2	0.4	(61.6%)
	Total Coal & Renewables	**311.0**	**295.6**	**5.2%**	**97.3**	**111.7**	**(12.9%)**	**13.1**	**14.9**	**(12.2%)**
Industrial Chemicals/Plastics	Chemicals	447.1	422.5	5.8%	165.1	156.8	5.3%	21.1	21.2	(0.5%)
(10% of Sales)	All Other Carloads	72.0	73.3	(1.7%)	26.7	28.9	(7.5%)	3.8	4.2	(10.3%)
	Total Chemicals & Plastics	**519.1**	**495.8**	**4.7%**	**191.8**	**185.6**	**3.3%**	**24.9**	**25.4**	**(2.1%)**
Metals & Minerals	Crushed Stone, Sand & Gravel	155.3	147.0	5.6%	60.1	57.7	4.3%	7.4	7.4	(0.3%)
(10% of Sales)	Stone, Clay & Glass Products	65.7	58.1	13.1%	26.0	24.0	8.4%	3.5	3.4	2.4%
	Metals & Products	55.4	55.9	(0.9%)	21.2	20.5	3.7%	2.9	2.6	13.4%
	Iron & Steel Scrap	21.8	20.1	8.4%	8.2	7.7	6.6%	1.2	1.0	10.4%
	Metallic Ores	6.9	10.4	(33.5%)	2.6	2.8	(6.6%)	0.4	0.4	9.9%
	Total Metals & Minerals	**305.1**	**291.5**	**4.7%**	**118.2**	**112.6**	**5.0%**	**15.4**	**14.8**	**3.7%**
Forest Products	Lumber & Wood Products	38.5	41.0	(6.1%)	16.0	16.2	(0.8%)	2.1	2.2	(4.3%)
(6% of Sales)	Pulp, Paper & Allied Products	36.1	35.4	2.1%	13.1	12.6	4.3%	1.6	1.6	(1.2%)
	Total Forest Products	**74.6**	**76.3**	**(2.3%)**	**29.2**	**28.8**	**1.5%**	**3.7**	**3.8**	**(3.0%)**
Energy & Specialized	Petroleum Products	108.0	102.1	5.8%	40.6	37.6	7.8%	5.5	5.4	2.1%
(11% of Sales)	Waste & Other Scrap	15.4	13.7	12.6%	5.8	5.4	6.8%	0.8	0.8	3.2%
	Total Energy & Specialized	**123.5**	**115.8**	**6.6%**	**46.3**	**43.0**	**7.6%**	**6.3**	**6.2**	**2.2%**
Automotive (11% of Sales)	**Total Automotive**	**163.2**	**161.2**	**1.3%**	**67.5**	**63.1**	**7.0%**	**9.3**	**8.7**	**7.0%**
	TOTAL CARLOADS	**1,875.0**	**1,780.8**	**5.3%**	**692.9**	**676.3**	**2.4%**	**91.6**	**91.2**	**0.5%**
Intermodal	Containers	1,438.8	1,531.0	(6.0%)	542.9	548.2	(1.0%)	75.4	69.6	8.4%
(20% of Sales)	Trailers	29.9	29.2	2.2%	11.6	10.9	6.3%	1.5	1.5	5.5%
	TOTAL INTERMODAL	**1,468.7**	**1,560.3**	**(5.9%)**	**554.5**	**559.1**	**(0.8%)**	**77.0**	**71.0**	**8.4%**
	TOTAL	**3,343.7**	**3,341.1**	**0.1%**	**1,247.3**	**1,235.4**	**1.0%**	**168.6**	**162.2**	**3.9%**

Figure 9: Union Pacific Quarterly Volume Growth and Associated Y/Y Comps



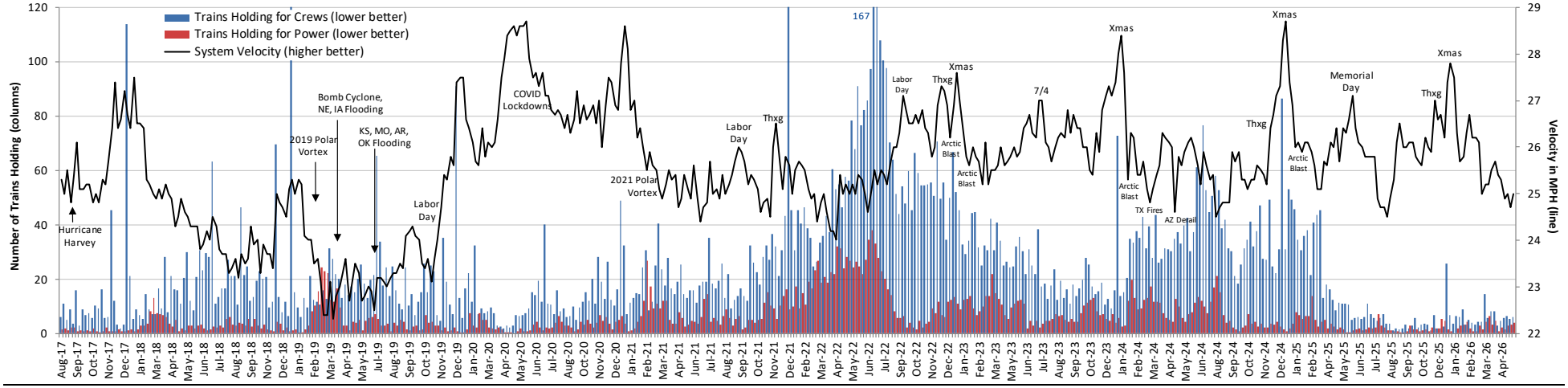
Source (all charts and tables): STB & www.investor.unionpacific.com/carloads-2026.

BNSF

Network Velocity and Trains Holding for Crews and Power

Velocity upticked off a low base in the week ending May 22, and we're only modestly above a nine-month low. The Memorial Day effect should give velocity a much-needed tailwind in next week's data. Trains holding for crews increased from five to six, and trains holding for power from three to four pe day last week.

Figure 10: BNSF Velocity (higher is better) and Trains per Day Holding for Power and Crews (lower is better)

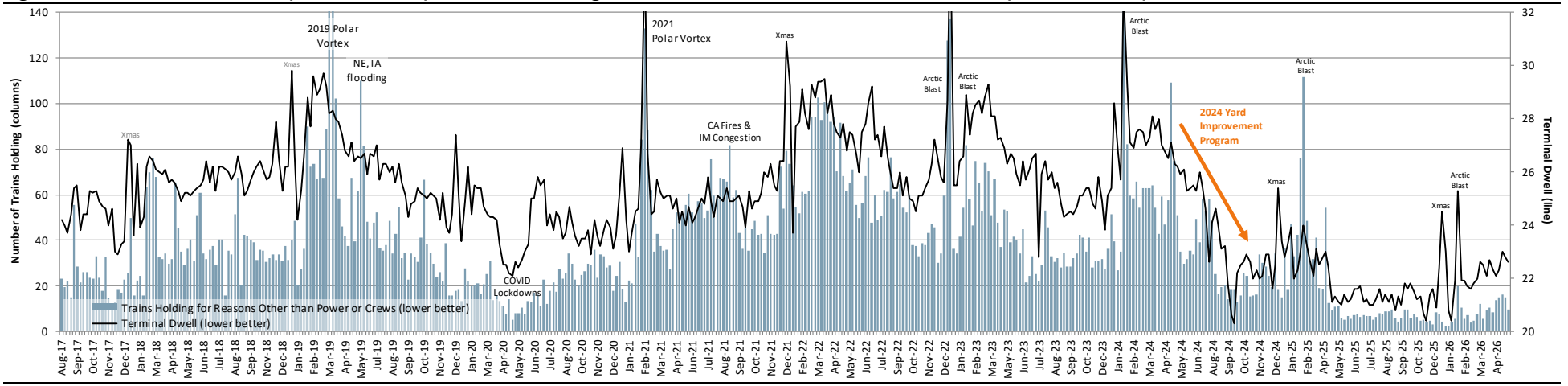


Source: BNSF & STB. BNSF trains holding is based on a daily snapshot that counts the number of trains delayed by zero hours or more at a certain time every day.

Terminal Dwell and Trains Holding for Other Reasons

Terminal dwell improved for a second week and, at 22.6 hours, remains solid. Trains holding for all reasons other than power and crews had a nice drop, from 15 to 10 per day. Historically, anything below 20 is good at BN.

Figure 11: BNSF Terminal Dwell (lower is better) and Trains Holding for All Reasons Other than Power and Crews (lower is better)

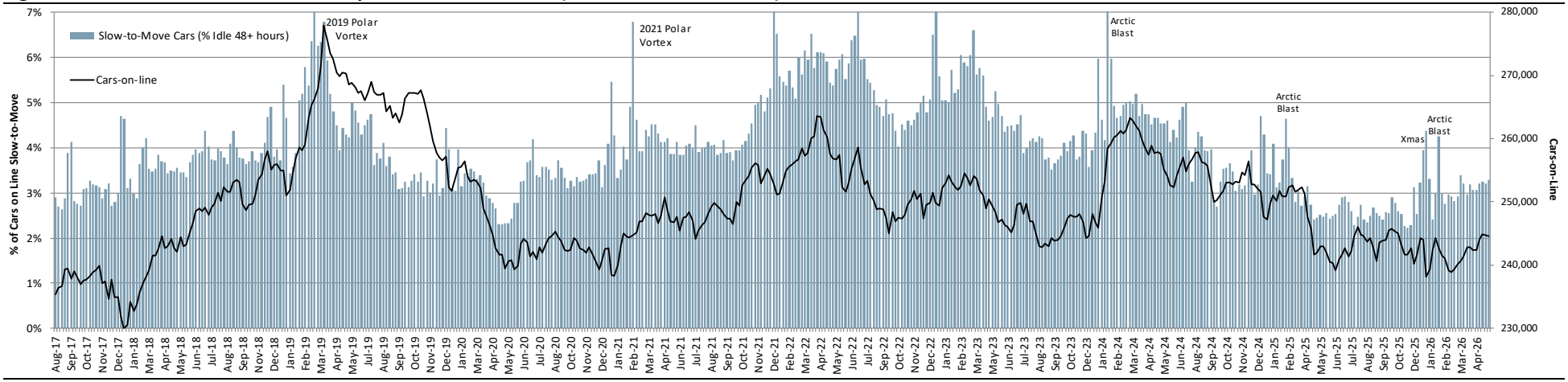


Source: BNSF & STB. BNSF trains holding is based on a daily snapshot that counts the number of trains delayed by zero hours or more at a certain time every day.

Cars Online and the Proportion Slow-to-Move

Cars online didn't materially change in the week ending May 22 and remains in the bottom (best) quartile of historical performance. The proportion of these cars idle for 48+ hours (slow-to-move) has drifted a little higher in recent weeks and currently sits at 3.3%.

Figure 12: BNSF Cars Online and the Proportion Slow-to-Move (lower is better for both)

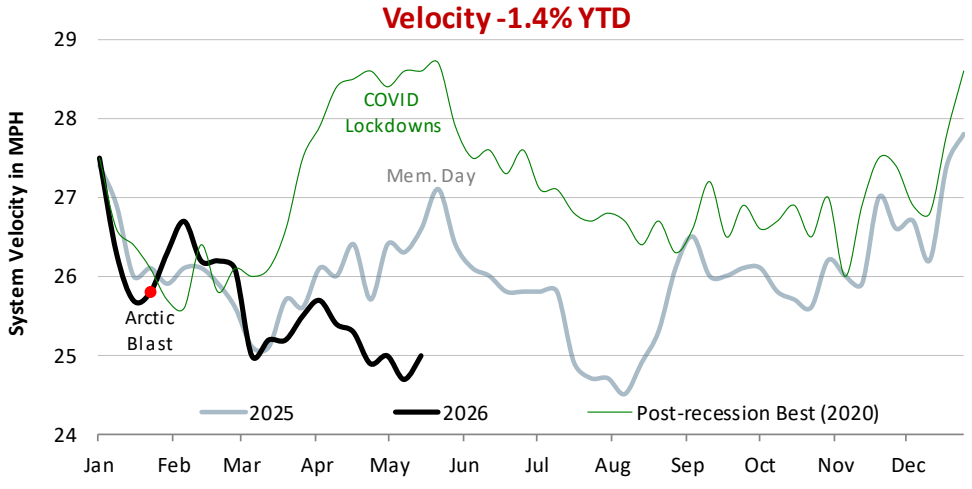


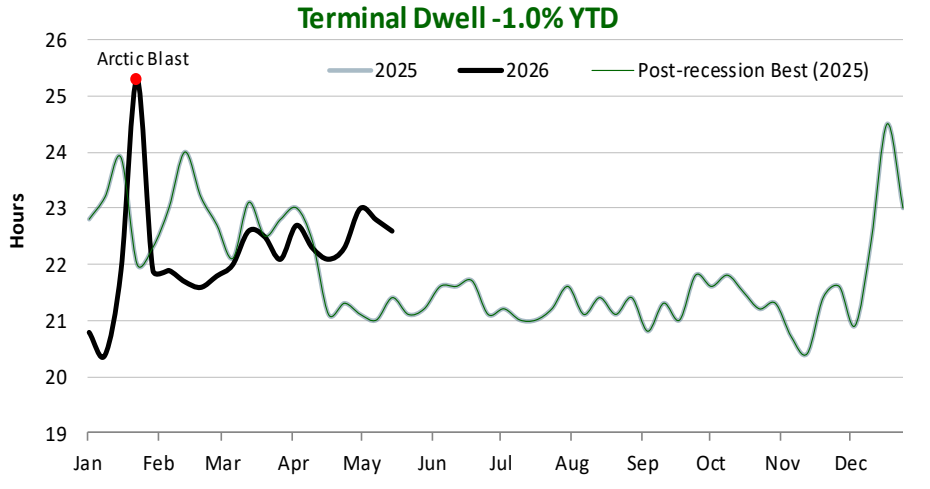
Source: BNSF & STB.

Year-over-Year Network Velocity and Terminal Dwell

You can see velocity now more than one mph behind last year's run rate. Dwell looks healthier year-to-date, but YoY comps are now tougher for the balance of the year.

Figure 13: BNSF High Level Velocity and Terminal Dwell



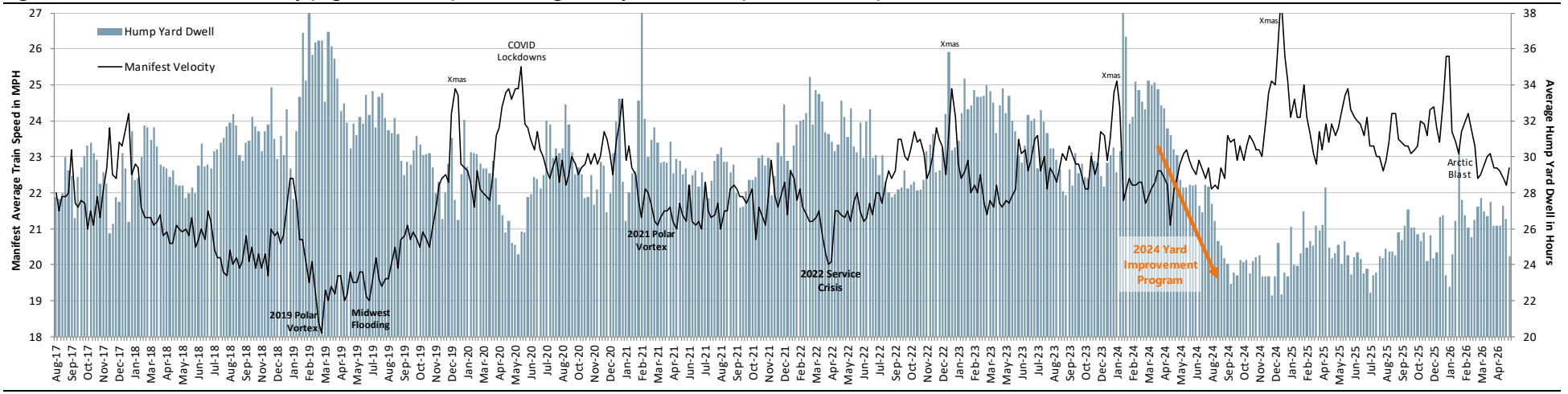


Source: BNSF & STB.

Manifest Network Efficiency

Manifest velocity added 0.5 mph in the week ending May 15 and the Memorial Day effect will extend gains next week. Average dwell for the eight hump yards that support this network saw a dramatic drop of two hours (7.7%), which again sets up nicely for the incoming Memorial Day effect.

Figure 14: BNSF Manifest Velocity (higher is better) and Average Hump Yard Dwell (lower is better)

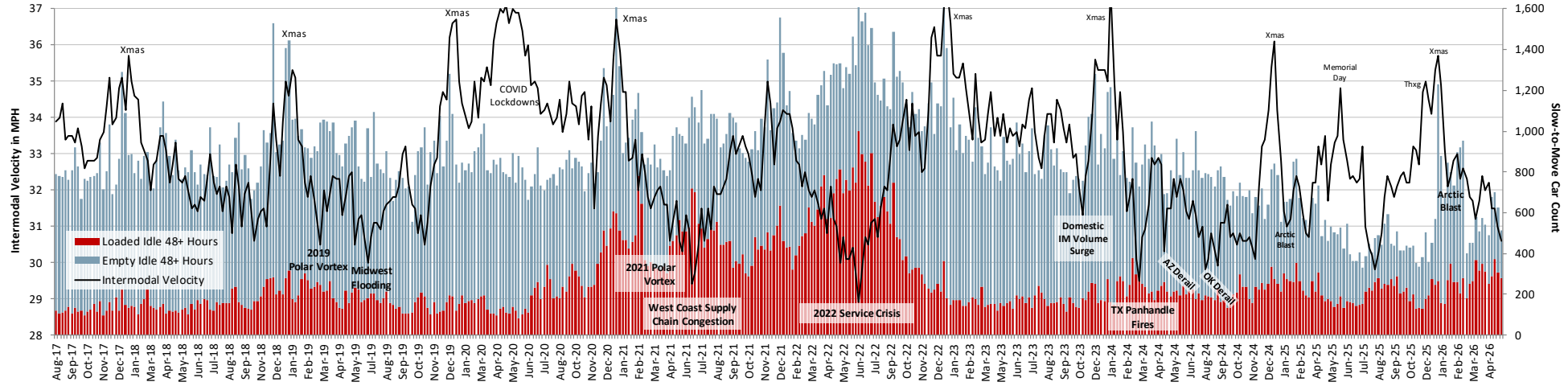


Source: BNSF & STB. Hump Yard Dwell represents the average time in hours for BNSF's eight active hump yards.

Intermodal Network Efficiency

Intermodal velocity continues to fade under volume pressure, with loads up 6% QTD, including almost 10% last week. High class problem. Surging truck spot rates and surcharges that reset weekly versus a two month lag at the railroads will continue to push loads to rail as the truck price premium over rail expands. Let's hope BN has enough crews to handle the surge.

Figure 15: BNSF Intermodal Average Train Speed (higher is better) and Slow-to-Move Platforms (lower is better)

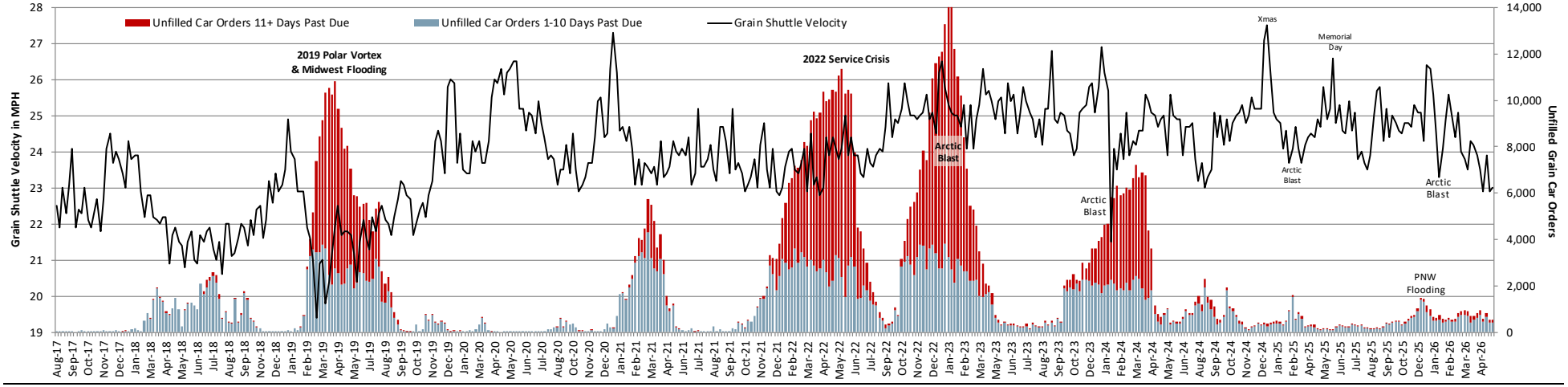


Source: BNSF & STB.

Grain Train Efficiency

Average grain train speed didn't materially change in the week ending May 22 but remains at low absolute levels. Unfilled grain car orders remain contained at low levels.

Figure 16: BNSF Grain Shuttle Velocity (higher is better) and Unfilled Grain Car Orders (lower is better)

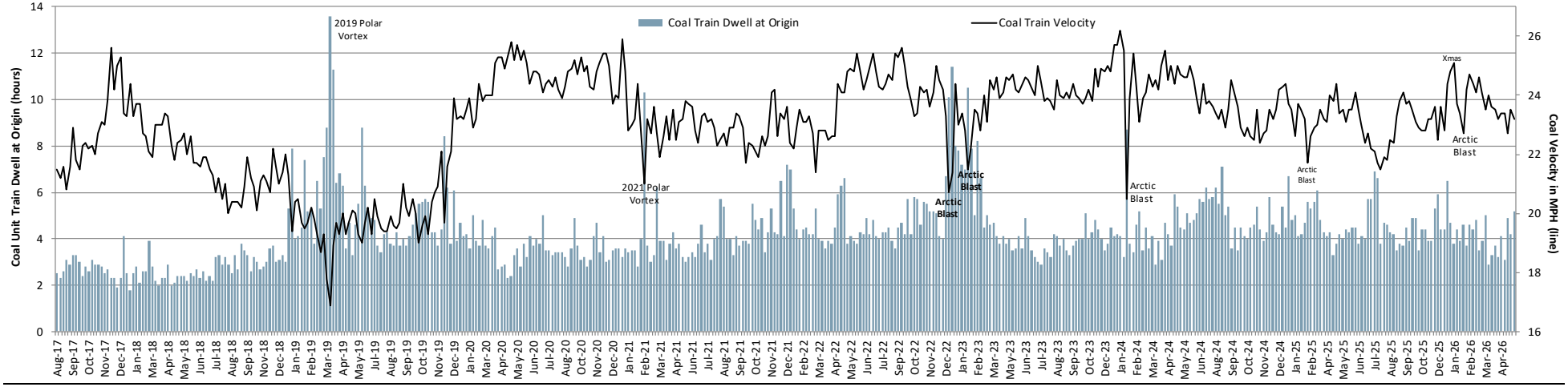


Source: BNSF & STB.

Coal Train Efficiency

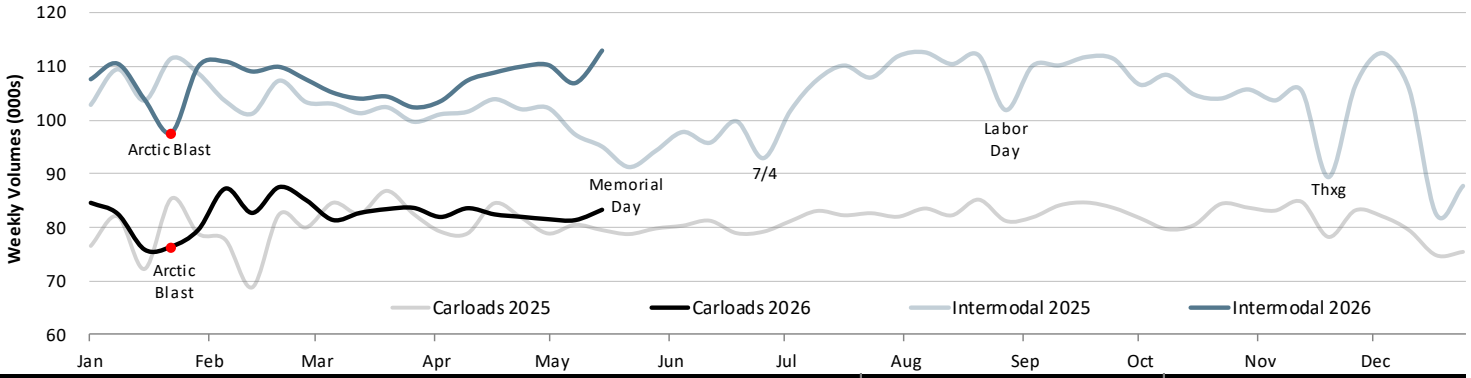
average coal train speed downticked last week but remains in absolute terms. Dwell at origin volatile but in the normal range.

Figure 17: BNSF Coal Unit Train Dwell at Origin (lower is better) and Coal Unit Train Velocity (higher is better)



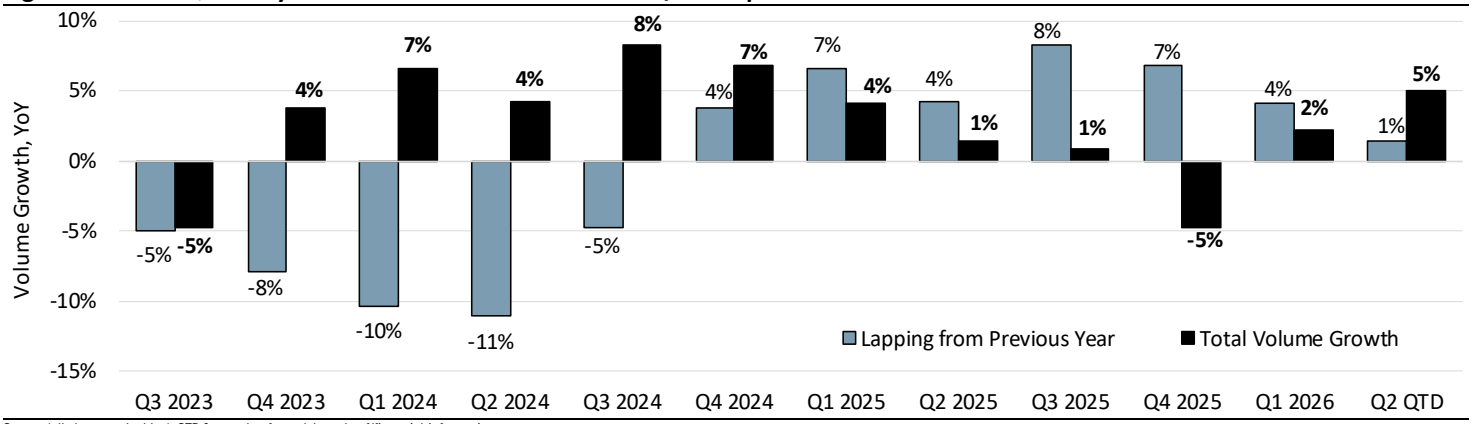
Source: BNSF & STB.

BNSF Volumes Through Week Ending 5/23/26



BNSF		Year-to-Date			Q2 Quarter-to-Date			Week Ending 5/23/26		
Reporting Segment	Commodity	2026	2025	Δ	2026	2025	Δ	2026	2025	Δ
Autos (4% of sales)	**Motor Vehicles & Equipment**	**117.2**	**117.1**	**0.1%**	**47.3**	**45.6**	**3.7%**	**6.3**	**6.3**	**(0.9%)**
Industrial Products	Petroleum Products	131.7	118.7	11.0%	48.9	44.2	10.7%	6.6	6.2	6.1%
(25% of Sales)	Chemicals	184.8	190.8	(3.2%)	68.5	71.7	(4.4%)	8.2	8.7	(6.3%)
	Crushed Stone, Sand & Gravel	78.1	72.4	8.0%	32.8	30.6	7.3%	4.4	4.4	(0.7%)
	Metallic Ores	33.0	33.4	(1.2%)	9.6	10.1	(4.6%)	2.0	1.9	3.3%
	Stone, Clay, & Glass Products	46.6	45.4	2.5%	20.1	19.2	4.8%	2.9	2.7	6.2%
	Metals & Products	38.7	39.0	(0.9%)	15.0	13.9	7.4%	2.1	1.7	24.3%
	All Other Carloads	47.2	52.2	(9.6%)	17.8	22.0	(18.9%)	3.2	3.1	3.9%
	Lumber & Wood Products	30.1	30.2	(0.3%)	12.1	11.4	5.8%	1.7	1.4	19.3%
	Pulp, Paper, & Allied Products	22.1	23.5	(5.8%)	8.3	8.2	1.6%	1.2	1.0	19.6%
	Iron & Steel Scrap	25.6	21.7	18.0%	10.2	8.2	25.0%	1.5	0.9	73.5%
	Coke	10.1	9.5	6.0%	3.4	3.1	10.2%	0.5	0.3	76.1%
	Nonmetallic Minerals	9.4	9.5	(0.7%)	3.7	3.3	14.3%	0.4	0.5	(15.2%)
	Waste & Other Scrap	10.2	9.9	2.4%	4.0	3.8	5.6%	0.5	0.5	0.0%
	Primary Forest Products	0.7	1.1	(29.8%)	0.3	0.4	(27.2%)	0.0	0.1	(20.0%)
	Total Industrial	**668.2**	**657.2**	**1.7%**	**254.8**	**250.0**	**1.9%**	**35.2**	**33.4**	**5.3%**
Coal (17% of Sales)	**Coal**	**445.9**	**464.5**	**(4.0%)**	**155.3**	**166.6**	**(6.8%)**	**20.0**	**21.5**	**(6.9%)**
Agricultural	Grain	271.5	227.6	19.3%	100.7	88.4	13.9%	13.3	10.3	28.6%
(24% of Sales)	Grain Mill Products	93.8	92.9	0.9%	34.6	32.4	6.7%	4.6	4.3	7.7%
	Food & Kindred Products	72.7	68.3	6.4%	26.9	24.6	9.2%	3.4	3.2	4.1%
	Farm Products, Ex-Grain	10.6	10.7	(1.3%)	3.9	3.8	2.4%	0.5	0.5	2.0%
	Total Agricultural	**448.5**	**399.6**	**12.3%**	**166.1**	**149.2**	**11.3%**	**21.8**	**18.4**	**18.6%**
	TOTAL CARLOADS	**1,679.9**	**1,638.4**	**2.5%**	**623.4**	**611.4**	**2.0%**	**83.2**	**79.6**	**4.6%**
Intermodal	Containers	2,104.4	2,023.2	4.0%	790.5	735.2	7.5%	109.0	91.8	18.7%
(30% of Sales)	Trailers	74.4	73.8	0.8%	27.2	25.6	6.3%	3.9	3.3	20.0%
	TOTAL INTERMODAL	**2,178.8**	**2,097.0**	**3.9%**	**817.8**	**760.9**	**7.5%**	**112.9**	**95.1**	**18.7%**
	TOTAL	**3,858.7**	**3,735.4**	**3.3%**	**1,441.2**	**1,372.2**	**5.0%**	**196.1**	**174.7**	**12.3%**

Figure 18: BNSF Quarterly Volume Growth and Associated Y/Y Comps



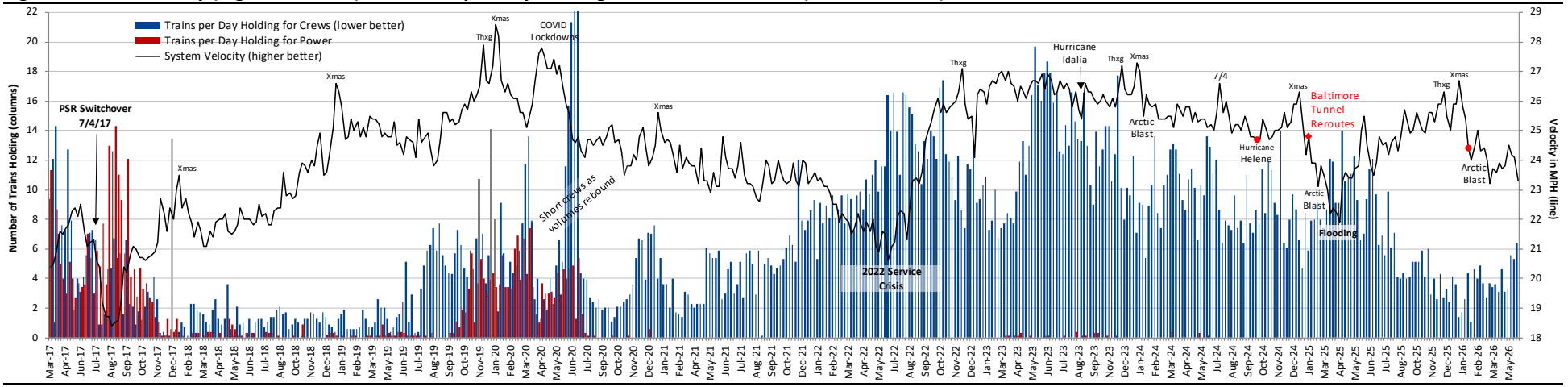
Source (all charts and tables): STB & www.bnsf.com/about-bnsf/financial-information.

CSX

Network Velocity and Trains Holding for Crews

CSX's network is also struggling with unanticipated volume pressure, with loads up 5.3% QTD, and you'll see the effects in most of these charts. Velocity dropped to 23.3 mph in the week ending May 22, which is a nine week low. Trains holding for crews deteriorated from 5.3 to 6.4 per day.

Figure 19: CSX Velocity (higher is better) and Trains per Day Holding for Power and Crews (lower is better)

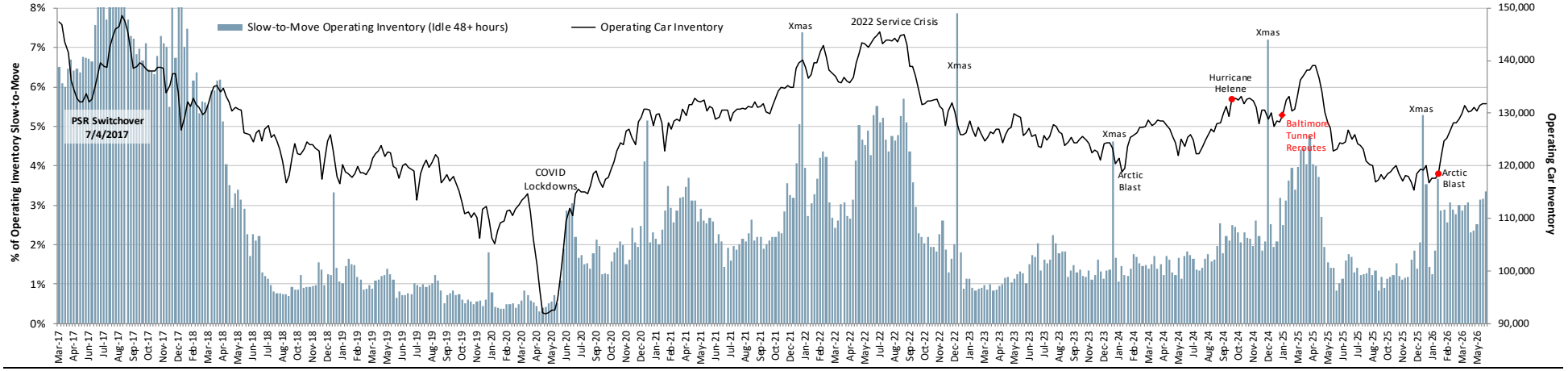


Source: CSX & STB. CSX trains holding based on daily snapshot that counts the number of trains delayed as at 3:30 AM every day. The delay is one hour for scheduled traffic and eight hours for bulk. Note CSX effectively stopped reporting trains holding for power from late 2020 despite the STB requirement to do so.

Operating Car Inventory and the Proportion Slow-to-Move

Operating inventory is trying to put in a "top" but can't quite pull it off, with car counts inching higher again in the week ending May 22. We're currently at 131,867 compared to an average of 119,934 when CSX was running well in the back half of last year. The 5% higher load count obviously necessitates more equipment, so the differential isn't as bad as it appears. The proportion of these cars that were slow-to-move increased again, from 3.2% to 3.3% vs. ~1.5% when CSX is running well.

Figure 20: CSX Operating Car Inventory and the Proportion Idle for 48+ hours During the Week (lower is better for both)

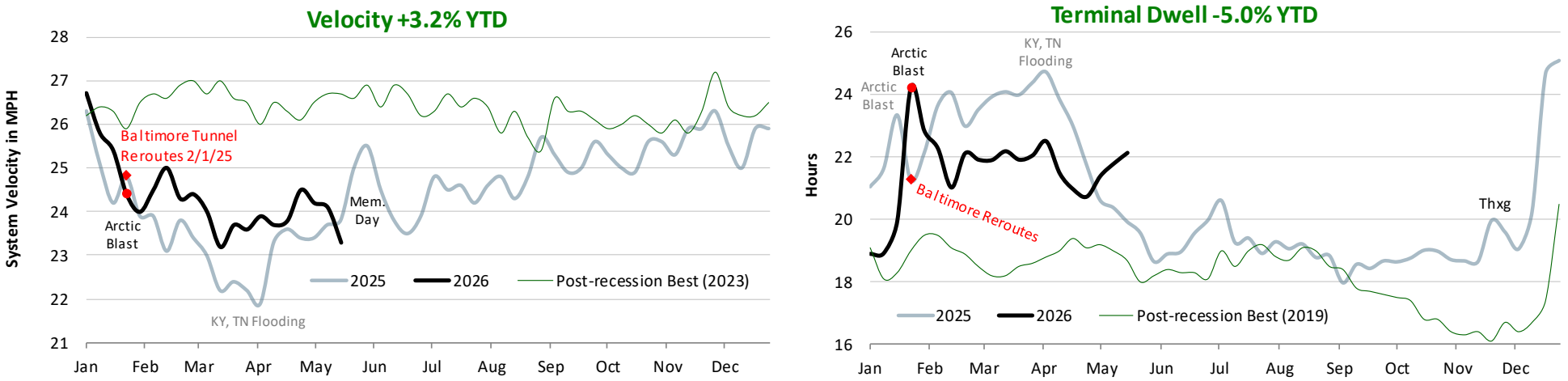


Source: CSX & STB. Operating inventory defined by CSX as "the number of active freight rail cars on lines operated by CSX, as determined by Rail Inc., excluding those being repaired, in storage, have been sold, or private cars dwelling at a customer location for more than one day."

Year-over-Year Network Velocity and Terminal Dwell

We're now lapping the Baltimore Tunnel closure (2/1/25), so YoY comps have been easy in recent weeks (dwell now less so). The effects also boost YTD velocity and dwell percentages.

Figure 21: CSX High Level Velocity and Terminal Dwell

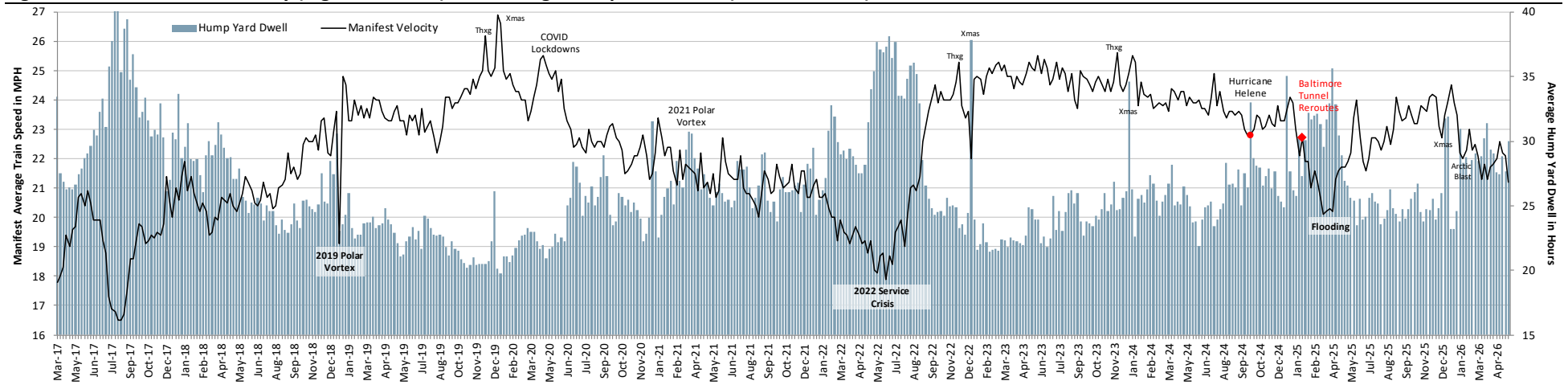


Source: CSX & STB.

Manifest Network Efficiency

Manifest velocity slowed by 4% in the week ending May 22 and remains in the bottom half of performance since 2022. Average dwell for CSX's five supporting hump yards deteriorated from 27.6 to 30 hours, which is a seven week high.

Figure 22: CSX Manifest Velocity (higher is better) and Average Hump Yard Dwell (lower is better)

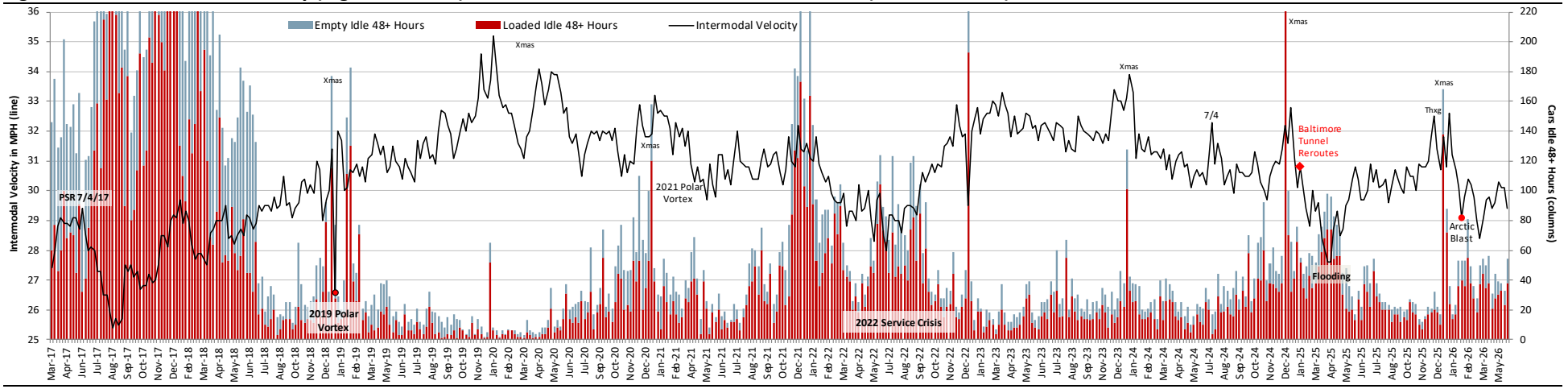


Source: CSX & STB. Hump Yard Dwell represents the average dwell for CSX's five active hump yards.

Intermodal Network Efficiency

Intermodal volumes up 6% QTD are having the predictable effect on intermodal network velocity, which back-peddled to its five week low last week. Slow-to-move intermodal platforms deteriorated from 33 to 54.

Figure 23: CSX Intermodal Velocity (higher is better) and the Number of Slow-to-Move Platforms (lower is better)

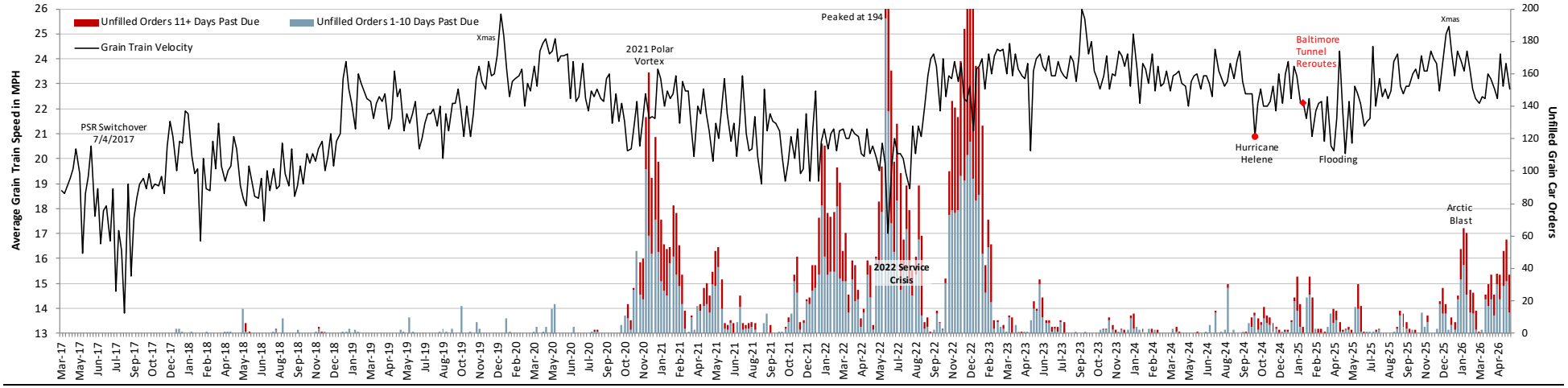


Source: CSX & STB.

Grain Train Efficiency

CSX's grain network also decelerated in the week ending May 22. Unfilled grain car orders rose to 58 through May 15 but inflected to the better last week, to 36.

Figure 24: CSX Grain Shuttle Velocity (higher is better) and Unfilled Grain Car Orders (lower is better)

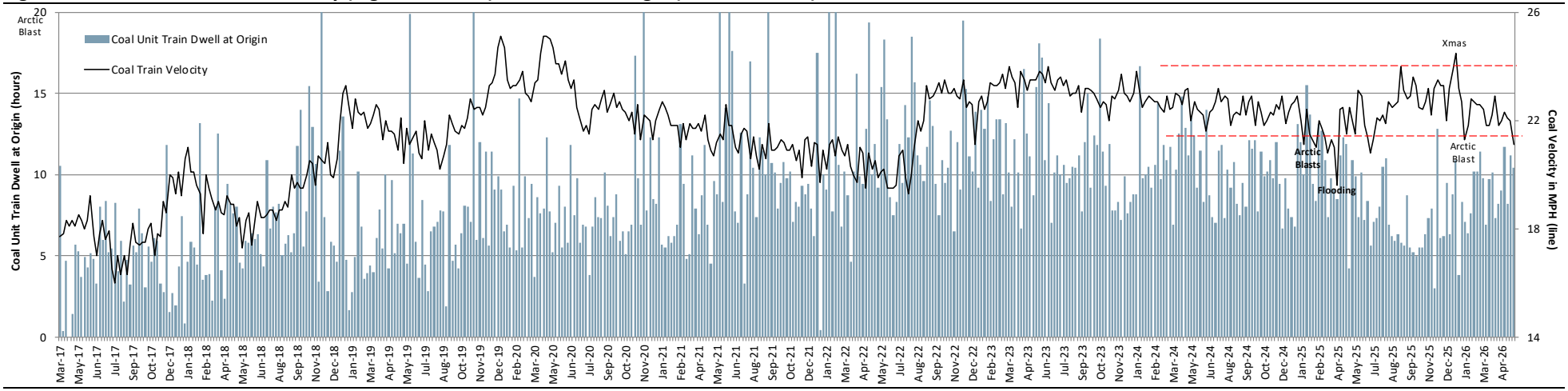


Source: CSX & STB.

Coal Train Efficiency

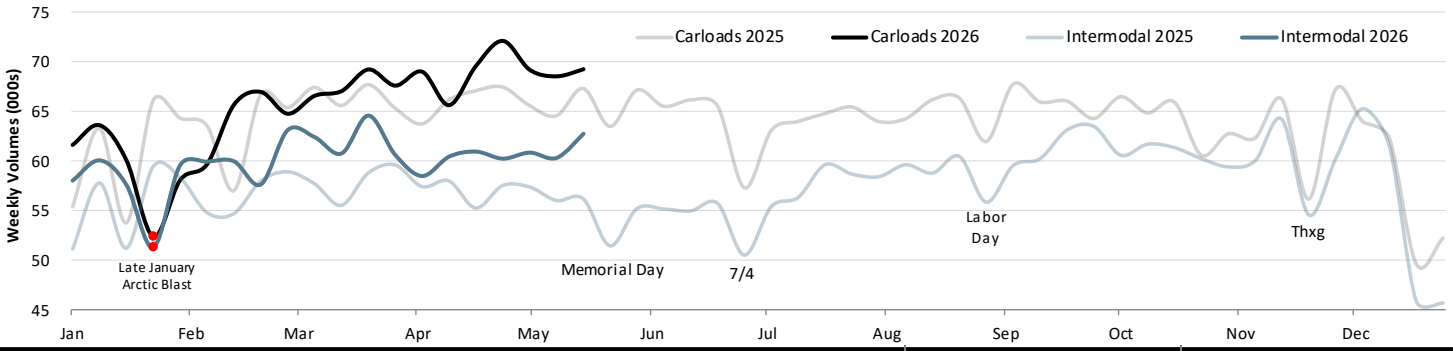
The coal network also decelerated last week, and in fact tipped below its normal range (dashed red lines). Dwell at origin typically volatile and modestly better in the week ending May 22.

Figure 25: CSX Coal Unit Train Velocity (higher is better) and Dwell at Origin (lower is better)



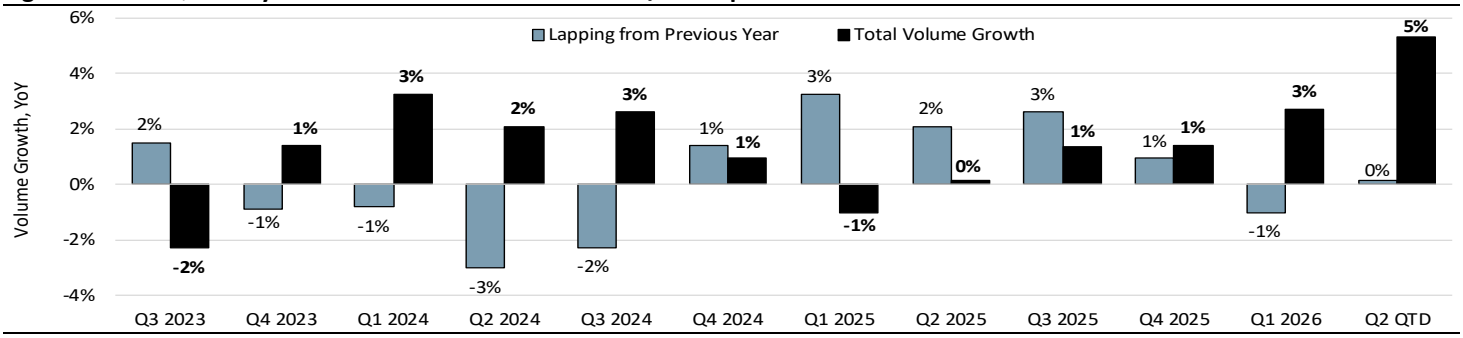
Source: CSX & STB.

CSX Volumes Through Week Ending 5/23/26



CSX		Year-to-Date			Q2 Quarter-to-Date			Week Ending 5/23/26		
Reporting Segment	**Commodity**	**2026**	**2025**	**Δ**	**2026**	**2025**	**Δ**	**2026**	**2025**	**Δ**
Coal	Coal	261.7	256.3	2.1%	103.7	98.2	5.5%	14.0	12.5	11.8%
(15% of Sales)	Metallic Ores	15.1	13.2	14.3%	5.9	4.4	34.8%	0.8	0.7	5.1%
	Coke	25.8	23.1	11.3%	9.7	8.3	17.9%	1.3	1.4	(5.8%)
	Total Coal	**302.5**	**292.6**	**3.4%**	**119.3**	**110.9**	**7.6%**	**16.0**	**14.6**	**9.8%**
Chemicals	Chemicals	214.4	210.6	1.8%	81.3	77.4	5.1%	10.4	10.5	(0.2%)
(22% of Sales)	Petroleum Products	52.2	53.8	(3.1%)	18.6	17.8	4.0%	2.3	2.3	(0.1%)
	Total Chemicals	**266.6**	**264.4**	**0.8%**	**99.9**	**95.2**	**4.9%**	**12.8**	**12.8**	**(0.2%)**
Automotive (9% of Sales)	**Motor Vehicles & Equipment**	**147.9**	**147.5**	**0.2%**	**60.0**	**59.8**	**0.3%**	**8.2**	**8.1**	**1.9%**
Agricultural & Food	Grain	61.2	61.6	(0.7%)	23.1	23.0	0.6%	2.8	3.4	(16.5%)
(13% of Sales)	Grain Mill Products	47.7	45.7	4.2%	17.4	17.3	0.3%	2.2	2.4	(9.5%)
	Farm Products Ex. Grain	3.4	3.0	12.5%	1.2	1.1	10.2%	0.1	0.2	(2.6%)
	Food & Kindred Products	40.9	41.1	(0.6%)	15.6	15.3	1.6%	2.0	2.2	(8.1%)
	Total & Food	**153.1**	**151.5**	**1.1%**	**57.3**	**56.7**	**1.0%**	**7.1**	**8.1**	**(11.9%)**
Forest Products	Pulp,Paper & Allied Products	54.8	58.8	(6.8%)	20.5	20.7	(0.8%)	2.8	2.8	(0.1%)
(8% of Sales)	Lumber & Wood Products	23.4	24.0	(2.2%)	10.2	9.6	6.6%	1.4	1.2	17.2%
	Primary Forest Products	12.2	12.6	(3.2%)	4.5	4.6	(2.3%)	0.5	0.6	(20.5%)
	Total Forest Products	**90.4**	**95.4**	**(5.2%)**	**35.2**	**34.8**	**1.1%**	**4.7**	**4.6**	**1.6%**
Metals	Metals & Products	54.5	56.0	(2.8%)	21.0	20.6	1.9%	3.0	2.9	2.3%
(7% of Sales)	Iron & Steel Scrap	33.4	30.3	10.1%	12.8	11.9	7.8%	1.8	1.6	12.6%
	Waste & Scrap	57.9	53.0	9.3%	24.2	21.1	14.4%	3.1	2.8	13.9%
	Total Metals	**145.8**	**139.4**	**4.6%**	**58.0**	**53.6**	**8.1%**	**7.9**	**7.2**	**9.0%**
Phosphates & Fertilizers (4% of Sales)	**Non-metallic Minerals**	**40.9**	**39.5**	**3.6%**	**15.6**	**15.0**	**3.7%**	**2.0**	**2.1**	**(5.0%)**
Minerals & Other	Crushed Stone, Sand, & Gravel	105.1	99.9	5.2%	44.6	41.9	6.7%	6.2	5.4	14.5%
(6% of Sales)	Stone, Clay, & Glass Products	56.8	57.2	(0.7%)	23.6	23.5	0.1%	3.1	2.9	7.4%
	All Other Carloads	20.5	19.2	6.8%	8.7	7.7	12.6%	1.3	1.6	(17.6%)
	Total Minerals & Other	**182.5**	**176.3**	**3.5%**	**76.9**	**73.1**	**5.2%**	**10.6**	**9.9**	**7.2%**
	TOTAL CARLOADS	**1,329.6**	**1,306.6**	**1.8%**	**522.2**	**499.2**	**4.6%**	**69.3**	**67.4**	**2.9%**
Intermodal	Containers	1,193.2	1,126.2	5.9%	449.2	423.1	6.2%	61.5	55.0	11.8%
(16% of Sales)	Trailers	26.4	25.5	3.6%	9.5	9.2	3.2%	1.3	1.2	8.7%
	TOTAL INTERMODAL	**1,219.5**	**1,151.7**	**5.9%**	**458.8**	**432.3**	**6.1%**	**62.8**	**56.2**	**11.7%**
	TOTAL	**2,549.2**	**2,458.2**	**3.7%**	**981.0**	**931.6**	**5.3%**	**132.1**	**123.5**	**6.9%**

Figure 26: CSX Quarterly Volume Growth and Associated Y/Y Comps



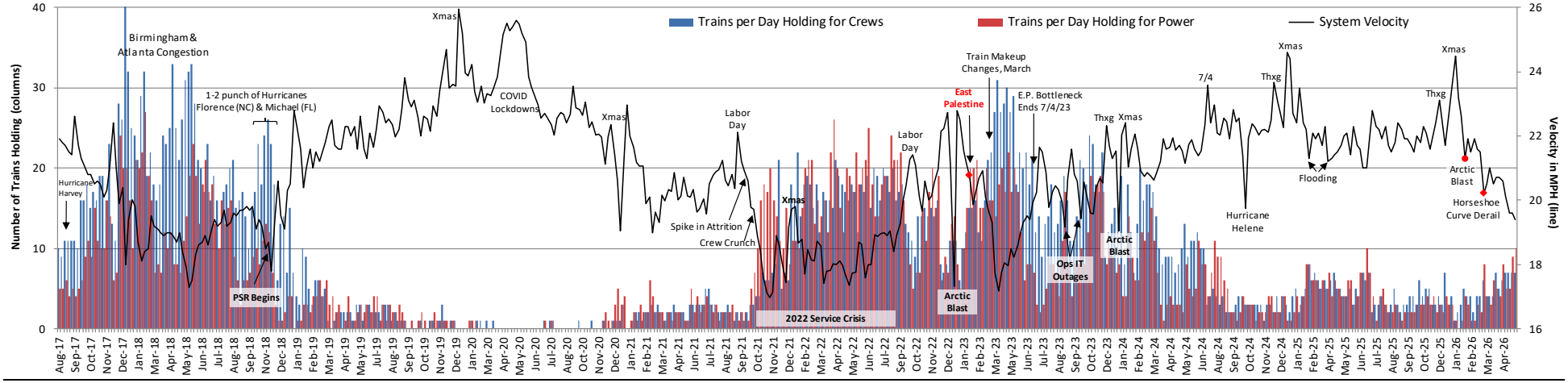
Source (all charts and tables): STB & www.investors.csx.com/metrics.

Norfolk Southern

Network Velocity and Trains Holding for Crews and Power

Another bad week. Velocity lost another 0.2 mph to 19.4 in the week ending May 22. For perspective, it troughed at 19.7 during Hurricane Helene in September 2024. The chart below includes two of NS's previous meltdowns: 2018 and October 2021 through the summer of 2022, and the current velocity line is starting to paint the same picture. Trains per day holding for crews was flat at seven per day, while trains holding for power increased by one to 10 per day; equaling an 11-month high.

Figure 27: Norfolk Southern Velocity (higher is better) and Trains per Day Holding for Power and Crews (lower is better)

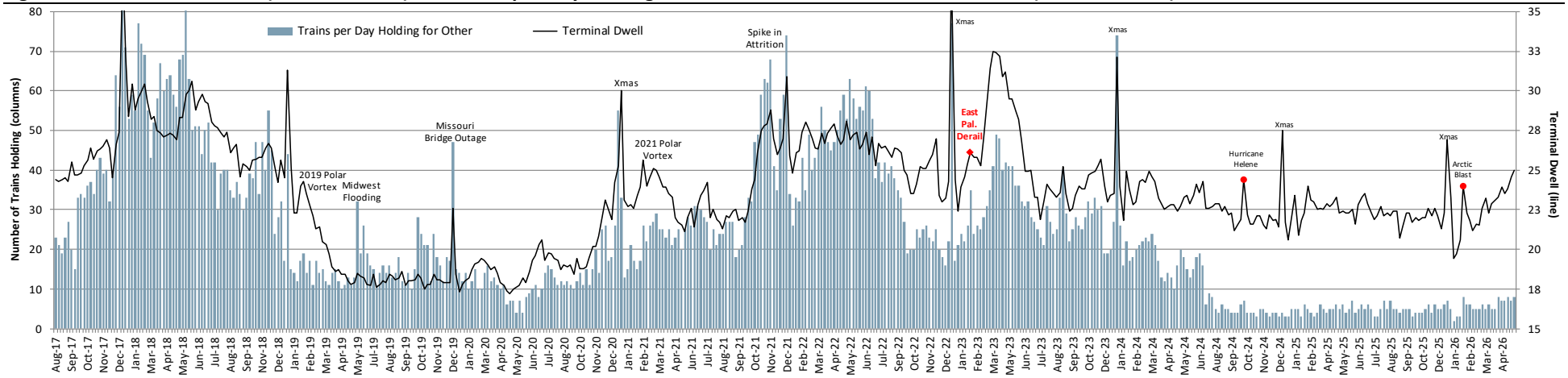


Source: Norfolk Southern & STB. NS trains holding is based on a daily snapshot that counts the number of trains delayed four hours or more as at 6AM every day.

Terminal Dwell and Trains Holding for Other Reasons

Terminal dwell continues to rise at 45 degrees since mid-February; thankfully off a low base, but that's becoming less relevant. Excluding artificial Christmas and Thanksgiving effects, current dwell at 25 hours is the highest it's been since early November 2023. Trains holding for reasons other than power and crews increased from seven to eight.

Figure 28: NS Terminal Dwell (lower is better) and Trains per Day Holding for Reasons Other than Power and Crews (lower is better)

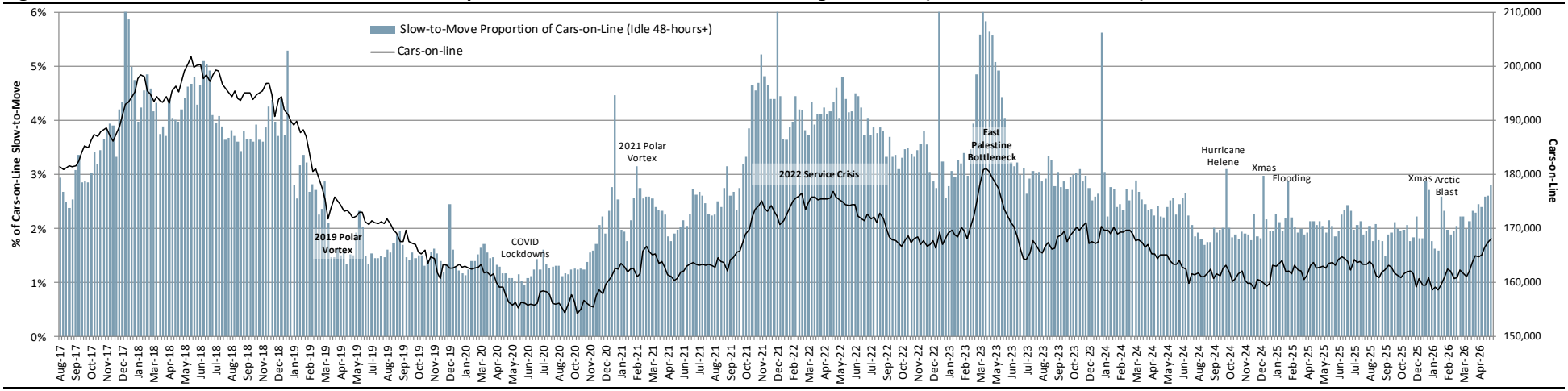


Source: Norfolk Southern & STB. NS trains holding is based on a daily snapshot that counts the number of trains delayed four hours or more as at 6AM every day.

Cars Online and the Proportion Slow-to-Move

Cars online added 483 in the week ending May 22 to a new two year high. Similarly, the percentage of these cars that were slow-to-move rose again, from 2.6% to 2.8%, and we have to go back to a flooding event in February last year to find a higher number (again excluding artificial Christmas effects).

Figure 29: Norfolk Southern Cars Online and the Proportion Idle for 48-hours or more During the Week (lower is better for both)

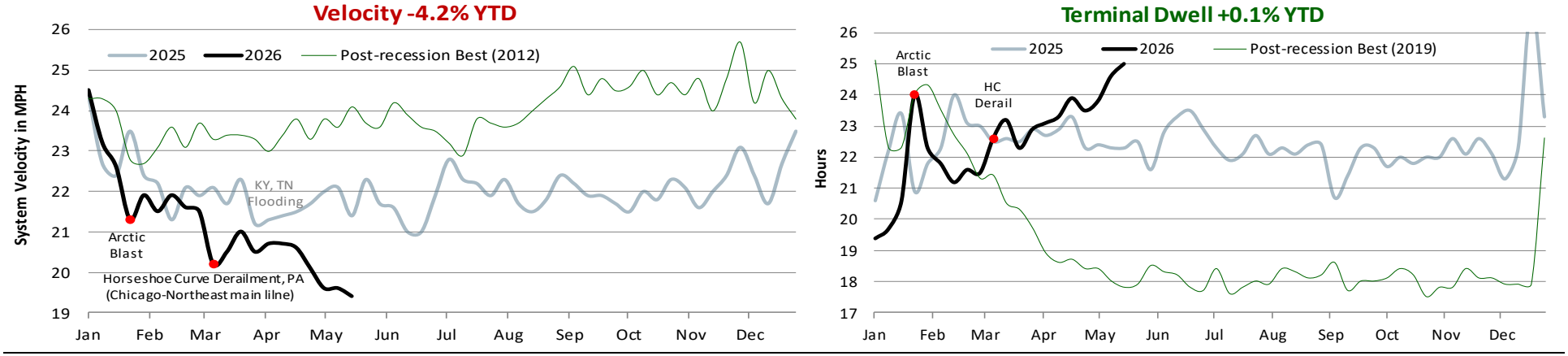


Source: Norfolk Southern & STB.

Year-over-Year Network Velocity and Terminal Dwell

In the velocity chart below you can see the impact of the March 7 derailment at Horseshoe Curve in PA; a ditch NS has so far been unable to dig out of. Terminal dwell is also now gapping year-ago levels in the wrong direction.

Figure 30: Norfolk Southern Velocity and Terminal Dwell

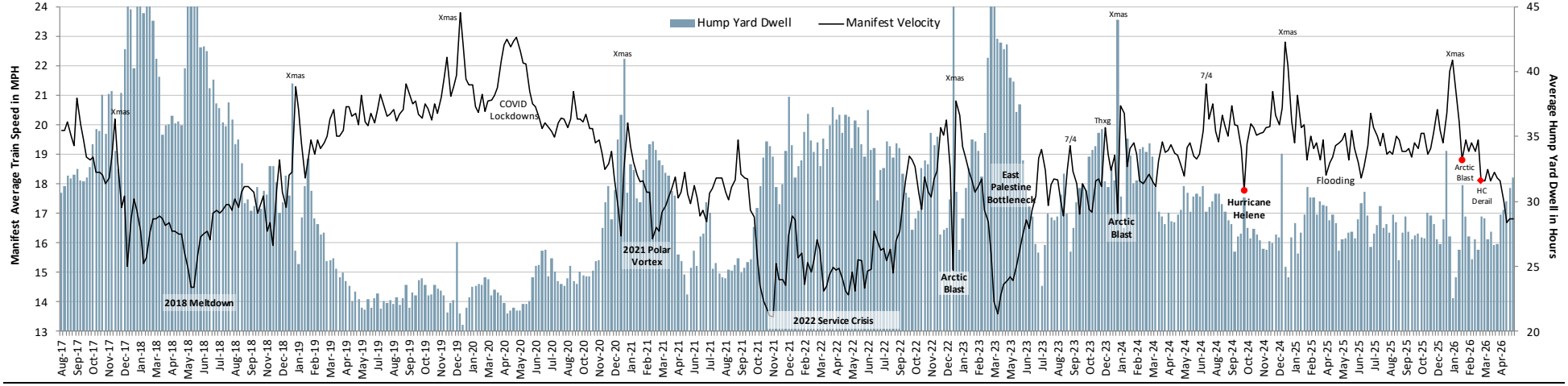


Source: Norfolk Southern & STB.

Manifest Network Efficiency

Manifest velocity was sequentially flat in the week ending May 22. We'll take it, however the closest historical comps remains the East Palestine bottleneck in 2023. Average hump yard dwell continues to spike; adding another 0.7 hours to 31.8. The main culprit is the Chattanooga hump yard, where dwell has blown out to the mid-30s over the last three weeks versus ~24 hours normally. Dwell at the Birmingham, Alabama hump is also somewhat elevated. NS's other four high volume hump yards are relatively normal.

Figure 31: Norfolk Southern Manifest Velocity (higher is better) and Average Hump Yard Dwell (lower is better)

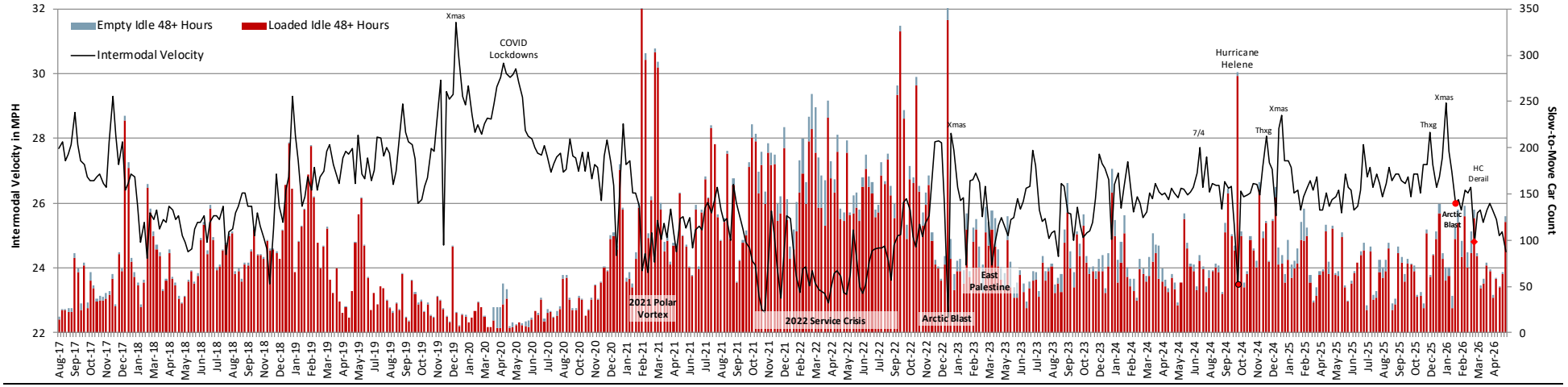


Source: Norfolk Southern & STB. Hump Yard Dwell represents average dwell for Norfolk Southern's six active hump yards.

Intermodal Network Efficiency

Intermodal velocity lost another 0.6 mph to 24.5 in the week ending May 22, which is a post-Hurricane Helene low. Volume pressure is now starting to layer on given the growing rail price discount to truck due to surging truck spot rates and much faster cadence of fuel surcharge updates. Slow-to-move platforms (idle 48+ hours) jumped from 65 to 126.

Figure 32: Norfolk Southern Intermodal Average Train Speed (higher is better) and Slow-to-Move Platforms (lower is better)

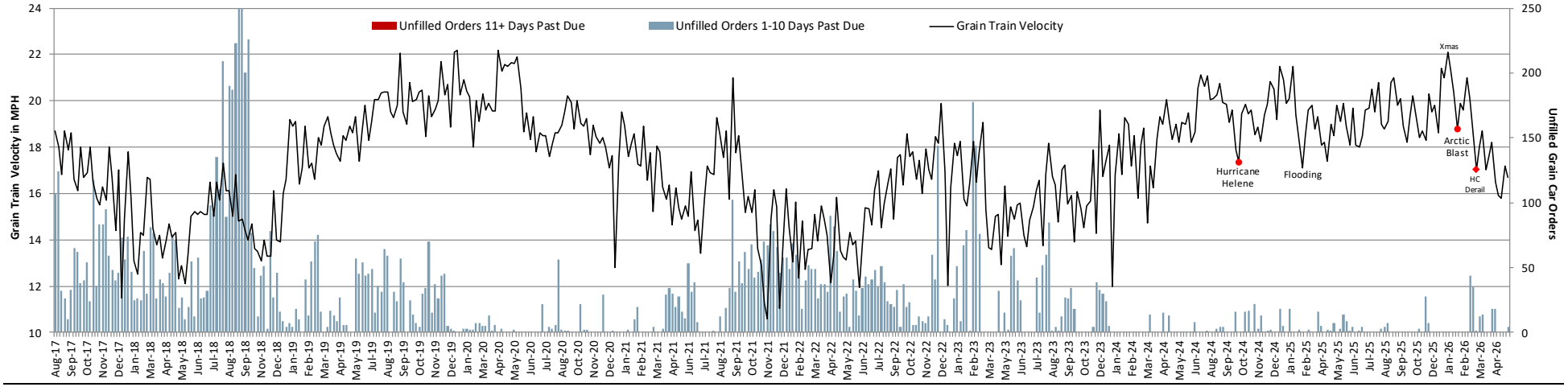


Source: Norfolk Southern & STB.

Grain Train Efficiency

Average grain train speed downticked in the week ending May 22 and remains only modestly above its two-year low. NS reported four unfilled grain car orders to the STB.

Figure 33: Norfolk Southern Grain Shuttle Velocity (higher is better) and Unfilled Grain Car Orders (lower is better)

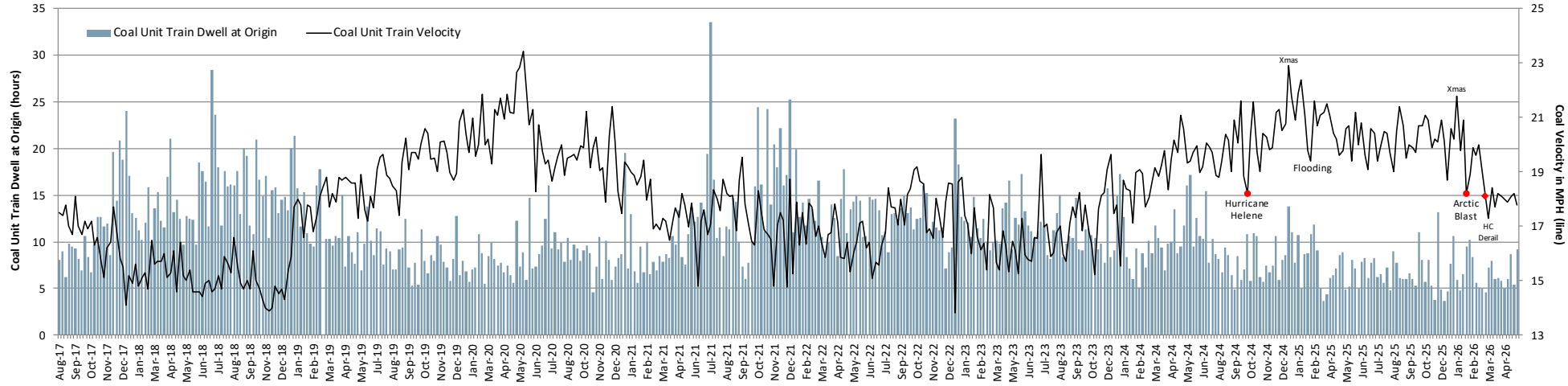


Source: Norfolk Southern & STB.

Coal Train Efficiency

Average coal train speed also modestly slower last week and remains underwhelming versus performance in 2024 and 2025. Dwell at origin still in the normal band.

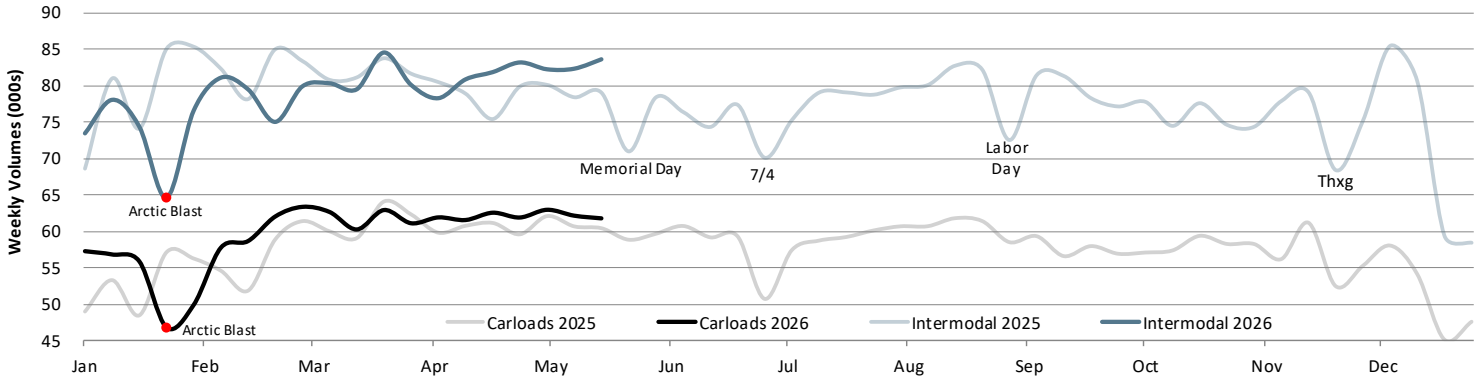
Figure 34: Norfolk Southern Coal Unit Train Dwell at Origin (lower is better) and Coal Unit Train Velocity (higher is better)



Source: Norfolk Southern & STB.

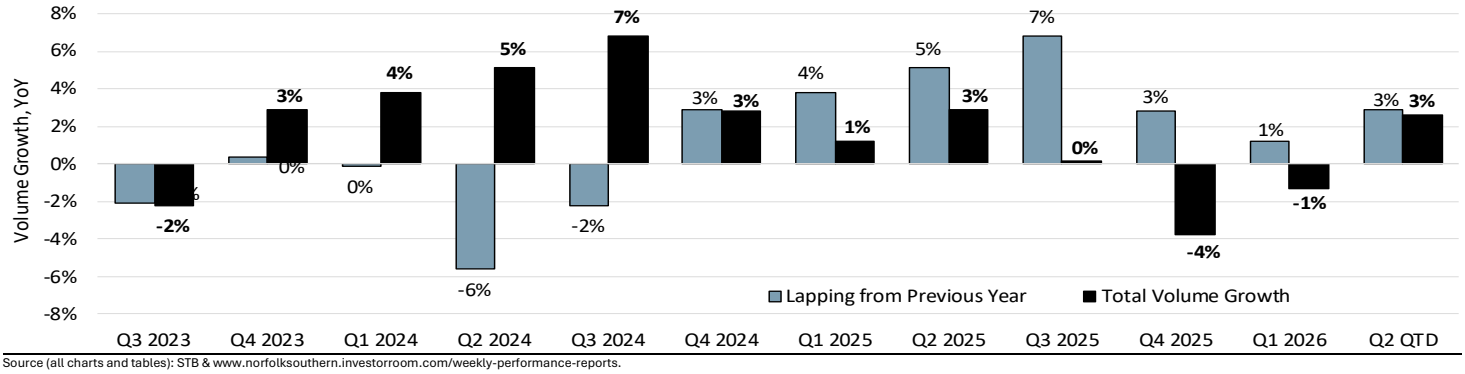
PUBLIC REDACTED VERSION

Norfolk Southern Volumes Through Week Ending 5/23/26



Norfolk Southern		Year-to-Date			Q2 Quarter-to-Date			Week Ending 5/23/26		
Reporting Segment	**Commodity**	**2026**	**2025**	**Δ**	**2026**	**2025**	**Δ**	**2026**	**2025**	**Δ**
Coal	Coal	280.4	262.1	7.0%	107.1	103.5	3.5%	13.9	13.9	0.2%
(14% of Sales)	Coke	13.6	12.0	13.1%	4.7	5.0	(4.8%)	0.7	0.7	(7.5%)
	Total Coal	**293.9**	**274.1**	**7.2%**	**111.8**	**108.5**	**3.1%**	**14.6**	**14.6**	**(0.2%)**
Chemicals	Chemicals	161.1	156.0	3.3%	60.9	58.3	4.4%	8.3	7.5	10.5%
(17% of Sales)	Petroleum Products	56.4	46.6	21.1%	21.5	17.2	25.1%	2.9	2.5	14.9%
	Non-metallic Minerals	9.7	7.6	26.8%	3.3	3.4	(2.4%)	0.3	0.5	(37.4%)
	Total Chemicals	**227.2**	**210.2**	**8.1%**	**85.7**	**78.9**	**8.6%**	**11.5**	**10.6**	**9.3%**
Metals & Construction	Metals & Products	95.5	99.4	(3.9%)	36.5	37.5	(2.7%)	4.9	4.6	7.2%
(13% of Sales)	Crushed Stone, Sand, & Gravel	89.1	92.7	(3.9%)	38.2	39.7	(3.9%)	4.8	5.2	(7.4%)
	Stone, Clay, & Glass Products	49.8	47.2	5.5%	20.2	18.9	6.8%	2.6	2.4	9.2%
	Iron & Steel Scrap	37.2	35.7	4.2%	14.0	13.6	2.8%	2.0	1.9	0.5%
	Metallic Ores	1.9	1.6	21.7%	0.9	0.6	42.6%	0.1	0.1	(13.1%)
	Total Metals/Construction	**273.6**	**276.7**	**(1.1%)**	**109.7**	**110.4**	**(0.6%)**	**14.3**	**14.2**	**1.1%**
Agriculture, Forest & Consumer	Grain	70.6	73.2	(3.4%)	25.6	26.9	(5.0%)	3.1	3.3	(6.7%)
(21% of Sales)	Grain Mill Products	49.9	48.5	3.0%	19.5	18.6	4.9%	2.5	2.4	4.5%
	Food & Kindred Products	34.6	33.6	3.0%	13.5	12.8	6.1%	1.8	1.8	(1.9%)
	Farm Products Ex. Grain	3.5	3.6	(2.6%)	1.2	1.4	(14.1%)	0.2	0.2	(5.4%)
	Pulp, Paper & Allied Products	42.6	45.3	(6.0%)	16.0	16.1	(0.5%)	2.1	2.0	2.6%
	Lumber & Wood Products	17.1	18.2	(6.2%)	7.1	7.3	(2.8%)	1.0	1.0	(0.8%)
	Primary Forest Products	5.8	6.5	(10.5%)	2.2	2.4	(10.0%)	0.3	0.4	(11.1%)
	Waste & Other Scrap	30.0	30.1	(0.3%)	12.0	11.6	3.5%	1.5	1.6	(9.2%)
	All Other Carloads	9.5	10.8	(12.2%)	3.5	4.7	(25.0%)	0.7	0.5	42.8%
	Total Ag, Forest, Consumer	**263.6**	**269.6**	**(2.2%)**	**100.5**	**101.7**	**(1.1%)**	**13.1**	**13.2**	**(0.8%)**
Automotive (9% of Sales)	**Motor Vehicles & Equipment**	**151.3**	**149.5**	**1.2%**	**61.5**	**60.9**	**1.0%**	**8.2**	**7.9**	**3.9%**
	TOTAL CARLOADS	**1,209.6**	**1,180.1**	**2.5%**	**469.3**	**460.2**	**2.0%**	**61.7**	**60.4**	**2.2%**
Intermodal	Containers	1,566.6	1,586.7	(1.3%)	603.7	586.2	3.0%	81.6	77.3	5.6%
(25% of Sales)	Trailers	38.3	40.4	(5.3%)	14.6	13.3	10.2%	2.0	1.8	13.3%
	TOTAL INTERMODAL	**1,604.8**	**1,627.1**	**(1.4%)**	**618.3**	**599.5**	**3.1%**	**83.6**	**79.0**	**5.8%**
	TOTAL	**2,814.4**	**2,807.2**	**0.3%**	**1,087.6**	**1,059.7**	**2.6%**	**145.4**	**139.5**	**4.2%**

Figure 35: Norfolk Southern Quarterly Volume Growth and Associated Y/Y Comps



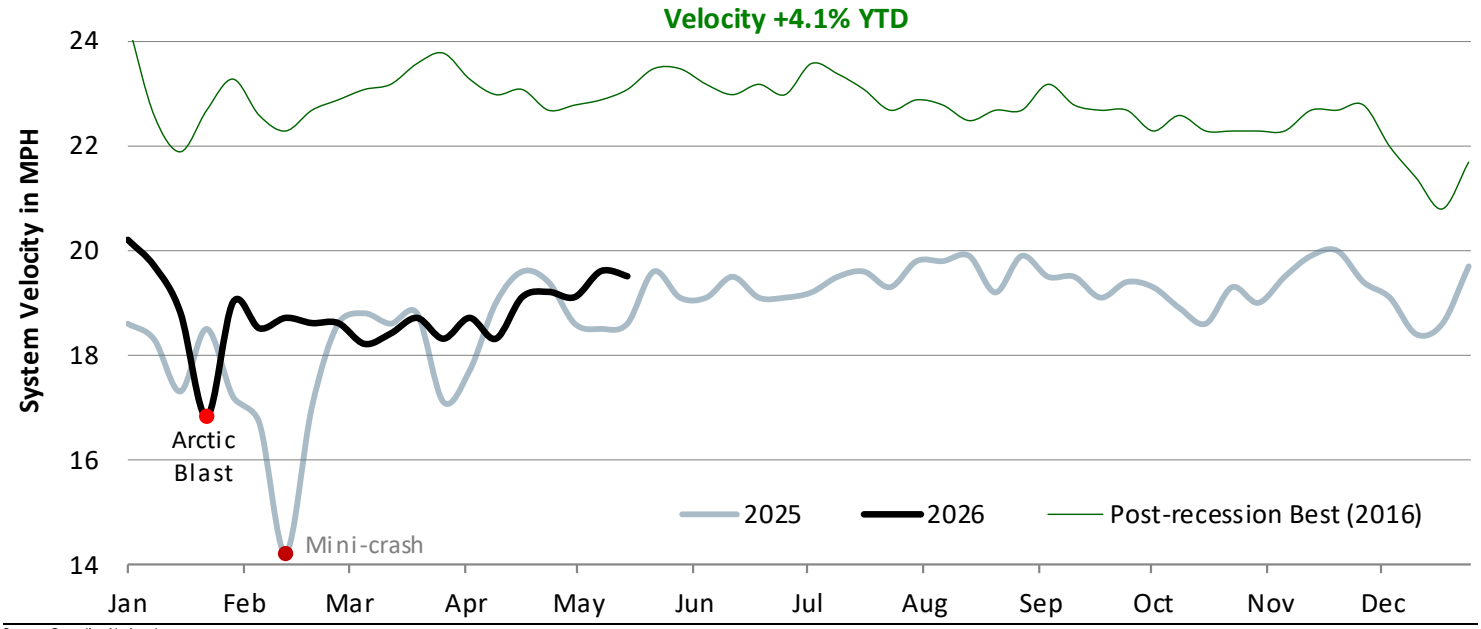
Source (all charts and tables): STB & www.norfolksouthern.investorroom.com/weekly-performance-reports.

Canadian National

Velocity and terminal dwell now look solid versus year-ago levels, plus YTD numbers are beneficially inflated because we lapped the "mini-crash" in February.

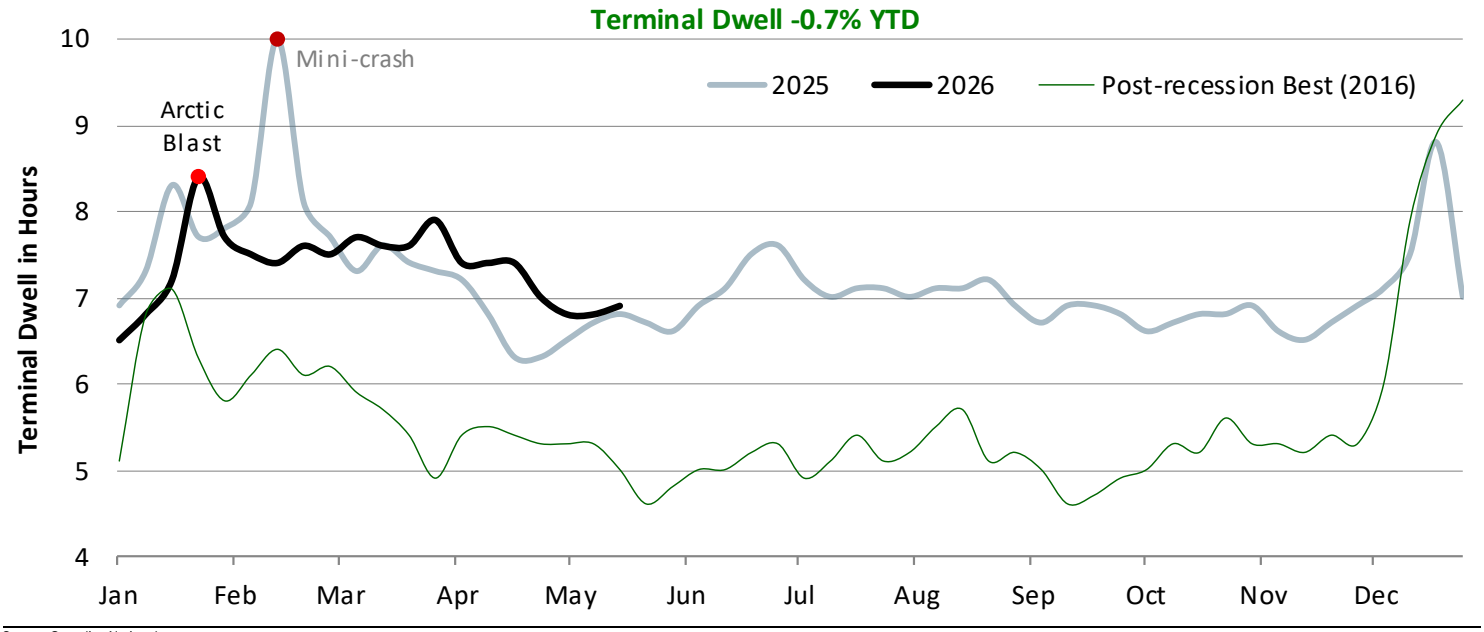
Year-over-Year Network Velocity and Terminal Dwell

Figure 36: Canadian National Full System Velocity



Source: Canadian National.

Figure 37: Canadian National Full System Terminal Dwell



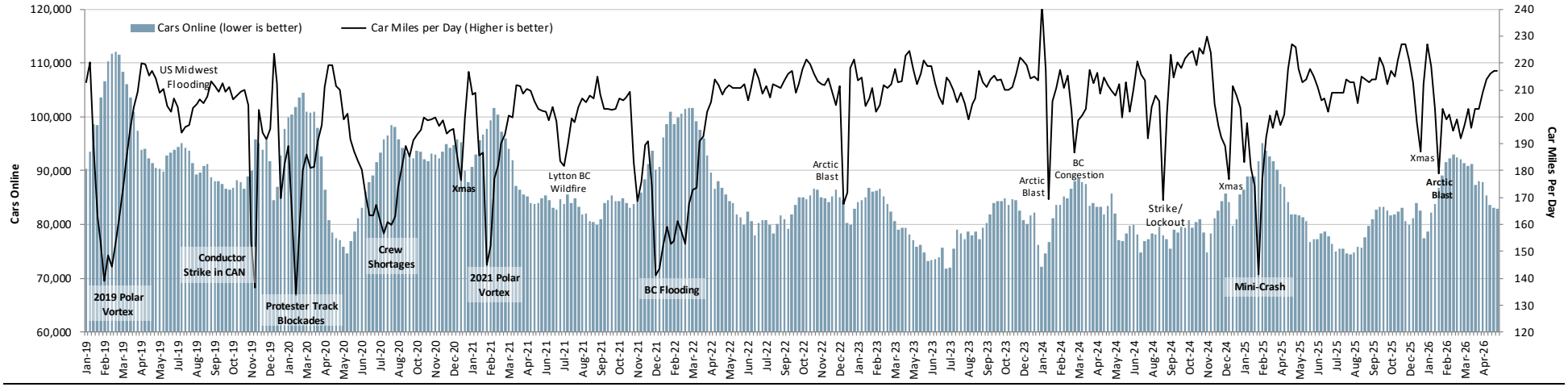
Source: Canadian National.

Note CN reports terminal dwell inclusive of "run-through trains", which heavily distorts this metric lower because it includes minimal dwell for cars on trains that have only stopped briefly to change crews or refuel (no switching). e.g. ~24 hours dwell for classified cars and ~3 hours dwell for cars on run-through trains. This is why CN and CPKC dwell is much lower than the mid-20s reported by the US railroads.

Cars Online and Car Miles Per Day

CN had another positive week, with cars online falling from 83,114 to 82,885 (below 85,000 is the historical benchmark where CN runs well), which enabled car miles per day of 117 to remain near the upper end of its traditional 200-220 range.

Figure 38: Canadian National Cars Online (lower is better) and Car Miles Per Day (higher is better)

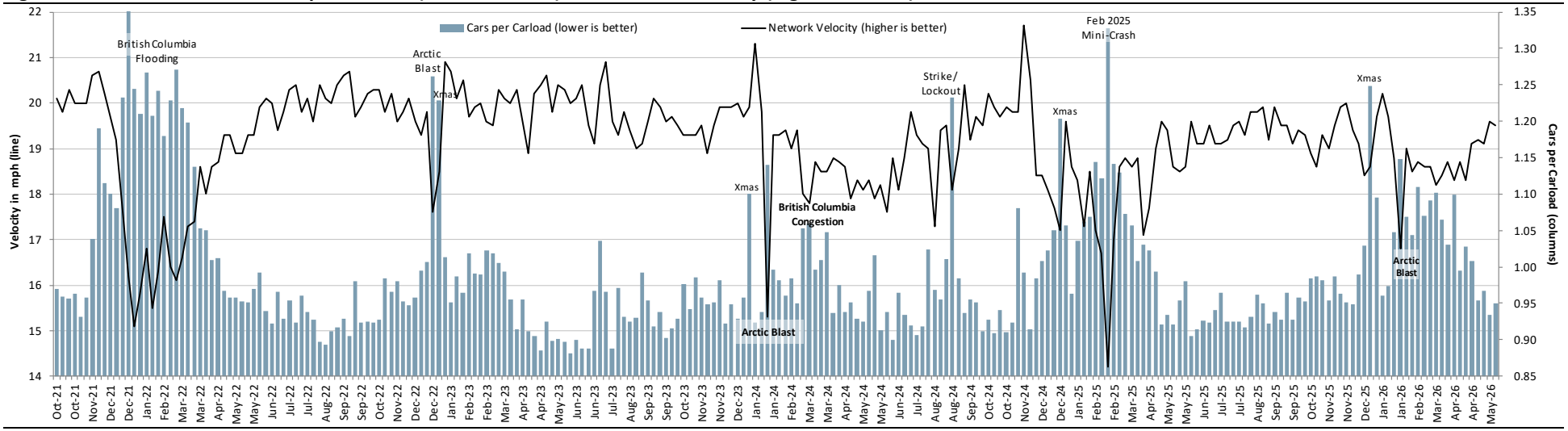


Source: Canadian National.

Cars per Carload and Network Velocity

Cars per carload (columns, far right, and definition below the chart) deteriorated from 0.93 to 0.95, but anything below 1.0 is historically healthy at CN. Network velocity also downticked but remains healthy.

Figure 39: Canadian National Cars per Carload (lower is better) and Network Velocity (higher is better)

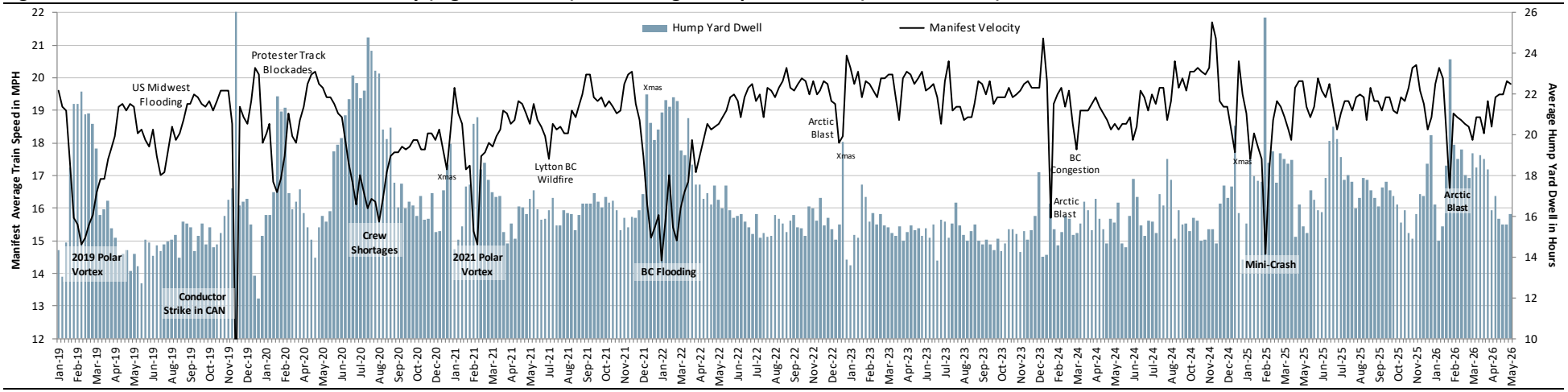


Source: Canadian National. Cars per Carload defined as weekly cars online divided by weekly loads, with intermodal divided by two to adjust containers to cars.

Manifest Network Efficiency

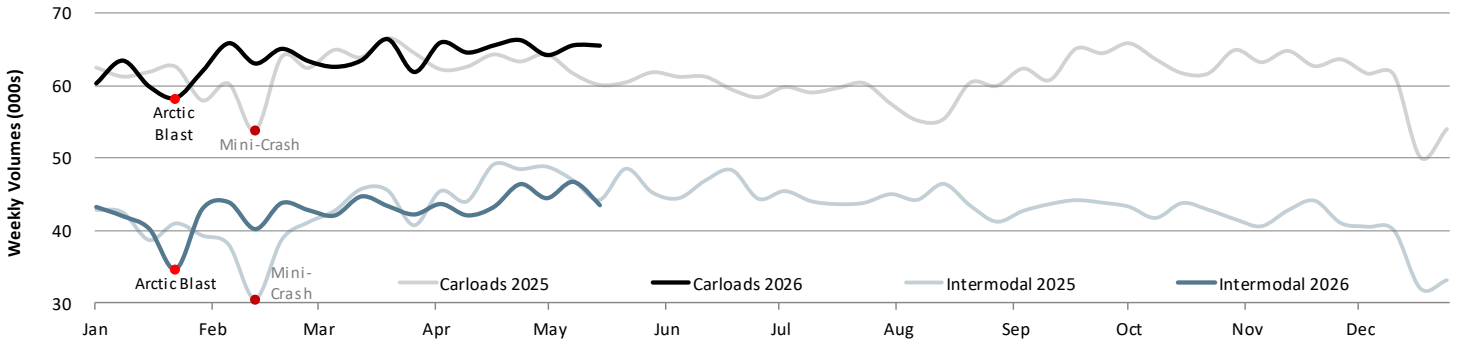
Manifest velocity was the same—a small downtick but remains good in absolute terms. Average dwell for the four hump yards that support this network (Toronto, Winnipeg, Chicago, and Memphis) added 30 minutes to 16.1 hours.

Figure 40: Canadian National Manifest Velocity (higher is better) and Average Hump Yard Dwell (lower is better)



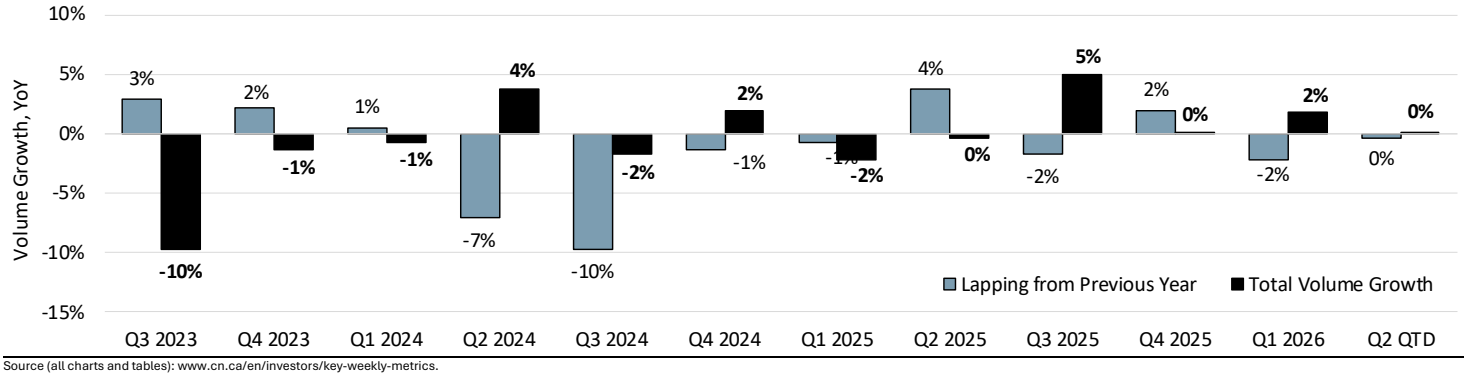
Source: Canadian National. Hump Yard Dwell represents average dwell for CN's four active hump yards.

Canadian National Volumes Through Week Ending 5/23/26



Canadian National		Year-to-Date			Q2 Quarter-to-Date			Week Ending 5/23/26		
Reporting Segment	**Commodity**	**2026**	**2025**	**Δ**	**2026**	**2025**	**Δ**	**2026**	**2025**	**Δ**
Petroleum & Chemicals	Chemicals	187.1	180.5	3.6%	70.2	68.6	2.4%	8.6	9.1	(4.6%)
(20% of Sales)	Petroleum Products	140.7	127.9	10.0%	50.8	42.9	18.4%	6.9	5.6	23.9%
	Non-metallic Minerals	24.5	25.4	(3.4%)	10.3	9.6	7.4%	1.2	0.8	50.0%
	Total Petroleum & Chemicals	**352.3**	**333.8**	**5.5%**	**131.3**	**121.1**	**8.4%**	**16.8**	**15.5**	**8.6%**
Grain & Fertilizers	Grain	132.3	116.3	13.8%	51.6	45.9	12.5%	6.9	5.0	37.0%
(20% of Sales)	Farm Products Ex. Grain	40.5	31.4	28.9%	15.5	12.1	28.2%	2.0	0.9	138.7%
	Grain Mill Products	28.3	27.3	3.6%	9.8	9.1	7.9%	1.4	1.3	7.8%
	Food & Kindred Products	38.1	37.7	1.1%	14.4	13.5	6.2%	1.9	1.8	3.7%
	Total Grain & Fertilizers	**239.3**	**212.8**	**12.5%**	**91.2**	**80.6**	**13.3%**	**12.2**	**9.0**	**35.8%**
Forest Products	Pulp, Paper & Allied Products	50.9	50.2	1.5%	18.2	17.7	3.0%	2.5	2.3	11.5%
(12% of Sales)	Lumber & Wood Products	42.7	47.3	(9.7%)	17.3	17.9	(3.0%)	2.2	2.3	(5.5%)
	Primary Forest Products	9.4	13.1	(28.2%)	3.7	5.2	(29.6%)	0.5	0.8	(35.9%)
	Total Forest Products	**103.0**	**110.5**	**(6.8%)**	**39.2**	**40.8**	**(3.8%)**	**5.2**	**5.4**	**(2.8%)**
Metals & Minerals	Metallic Ores	196.4	197.1	(0.4%)	72.0	75.1	(4.0%)	10.1	10.8	(6.6%)
(13% of Sales)	Crushed stone, Sand, & Gravel	48.9	51.1	(4.4%)	21.7	22.8	(4.9%)	3.1	3.5	(10.0%)
	Metals & Products	27.4	31.0	(11.7%)	10.1	11.2	(9.7%)	1.4	1.5	(8.1%)
	Stone, Clay, & Glass Products	18.5	19.1	(3.3%)	7.2	7.6	(4.5%)	1.1	1.0	5.2%
	All Other Carloads	31.9	24.8	28.8%	11.8	9.2	27.9%	1.7	1.0	68.9%
	Iron & Steel Scrap	16.5	13.4	23.2%	6.6	4.9	33.1%	0.8	0.6	28.7%
	Waste & Other Scrap	6.8	6.9	(1.4%)	2.7	2.6	2.8%	0.3	0.3	15.3%
	Total Metals & Minerals	**346.4**	**343.5**	**0.8%**	**132.1**	**133.4**	**(1.0%)**	**18.5**	**18.7**	**(1.1%)**
Autos (6% of Sales)	**Motor Vehicles & Equipment**	**81.7**	**83.2**	**(1.8%)**	**33.5**	**32.2**	**4.2%**	**4.5**	**4.1**	**9.8%**
Coal	Coal	150.5	160.9	(6.5%)	56.9	59.2	(3.9%)	7.2	6.4	12.3%
(6% of Sales)	Coke	22.8	26.0	(12.5%)	8.6	9.5	(9.8%)	1.1	1.2	(4.5%)
	Total Coal	**173.3**	**186.9**	**(7.3%)**	**65.4**	**68.7**	**(4.8%)**	**8.3**	**7.6**	**9.6%**
	TOTAL CARLOADS	**1,295.9**	**1,270.7**	**2.0%**	**492.9**	**476.7**	**3.4%**	**65.5**	**60.2**	**8.8%**
Intermodal	Containers	871.0	868.8	**0.3%**	334.4	349.6	**(4.3%)**	43.5	44.2	**(1.5%)**
(24% of Sales)	Trailers	-	-		-	-		-	-	
	TOTAL INTERMODAL	**871.0**	**868.8**	**0.3%**	**334.4**	**349.6**	**(4.3%)**	**43.5**	**44.2**	**(1.5%)**
	TOTAL	**2,166.9**	**2,139.5**	**1.3%**	**827.3**	**826.3**	**0.1%**	**109.0**	**104.4**	**4.5%**

Figure 41: Canadian National Total System Quarterly Volume Growth and Associated Y/Y Comps

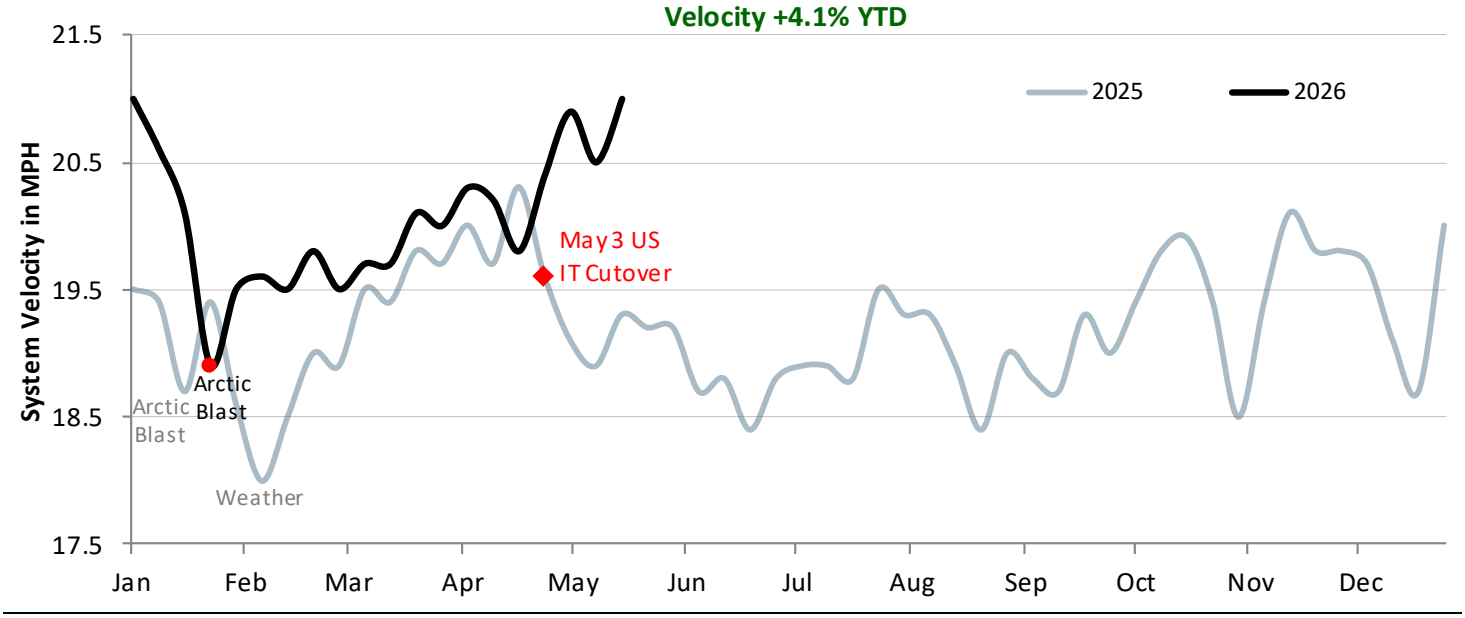


Source (all charts and tables): www.cn.ca/en/investors/key-weekly-metrics.

Velocity re-rallied to a multi-year high in the week ending May 22 and terminal dwell looks similarly very good. YTD gains for both metrics will also expand going forward as we're now lapping the problematic KCS Transportation Management System cutover that started on May 3 last year. Rather, volumes remain the issue at CPKC; down YTD and QTD.

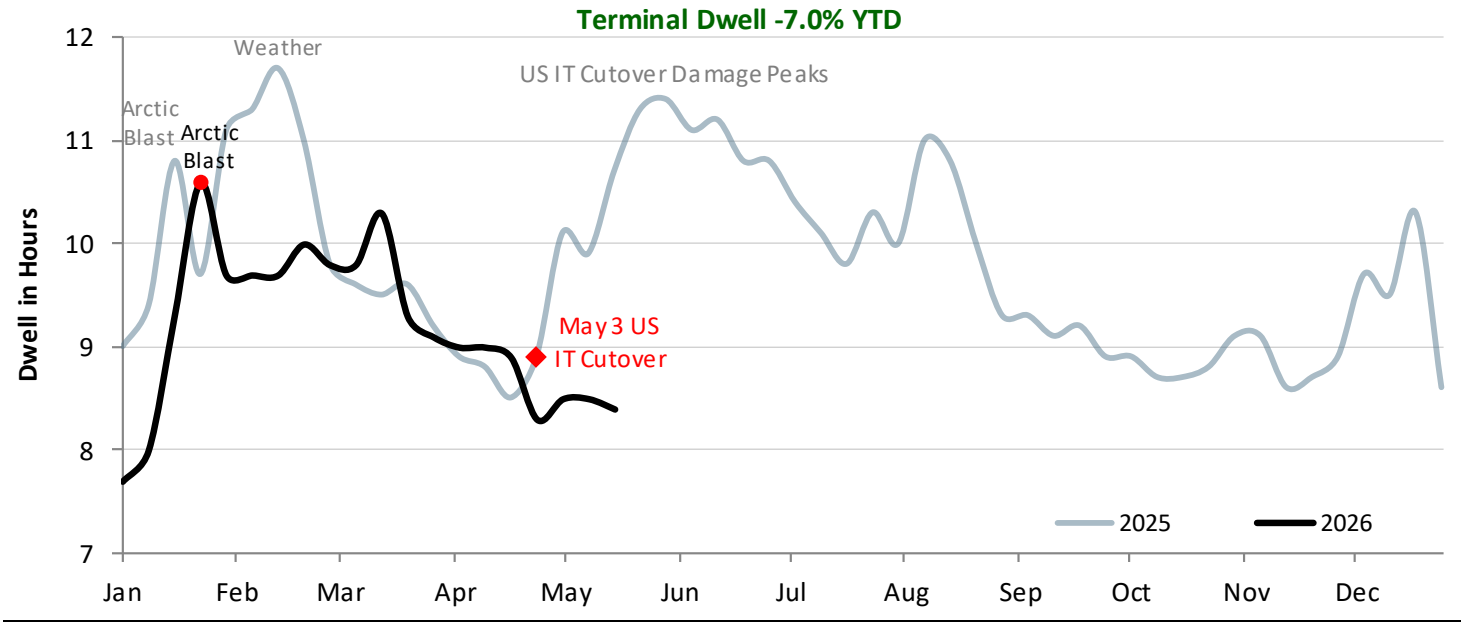
Year-over-Year Network Velocity and Terminal Dwell

Figure 42: CPKC Full System Velocity



Source: CPKC.

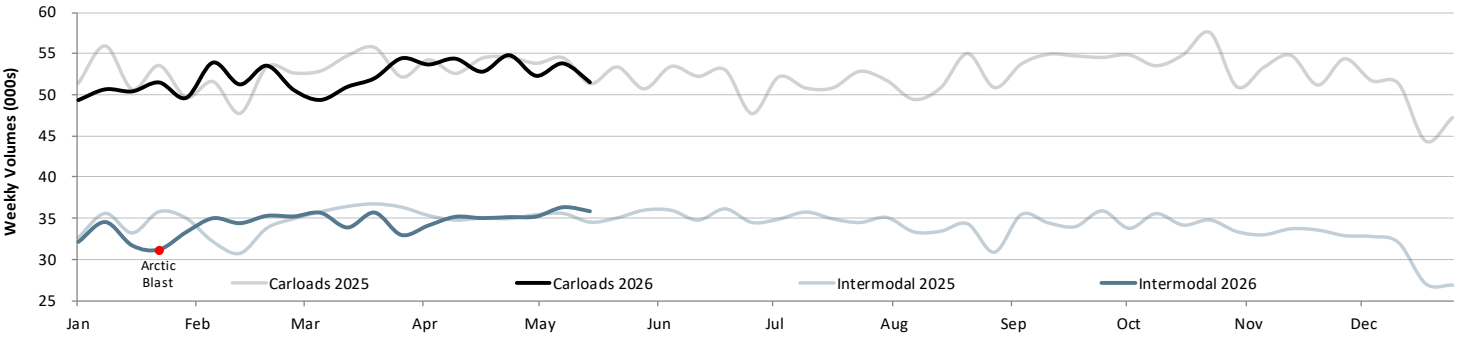
Figure 43: CPKC Full System Terminal Dwell



Source: CPKC.

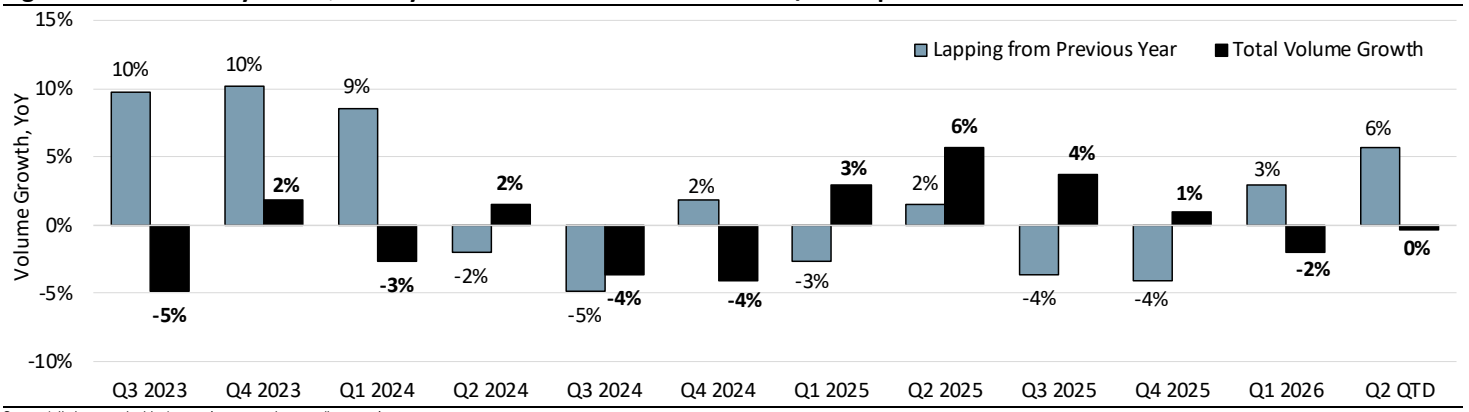
Note CPKC reports terminal dwell inclusive of "run-through trains", which heavily distorts this metric lower because it includes minimal dwell for cars on trains that have only stopped briefly to change crews or refuel (no switching). e.g. ~24 hours dwell for classified cars and ~3 hours dwell for cars on run-through trains. This is why CPKC and CN dwell is much lower than the mid-20s reported by the US railroads.

CPKC Volumes Through Week Ending 5/23/26



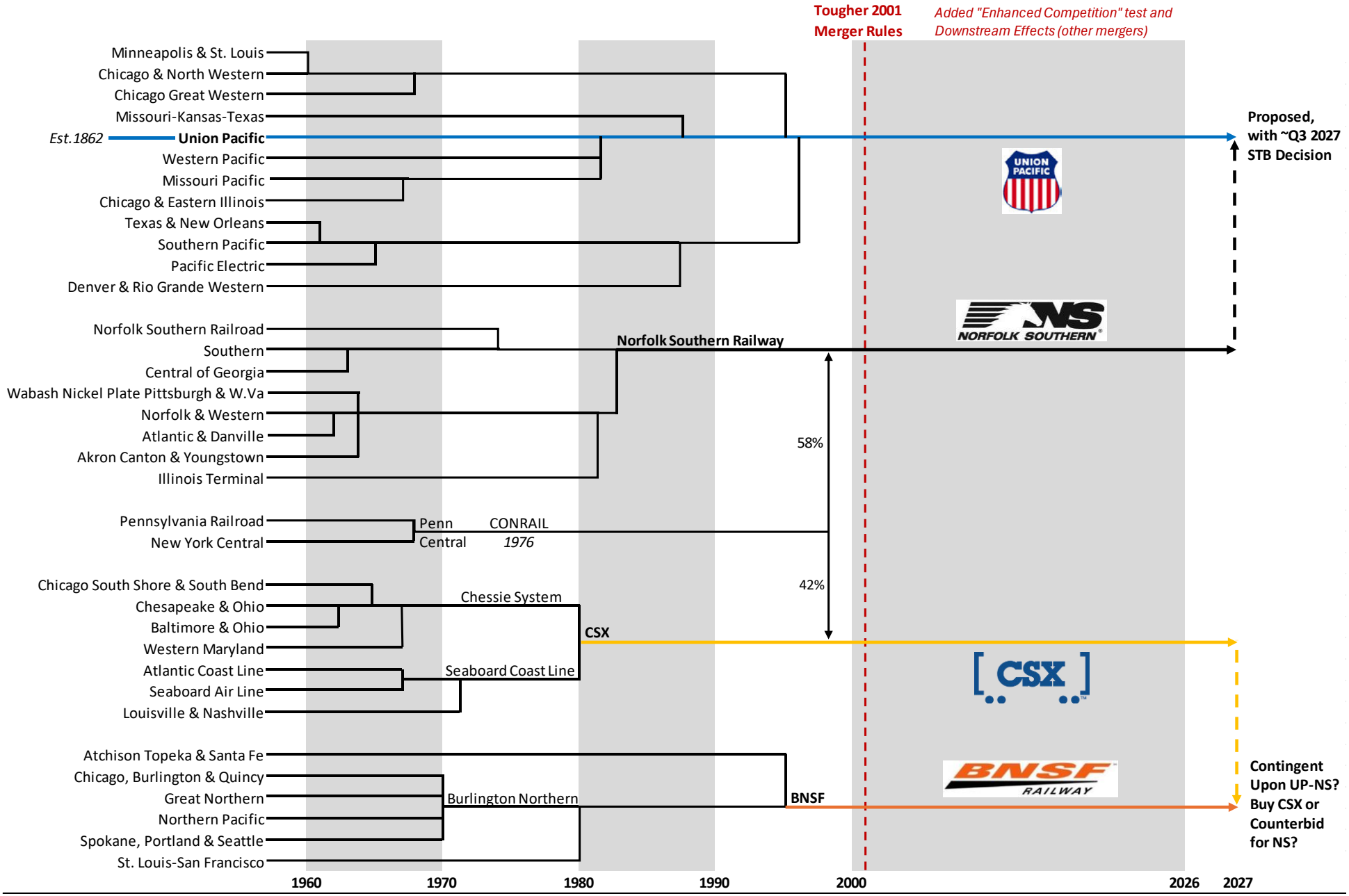
CPKC		Year-to-Date			Q2 Quarter-to-Date			Week Ending 5/23/26		
Reporting Segment	**Commodity**	**2026**	**2025**	**Δ**	**2026**	**2025**	**Δ**	**2026**	**2025**	**Δ**
Grain	Grain	153.4	144.7	6.0%	61.7	59.1	4.3%	7.4	7.0	6.4%
(20% of Sales)	Farm Products, Ex. Grain	39.2	26.9	45.9%	16.1	10.5	53.5%	2.3	1.1	111.6%
	Food & Kindred Products	39.7	36.3	9.3%	14.9	13.0	14.4%	1.9	1.5	27.9%
	Grain Mill Products	25.7	23.5	9.2%	9.9	8.5	16.0%	1.3	1.0	26.4%
	Total Grain	**257.9**	**231.4**	**11.5%**	**102.5**	**91.1**	**12.5%**	**13.0**	**10.6**	**22.3%**
Energy, Chemicals & Plastics	Chemicals	197.4	193.5	2.0%	75.7	72.5	4.3%	9.8	9.3	5.4%
(19% of Sales + 5% Potash)	Petroleum Products	113.1	123.5	(8.4%)	40.8	45.9	(11.1%)	5.2	5.7	(9.2%)
	Total Energy, Chem, Plastics	**310.4**	**316.9**	**(2.1%)**	**116.5**	**118.4**	**(1.7%)**	**15.0**	**15.0**	**(0.2%)**
Metals, Minerals & Consumer	Stone, Clay and Glass Products	34.3	33.5	2.7%	13.8	13.0	6.3%	1.9	1.8	4.3%
(13% of Sales)	Crushed Stone, Gravel & Sand	51.0	44.8	13.8%	21.8	18.2	20.2%	2.8	2.6	6.8%
	Metals and Products	48.8	54.2	(9.9%)	18.9	18.9	(0.3%)	2.6	2.3	13.9%
	Iron and Steel Scrap	18.0	18.4	(1.9%)	7.0	6.5	6.6%	0.9	0.8	5.3%
	Metallic Ores	7.2	8.3	(13.3%)	3.2	3.0	5.5%	0.5	0.3	91.5%
	Waste & Scrap Materials	3.9	4.6	(14.0%)	1.6	1.8	(9.2%)	0.2	0.2	(14.5%)
	Total Metals, Min, Consumer	**163.4**	**163.8**	**(0.3%)**	**66.2**	**61.4**	**7.9%**	**8.9**	**8.1**	**10.1%**
Coal	Coal	148.2	169.5	(12.6%)	47.4	62.3	(23.8%)	5.1	8.4	(38.8%)
(7% of Sales)	Coke	16.6	19.6	(15.4%)	5.7	7.1	(19.9%)	0.7	0.8	(19.1%)
	Total Coal	**164.8**	**189.1**	**(12.9%)**	**53.1**	**69.3**	**(23.4%)**	**5.8**	**9.2**	**(37.0%)**
Automotive (8% of Sales)	**Motor Vehicles & Equipment**	**88.1**	**92.8**	**(5.1%)**	**37.4**	**35.1**	**6.5%**	**4.8**	**4.3**	**10.1%**
Fertilizers & Sulphur (3% of Sales)	**Non-metallic Minerals**	**7.2**	**7.0**	**3.3%**	**2.7**	**2.4**	**9.5%**	**0.4**	**0.4**	**19.1%**
Forest Products	Primary Forest Products	1.0	0.7	44.1%	0.3	0.3	33.6%	0.1	0.0	138.1%
(6% of Sales)	Lumber and Wood Products	15.5	17.0	(8.8%)	6.2	6.6	(5.0%)	0.7	0.8	(3.4%)
	Pulp, Paper, and Allied Product	31.7	35.9	(11.6%)	11.4	12.5	(9.1%)	1.5	1.7	(14.2%)
	Total Forest Products	**48.2**	**53.6**	**(10.0%)**	**17.9**	**19.3**	**(7.1%)**	**2.3**	**2.5**	**(9.6%)**
All Other Carloads	**Total All Other Carloads**	**21.4**	**24.6**	**(13.1%)**	**8.0**	**8.6**	**(6.3%)**	**1.3**	**1.2**	**8.8%**
	TOTAL CARLOADS	**1,061.3**	**1,079.1**	**(1.7%)**	**404.4**	**405.7**	**(0.3%)**	**51.5**	**51.4**	**0.3%**
Intermodal	Containers	697.9	703.1	(0.7%)	265.4	265.6	(0.1%)	35.8	34.4	4.1%
(20% of Sales)	Trailers	0.5	1.2	(60.9%)	0.0	0.5	(93.6%)	0.0	0.1	(98.2%)
	TOTAL INTERMODAL	**698.4**	**704.3**	**(0.8%)**	**265.4**	**266.1**	**(0.3%)**	**35.8**	**34.5**	**4.0%**
	TOTAL	**1,759.7**	**1,783.5**	**(1.3%)**	**669.8**	**671.8**	**(0.3%)**	**87.3**	**85.8**	**1.7%**

Figure 44: CPKC Full System Quarterly Volume Growth and Associated Y/Y Comps



Source (all charts and tables): www.investor.cpkcr.com/key-metrics.

How Did We Get Here: Creating the Big ~~Four~~Two?



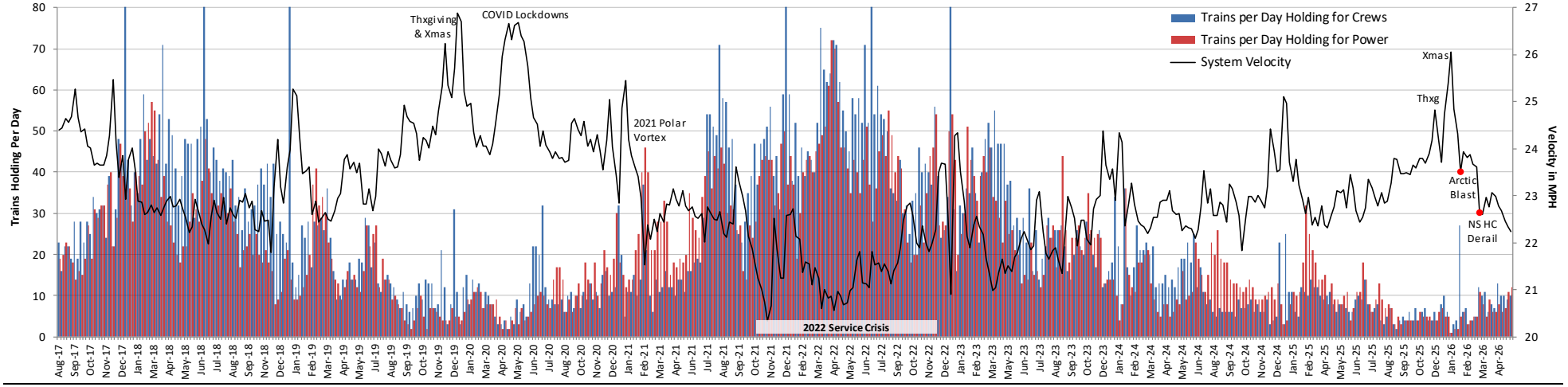
Source: Trains Magazine & Rick Paterson

Consolidated Union Pacific + Norfolk Southern

Network Velocity and Trains Holding for Crews and Power

In case you're curious, here are the key operating metrics for Union Pacific and Norfolk Southern as if they were operating as a consolidated network. The stronger these metrics are, the easier the integration will be, assuming of course the merger is approved by the STB, which is far from certain.

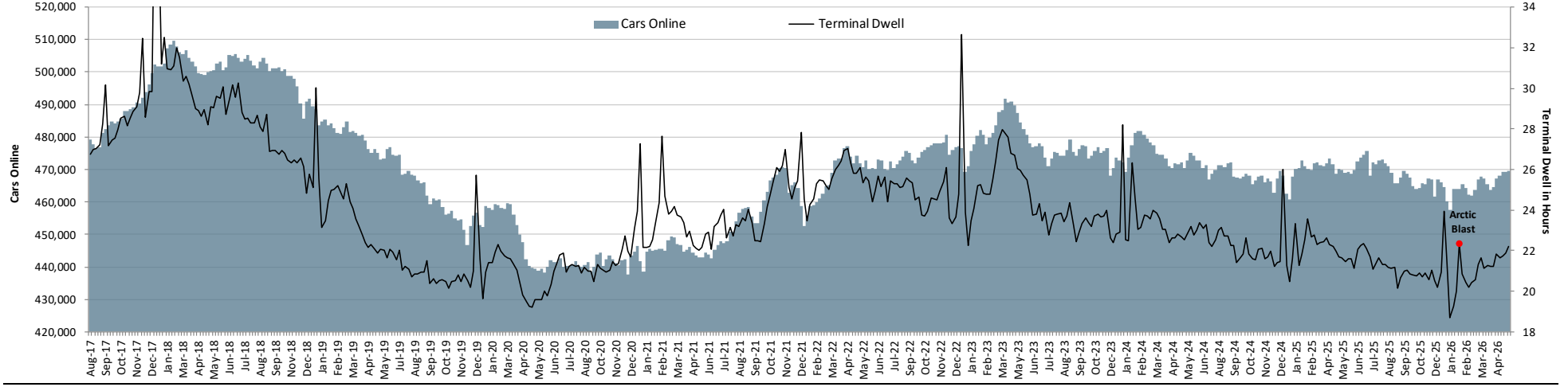
Figure 45: UP+NS Velocity (higher is better) and Trains per Day Holding for Power and Crews (lower is better)



Source: Union Pacific, Norfolk Southern & STB. System velocity is volume-weighted in every week; so if UP is 54% of total loads in a given week it's velocity will also be weighted 54%. Trains holding numbers are simply added together.

Terminal Dwell and Trains Holding for Other Reasons

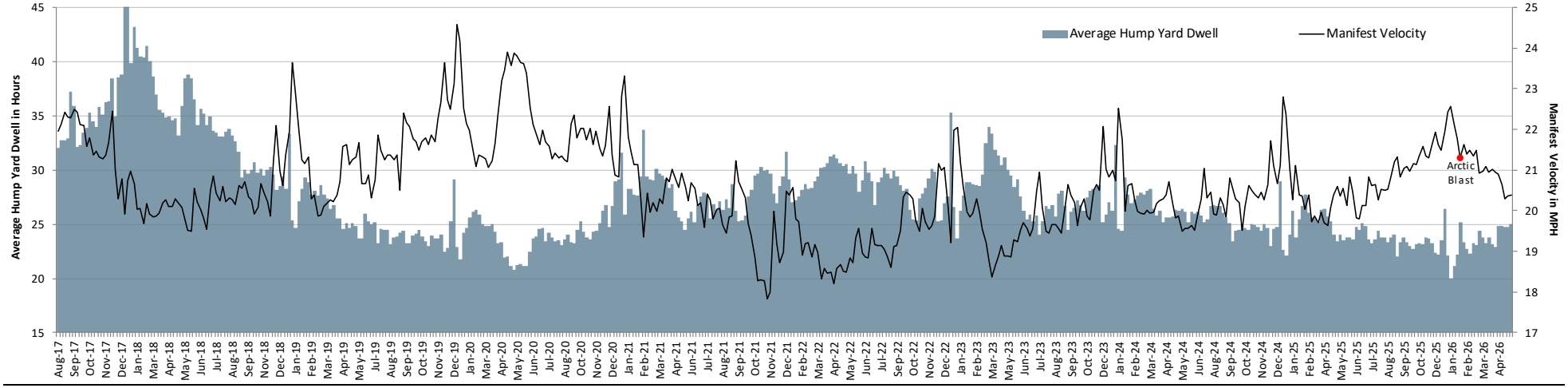
Figure 46: UP+NS Terminal Dwell and Cars Online (lower is better for both)



Source: Union Pacific, Norfolk Southern & STB. Terminal dwell is volume-weighted in every week; so if UP is 54% of total loads in a given week it's dwell will also be weighted 54% and NS 46%. Cars Online are simply added together.

Manifest Network Efficiency

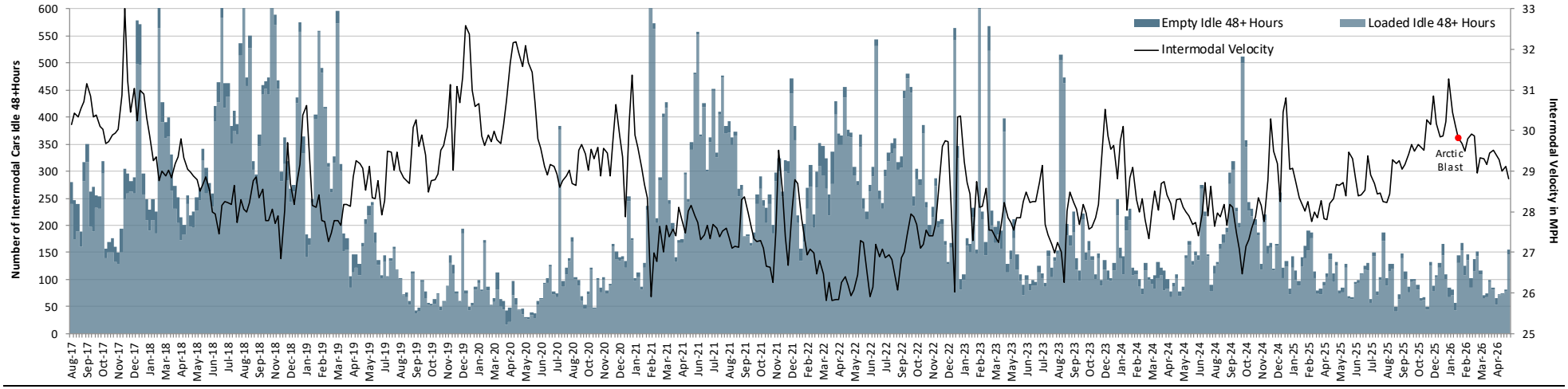
Figure 47: UP+NS Manifest Velocity (higher is better) and Average Hump Yard Dwell (lower is better)



Source: Union Pacific, Norfolk Southern & STB. Both metrics are volume-weighted by non-intermodal carloads. So if UP is 61% of total carloads in a given week it's manifest velocity and hump dwell will be weighted 61% and NS 39%.

Intermodal Network Efficiency

Figure 48: UP+NS Intermodal Velocity (higher is better) and the Number of Slow-to-Move Platforms (lower is better)



Source: Union Pacific, Norfolk Southern & STB. Intermodal velocity is volume-weighted by weekly intermodal loads. So if UP is 47% of total intermodal loads in a given week it's intermodal velocity will be weighted 47% and NS 53%. 48+ hours delays are added together.

Appendix B

Verified Statement of Adolph Gameiro

PUBLIC REDACTED VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

VERIFIED STATEMENT OF ADOLPH GAMEIRO

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

— CONTROL —

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED STATEMENT OF ADOLPH GAMEIRO

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EXHIBIT 2: LETTER FROM DEREK HINDS TO STEVE SIMMONS (AUG. 28, 2026)

EXHIBIT 3: EMAIL FROM RAYMOND ELPHICK TO RICK LICHTAS (OCT. 24, 2023)

EXHIBIT 4: EMAIL FROM STEVE SIMMONS TO JEFFREY SONGER (NOV. 6, 2020)

EXHIBIT 5: LETTER FROM MIKE FORAN TO CARL GARRISON (AUG. 21, 2025)

EXHIBIT 6: LETTER FROM MELISSA GROSZ TO WILL WANGERIN (FEB. 5, 2024)

EXHIBIT 7: LETTER FROM WILL WANGERIN TO MELISSA GROSZ (FEB. 2, 2026)

EXHIBIT 8: EMAIL FROM MELISSA GROSZ TO WILL WANGERIN (FEB. 27, 2026)

EXHIBIT 9: EMAILS BETWEEN JOEL HOBERMAN, STEVE SIMMONS, MELISSA GROSZ, AND OTHERS (OCT. 28, 2025 - NOV. 6, 2026)

EXHIBIT 10: LETTER FROM STEVE SIMMONS TO MELISSA GROSZ (JUNE 22, 2026)

EXHIBIT 11: LETTER FROM DAVID HUGHES TO STEVE SIMMONS (MAR. 27, 2026)

EXHIBIT 12: LETTER FROM DAVID HUGHES TO STEVE SIMMONS (MAY 22, 2026)

EXHIBIT 13: LETTER FROM TOM BOURGONJE TO RUSSELL ROHLFS (SEP. 4, 2026)

EXHIBIT 14: LETTER FROM RUSSELL ROHLFS TO TOM BOURGONJE (SEP. 21, 2026)

EXHIBIT 15: LETTER FROM STEVE SIMMONS TO DEREK HINDS (OCT. 28, 2026)

EXHIBIT 16: LETTER FROM HANNA CHOUEST TO MARK REDD AND CASSANDRA QUACH (FEB. 24, 2025)

VERIFIED STATEMENT OF ADOLPH GAMEIRO

1. I am Adolph Gameiro. I am the Managing Director of Interline and Network Strategy at CPKC. I have held that role since April 2021. Prior to this role, I served as Director of Interline Agreements since 2011. I am responsible for the ongoing management and administration of CPKC's trackage rights and other joint facility agreements with other railroads and commuter rail agencies in the United States and Canada.

2. The purpose of this Verified Statement is to emphasize the following points:

- First, UP and NS already control assets on which CPKC critically depends to be able to reach and serve customers;
- Second, both railroads—and UP, in particular—have a track record of neglecting their contractual and regulatory obligations in a manner that interferes with CPKC's use of shared lines and impedes CPKC's ability to compete effectively, which heightens the risk that a combined UP-NS will expand these practices to more of the U.S. rail network that CPKC and other railroads rely on to compete effectively against UP-NS;
- Third, the transaction would also enable UP to exercise undue influence over key jointly-owned terminal railroads in the Midwestern gateways of Chicago, Kansas City, and St. Louis, thereby harming competition and rail customers; and
- Fourth, in the event the Board chooses to approve the proposed UP-NS merger, I discuss several specific proposed conditions needed to safeguard CPKC's existing rights to compete using UP and NS trackage and to prevent UP-NS from exploiting limitations on CPKC's rights in a manner

that strengthens UP-NS's own market position at the expense of competition and rail customers.

I. WITNESS BACKGROUND

3. My current responsibilities and prior experience give me familiarity with the CPKC contractual rights, operations, terminal-company relationships, and proposed competitive conditions addressed in this statement.

4. I, or people who report to me, regularly interact with UP and/or NS counterparts on the contractual, operational, and joint-facility matters that are discussed in this Verified Statement. These discussions generally involve keeping in touch with the other contracting party about day-to-day implementation of the contract—facility maintenance, billing and the like. I also coordinate with the CPKC Operations department to understand any problems that are occurring where we operate on another carrier's track, or where they operate on ours. My team tries to keep lines of communication open with the other party to each contract to resolve issues as early as possible to keep matters from having to escalate to senior management for resolution.

5. In some circumstances, however, matters do escalate, sometimes even to arbitration under the terms of an agreement. Currently we have two arbitrations in process with UP and one with NS, each dealing with a major aspect of particular contracts discussed later in this statement. We also have a lawsuit in federal court where NS has appealed a district court decision in CPKC's favor against NS's attempt to terminate a longstanding agreement on short notice. In connection with an arbitration or a lawsuit, I gather background information and coordinate with our counsel to make sure that they have a complete understanding of the facts relevant to our position.

6. CPKC does not have any pending arbitrations or lawsuits about joint facility matters with carriers other than UP and NS.

II. CPKC'S ABILITY TO COMPETE EFFECTIVELY WITH POST-MERGER UP DEPENDS HEAVILY ON EXISTING ACCESS TO UP/NS RAIL INFRASTRUCTURE AND THE CONTRACTS GOVERNING THAT ACCESS

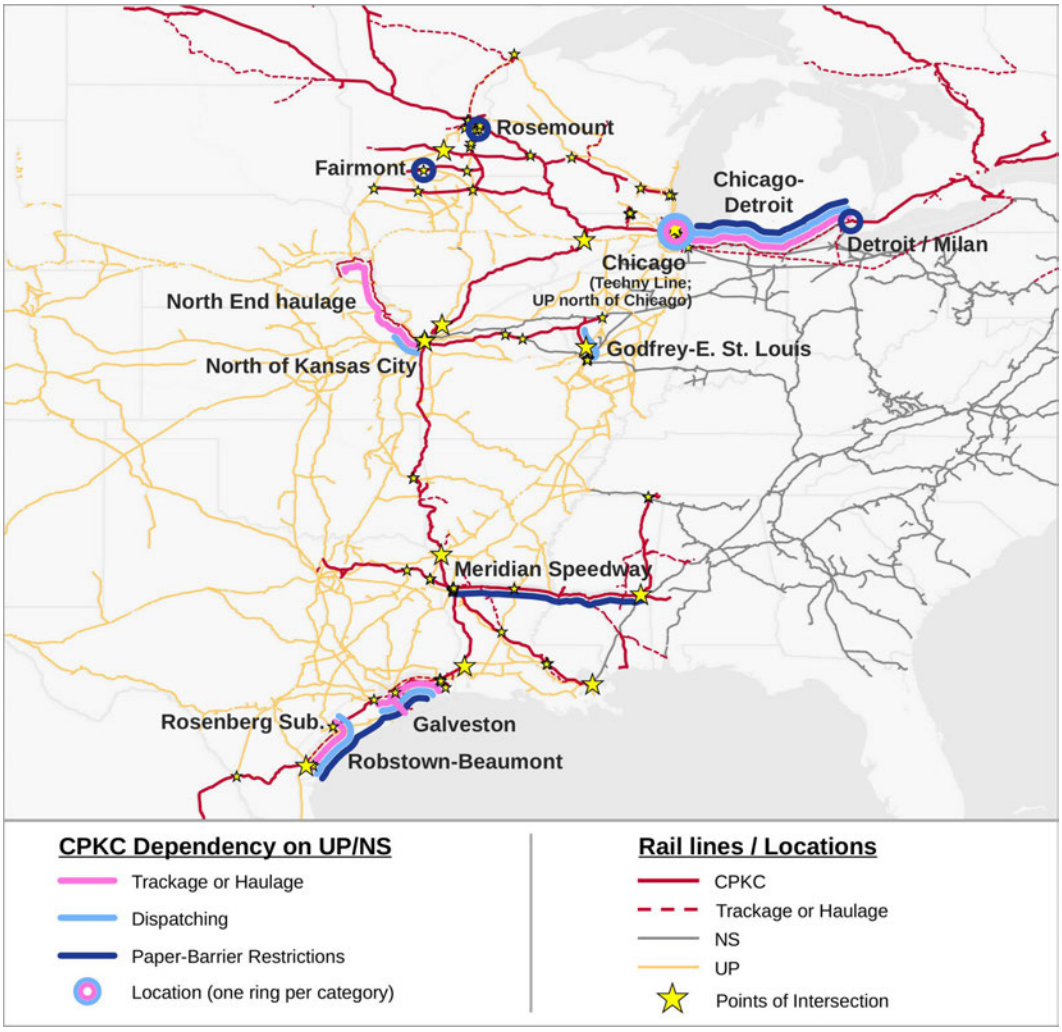
7. CPKC's ability to serve its customers and compete against a post-merger UP-NS depends heavily on CPKC's continuing ability to effectively use UP and NS assets. CPKC's access over UP lines between Beaumont and Robstown, TX connects CPKC's Midwest and Southeast U.S. operations to Mexico, while CPKC's access over NS's Chicago-Detroit route is essential to connect CPKC's Midwest operations to CPKC's eastern Canada operations. CPKC's ability to compete with a merged UP-NS would depend heavily on CPKC's use of the merged entity's track in these areas.

8. As shown in Figure 1 below, a post-merger UP would control critical portions of CPKC's U.S. network. CPKC's U.S. operations depend on approximately 350 miles of trackage rights on UP and HBT between Robstown and Beaumont;[1] 41.28 miles of trackage rights on UP north of Kansas City; 260.8 miles of trackage rights on NS between Chicago and Detroit; and 10.24 miles of trackage rights on UP north of Chicago. At all of these strategic lines and points, UP will control dispatching, operating rules, and investment in new capacity.

---

[1] Because of the so-called "clear route" condition imposed by the STB as a result of the UP/SP 1997-1998 service crisis and UP's alternation between use of the Cuero Subdivision and the Victoria Industrial Lead for movement of CPKC trains, the exact length of UP track used by CPKC trains varies from time-to-time.

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



9. In addition to trackage rights, CPKC has numerous other dependencies on UP and NS that are critical to CPKC's continued competitive capacity (which are also shown in Figure 1):

- Dependency on UP for haulage rights over a network of UP track known as the "North End," which connects Omaha/Council Bluffs, NE/IA; Lincoln, NE; and Atchison and Topeka, KS to CPKC at Kansas City. CPKC utilizes this haulage for moving grain and other agricultural

products, as well as for non-agricultural commodities such as chemicals, steel, and flour;[2]

- Dependency on UP for "South End" haulage rights to handle from Beaumont to Houston or Galveston grain traffic originating at points north and east of Kansas City and received by CPKC at Kansas City for delivery to Houston or Galveston;[3]
- Dependency on UP dispatching of the Techny Line connecting CPKC's Bensenville Yard and the Bryn Mawr Cutoff with Tower A20 on CPKC's principal route between Chicago and the Twin Cities; and
- Dependency on UP dispatching of the joint UP-CPKC line and paired tracks between Godfrey and East St. Louis, IL.

10. Further, there are over 80 locations along the CPKC network where our trackage and operations come in contact with UP or NS trackage and operations, such as crossing diamonds, interlockers, jointly-owned or jointly-used track, and the like. At virtually all of these points, a merged UP-NS has the potential to interfere with CPKC's operations. A recent incident

---

[2] The North End haulage agreement arises from a competition-preserving condition imposed by the ICC on the UP/MKT merger in the 1980s. *See Union Pacific – Control – Missouri-Kansas-Texas R.R.* ("*UP/MKT*"), Finance Docket No. 30800, (Sub-No. 22) (STB served July 7, 2025), at 2 (discussing this history). The agreement provides CPKC with the option to convert from haulage to trackage rights to be less dependent on UP. *See* Term Sheet for UP/KCS Haulage/Joint Rate Agreement with Trackage Rights Option (December 2, 1989), § XV. However, such a conversion is not feasible because the cost to run whole trains to serve small volume customers such as chemicals and steel is prohibitive. Converting to trackage rights would leave CPKC only with unit train business while non-agriculture product customers that we serve would lose out on the competition CPKC currently provides. Thus, CPKC remains dependent on UP haulage on UP North End to serve UP North End customers.

[3] The South End haulage rights derive from the same competition-preserving agreement as the North End haulage rights discussed above. *See UP/MKT*, Finance Docket No. 30800, (Sub-No. 22) (STB served July 7, 2025), at 2.

in Clinton, IA and UP's refusal to adhere to interchange agreements at Westlake/West Lake Charles, LA, both discussed below, are indicative of the types of interference that UP, intentionally or sloppily, regularly foists upon CPKC.

11. Additionally, a number of paper barrier restrictions constrain CPKC's ability to compete with UP. Particularly when layered on top of CPKC's physical dependence on UP and NS infrastructure, these restrictions show the many ways in which UP-NS would inhibit CPKC's competitive reach. For example:

- Subject to the exception for traffic originating or terminating at shipper facilities on the Rosenberg Line Sale Portion, traffic handled through CPKC's existing rights on UP track between Beaumont and Robstown must have a prior or subsequent haul over CPKC's lines between Laredo and Corpus Christi. This limits CPKC's ability to compete for traffic in Houston and other Gulf Coast locations.[4]
- Contractual restrictions imposed by UP limit CPKC's use of the joint trackage for specified traffic to, from, or via CPKC's Rosenberg Subdivision, including by restricting local service, pickups and setouts, interchange, and service to

[4] *See* Memorandum of Understanding among Union Pacific R.R., The Texas Mexican Ry., & The Kansas City Southern Ry. (Nov. 16, 1999) ("Rosenberg/Wharton Line Sale MOU"), §§ I.1(c), I.3; *see also* Rosenberg Line Trackage Rights Agreement (Mar. 12, 2001, as supplemented in 2009 & 2011 & amended in March 2021), § 2(b); Terms for Texas Mexican Ry. Trackage Rights (Dec. 12, 1996, as amended Mar. 12, 2001, supplemented Nov. 16, 2007, & assigned to KCS effective Jan. 1, 2006) ("MP/SP-Tex Mex Terms"), § 2(b); Terms for Texas Mexican Ry. Trackage Rights (Jan. 1997, as assigned to KCS effective Jan. 1, 2006) ("HBT-Tex Mex Terms"), § 2(b); Houston to Beaumont, Texas Trackage Rights Agreement (June 16, 1997, as assigned to KCS effective Jan. 1, 2006) ("SP-Tex Mex Houston-Beaumont Trackage Rights Agreement").

transloads and shipper facilities on CPKC's Rosenberg Subdivision or shippers reached via build-ins/build-outs there.[5]

- NS's Michigan Trackage Rights Agreement ("MTRA") bars CPKC from interchanging any traffic on or at [redacted] and prohibits CPKC from handling automotive traffic to or from [redacted][6]
- The Meridian Speedway, LLC ("MSLLC") agreements give NS [redacted] to handle U.S. intercontinental intermodal traffic (*i.e.*, between points in the United States west of Dallas/Fort Worth and points east of Meridian). CPKC cannot solicit that traffic or participate in it, except as MSLLC's contractor providing haulage service to NS.[7]
- Geographic restrictions on CPKC's rights to serve customers at Roseport in the Rosemount, MN area limit loaded traffic involving [redacted]

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[5] *See* Rosenberg/Wharton Line Sale MOU § I.3; *see also* Rosenberg Line Trackage Rights Agreement § 2(b); Amendment to Terms for Texas Mexican Ry. Trackage Rights (Mar. 12, 2001), § 1 (amending § 2(b) of MP/SP-Tex Mex Terms); MP/SP-Tex Mex Terms, § 2(a); *see also* SP-Tex Mex Houston-Beaumont Trackage Rights Agreement, § 2(a).

[6] Michigan Trackage Rights Agreement (June 2, 2005, as amended) ("MTRA"), §§ 3(d), 3(i), 5(b).

[7] *See* NSR-Meridian Speedway LLC Joint Use Agreement (May 1, 2006, as amended) ("NSR JUA"), §§ 1(b), 2(b), 4(a), (b); *see also* KCSR-Meridian Speedway LLC Joint Use Agreement (May 1, 2006, as amended) ("KCSR JUA"), §§ 1(b), 4(a), (c).

[redacted] while preserving expressly permitted geographic flows.[8] Separately, local-service restrictions at Fairmont prevent CPKC from serving UP sole-served customers, [redacted] which are closed on UP track that CPKC traverses.[9]

As explained below in Section V.B., these restrictions already operate to limit CPKC's competitive capacity, and a merger between UP and NS would greatly exacerbate the adverse impacts of those limitations.

III. UP'S EXERCISE OF CONTROL OVER SHARED LINES AND FACILITIES LIMITS THE EFFECTIVENESS OF CPKC'S COMPETITION USING THOSE RIGHTS

12. The Board should consider CPKC's first-hand experience competing with UP while depending on UP-controlled lines and facilities. The examples below show a recurring pattern: UP exercises its control over operating rules, dispatching, maintenance, and capacity investment in ways that limit CPKC's ability to use its operating rights effectively. These practices affect UP lines over which CPKC holds trackage or haulage rights, as well as UP-CPKC joint lines and locations where the railroads' networks intersect. UP has repeatedly declined or delayed performance of its contractual obligations and regulatory conditions that were intended to constrain UP's control. The resulting restrictions, delays, and additional costs that UP has imposed on CPKC have impaired the competition those rights were intended to preserve.

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[8] *See* Verified Statement of John Brooks ¶¶ 232-34 ("Brooks V.S."); *see also* Roseport Trackage Agreement (Apr. 17, 1968), § 13.

[9] Chicago & Nw. Transp. Co. & Chicago, Milwaukee, St. Paul & Pacific R.R. Agreement (Apr. 1, 1974), § 5.1(a)-(b).

13. The consequences of UP's decisions often fall disproportionately on CPKC because certain shared lines are more important to CPKC's network than to UP's. UP's Brownsville Subdivision (between Robstown and Bloomington, TX), for example, is an essential part of CPKC's premium-service route to Mexico, whereas it is a less important line (without premium services) in UP's network; UP has alternative routes to/from Mexico via San Antonio and Eagle Pass, among others. UP therefore can restrict operations or defer improvements on the Brownsville Subdivision without bearing the same adverse operational consequences as CPKC. In my view, that asymmetry gives UP an incentive and ability to use its control to place CPKC at a competitive disadvantage. At a minimum, improvements needed to support CPKC's service and growth are ranked by UP below projects serving UP's own priorities elsewhere on its network. In either case, CPKC cannot obtain the full benefit of its rights when necessary operating decisions or investments remain subject to UP's willingness to act.

14. The proposed merger would increase both the scope of UP's control and its incentive to exercise that control to CPKC's disadvantage. UP would acquire NS lines and facilities on which CPKC depends, including the Chicago-Detroit route, and would control additional points of contact with CPKC's network described in Section II. At the same time, the combined carrier would have a broader set of commercial interests that compete with CPKC (such as a longer-haul and greater profit potential from using its leverage to win traffic opportunities between Mexico and points in the Southeast reached via the NS network). As a result, the merged carrier would have a greater incentive to use its control to inhibit CPKC's competing services to drive more traffic to its own network. The merger would thus expose more of the infrastructure CPKC needs to compete to UP's obstructionist practices described in this Section, while creating additional reasons for UP to give that infrastructure lower priority.

15. The following examples illustrate these concerns and the practical limits of relying on contractual and regulatory protections alone. Even when CPKC ultimately succeeds in enforcing a right, the intervening loss of service, added expense, and delay in improvements can impair its ability to compete for traffic and serve customers.

A. Deny and Delay—UP's Exploitation of Its Contractual and Operational Leverage over KCS and CPKC with Respect to Robstown-Beaumont Trackage Rights

16. As a condition of the merger of UP and Southern Pacific ("SP") in 1996, the Board granted The Texas Mexican Railway Company ("Tex Mex") trackage rights between Beaumont and Robstown over track of UP (including its subsidiary Missouri Pacific Railroad Company ("MP")),[10] SP, and the Houston Belt & Terminal Railway Company ("HBT") to provide Tex Mex with a connection to The Kansas City Southern Railway Company ("KCSR") at Beaumont to enable a competitive alternative to the merged UP-SP. Initially, Tex Mex's right to operate between Houston and Robstown was set forth in an agreement granting Tex Mex access over certain MP and SP lines between Houston and Robstown via Rosenberg, Flatonia, and Victoria. That agreement was presented to the Board for the resolution of certain disputed issues and was approved and imposed on UP by the Board as modified.[11] In 2006, following KCSR's acquisition of control of Tex Mex, Tex Mex assigned its trackage rights over UP for operation between Beaumont and Robstown to KCSR.[12]

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[10] MP was, at the time immediately prior to the UP-SP merger, a wholly owned subsidiary of Union Pacific Corporation.

[11] *See Union Pac. – Control & Merger – S. Pac.*, 1 S.T.B. 591, 594, 622 (1996).

[12] *See Kan. City Southern, The Kan. City Southern Ry., & The Texas Mexican Ry. – Exemption for Transactions Within a Corporate Family*, Finance Docket No. 34849, (STB served Apr. 17, 2006) at 1.

17. In 1999, Tex Mex reached agreement with UP to acquire 84.5 miles of the former SP Wharton Branch between Rosenberg and Victoria, TX (referred to as the "Rosenberg Line Sale Portion" in the MOU agreement), along with trackage rights over short segments that UP retained at either end of this line that connected the new trackage with Tex Mex's preexisting rights over UP between Houston and Robstown (specifically 2.5 miles on the north end at Rosenberg and 3.8 miles at the south end at Victoria).[13] At the same time, UP and Tex Mex agreed to certain modifications to the UP-Tex Mex trackage rights agreements to allow Tex Mex to use those rights to handle traffic to and from shippers on the Rosenberg Line Sale Portion. The Board approved the transaction in December 2000.[14] In 2005, Tex Mex became a wholly owned subsidiary of KCSR. In 2008 and 2009, despite the advent of the Great Recession, KCSR rebuilt the Rosenberg-Victoria line at a cost of approximately $173.5 million and put it back in service. The Wharton Line is now known as CPKC's Rosenberg Subdivision. Figure 2 below illustrates CPKC's rights between Robstown and Beaumont.

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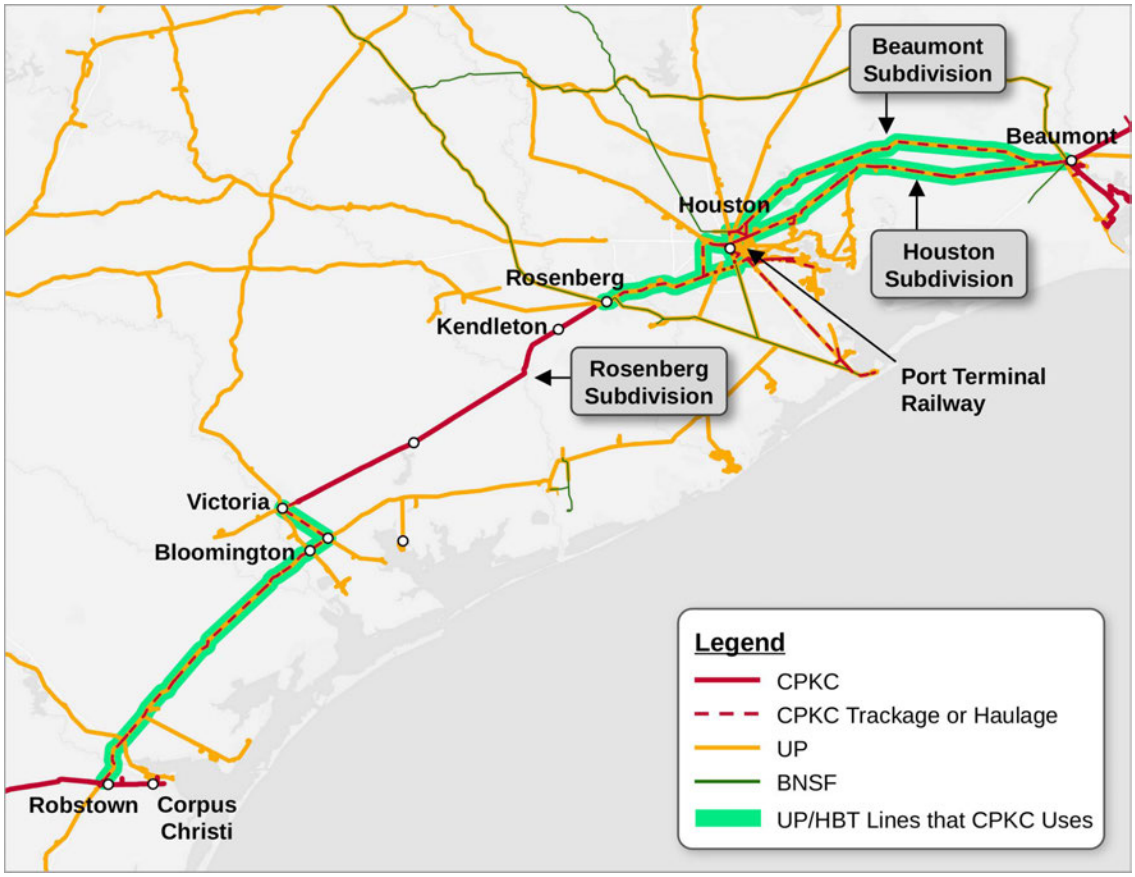
[13] *See* Rosenberg/Wharton Line Sale MOU, § I.3; *see also* MP/SP-Tex Mex Terms, § 2(b); Rosenberg Line Trackage Rights Agreement, § 2(b).

[14] *See Tex. Mexican Ry. – Purchase Exemption – Union Pac. R.R.*, 5 S.T.B. 379, 385-88 (2000).

FIGURE 2
CPKC RIGHTS BETWEEN ROBSTOWN AND BEAUMONT



18. Through its trackage rights on the UP-owned 3.8 miles of track at the south end of CPKC's Rosenberg Subdivision, CPKC connects to UP's Cuero Subdivision in Victoria. From there, CPKC's trackage rights extend south to where the Cuero Subdivision intersects the south end of UP's Angleton Subdivision at Placedo, a short distance east of where the Angleton Subdivision connects to the Brownsville Subdivision near Bloomington, TX.

19. As previously noted, CPKC's rights over the UP Brownsville Subdivision between Robstown and Bloomington are an essential component of CPKC's main-line service route to the U.S.-Mexico border. For UP, however, the route is of secondary importance; UP's premium service routes to/from Mexico run through San Antonio and UP's lines between there

and the Eagle Pass and Laredo gateways. CPKC's trains on the Brownsville Subdivision outnumber UP and BNSF trains combined. And CPKC operates premium intermodal service on this trackage rights route, whereas UP does not. Accordingly, while some of UP's own trains might be affected by limiting operational fluidity on the Brownsville Subdivision, the operational consequences fall more heavily on CPKC. This asymmetry reduces UP's incentive to undertake or prioritize investments that CPKC needs to maintain and expand service on the shared route. As CPKC leadership has elsewhere explained, "[a]cross the parts of CPKC's network where it shares facilities with Union Pacific, UP has used its control of capacity investments to hold up work needed to support CPKC's traffic growth, while UP took advantage of other routes bypassing the track used by CPKC."[15]

1. UP's Resistance to Network Fluidity Measures and Capacity Expansion Projects That Would Benefit CPKC

20. The parties' 1996 trackage rights agreement covering the Brownsville Subdivision, imposed in the UP-SP merger to preserve competition, requires UP to maintain the track standard and physical capacity of the shared trackage *and* to make necessary infrastructure improvements "to accommodate [UP's, BNSF's and CPKC's] traffic while maintaining at existing service standards (including transit times)."[16] Further, the rate per gross ton-mile ("GTM") that CPKC pays under the agreement covers capital projects "to the extent required by the first sentence of Section 2.2" of those General Conditions.[17]

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[15] James Clements, *Commentary: It's About More Than Counting Votes*, CPKC (July 15, 2026) https://www.cpkcr.com/en/media/Rail-Consolidation-Updates/RailwayAge-Article.

[16] MP/SP-Tex Mex Terms, Ex. B, General Conditions, § 2.2.

[17] MP/SP-Tex Mex Terms § 3(a), Ex. B, General Conditions, § 1.3.

21. UP has continually ignored these contractual responsibilities to accommodate CPKC's traffic while maintaining service standards and transit times.[18] Instead, UP required KCSR to enter into "settlement agreements" under which KCSR had to pay amounts above and beyond the GTM rate for capital projects that, by contract, should have been covered by the GTM rate.[19] As a consequence, KCSR paid tens of millions of dollars to improve UP's Brownsville Subdivision in order to continue to grow and compete with UP.

22. Faced with the choice of entering into "settlement agreements" or pursuing arbitration or regulatory proceedings that could take years, KCSR repeatedly proposed capacity-expansion projects for which it would fund its usage-based portion and, to the extent possible, perform the required work.

23. UP generally responded that a suggested project would have to wait for design and then for the work to be scheduled, creating further delays.[20] Further, [redacted]

24. These delays illustrate how UP's control over the timing of capacity improvements can constrain CPKC's growth even when CPKC is willing to contribute funding

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[18] UP's evasion of these contractual responsibilities is described in additional detail in the Reply Verified Statement of Stephen Simmons that was submitted by CPKC in the Board proceeding regarding the CP/KCS transaction. *See Canadian Pacific Ry .– Control – Kansas City Southern* ("*CP/KCS*"), Applicants' Response to Comments & Requests for Conditions, Opposition to Responsive Applications, & Rebuttal in Support of the Application, Vol. 2, Reply Verified Statement of Steve Simmons, Finance Docket No. 36500 (filed July 13, 2022) at 9-22.

[19] *See* Settlement Agreement Regarding Payment for Projects on the Brownsville/Angleton Subs Between Union Pacific R.R. & The Kansas City Southern Ry. (Nov. 6, 2012); *see also* KCSR/UP Settlement Agreement (Apr. 2015); KCSR/UP Modification of Apr. 2015 Settlement Agreement (executed June 14, 2017 by KCS, June 9, 2017 by UP).

[20] *See, e.g.*, Letter Agreement from Greg Walling to Cameron Scott (Nov. 1, 2012); Settlement Agreement Regarding Payment for Projects on the Brownsville/Angleton Subdivisions Between Union Pacific R.R. & The Kansas City Southern Ry. (Nov. 6, 2012).

and perform the work. Given the extensive capital projects UP will need to undertake across its new transcontinental network if its merger with NS is approved, I expect projects needed for CPKC's competitive service to face further delays as they compete with the combined carrier's investment priorities.

2. UP's Failure to Remedy Longstanding Slow Orders Between Victoria and Robstown

25. CPKC's trackage rights agreement states explicitly that UP would "keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Terms."[21] Nevertheless, UP has maintained a number of longstanding slow orders on the Brownsville Subdivision—including two slow orders that first went into effect in 2011 and another two that began in 2020—that have resulted in track speeds degrading to speeds that are below the agreed upon standard:

TABLE 1:
BROWNSVILLE SUBDIVISION SLOW ORDERS AND TIMETABLE SPEED STANDARDS

Brownsville Subdivision Milepost	Current Speed Restriction	UP's 1996 Timetable Speed Restrictions	Track Speed Required	Loss in Velocity	Year Slow Order First Went Into Effect
219.3 - 219.0	30 MPH	No Speed Restrictions	50 MPH	-20 MPH	2011
216.1 - 216.0	25 MPH	35 MPH Speed Restrictions	35 MPH	-10 MPH	2020
154.5 - 154.4	25 MPH	No Speed Restrictions	49 MPH	-24 MPH	2011
152.6 - 142.2	40 MPH	No Speed Restrictions	49 MPH	-9 MPH	2020

26. [redacted]

[21] *See* Rosenberg Line Trackage Rights Agreement, Ex. B., General Conditions § 2.2; *see also* MP/SP-Tex Mex Terms, Ex. B, General Conditions, § 2.2.

[redacted]

Under that interpretation, improvements on portions of the route important to UP could offset deterioration on portions more important to CPKC, *i.e.*, the Brownsville Subdivision, leaving CPKC without the benefit of the agreed track standard on those segments. As explained above, all CPKC trains to and from Mexico must flow over the Brownsville Subdivision, while UP has alternative routes to Mexico through San Antonio and other gateways. Additionally, CPKC's trains on the Brownsville Subdivision significantly outnumber UP and BNSF trains combined. Thus, slow orders on the Brownsville Subdivision impact both a higher absolute number and a higher proportion of CPKC trains than UP trains.

27. These slow orders require CPKC trains to decelerate to the applicable reduced speed and then accelerate back to normal track speed. By sprinkling slow orders across the Brownsville Subdivision, UP's control of track maintenance effectively slows passage across the entire subdivision. Even assuming optimal conditions to minimize these delays, CPKC's service design group calculates the minimum delay from each of these slow orders is ten minutes per train, which adds up across repeated slow orders.[24] And, as explained, the burden of these delays caused by UP's track maintenance practices impacts CPKC more than it does UP.

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22 Letter from Mark Redd to Eric Gehringer (June 23, 2026) (attached hereto as Exhibit 1).

23 Letter from Derek Hinds to Steve Simmons (Aug. 28, 2026) (attached hereto as Exhibit 2).

24 Gameiro Workpaper – Brownsville Subdivision Slow Order Delays.

28. Similarly, CPKC paid to install a higher-speed turnout from the Cuero Subdivision to the Angleton Subdivision, just east of Bloomington.[25] The turnout was built to handle trains traversing it at twenty miles per hour. UP, however, never increased the timetable speed above the previous ten miles per hour to match the capability of the new turnout. While UP trains are also limited to ten miles per hour traversing the turnout, UP trains often slow to do work in nearby Bloomington Yard while CPKC trains do not. Further, as previously noted, CPKC operates more trains on the Brownsville Subdivision than UP does. Therefore, UP's refusal to raise the timetable speed over the turnout adversely impacts CPKC more than UP. This refusal also ensures that CPKC has paid to improve UP's track, while getting no benefit from doing so.

3. UP's Use of Operating Restrictions on the Brownsville Subdivision to Obtain Concessions from CPKC

29. UP has also used its control over operating rules on the Brownsville Subdivision to restrict CPKC's operations in pursuit of concessions elsewhere. In 2023, UP arbitrarily imposed an 8,000-foot maximum train length limit on CPKC's use of UP's Brownsville Subdivision. This limitation was not necessitated by infrastructure conditions because, as a result of KCS investments on the line, most sidings on the subdivision exceeded 10,000 feet.

30. Indeed, KCS invested many tens of millions of dollars into the Brownsville Subdivision (and the adjoining Cuero Subdivision) on the express understanding with UP that those improvements would increase capacity and fluidity for both carriers. Table 2 below provides a synopsis of the new sidings and siding extensions that were added between 2011 and

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[25] Supplement to the Rosenberg Line Trackage Rights Agreement (Apr. 29, 2009), ¶ 2.

2019 to support fluid operations on the Brownsville Subdivision between Bloomington and Robstown.

TABLE 2
SIDINGS SUPPORTING OPERATION OF LONG TRAINS ON PORTION OF BROWNSVILLE SUBDIVISION USED BY CPKC

LOCATION	STATE IN 2011	CURRENT STATE
Benavides Siding (at Placedo, TX)	Did Not Exist	10,400 ft. siding
Inari Siding	7,667 ft. siding	10,420 ft. siding
Greta Siding	7,270 ft. siding	14,040 ft. siding
Woodsboro Siding	9,300 ft. siding	9,590 ft. siding
Cranell Siding	Did Not Exist	10,400 ft. siding
Sinton Siding/Running Track	14,004 ft. siding	13,630 ft. siding, plus running track bypassing yard

31. In all, KCS invested $50 million or more to add or lengthen three out of the five sidings on this portion of the Brownsville Subdivision, build a long run-around track at Sinton, and add the new siding at Placedo on the Cuero Subdivision (the Benavides Siding) to stage trains heading south onto the Brownsville Subdivision. All of this work was reviewed and approved by UP, and all of it presupposes that trains well in excess of 8,500 feet – in fact, up to 14,000 feet – would be permitted to operate on that trackage.

32. The nature of the capacity additions that were agreed upon with UP and funded by KCS shows that both railroads understood that trains well in excess of 8,500-feet (indeed, up to 10,000 feet or more) would be allowed to operate on the Brownsville Subdivision. The investments in sidings and siding extensions of well-above 8,500-feet – costing tens of millions of dollars in the aggregate – made sense only because it was the aim of both KCSR and UP to support the operation of trains of 10,000 or more feet in length on this route. The incremental

expenditures needed to take these sidings beyond 8,500 feet would not have made sense were train lengths in this territory capped at 8,500 feet.

33. The events that culminated in UP's retaliatory action began in May 2023, when CPKC advised its MSLLC joint venture partner, NS, that it was reinstating an 8,500-foot limit for all trains on the Meridian Speedway effective in June 2023. CPKC made this decision because the siding lengths on the Meridian Speedway—which were built for 8,500-foot trains[26]—could not handle 11,000-foot trains without those non-fitting trains interfering significantly with other trains operating on the line.[27] This issue had been a topic of discussion with NS at least since 2020.[28] NS chose not to pursue extending the sidings as allowed by the terms of the MSLLC agreements.[29] Instead, [redacted]

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[26] *See* NSR-Meridian Speedway LLC Joint Use Agreement (May 1, 2006, as amended) ("NSR JUA"), § 6(b)(v) [redacted]

[27] [redacted]

Email from Raymond Elphick to Rick Lichtas (Oct. 24, 2023) (attached hereto as Exhibit 3).

[28] *See* Email from Steve Simmons to Jeffrey Songer (Nov. 6, 2020) (attached hereto as Exhibit 4).

[29] *See* Limited Liability Company Agreement of Meridian Speedway, LLC (May 1, 2006), § 5.12.

[redacted][30] Because CPKC viewed the longer sidings as being for NS's sole benefit, CPKC did not agree to NS's proposal.

34. In October 2023, UP informed CPKC that it was imposing an 8,000-foot maximum train length limit on CPKC's use of UP's Brownsville Subdivision despite the fact that, as explained above, the Brownsville Subdivision is designed for trains above 10,000 feet. The restriction on the Brownsville Subdivision had an immediate operational and competitive impact on CPKC and its customers by forcing CPKC to remove cars from many of its trains going to and from Mexico.[31] Rather than pursue a lengthy legal challenge to the restriction, CPKC agreed to allow a single 11,000-foot eastbound UP-NS haulage train on MSLLC in exchange for UP lifting the Brownsville Subdivision train-length limit and UP's commitment to cooperate on certain commercial matters.

35. One of those commercial matters was UP's agreement to sell to CPKC a sliver of land near Blue Valley, MO, which was needed to support CPKC's plan to double-track a portion of its mainline south of Kansas City to improve fluidity of traffic flows through Kansas City, an area that the UP-NS merger now threatens with additional congestion. However, after getting the Meridian Speedway concession, UP reneged on its promise to sell CPKC the Blue Valley real estate parcel that was needed for the improvement. As a result, CPKC reverted to the 8,500-foot limitation on UP-NS haulage trains on MSLLC.[32]

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[30] *See* Proposed Memorandum of Understanding Long Train Corridor Development Between Shreveport, LA & Atlanta, GA (June 30, 2021).

[31] The MSLLC dispute is described in further detail in a letter CPKC submitted to the Board on November 13, 2025. *See CP/KCS*, CPKC Reply to UP & NS Correspondence Regarding Meridian Speedway (CPKC-48), Finance Docket No. 36500 (Sub-No. 6) (filed Nov. 13, 2025).

[32] *See* Letter from Mike Foran to Carl Garrison (Aug. 21, 2025) (attached hereto as Exhibit 5).

36. This episode illustrates how UP uses control over a route that is essential to CPKC—and over which CPKC has binding operating rights—in order to obtain concessions elsewhere to which UP is not entitled. Indeed, it is worth emphasizing that, whereas CPKC has trackage rights over the Brownsville Subdivision, UP has no ownership or right to use the Meridian Speedway. The trains that UP interchanges for movement by CPKC are NS haulage trains. And NS, not UP, has the right to upgrade Meridian Speedway infrastructure if it chooses to do so in order to handle the longer UP trains without disruption to other traffic.

37. Therefore, by imposing an 8,000-foot maximum train length limit, UP forced CPKC to choose between operational disruption or capitulation to UP's demands for concessions, despite the fact that CPKC holds trackage rights over the Brownsville Subdivision that were granted by the Board to preserve competition. A merger that places additional CPKC routes under UP's control would create more opportunities for this sort of hold-up.

4. UP's Dispatching Practices at Points Where CPKC Exercises Operating Rights

38. In the areas of UP's network where CPKC is dependent on UP's dispatching, UP dispatchers consistently establish an extensive umbrella of protection around upcoming movements of UP trains, holding all potentially conflicting movements in favor of their trains.

39. Other long-standing operational issues on the Robstown-Beaumont corridor illustrate UP's willingness to use its dispatching control to disadvantage its competitors. At times, UP has not had sufficient crews for its trains using the joint trackage, yet UP's Joint Director at the Spring Center has nonetheless prioritized moving UP trains, resulting in holding CPKC trains that were crewed and ready while UP's trains advanced. At other times, UP has

made unilateral decisions to extend work events, thus preventing CPKC trains from entering the joint trackage at Beaumont (and elsewhere) for an unreasonably lengthy period.

40. Similarly, UP delays higher-priority CPKC trains by favoring its local trains at both Bloomington and Robstown. UP held southbound CPKC trains on CPKC's Rosenberg Subdivision while a UP local is working in or around Bloomington. UP also holds northbound CPKC trains on CPKC's line at Robstown while UP's local works at Odem and Sinton. In these situations, UP typically asserts that CPKC is not being disadvantaged because the CPKC trains have not yet entered the joint track, even though those trains have a higher dispatching priority than UP's local trains.

B. UP's Refusal to Honor CPKC's ICC-Imposed South End Haulage Rights

41. In a dispute that required Board resolution,[33] UP refused to honor CPKC's South End haulage rights, which were imposed by the Interstate Commerce Commission to address competitive harms arising from UP's merger with Missouri-Kansas-Texas Railroad ("MKT") in the late 1980s.

42. After the CP/KCS transaction, UP took the position that KCS—as a CPKC subsidiary—could no longer use its longstanding South End haulage rights between Beaumont and Houston/Galveston to move grain traffic originated on the CP network north of Kansas City.[34] CPKC brought the dispute before the Board in 2023, and, in 2025, the Board rejected UP's position and enforced the UP/MKT merger condition imposed in 1988. Although UP's

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[33] *See UP/MKT*, Finance Docket No. 30800 (Sub-No. 22), (STB served July 7, 2025), at 6.

[34] *See UP/MKT* (Sub-No. 22), KCSR Petition to Enforce Condition (filed Aug. 1, 2023) (detailing UP's refusal to honor south end haulage rights and attaching exhibits demonstrating said refusal).

effort to evade its obligations under this merger condition failed before the Board, CPKC was prevented from competing for grain traffic during the 2023 and 2024 harvest seasons.

43. This episode shows UP's ability and willingness to undermine the efficacy of protections imposed by the Board or its predecessor by disputing their scope and forcing CPKC to seek enforcement.

C. UP's Refusal to Allow CPKC's Continued Use of the Incline Track in Kansas City to Interchange with BNSF

44. For approximately 100 years, CPKC and its predecessors[35] used the North End Freight Line of the Kansas City Terminal Railway Company ("KCT") to interchange traffic efficiently in, and operate through, the Kansas City Terminal. In more recent times, this has included interchange between CPKC's Knoche Yard on the east side of the terminal and BNSF's Argentine Yard on the west side. After leasing the North End Freight Line from KCT in connection with UP's merger with MP, UP reconfigured the North End Freight Line to remove a portion of track while connecting the North End Freight Line to the UP-owned Incline Track, which CPKC and BNSF began to use for interchange. However, in early 2024, UP denied CPKC and BNSF the right to use the Incline Track, thereby depriving UP's competitors of their historic and efficient interchange connection in Kansas City.

45. More specifically, KCT's North End Freight Line had previously connected directly to BNSF's rail line. The historic route for this interchange is shown in Figure 3 below.

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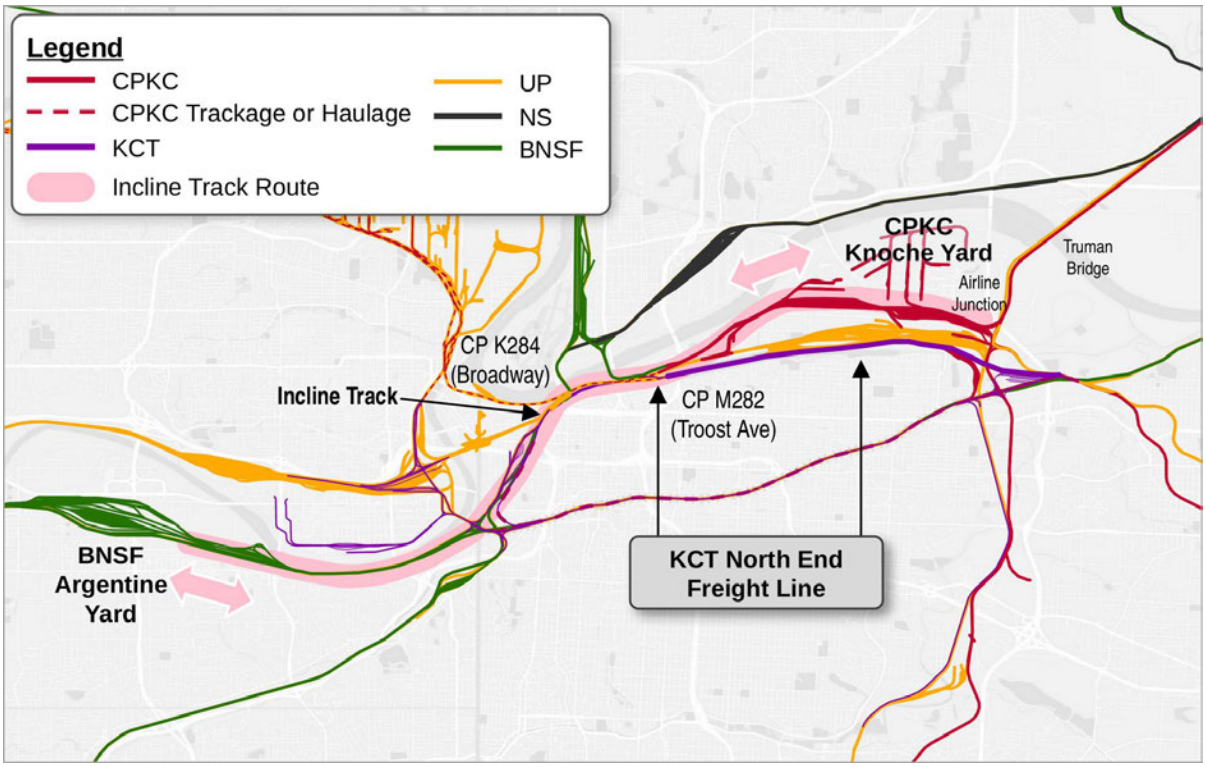
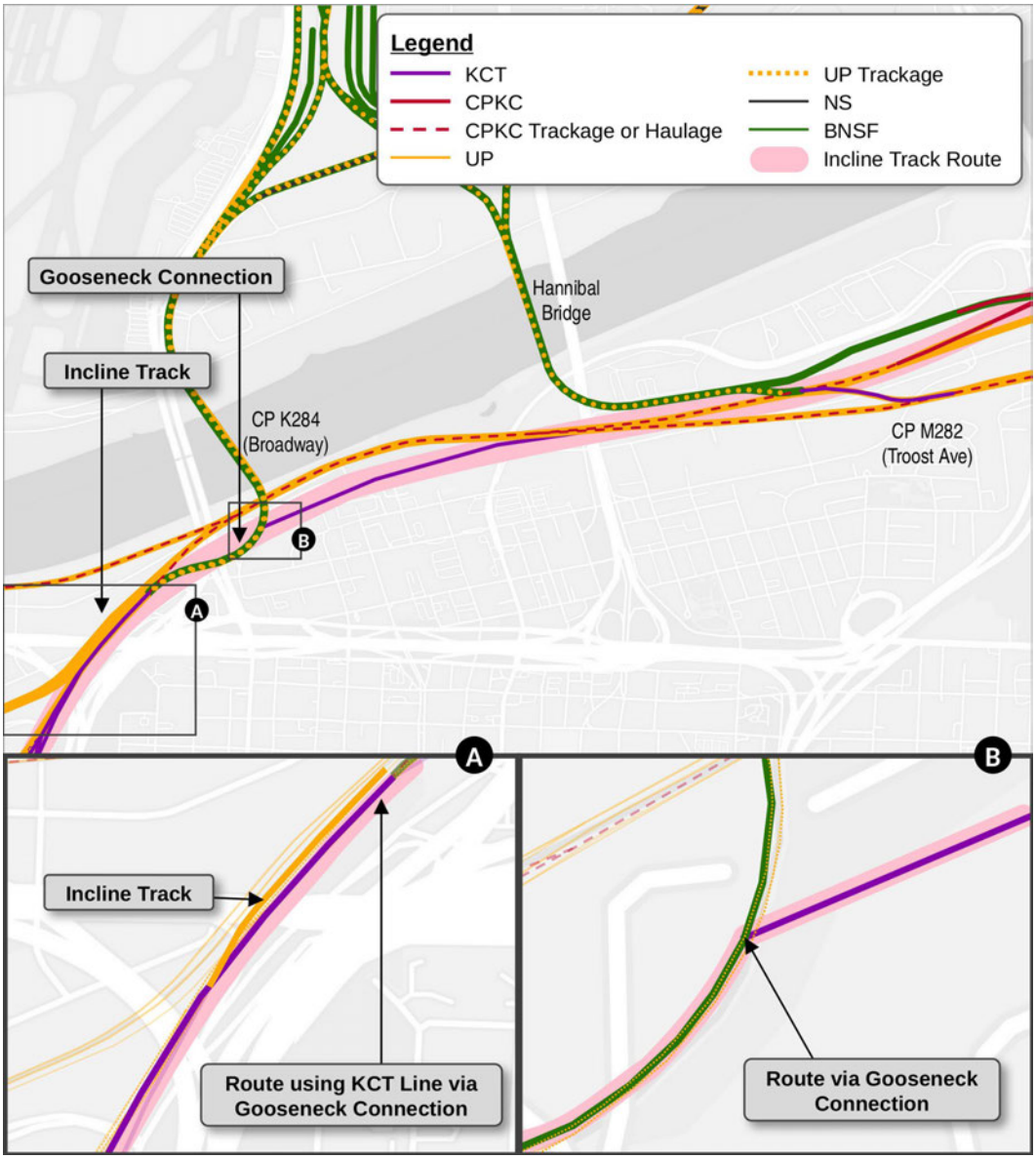
[35] For ease of reference, CPKC, UP and BNSF are also used herein to refer to their respective predecessors.

FIGURE 3
NORTH END FREIGHT LINE ROUTE BETWEEN
CPKC'S KNOCHE YARD AND BNSF'S ARGENTINE YARD



46. The Gooseneck connection—a portion of the North End Freight Line that was previously used by CPKC to interchange with BNSF—is shown in Figure 4 below.

FIGURE 4
GOOSENECK CONNECTION



47. In the early 1980s, UP and MP sought merger approval from the Board's predecessor. In their merger application, UP and MP described their plans to reconfigure the North End Freight Line and represented that KCT owners would share use of the improved line. In connection with the UP/MP merger, MP entered into a 1984 lease agreement with the KCT

under which UP leases and controls the North End Freight Line (the "1984 Lease").[36] The 1984 Lease also contemplated that UP would reconfigure the North End Freight Line to eliminate redundant KCT trackage and shift all traffic to UP's remaining tracks and connections. Thus, the 1984 Lease provided that the remaining UP trackage and connections would be substituted for the leased KCT property, *i.e.*, the trackage would become part of the leased North End Freight Line. A core condition of the lease is that KCT owners—including CPKC—continue to have the right to use the North End Freight Line. The 1984 Lease thus committed UP to enter into trackage rights agreements to effect those rights. CPKC is party to such a trackage rights agreement (the "1984 Trackage Rights Agreement").[37]

48. As part of the reconfiguration of the North End Freight Line, UP removed the old KCT trackage that connected to the BNSF line, referred to as the Gooseneck connection, as shown in Figure 5 below. This reconfiguration left a short segment of UP's track known as the Incline Track as the sole remaining connection between the North End and BNSF's line, as shown in Figure 5 below.

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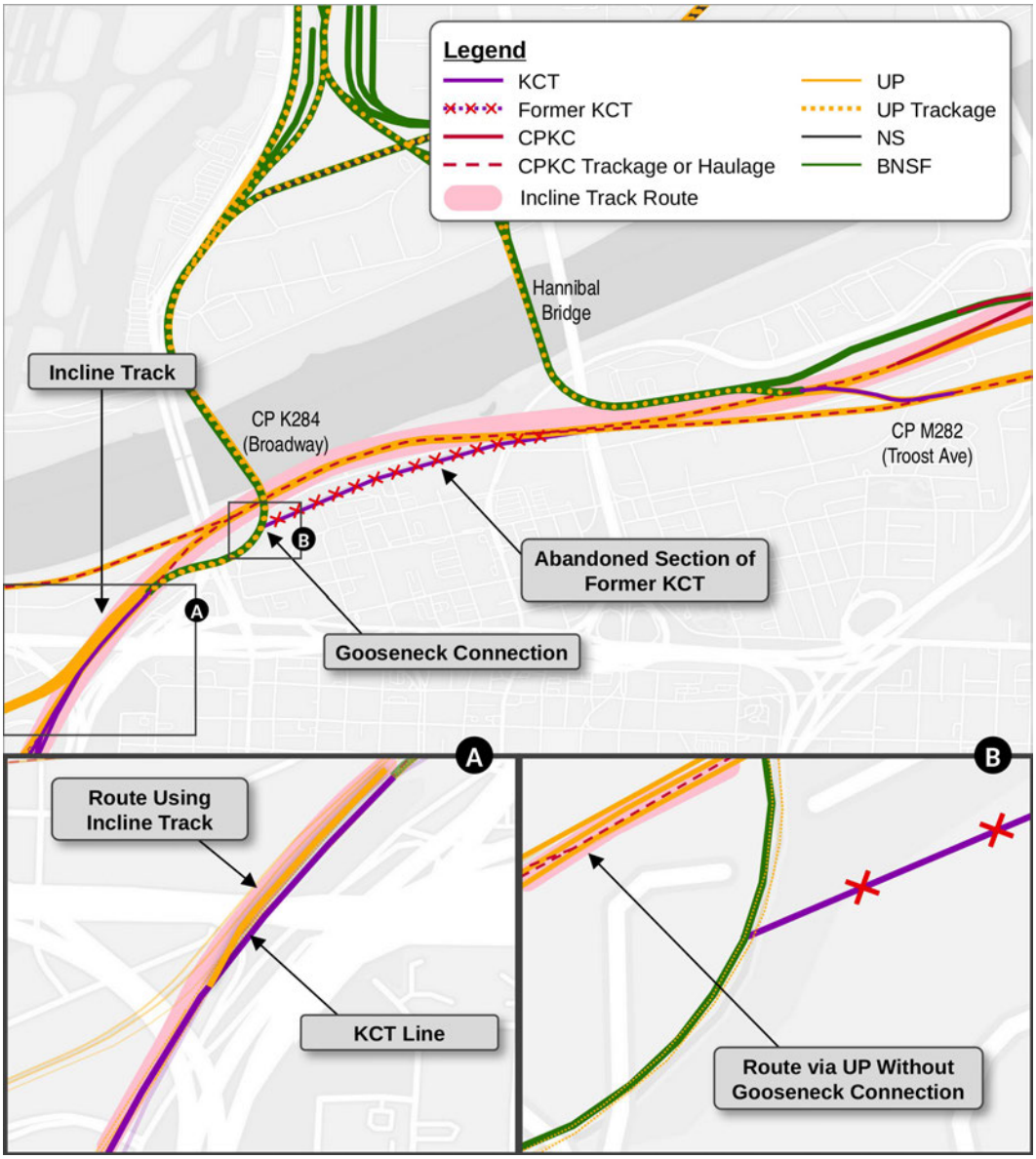
[36] KCT-MP Lease Agreement (June 26, 1984).

[37] Incline Track Trackage Rights Agreement (June 26, 1984).

FIGURE 5
REMOVAL OF GOOSENECK CONNECTION



49. At the time of the removal, CPKC was already operating over the Incline Track pursuant to a 1981 trackage rights agreement (the "1981 Supplemental Agreement"),[38] and CPKC continued to operate over the Incline Track after the removal of the Gooseneck

[38] Incline Track Supplemental Agreement (July 1, 1981).

connection, which had previously provided a direct connection of KCT and BNSF trackage. When UP reconfigured the North End Freight Line and left the Incline Track as the only connection to BNSF's line, the replacement property provisions extended CPKC's rights as a KCT owner under the 1984 arrangements to the Incline Track.

50. Using their access over the North End Freight Line as KCT owners, CPKC and BNSF alternated responsibility for interchange every six months. Interchange via this route was efficient because the same crew that delivered cars in interchange to the other carrier's yard ordinarily was able to operate in turnaround service; *i.e.*, that same crew could also pull cars from the other carrier's yard and return to its home yard before expiring on hours of service.

51. In February 2024, UP announced its refusal to allow CPKC and BNSF to operate via the Incline Track, effective as of March 5, 2024.[39] In February 2026, CPKC requested that UP allow CPKC to resume use of its rights to the Incline Track.[40] While UP acknowledged CPKC's right to use the tracks and facilities covered by the 1984 Lease, UP disputed that the leased premises included the Incline Track.[41] As CPKC explained to UP, UP's position ignores that UP's reconfiguration of the North End Freight Line removed the only other existing west end connection with the North End Freight Line. As a result, CPKC's use of the Incline Track is necessary to make use of the North End Freight Line. Without the ability to use the Incline Track, CPKC's right to use the North End Freight Line would be meaningless—there would be no eastbound access and no western egress for westbound traffic. Additionally, because no

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39 Letter from Melissa Grosz to Will Wangerin (Feb. 5, 2024) (attached hereto as Exhibit 6).

40 Letter from Will Wangerin to Melissa Grosz (Feb. 2, 2026) (attached hereto as Exhibit 7).

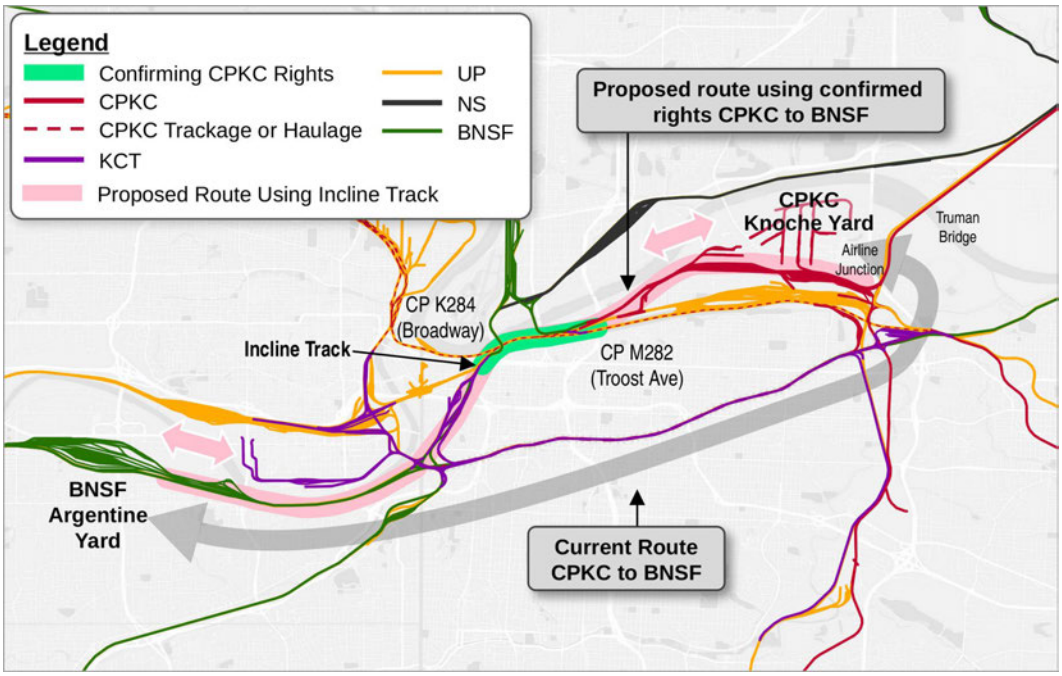
41 Email from Melissa Grosz to Will Wangerin (Feb. 27, 2026) (attached hereto as Exhibit 8, at 6-7).

regulatory authority has been granted to terminate CPKC's trackage rights under the 1984 Trackage Rights Agreement, those rights continue in existence.

52. As a result of being denied access to the Incline Track, CPKC and BNSF were forced to move interchange operations to KCT's southern line, entering and exiting Knoche Yard from the east and requiring operations through Airline Junction, Southwest Junction, and across the same KCT mainline that already handles Amtrak passenger trains and BNSF's expedited West Coast-Chicago trains. As compared to the current route used by CPKC and BNSF, which is shown in Figure 6 below, CPKC's route to BNSF's Argentine Yard, using the UP Incline track, is approximately four miles shorter, takes approximately [redacted] and does not require a consist reduction because of the 1.2 percent grade on the alternate route.[42] Using the UP Incline track route also does not create delays with overhead trains at Airline Junction or Southwest Junction because CPKC is able to build the complete train in our Knoche yard for departure. The alternate route causes unnecessary delays at Airline and KCS Junctions when building the train due to the need to occupy the signals when folding over the train.

[42] The route from Airline Junction to Argentine is approximately 8.5 miles and has an average run time of [redacted] whereas the route from Troost Avenue to Argentine Yard is approximately 4.5 miles and has a total run time of approximately [redacted] *See* Gameiro Workpaper – Kansas City Terminal Alternate Routes Velocity Report.

FIGURE 6
ROUTES BETWEEN CPKC'S KNOCHE YARD AND BNSF'S ARGENTINE YARD



53. The problems with the current route begin as Train KK20 prepares to depart from Knoche Yard. The train must exit the east side of Knoche Yard onto the busy shared UP-CPKC single main line at Airline Junction. BNSF also operates in this corridor. Train KK20 must first wait for clearance from the KCT dispatcher. If a UP train is working at UP's nearby Neff Yard and blocking the Southwest Junction, which currently occurs approximately once a month, the wait can be several hours. This can cause the crew of Train KK20 to expire on hours of service, resulting in a missed transfer. This missed transfer in turn causes congestion in Knoche Yard.

54. By blocking CPKC and BNSF from interchanging via the Incline Track/North End Freight Line route, UP has made CPKC-BNSF Kansas City interchange less safe, less reliable, and less efficient, adding congestion in the yards and on the busy KCT Transcon line. Control of this short connecting segment enables UP to determine how two competitors interchange traffic, even though UP is not a participant in that interchange.

55. The current route required by UP's refusal to allow CPKC use of the Incline Track route would be further burdened by the additional congestion that the UP-NS merger is expected to bring to the Kansas City Terminal. UP plans to run approximately 7.5 additional trains per day across the KCT southern mainline and past Southwest Junction and Airline Junction.[43] CN's proposed operations into Neff Yard will also conflict with the current route of CPKC's operations to the west side of the Kansas City Terminal.

56. If CPKC's rights to use the Incline Track/North End Freight Line route were confirmed or reestablished, CPKC's operations would return to the pre-2024 patterns described above. The Board should confirm that those rights remain available or, alternatively, affirmatively grant the rights needed to restore the connection, including necessary connections and incidental operating authority.

57. Two facts provide additional support for the feasibility of restoring CPKC's use of this route. First, CPKC traditionally operated via this route, and nothing has changed about the route to make those operations infeasible. Second, the settlement agreement between CN and UP appears to provide for UP granting trackage rights to CN across the same route between Neff Yard and Broadway via Troost and the Incline Track.[44]

D. UP's Delays in Implementing Dispatching Protections and Reallocating Maintenance Costs in East St. Louis

58. On its East St. Louis Terminal Subdivision, CPKC has experienced two additional instances of UP's refusal to perform its contractual obligations.

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[43] *See* UP-NS Merger Response to Information Request No. 3 A1A2 Rail Segment Maps (UP Segment Key Nos. 12411, 12412, & 102881) (Apr. 30, 2026) at 158, 159, 195, available at https://www.stb.gov/upns-eis-fd36873/documents/.

[44] *See* CN Description of Anticipated Responsive Application (CN-30) (filed Sep. 9, 2026) at 10.

59. ***UP's Refusal to Accept Its Part of Maintenance Costs.*** UP and CPKC jointly own most[45] of the paired tracks between Godfrey and East St. Louis, IL, as a result of the 1989 bankruptcy of the former owner of the lines. By agreement, maintenance costs for the joint facility are allocated according to the percentage of use by UP and CPKC and their authorized tenants (including UP's tenant Amtrak).

60. CPKC recently completed a use study with UP of the joint track, which shows that CPKC's use has declined from [redacted] between Godfrey and Valley Junction to [redacted] CPKC worked with UP on the study,[46] and CPKC provided the study results to UP for adjustment of maintenance cost allocation.[47]

61. However, UP has refused to respond to the joint study and CPKC's proposed revisions to the agreement, resulting in CPKC being billed for maintenance costs that should be covered by UP. UP has delayed and denied executing a revised agreement while continuing to bill grossly overstated amounts and, in response to CPKC's objection to paying those inflated amounts, UP has refused to pay CPKC invoices on other, unrelated matters.

62. ***UP's Delay in Establishing Agreed Dispatching Protections for CPKC.*** UP has also failed to install the AEI readers on the East St. Louis Terminal Subdivision, which were intended to prevent discrimination against CPKC in UP's dispatching of the joint track—even though UP committed to the installation almost thirteen years ago.

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[45] CPKC's subsidiary Gateway Eastern Railway Company (GWER) solely owns the eastern track between Wann and WR Tower, having purchased the same from Conrail.

[46] *See* Emails between Joel Hoberman, Steve Simmons, Melissa Grosz, and others (Oct. 28, 2025 – Nov. 6, 2026) (attached hereto as Exhibit 9).

[47] *See* Letter from Steve Simmons to Melissa Grosz (June 22, 2026) (attached hereto as Exhibit 10).

63. As noted, CPKC's subsidiary GWER is the sole owner of the eastern track portion from Wann to WR Tower of the Godfrey-Valley Junction joint facility. Until 2014, KCSR dispatched both tracks of the joint facility between Wann and WR Tower, while UP dispatched the remainder.

64. In 2014, UP requested that KCSR allow UP to dispatch the Wann-WR Tower segment to facilitate coordination in the handling of Amtrak trains as Amtrak increased speed on its high-speed route from Chicago to St. Louis. The State of Illinois strongly supported UP's request.

65. KCSR agreed to UP's request on the strict condition that UP install AEI readers at the entry points to the track to ensure first-come, first-served dispatching (except for Amtrak priority). UP agreed and the State of Illinois agreed to fund the AEI readers.[48]

66. As of 2026, twelve years later, UP has still not installed the AEI readers it promised to monitor and prevent discrimination against CPKC. When CPKC recently raised the matter, UP said that it would not commit to a timeframe for the installation.[49] Further, in response to CPKC's suggestion that it was contractually entitled to take back dispatching due to discrimination against its trains, UP (in Kafka-esque style) responded that CPKC could not establish discrimination under the dispatching agreement.[50] However, the primary obstacle to CPKC providing that proof was the fact that the dispatching protocols rely on the AEI readers

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[48] *See* KCS Proposal on High Speed Rail Dispatching Between Godfrey & Q Tower (May 23, 2014); *see also* Dispatching Supplement to 1906 Godfrey-E. St. Louis Joint Facility Agreement Between KCS & UP (July 14, 2014); Dispatching Supplement to 1989 Godfrey-E. St. Louis Joint Facility Agreement Between KCS & UP (July 14, 2014).

[49] *See* Letter from David Hughes to Steve Simmons (Mar. 27, 2026) (attached hereto as Exhibit 11); *see also* Letter from David Hughes to Steve Simmons (May 22, 2026) (attached hereto as Exhibit 12).

[50] *See* Letter from David Hughes to Steve Simmons (Mar. 27, 2026) (attached hereto as Exhibit 11).

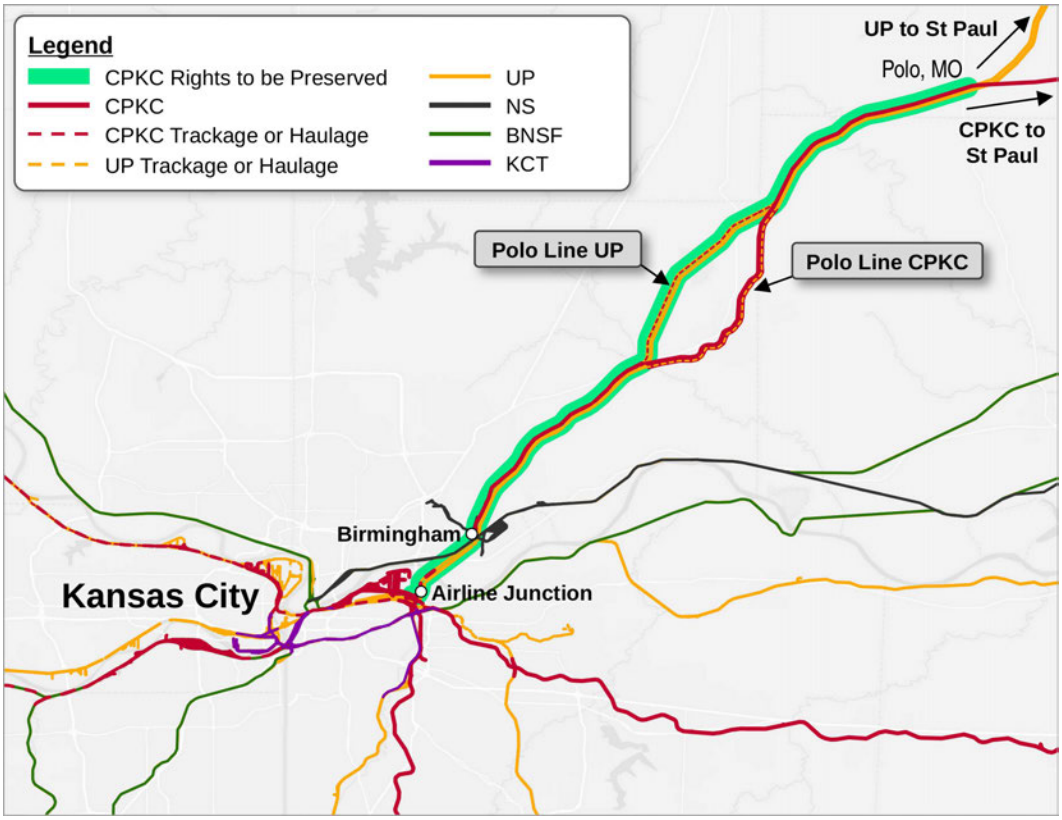
UP has not installed. Therefore, by ignoring its contractual responsibility to install the AEI readers, UP has effectively precluded CPKC from enforcing UP's contractual obligation or protecting itself from discriminatory dispatching.

E. UP's Failure to Honor Its Maintenance Obligations

1. UP's Failure to Remedy Slow Orders on the Polo Joint Line or Allow CPKC to Undertake the Repairs

67. Through its subsidiary, Dakota, Minnesota & Eastern Railroad Corporation ("DME"), CPKC is party to agreements with UP governing the operation of a line between Airline Junction in Kansas City and Polo, MO. The line is jointly owned by CPKC and UP from Airline Junction to Birmingham, MO, just south of NS's Voltz Yard. The separately owned UP and CPKC lines north of Birmingham are operated as paired track in conjunction with the track to Airline Junction. Except for the portion of the route at and south of the Truman Bridge, the line is double track. An overview of the route is shown below in Figure 7.

FIGURE 7
CPKC RIGHTS ON THE POLO LINE



68. This trackage is vital to CPKC's main-line operations going north from Kansas City to Chicago and the remainder of the northern portion of CPKC's network. It is likewise critical to CPKC traffic from points north of Kansas City to points south of Kansas City.

69. Contractually, maintenance of the Polo Joint Line is split into zones, with UP responsible for portions of both northbound and southbound trackage. Most of the trackage for which UP has maintenance responsibility is required by contract to be maintained to allow 60 mile-per-hour running speeds.

70. On May 19, 2025, CPKC informed UP that nine slow orders were causing 22 minutes of delay to trains operating over the 33.5 miles of UP-maintained trackage on the Joint

Line.[51] CPKC also noted that UP has had as many as nine to 15 slow orders in effect over this territory, resulting in ongoing operational delays and concerns.[52] As of the time of this filing, two of the slow orders have been in effect for over 150 and 220 days, respectively. By comparison, CPKC typically addresses slow orders on its track that are comparable to the UP slow orders within a few days to a couple of weeks. UP thus benefits from CPKC's prompt maintenance of its portion of the shared track, while refusing to adequately maintain its portion.

71. CPKC provided notice to UP that unless UP brought the slow-ordered trackage on the Joint Line was brought into compliance with the contractually mandated standards, CPKC would undertake the necessary repairs to restore the subject trackage to the required maintenance level. However, UP resisted CPKC's efforts to compel UP's contractual maintenance obligations. In response to CPKC's objection to UP's slow orders, some of which have persisted for over four months, UP offered platitudes rather than taking action, noting—unhelpfully—that "slow orders are a normal aspect of railroad operations," and that UP "remains committed to addressing them within a reasonable amount of time."[53] UP also rejected CPKC's offer to remedy the slow orders itself with the parties to share the cost per contract terms.[54]

72. While CPKC waits for UP to remedy the slow orders, CPKC continues to experience month after month the delays it has flagged to UP. Nevertheless, UP refuses to acknowledge or honor CPKC's right under the agreement to perform the maintenance of UP's track in the face of UP's failure to do so. The result is that the condition of a route vital to

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51 Letter from Tom Bourgonje to Russell Rohlfs (Sep. 4, 2026) (attached hereto as Exhibit 13).

52 *Id.*

53 Letter from Russell Rohlfs to Tom Bourgonje (Sep. 21, 2026) (attached hereto as Exhibit 14).

54 *Id.*

CPKC's main-line service remains dependent on UP's maintenance priorities, even when CPKC is willing to undertake the repairs.

2. UP's Failure to Perform Its Acknowledged Maintenance Obligations at Texarkana

73. In Texarkana, TX, UP has failed to respond for over two months to CPKC's requests to perform signal work at a key at-grade crossing of UP's Houston-St. Louis mainline with CPKC's Shreveport-Kansas City mainline that was essential to support the movement of CPKC trains.[55] UP's track crosses CPKC track pursuant to a 1902 agreement between the parties' predecessors. UP is the junior road at the location, meaning that CPKC's predecessor's track was already in place when the UP predecessor sought permission to cross it.

74. As is typical in agreements for rail crossings, the 1902 agreement placed on UP's predecessor, the "junior" road, responsibility to maintain an interlocking at the crossing to the satisfaction of the senior road (*i.e.*, CPKC's predecessor):

> 6th, That said party of the second part [*i.e.*, UP] will, at its own expense, immediately construct erect, maintain in good order, and perpetually operate an Interlocking and Derailling Machine of the latest and most improved character (subject to the approval of the party of the first part [i.e., CPKC], …) at the aforesaid crossing and will make such additions thereto from time to time, as the party of the first part may deem necessary.[56]

75. UP has ignored this "immediate" responsibility since being notified by CPKC in August 2026 of the need to upgrade its approach signal at the Kerr McGee interlocker in Texarkana to correspond to circuit work at CPKC's Jury siding. Indeed, UP has not progressed

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[55] Letter from Steve Simmons to Derek Hinds (Oct. 28, 2026) (attached hereto as Exhibit 15).

[56] Texarkana & Fort Smith Ry. & Texas & Pacific Ry. Agreement (June 2, 1902), cl. 6.

on the requested work beyond a preliminary estimate and referring CPKC to UP's interline group.

76. The result of UP's refusal is to make CPKC trains subject to the control of the UP dispatcher at the location. Consequently, CPKC trains sit in a siding for extended periods waiting for clearance from UP.

77. [redacted] However, it has not performed the work, taking the position that the agreement's requirement to act "immediately" does not specify a number of days or weeks for completion.

78. This example—just like UP's refusal to install AEI readers on the East St. Louis Terminal Subdivision—illustrates UP's practice of indefinitely delaying performance of its contractual obligations in scenarios where the relevant agreement does not set a specific date as the deadline.

F. UP's Increase in Detour Charges and Its Effect on Network Fluidity

79. Arrangements among railroads allowing the trains of one railroad to "detour" on the lines of another railroad when there is a blockage are a vital element supporting the resilience of the national rail system by allowing a carrier's most important trains to continue to operate via another carrier's track in the event that a hurricane, washout, or other disaster disables the first carrier's lines. Without this ability, the result would be gridlock and delayed or cancelled shipments.

80. Like all railroads UP and CPKC had in place a reciprocal detour agreement that supported detouring in these circumstances. In about 2020, however, UP apparently concluded that it has less need for detour rights than did CPKC (perhaps because of UP's own parallel

routes) and UP elected to quadruple its detour charges from about $25 per train mile to about $100 per train mile. Because detour rates are reciprocal, CPKC increased detour rates for UP trains in step with UP's increase. CPKC's detour rates for other carriers' trains are significantly lower.

81. UP's increase in detour charges effectively ended CPKC detours on UP by making them too costly, even assuming that UP was adequately staffed to provide pilots for another carrier's trains (which it often is not). This example illustrates a different limit on the practical availability of operating rights: access that becomes prohibitively costly cannot provide the operational protection on which CPKC would otherwise rely. Jim Vena, UP's Chief Executive Officer, recognized this point in recent comments in which he noted that: "If we allowed X railroad to run on our railroad for 800 miles, we would charge them a per car-mile charge that actually would make it more expensive for them to get to that destination."[57]

G. Other Representative Issues

82. ***Control of Interlocking at Clinton, IA.*** On August 16 and 17, 2026, UP unnecessarily blocked CPKC's mainline at the UP-controlled Clinton, IA interlocking. Had senior CPKC officers not intervened immediately, the blockage would have lasted several hours. Their intervention limited the blockage to approximately 90 minutes.

83. UP's track crosses CPKC's main line at Clinton. A short distance east of the crossing, UP's line crosses the Mississippi River on UP's bridge.

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[57] Trains.com, *Union Pacific blasts rival railroads' trackage rights requests*, FreightWaves (Sep. 18, 2026), available at https://www.freightwaves.com/news/union-pacific-blasts-rival-railroads-trackage-rights-requests.

84. On August 16, at about 1700 hours, a UP locomotive broke down near the bridge, blocking passage. UP advised CPKC that it would be delayed until the next morning, interchanging a coal train with CPKC. Yet, at about 2315 hours, UP pulled a train headed toward the bridge into the interlocking that controls the crossing of CPKC's line with UP's, and tied the train down for the night, shutting down CPKC's main line. The action was wholly unnecessary because there was nowhere for the UP train to go past the interlocking.

85. It took a midnight call from a senior CPKC executive to a senior UP operations leader to get the UP train moved back out of the interlocking that night. Otherwise, CPKC's mainline would have been closed at least until morning. CPKC should not have had to escalate the matter to avoid an hours-long blockage of its mainline. This incident illustrates that UP's control at a single crossing can disrupt service on CPKC's own line even beyond the routes where CPKC operates over UP track. The merger would place additional points of contact with CPKC's network under UP's control.

86. ***Interchange Practices at Westlake and West Lake Charles.*** For at least the last two years, and increasing dramatically in August 2026 and continuing through the preparation of this statement, UP's non-compliance with agreements and good operating practices has hampered CPKC's operations and hampered timely service to shippers in Westlake and West Lake Charles, LA. While CPKC routinely experiences UP's wasteful and inefficient non-compliance with agreed interchange practices, UP's recent behavior in Westlake and West Lake Charles has been particularly egregious.

87. The CPKC-UP joint facility agreements for Westlake and West Lake Charles provide two primary interchanges between UP and CPKC: the UP and CPKC jointly-owned Rosebluff Yard in West Lake Charles, south of the UP-BNSF main line, and the CPKC-owned

Conoco Yard in Westlake, north of the UP-BNSF main line. The interchange agreements specify which customers' traffic is to be interchanged in each yard.[58]

88. With increasing frequency, UP has failed to fulfill its agreed responsibilities to deliver prescribed customers' cars to specified yards. For example, recently, in an approximately three-week period, UP delivered nearly [redacted] cars per day to the wrong interchange yard—approximately 52% compliance with the interchange agreements. More than [redacted] of these cars should not have been delivered to CPKC at all.

89. UP's malfeasance imposed significant burdens on CPKC. CPKC was required to switch the cars to their correct locations, which consumed CPKC resources and delayed delivery to customers. Effectively, UP was shifting its own switching responsibilities and costs to CPKC.

90. When CPKC reminded UP of its obligations, UP countered—as usual, unhelpfully—that CPKC was taking too long in the interchange yard and not allowing UP into the yard soon enough. This response was neither a justification nor an excuse—it completely ignored what was going on here, namely that UP's mishandling of cars was saddling CPKC with the extra switching work in the yard, which took extra time. UP tried to blame its own delays on CPKC.

91. Taken together, these examples show how UP's control over shared infrastructure and connecting facilities can limit CPKC's ability to compete—notwithstanding existing contractual and regulatory protections intended to limit that control. I expect these risks to increase if UP acquires NS. UP would control more of the points on which CPKC depends and would have a greater incentive to favor its expanded single-line network over competing

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[58] *See* The Kansas City Southern Ry. & Southern Pacific Transportation Co. Agreement (Sep. 2, 1981, as amended Jan. 13, 1999) ("KCSR-SP Zone Switching Agreement"), art. I, ¶ B.

services. The demands of integrating the two networks and pursuing UP's planned capital projects could also defer work needed by CPKC, regardless of whether a particular delay is intended to disadvantage it. The 1997-1998 UP/SP service disruption in Houston illustrates the additional operational risks of integrating acquired infrastructure. CPKC's experience therefore warrants attention to both the broader control the merger would confer and the practical effectiveness of the protections governing that control.

IV. UP'S INCREASED CONTROL OF KEY RAILROAD TERMINALS THREATENS DEGRADATION OF INTERCHANGE ON WHICH THE NATIONAL NETWORK DEPENDS

92. A combined UP-NS would also gain the ability to undermine the effectiveness of key terminal railroads at the major Mid-Continent gateways upon which the efficiency of the U.S. rail network would continue to depend, but on which UP-NS would be less reliant. The efficient functioning of the Chicago, Kansas City and St. Louis gateways—and the role played by the terminal railroads at those gateways—offers vital support for the interconnected interline network that provides U.S. shippers with routing optionality. Through their combined ownership interests and other levers of influence, UP-NS would have the ability to thwart investments and other initiatives—and even hold up routine annual budgeting—at the Belt Railway of Chicago ("BRC"), the Indiana Harbor Belt Railroad ("IHB"), KCT, and the Terminal Railroad Association of St. Louis ("TRRA"). If wielded in a manner consistent with UP-NS's incentives, this ability would impede the ability of CPKC and other railroads to compete effectively.

93. UP's post-merger influence would enable it to drive the investment agenda, disinvest in facilities important to competition with UP single-line routes, and ultimately ensure that these entities did not support operations that were contrary to UP's own competitive interests. These changes might not emerge immediately or perhaps even in the first decade after UP acquired NS. But over time, the role played by these key terminal railroads would be

transformed to match the vision that UP would have for them rather than the role that they play today and would continue to play absent UP strengthening its hold on investments and other decision-making on the boards of these entities.

94. For reasons I will explain below, UP would have the power and incentive to achieve these aims whether or not the Board regarded the UP-NS transaction as giving UP formal legal "control" of any of these entities. While the story varies slightly with respect to each of these terminal railroads, all of them will be vital to railroads seeking to compete with UP-NS single-line services.

A. The Transaction Would Increase UP's Influence Over Joint Facilities Serving the Chicago Terminal

95. I begin in Chicago, which is by far the most important and most complicated of the Mid-Continent gateways. Applicants have touted their proposed merger's ability to reduce their usage of BRC's Clearing Yard, a vital facility that Mr. Redd describes in more detail in his Verified Statement.[59] Applicants' Operating Plan showed them routing trains across the Chicago Terminal via a route that largely bypasses Clearing Yard, with processing of manifest traffic (when it goes according to plan) shifted elsewhere.[60]

96. The path of Applicants' proposed new through trains, at least as of their Amended Application, is shown in Figure 8, bypassing Clearing Yard.

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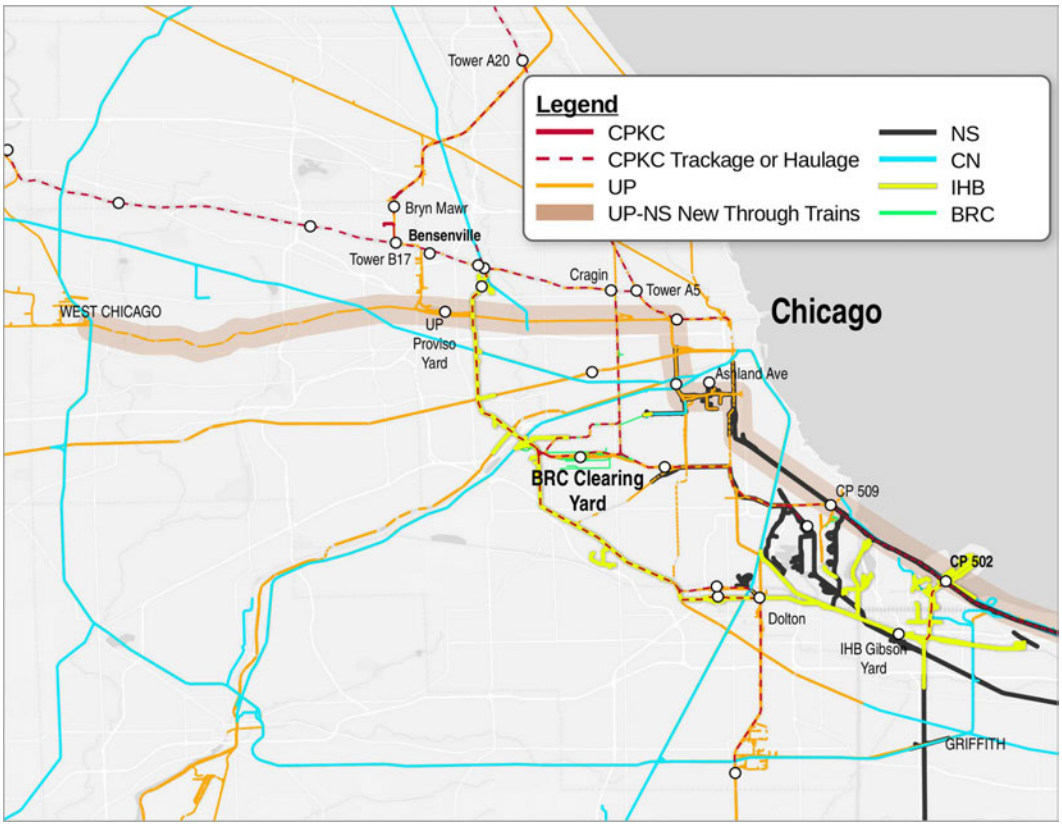
[59] Verified Statement of Mark Redd ¶¶ 60-72 ("Redd V.S.").

[60] Rev. App. 2-710 to -11 (Gehringer & Orr Second Errata V.S. ¶¶ 206-09).

FIGURE 8
APPLICANTS' PROPOSED ROUTING THROUGH CHICAGO,
PRIOR TO UP-CN DEAL FOR MORE UP SLOTS ON EJ&E



97. More recently, however, UP announced an agreement with CN whereby it would re-route some number of UP trains around Chicago via CN's Elgin, Joliet & Eastern ("EJ&E") bypass route. According to reports on that agreement, UP will receive a certain number of train slots initially and will be free to invest to add more if it wishes.[61] This agreement has repeatedly been described by UP as connected to the pending UP-NS merger. Regardless of whether it is

[61] *See* Press Release, CN, Union Pacific & CN Announce Agreement to Improve North American Rail Connectivity (July 22, 2026), https://www.cn.ca/en/news/2026/07/union-pacific-and-cn-announce-agreement-to-improve-north-america/ ("agreement provides Union Pacific with expanded operating rights over CN's Elgin, Joliet & Eastern Railway (EJ&E) corridor through Chicago"); *see also* Bill Stephens, *UP and CN chief executives detail their railroads' new agreements*, Trains (July 24, 2026), https://www.trains.com/pro/freight/class-i/up-and-cn-chief-executives-detail-their-railroads-new-agreements/ ("Any additional capacity required to accommodate UP volumes will be funded by them.").

deemed to be merger-related, it will certainly affect UP's need for alternative routes through Chicago—most importantly routes via BRC and IHB. As UP CEO Jim Vena explained in an interview with Trains Magazine: "As far as I'm concerned, [the CN Agreement] gave us everything that we need to be able to grow our business and move more seamlessly and have the best option to go around the City of Chicago."[62]

98. CN's portrayal of the EJ&E "Outer Belt" route around Chicago as the "fastest rail route in and around Chicago" is shown in Figure 9 below.[63]

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[62] Bill Stephens, *UP and CN chief executives detail their railroads' new agreements*, Trains (July 24, 2026), https://www.trains.com/pro/freight/class-i/up-and-cn-chief-executives-detail-their-railroads-new-agreements/.

[63] *See* CN, Accelerating Sustainable, Profitable Growth: Investor Day 2023 (May 2-3, 2023) at 3, available at https://experience.cn.ca/cn-ir-day-map/p/1.

FIGURE 9
CN MAP OF EJ&E BYPASS ROUTE TO WHICH UP RECEIVES ACCESS, SHOWING RELATIONSHIP TO IHB ROUTE



99. With these changed UP incentives, the influence over BRC and IHB that UP would gain through the proposed merger will not be consistent with these joint facilities serving their procompetitive purposes over the long run.

1. UP Would Gain Inordinate Influence over the Belt Railway of Chicago Even While Its Need for that Facility Would Diminish

100. BRC and its Clearing Yard are central components of the Chicago gateway. Clearing Yard is a crucial double-hump yard used by all of the Class I railroads to process some portion of the traffic flowing through Chicago. Clearing Yard receives approximately 25 or more inbound trains daily and assembles approximately 50 daily blocks for distribution to Class I carriers and smaller Chicago-area railroads, supporting efficient movements to destinations

beyond Chicago (for as far away as Upstate New York, North Carolina, Georgia, Tennessee, Arkansas, Oklahoma, Nebraska, Minnesota, and Washington State).[64] CPKC and other carriers depend on BRC for efficient interchange across the terminal to connect with the smaller carriers that serve the Chicago area.

101. Currently, NS owns 25% of the BRC and holds three of the 12 board seats while UP owns 8.33% and holds one board seat. By consolidating UP's and NS's ownership interests in BRC, Applicants would control outright four of the 12 votes on the BRC Board.[65] BRC's By-Laws require an [redacted][66] During 2025, there were [redacted] Four of twelve votes would not, by themselves, allow UP to block a decision requiring [redacted] But UP would need only [redacted] to withhold support to prevent approval. UP's expanded commercial relationship with CN, including their shared interest in the EJ&E bypass route, creates a material risk that their interests would align on decisions affecting investment in BRC. The merger would therefore materially increase UP's ability to block important BRC decisions with another owner's support. Accordingly, the governing rights do not provide the protections necessary to preserve competition in the wake of the Proposed Transaction.

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64 Redd V.S. ¶¶ 63-65 & Figure 3.

65 The Belt Ry. Company of Chicago Operating Agreement (Mar. 30, 1990), art. III, § 5.

66 By-Laws of The Belt Ry. of Chicago (as amended June 7, 1990), art. III, § 7.

[redacted]



[redacted]

102. The potential for UP, working with an ally, to downgrade the capabilities of BRC over the long run, and thereby disadvantage the means by which other railroads would compete with UP's single-line routes, is not far-fetched and should be of great concern to the Board. UP has described its long-term desire to send less traffic through the Chicago gateway, favoring other routes—for example, the UP-NS connection via Kansas City.[67] Applicants have indicated their intention to remove significant volumes of UP-NS manifest traffic from Clearing Yard.[68]

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[67] Rev. App. 1-231 (Vena V.S. ¶ 49); *id.* at 2-615, 2-695, 2-710 to -11 (Gehringer & Orr Second Errata V.S. ¶¶ 10, 187-88, 205-09).

[68] Rev. App. 2-710 to -11 (Gehringer & Orr Second Errata V.S. ¶¶ 206-09).

And UP has entered into an agreement with CN whereby it would gain expanded access to CN's EJ&E bypass route. I would expect that UP (along with CN) would seek to exercise its influence at BRC in a manner that is in UP's interest but not in the interest of a well-functioning Chicago gateway that serves the needs of others.

103. It is not hard to imagine any number of adverse scenarios playing out over time. UP along with CN would have the advantage of their shared EJ&E bypass route and may choose to resist spending at BRC that maintains the utility of BRC's other routes across Chicago, which in a post-merger scenario would primarily support other railroads serving Chicago. Or, because it serves no immediate benefit to UP while being a direct benefit to its competitors, UP will be incentivized to resist capital maintenance work on Clearing Yard, the result being that facility becomes less efficient, or less viable as a connection, over time. Or, pulling a favorite page from its interline playbook, UP could threaten to hold up key BRC projects until it got its way on some other issue, like directing BRC to favor UP's preferred blocking plan, scheduling of work performed at Clearing in a way that benefits UP, or any number of other issues.

104. If the Board does approve the merger, it should condition its approval on UP reducing its voting power on the BRC board of directors sufficiently so that no vote [redacted] can be voted down solely through the votes of UP directors, acting alone or together with those of any single other independent owner group. UP and the entities under its common control should be treated as one group, and each other owner's affiliated entities should likewise be aggregated. Before consummation, Applicants should obtain Board approval of implementing arrangements demonstrating that the test is satisfied under BRC's actual voting rules, including the applicable denominator and approval threshold and the treatment of quorum, abstentions, recusals, nonattendance, vacancies, proxies, and committee or

consent procedures. UP would not be required to reduce its equity interest in BRC or dilute its vote on matters [redacted] but with the proposed change UP would no longer have the ability—by itself or working with a single ally like CN—to hold up formal actions of the BRC board [redacted] As a result of losing that extraordinary leverage, UP would also relinquish, as it should, the leverage to demand (or prevent) changes in other BRC policies and practices without the assent of a broader group of BRC owners.

105. It may seem tempting to attempt to draw up a list of "do's and don'ts" that the Board could impose on UP to constrain its influence over BRC—akin to the Board's requirement when approving the Conrail transaction that IHB continue to be managed as a neutral switching carrier.[69] But that is not a tenable solution. The issues that may arise at BRC over the next century are too varied, and potentially too complex, to attempt to reduce to a checklist the strategies that UP is allowed to support or prohibited from pressing. Only a structural fix, in which those parties retaining a compelling interest in the proper and efficient functioning of BRC can remain as stewards of this vital asset without interference by UP, can hope to replicate today's industry structure. The same is true for the other terminal railways I discuss in this section.

2. The Transaction Would Transfer NS's Effective Veto at IHB into the Hands of UP

106. The story is somewhat different at IHB, but with the same ultimate conclusion: UP would acquire NS's ability to withhold concurrence for IHB decisions that require

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[69] *CSX Corp. – Control & Operating Leases/Agreements – Conrail Inc.* ("*CSX/NS/Conrail*"), 3 S.T.B. 196, 292 (1998).

concurrence under the governing arrangements and could over time reduce IHB's effectiveness at serving the other railroads that would need it more than UP.

107. IHB is a Class III railroad and the largest switch carrier in the United States, operating a network of 320 miles of track.[70] IHB's lines provide the sole alternative to EJ&E as a bypass for the central terminal area of Chicago, connecting CPKC and CN in the northwest corner of the terminal at Tower B12, crossing and connecting with all lines radiating from Chicago, and reconnecting with CSXT, CN and NS lines heading east of Chicago, as shown in Figure 11 below. CPKC's operations depend on the IHB route to reach eastern connections from CPKC's Bensenville Yard via Tower B12 to CSXT-owned track at Dolton. CPKC also uses IHB to move between NS at CP-502, an entry/exit to CPKC's Chicago-Detroit trackage rights on NS, and IHB's Gibson Yard.[71]

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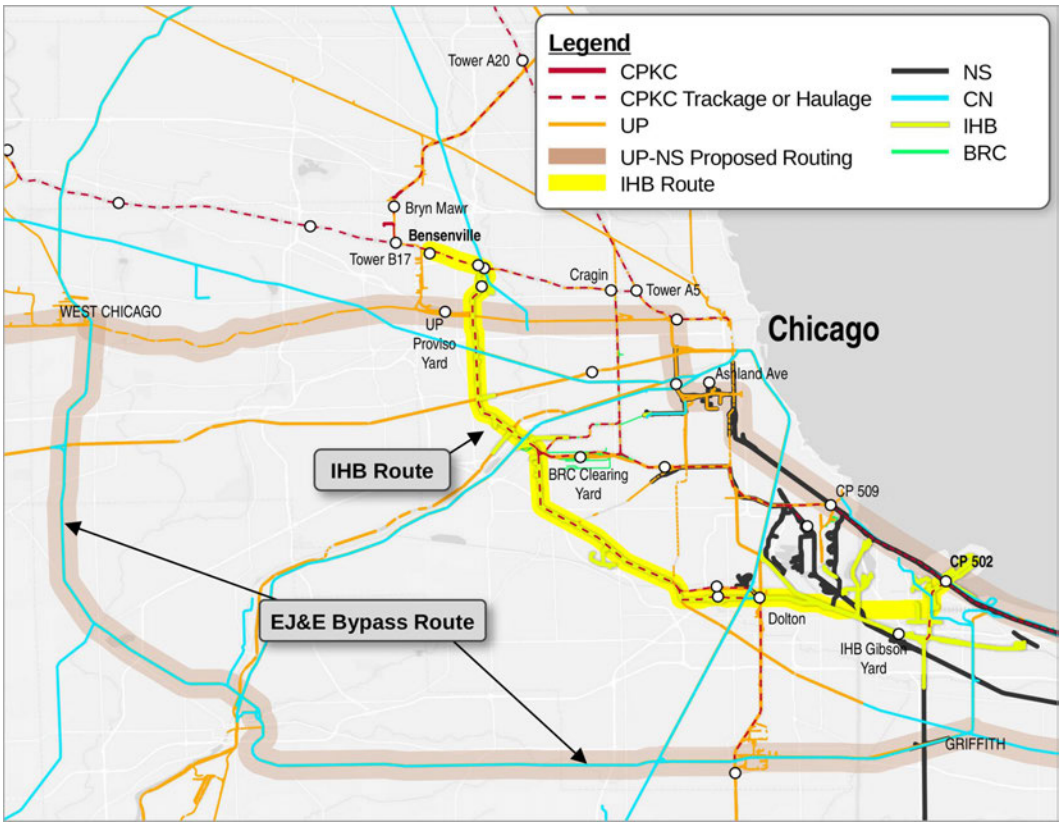
[70] *See* Indiana Harbor Belt R.R., *Connecting Industries, Empowering Growth*, https://ihbrr.com/ (last visited Oct. 26, 2026).

[71] *See generally* IHB-NS-Conrail-CP Interchange Agreement (July 15, 2005).

FIGURE 11
IHB ROUTE AND CONNECTIONS AS AN ALTERNATIVE TO EJ&E



108. IHB's Gibson Yard is a key interchange point for automotive traffic, enabling all six Class Is to consolidate those shipments of finished autos efficiently for onward movement via the route to destination chosen by the customer.

109. IHB's governance structure has an interesting history. CPKC owns 49% of the shares of IHB, with 50.99%—which conveys outright control—held by Conrail (and the remaining 0.01% designated as Director's Shares).[72] When NS and CSXT split Conrail in 1998, they structured the transaction to preserve Conrail's control of IHB and agreed that they would agree among themselves as to how to vote the Conrail shares rather than splitting those votes

[72] *See* Rev. App. at 1-164; *see also* By Laws of the Indiana Harbor Belt R.R. Co. (1999), at 20.

between them.[73] As a result, NS and CSXT jointly exercise Conrail's voting interests. For matters requiring NS concurrence, NS can withhold its assent to Conrail voting its shares in favor of the action, which gives NS an effective veto over those matters.[74] Where approval requires that favorable Conrail vote, CPKC's support cannot by itself secure approval.

110. The way this process works in CPKC's experience is set forth in Table 3 below. Basically, because an affirmative Conrail vote requires consensus of NS and CSXT, if NS (or CSXT) is against a measure, then it will be turned down even when the other two railroads are in favor.

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[73] *CSX/NS/Conrail*, 3 S.T.B. at 292.

[74] I understand that the agreement between CSXT and NS on Conrail's IHB interests provides a dispute resolution mechanism. *See* Agreement Relating to the Contractual Rights & Ownership Interest of Consolidated Rail Corporation With Respect to the Indiana Harbor Belt R.R. (Aug. 2, 1998) § 6. Under that agreement, if CSXT and NS directors disagree, the parties are required to negotiate for 30 days to resolve the disagreement. If no agreement is reached, the matter is submitted to binding arbitration. This mechanism does not resolve NS's effective veto for two reasons. First, if NS, or UP standing in NS's shoes, prevails at arbitration, its position still controls. Second, the slow-moving and open-ended arbitration process provides NS, or UP-NS, with, in practice, a pocket veto. Not only must the 30 day negotiation period run before arbitration can begin, but if the parties do not agree on an arbitrator, another 30 days must run before one is designated. The agreement sets no deadline for an ultimate resolution. Accordingly, even where NS could not ultimately block an action, it could frustrate the action through delay.

TABLE 3
HOW IHB DECISIONS ARE MADE

Row	CPKC Position/Vote	NS Position	CSXT Position	Conrail Vote	Resulting IHB Outcome
1	✓	✓	✓	✓	✓
2	✓	✗	✓	✗	✗
3	✓	✓	✗	✗	✗
4	✓	✗	✗	✗	✗
5	✗	✓	✓	✓	✓
6	✗	✗	✓	✗	✗
7	✗	✓	✗	✗	✗
8	✗	✗	✗	✗	✗

IHB acts only in Rows 1 and 5, when NS and CSXT both vote ✓.
CPKC's 49% vote does not change the outcome.

111. As can be seen in Table 3 above, the only way for IHB to promptly and reliably obtain shareholder or board of directors approval to act on matters requiring that approval is *for NS to agree* to that course of action. Even if CSXT and CPKC agree, the matter would not go forward because NS's disapproval would effectively mean a negative vote of the Conrail shares.

112. As a practical matter, then, how CPKC votes—despite our 49%—is irrelevant to outcomes at IHB, and similarly, how CSXT votes is likewise irrelevant in situations where CSXT is supportive of IHB taking some action, but NS is not.

113. This approach may make some sense in today's environment, where both CSXT and NS are motivated to support IHB providing efficient and neutral connections with western carriers at Chicago. The proposed UP-NS transaction, however, would transfer NS's interest in Conrail's IHB shares to UP, and UP would not have the same interest in IHB providing effective

and neutral connection between eastern carriers like CSXT and western carriers like BNSF and CPKC.

114. Fundamentally, the problem relates to scenarios that would fall into Row 2 above, where CPKC and CSXT agree about the right path forward for IHB to support efficient interchange and customer access via the Chicago gateway, and where NS previously would have shared the same interest, but where post-merger NS's vote (now in the hands of UP) flips and that change prevents the concurrence needed for IHB approval. In Row 2, if the UP-NS merger flips an NS vote from "yes" to "no," that would change IHB's course regardless of the consensus of CPKC and CSXT to the contrary, blocking the initiative in question. Table 4 below depicts that scenario.

TABLE 4
IMPACT OF MERGER ON NS POSITION AUTOMATICALLY CHANGES IHB COURSE OF ACTION

Row	CPKC Position/Vote	NS Position	CSXT Position	Conrail Vote	Resulting IHB Outcome
1 Before Merger	✓	✓	✓	✓	✓
		↓		↓	↓
2 After Merger (NS incentives change)	✓	✗	✓	✗	✗

115. Consider some scenarios that could well play out at IHB over time. Over the decades following the UP-NS merger, UP may deprioritize spending on capital projects supporting the IHB bypass route, meaning that IHB's utility would deteriorate over time while UP uses its leverage to pull traffic to its alternative route through Chicago. Under IHB's governance structure, CPKC and CSXT would not have the tools to force IHB to make

investments needed to maintain this route's effectiveness. UP would not care because of its alternative pathways through or around Chicago, or bypassing it entirely via other gateways.

116. Alternatively (or in addition), UP may conclude that it has less need for an efficient clearing house for interline automotive traffic moving via Chicago, which UP may perceive as helping its rivals more than it helps the UP single-line network. As a result, UP either pushes for the downgrading of IHB's Gibson Yard, which serves that function today for all carriers in Chicago, or simply deprioritizes the ongoing investment needed to make Gibson perform its role effectively. Again, CPKC and CSXT could not force a different result despite accounting for nearly two-thirds of IHB's equity ownership. The kinds of mischief that UP could engage in because of its effective control over IHB are nearly infinite.

117. I understand that the Board imposed a condition in its approval of the Conrail split requiring that IHB "continue to be managed as a neutral switching carrier."[75] But it is not clear to me that this obligation necessarily would clearly be enforceable against UP in a context where UP was claiming that it supported IHB's "neutral" handling of traffic but that some investment needed to make IHB better (or keep it from deteriorating) was not among UP's top investment priorities.

118. The only way I see to overcome this problem would be to prevent UP from obtaining NS's effective veto position with respect to IHB or to constrain UP's exercise of the governance rights acquired through NS. Accordingly, if the Board concludes that it will authorize UP control of NS, it should either:

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[75] *CSX/NS/Conrail*, 3 S.T.B. at 292.

- (a) Require that UP, prior to acquiring control of NS, enter into and implement a binding agreement with CSXT separating the exercise of the CSXT and NS interests in Conrail's ownership of IHB so that the shareholder votes and board votes reflecting those interests can be made separately from one another without the need for alignment between CSXT and NS; or
- (b) Alternatively, impose a condition on its approval requiring UP to vote in favor of a proposed IHB action affirmatively supported by a majority in number of the other independent owner groups, and against a proposed action affirmatively opposed by that majority. A majority should be counted by owner group, without weighing ownership percentages or board seats, with each commonly controlled group counted once and Conrail and other intermediate entities not counted separately. Currently, that means both CPKC and CSXT must support, or both must affirmatively oppose, the same proposal to trigger the condition. If they disagree, or either abstains or states no position, this alternative supplies no voting direction. Applicants should exercise the direct and indirect votes, consents, and other governance rights within their control, including through Conrail and their designated representatives, to give effect to a required direction.

119. Both alternatives would prevent UP from blocking an IHB action supported by CPKC and CSXT, but they would operate differently. Splitting the Conrail interests would permit CSXT and UP to cast the associated shareholder and board votes independently. The alternative voting condition would retain the existing Conrail structure and constrain UP's vote when CPKC and CSXT agree. Both alternatives would address the Row 2 concern; their broader effects would depend on the selected alternative and the implementing voting rules. Before

consummation, Applicants should obtain Board approval of implementing arrangements demonstrating that the selected alternative works under the IHB rules.

120. Neither of these conditions, however, would provide a complete solution for the impact of the changed incentives associated with UP control of NS. It is easy to imagine alternative scenarios where, instead of UP resisting action by IHB, UP favors that action in circumstances where pre-merger NS would not have done so, and for reasons relating to further consolidation or other factors, CSXT agrees with that course of action. Imagine, for example, that as a result of the merger, UP desires to shutter the Gibson facility, and CSXT does as well following a hypothetical merger with BNSF. Neither governance alternative would necessarily prevent that result under the applicable voting rules, even if CPKC sought to preserve that capability. The separate access, shared facility, and service protections would therefore remain necessary. A decision blocking the merger likely is the only practical way to prevent an evolution of the rail network away from supporting interline optionality at the major Mid-Continent gateways.

121. The governance changes should preserve the existing compensation framework for CPKC's existing use of IHB track. Compensation for any additional authorized service or facilities should be addressed in the corresponding access arrangements on reasonable and nondiscriminatory terms.

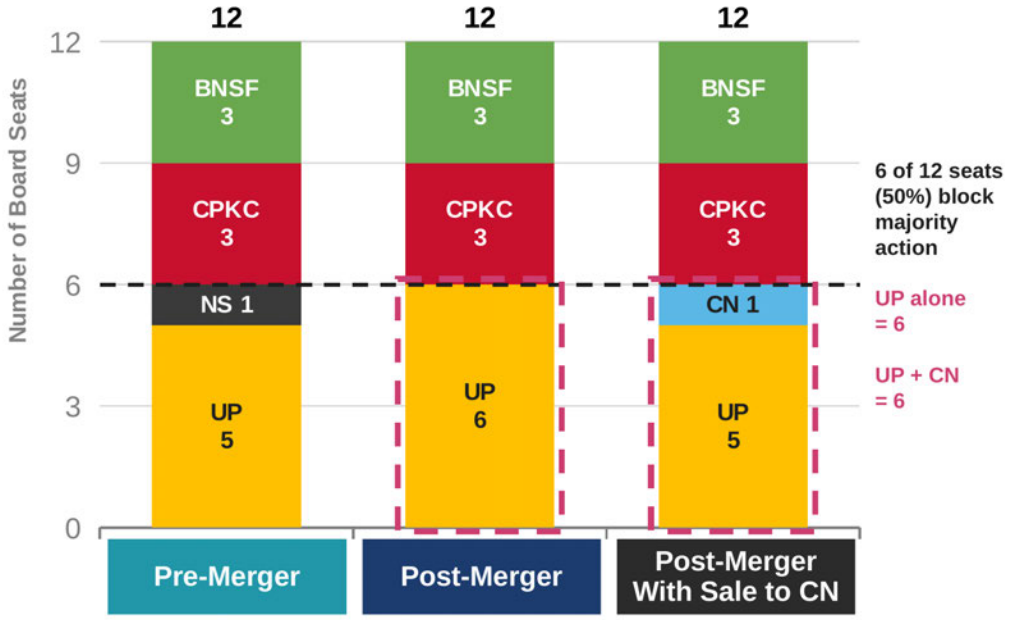
B. The Transaction Would Enable UP to Control Kansas City Terminal Railway, with Adverse Public-Interest Consequences

122. Currently, UP holds five out of 12 KCT board seats, with BNSF and CPKC holding three each, and NS holding one. Under that structure, and because of the fourth independent owner, no owner can block majority action without the agreement of another

independent owner.[76] The Proposed Transaction would give UP 50 percent ownership of KCT and control of six out of 12 board seats. UP's six board votes would allow it to prevent majority approval when all twelve directors participate, even if every other owner supported the proposed action. Its 50 percent shareholder interest would likewise permit it to block matters requiring approval by more than half of the shareholder [redacted] Those positions would confer substantial negative control. UP could also wield its increased position indirectly to force its will upon other KCT practices. For example, UP could withhold approval for a critical infrastructure project until KCT agreed to revise its dispatching protocols or operating rules in a manner that UP believed would better support its planned operations, regardless of the impacts on other railroads serving the Kansas City Terminal.

[76] *See* Applicants' First Submission in Response to Decision No. 21 (UP-68/NS-66) (filed July 7, 2026) at Supp. 2-41.

FIGURE 12
KCT OWNERSHIP BEFORE AND AFTER UP-NS MERGER



123. With six votes post-merger instead of five today, UP will be in a far stronger position to block approval of KCT initiatives that CPKC and others need to maintain the efficient functioning of parts of the Kansas City Terminal that UP will not care about, or will care less about. UP's incentives will be to wield that control in a manner that undermines competition rather than supporting a well-functioning terminal for all users. UP's unilateral denial of CPKC and BNSF access to the Incline Track as part of a KCT route is a good example.

124. UP has proposed to transfer the KCT shares held by NS to CN in the event CN is given access to Kansas City via the acquisition of rights over UP between St. Louis and Kansas City (or a divestiture of UP's line between those points). CPKC does not think CN's entry into Kansas City would serve the public interest, but even if CN received the Kansas City access rights it seeks, its acquisition of NS's shares in KCT would not solve the problem the UP-NS merger would create for KCT governance.

125. If CN enters Kansas City using UP lines, yard facilities, and haulage, those dependencies and the carriers' overlapping operating interests would create a material risk of coordinated positions on KCT matters. Acting together, UP and CN could block majority action, although their combined votes would not, by themselves, authorize affirmative action. Areas of likely alignment are real. To cite just one example, UP and CN would both depend on favorable dispatching by KCT of the critical interlockings between Airline Junction and KCS Junction, shown on the map set forth in Mr. Redd's Verified Statement (as Figure 5).[77] That segment is vital for all CPKC trains serving Kansas City, but also for CN and UP. CN would enter and exit Neff Yard across Southwest Junction, dispatched by KCT, while UP's new post-merger flows would traverse the entire Airline Junction-KCS Junction segment dispatched by KCT. UP and CN would thus have incentives to work together to exert leverage over KCT to adopt ostensible "non-discriminatory" approaches to dispatching in this area that nevertheless ensure favorable performance for UP (or UP and CN) trains but do not necessarily support CPKC operations through the area.

126. Applicants' reliance on KCT's General Manager to conduct day-to-day operations does not answer the concern that their combined ownership could enable them to block investments requiring board approval. KCT's bylaws require [redacted][78] Applicants themselves acknowledge that KCT's governance documents contain no mechanism for resolving shareholder

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[77] Redd V.S. ¶¶ 109-12.

[78] Bylaws of the Kansas City Terminal Ry. Amended & Restated Bylaws (Mar. 14, 1995, as updated Mar. 9, 2017), §§ 6.1, 6.3.

or board deadlocks and that, "[i]n general, a deadlock would mean a continuation of the status quo."[79] That consequence is precisely the concern: preserving the status quo can prevent capacity improvements or other investments needed to maintain an efficient and competitive gateway as traffic and operating requirements change. That ability of one or symbiotically-related parties to freeze progress can be used by UP as leverage to achieve its goals at the expense of KCT's other owners. Unless effective divestiture or other enforceable governance protections remove that blocking power, management's responsibility for daily operations provides no assurance that those investments can obtain the necessary approval.

127. Accordingly, if the Board does approve the merger, it should condition its approval on a governance remedy that constrains UP's ability to interfere with KCT's functioning. Such a governance remedy could take one of two forms depending on whether Applicants divest shares to a new independent railroad-owner group.

a. If Applicants divest KCT shares to a new independent railroad-owner group outside KCT's pre-merger ownership group, including CN, the Board should require that no matter put to a vote can be voted up or down solely by the votes of (i) UP alone or (ii) UP together with any single other independent railroad-owner group. The restriction should apply to every such group, not only the transferee. A transfer to CN would present the particular risk of aligned voting described above because CN would depend on UP's lines, yards, and haulage for its Kansas City operations.

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[79] *See* UP-68/NS-66 at Supp. 2-42.

b. If Applicants do not divest KCT shares to a new independent railroad-owner group, including if they transfer shares to an existing independent owner such as CPKC or BNSF, the Board should require Applicants to reduce or restrict UP's voting power so that UP alone cannot force or block any KCT action. For example, the Board could condition the merger on UP securing changes in KCT's governance structure such that four board votes and one-third of shareholder voting power were allocated to each of combined UP-NS, CPKC, and BNSF, with approval and quorum rules that prevent UP from acting or blocking action alone. That allocation could change governance rights without requiring CPKC or BNSF to acquire additional equity or altering the owners' economic rights and obligations, unless the Board orders otherwise.

With the applicable restriction, UP could not force or block KCT action alone or, where shares are divested to a new independent owner group, together with any single other owner group. Removing that prohibited voting power would also remove the leverage it supplies to demand or resist changes in KCT policies and practices without the broader owner support required by the condition.

128. Before consummation, Applicants should obtain Board approval of, secure the necessary agreements for, and put into effect implementing arrangements satisfying this restriction. Those arrangements should specify shareholder, board, and committee voting rights, voting denominators and approval thresholds, and the treatment of quorum, abstentions, nonattendance, vacancies, written consents, and commonly controlled entities, and demonstrate how the applicable restriction operates under each ordinary or special voting rule. Any later transfer or governance change that could weaken or defeat the applicable restriction should

require prior Board approval and continued compliance with the branch governing the resulting ownership structure.

C. The Transaction Would Increase UP's Influence over TRRA and the St. Louis Terminal

129. The St. Louis gateway is an important connection point for traffic moving among eastern, western, and Canadian railroads. The Terminal Railroad Association of St. Louis ("TRRA") is an intermediate switching terminal railroad in the St. Louis area connecting to all six Class I carriers. Efficient operations using TRRA facilities are necessary for CPKC and other carriers to interchange traffic and reach their own lines and connecting carriers. Thus, like all Class Is, CPKC depends on efficient operations in St. Louis including over TRRA trackage.

130. The transaction would give UP formal control of TRRA, and it is clear that a solution to that control is required. Applicants concede that combining UP's and NS's interests would give the merged UP control of TRRA, the intermediate switching terminal railroad in St. Louis that serves all six Class I carriers.[80] Applicants have thus offered several possible arrangements to resolve the concerns over their control of TRRA.[81] None of these arrangements, standing alone, provides the enforceable governance and operating protections needed to prevent UP from abusing its enlarged position to impair competing service through its governance power within TRRA. Even if UP reduces its power over TRRA on paper, UP's 100 percent ownership of Alton & Southern gives it ample ability to subtly but meaningfully tilt access to shippers in the St. Louis/East St. Louis area in favor of the merged UP network.

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[80] Rev. App. 1-77.

[81] *See* UP-68/NS-66 at Supp. 2-13.

131. From CPKC's perspective, the solution should not involve transferring NS's interest in TRRA to CN since that outcome would simply mean that UP and CN could exert joint control over TRRA. Again, as explained above with KCT, the potential for alignment between UP and CN is great, especially in light of the rights UP proposes to transfer to CN over UP's line between St. Louis and Kansas City and over UP's line between Tuscola and East St. Louis. There is every reason to expect that CN's proposed rights on UP track east and west of St. Louis would give UP and CN parallel interests with respect to many matters relating to TRRA and the St. Louis terminal.

132. The merger would also shift St. Louis switching away from TRRA and onto UP-controlled facilities.[82] Under Applicants' Operating Plan, eastbound UP-NS manifest traffic that the UP-owned Alton & Southern ("A&S") now hands to TRRA for blocking would instead be blocked at A&S's Gateway Yard, and intermediate manifest switching now performed at NS's Luther Yard would also move to Gateway Yard.[83] Simultaneously, Applicants plan to run longer trains, including by increasing train lengths of legacy NS trains.[84] Already, CPKC experiences delays due to over-length trains moving between the A&S and UP at Valley Junction and over TRRA track. Since June 2025, those delays have caused approximately 16 recrews on CPKC trains. This will only increase when UP folds NS traffic into its own. This makes TRRA even more important to parties other than the Applicants.

133. In this context, CPKC urges the Board, if it decides to approve the merger, to condition its approval on UP reducing its voting power at TRRA sufficiently such that no matter

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82 Rev. App. 2-712 (Gehringer & Orr Second Errata V.S. ¶¶ 211-12).

83 *Id.*

84 *Id.* at 2-801 (Gehringer & Orr Second Errata V.S. ¶ 420).

put to a vote can be voted up or down solely by the votes of (a) UP alone or (b) UP together with any single other independent owner group, whether Applicants retain NS's interest or divest it to CN or another party. With that change, neither UP alone nor UP working together with any single other independent owner group, including CN if the shares were divested, would be able to force actions by TRRA or have an effective veto over such actions, and, equally important, UP would not have the leverage that came with that power to demand or resist implementation of other TRRA policies and practices without the assent of a broader group of TRRA owners.

134. Before consummation, Applicants should obtain Board approval of, secure the necessary agreements for, and put into effect implementing arrangements satisfying this restriction. Those arrangements should specify shareholder, board, and committee voting rights, voting denominators and approval thresholds, and the treatment of quorum, abstentions, nonattendance, vacancies, written consents, and commonly controlled entities, and demonstrate how the restriction operates under each ordinary or special voting rule. Any later transfer, amendment, or other arrangement that would weaken or defeat the restriction should require prior Board approval and demonstrated continued compliance.

V. TO PROTECT AND ENHANCE COMPETITION AGAINST A MERGED UP, CPKC'S RIGHTS ON UP/NS TRACK MUST BE AMENDED, AND EFFECTIVE ENFORCEMENT MECHANISMS MUST BE IMPOSED

135. In this Section, I discuss proposed conditions that are needed to safeguard CPKC's existing rights to compete using UP and NS trackage, as well as to prevent UP-NS from exploiting limitations on CPKC's rights to strengthen UP-NS's own market position at the expense of competition and rail customers. Appendices A through I catalog the specific contractual changes and new contractual provisions, as applicable, that are necessary to implement these concepts. The changes and terms described in Appendices A through I are

necessary to make the conditions proposed in this Section operative but it is incumbent on the combined UP-NS to execute all changes and obtain all assents necessary to effectuate the Board-ordered relief.

A. The Board Should Impose Changes to Terms of UP-CPKC and NS-CPKC Trackage Rights to Preserve and Strengthen CPKC's Existing Rights

1. Revisions to Existing Rights Between Robstown and Beaumont

136. CPKC proposes revisions to its existing rights between Robstown and Beaumont so that those rights can support an effective competitive service after a UP-NS merger and also to address the inevitable harm to competition coming from the increased size of a combined UP-NS and the resulting increased leverage against shippers.[85] The revisions should address the limitations and enforcement problems revealed by CPKC's experience under the existing arrangements.

(a.) Preserve Bi-Directional Rights if UP Ends Directional Running

137. CPKC currently participates in directional operation over UP's parallel Houston and Beaumont Subdivisions, using the Beaumont Subdivision eastbound and the Houston Subdivision westbound rather than relying on bidirectional operation over the predominantly single-track Beaumont route alone. CPKC's existing Houston Subdivision rights are operationally important, but they are not permanent and could be threatened by changes to or discontinuance of directional running. The Houston-Beaumont agreement currently conditions CPKC's Houston Subdivision rights on continued directional operation between Houston and

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[85] *See* MP/SP-Tex Mex Terms; HBT-Tex Mex Terms; SP-Tex Mex Houston-Beaumont Trackage Rights Agreement; Rosenberg Line Trackage Rights Agreement; Ex. A to Supplement to the Rosenberg Line Trackage Rights Agreement (Feb. 12, 2009).

Beaumont.[86] By discontinuing directional running, UP could in theory terminate CPKC's right to operate over UP's Houston Subdivision, forcing all of CPKC's trains to operate bidirectionally on UP's Beaumont Subdivision. Due to the spacing and length of sidings on the predominantly single-track Beaumont Subdivision, CPKC's operations would be severely disrupted if they were forced to switch to bidirectional operation on the Beaumont Subdivision.

138. CPKC's existing Houston Subdivision rights should be made permanent and should not depend on a continuation of UP's use of a directional running scheme. If UP ends or modifies directional running so that equivalent, efficient, and commercially effective CPKC access is no longer preserved, CPKC should have permanent bidirectional rights over the Houston Subdivision between Houston and Beaumont.[87] This protection would prevent a UP operating decision from eliminating the practical route on which CPKC's competitive service depends. With permanent CPKC rights on both the Houston and Beaumont Subdivisions, UP would no longer have the power to disrupt CPKC's service to its customers and potential customers or threaten to impose an arbitrary increase in compensation as the price of continued operations there.[88] In short, this condition protects the competitive status quo against UP's manipulation of trackage rights against competitor tenants.

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[86] *See* SP-Tex Mex Houston-Beaumont Trackage Rights Agreement (June 16, 1997, as assigned to KCS effective Jan. 1, 2006), Recital D, § 2(a), (c), §§ 6-7.

[87] *See* SP-Tex Mex Houston-Beaumont Trackage Rights Agreement (June 16, 1997, as assigned to KCS effective Jan. 1, 2006), § 2(a); § 6.

[88] In addition, by removing the risk that UP might seek to kick CPKC off of the Houston Subdivision, such a condition also would avoid the complex issues associated with the need for CPKC to recapture investment in improvements on the Houston Subdivision it had made over the past nearly 40 years through the trackage rights fees it has paid UP.

(b.) Reform Capital-Investment and Capacity-Expansion Provisions

139. The capital-investment and capacity-expansion provisions should be revised so that necessary projects can be identified, evaluated, and implemented on defined schedules.[89] To begin with, this necessitates CPKC being able to participate in UP's 5-year capital planning process for those capital projects that UP contends are for the mutual benefit of all users of the joint trackage. CPKC should be able to propose projects for the mutual benefit of the users as well as projects for CPKC's sole benefit, including the timing thereof. UP should not be able to defeat the competitive value of the rights by unreasonably delaying or withholding approval for the capacity work that is needed to support them. UP has repeatedly demonstrated its willingness and ability to do just that, as described in Section III of this Verified Statement. This modification of capital-investment and capacity-expansion provisions is important for CPKC customers and potential customers because competition delayed is competition denied. CPKC's ability to construct capital investments needed for competition removes the threat of that delay.

(c.) Incorporate the Service-Assurance Framework

140. Performance between Robstown and Beaumont should be governed by the Service-Assurance Framework, described in Section VII below, including objective corridor-specific measures, regular reporting to the Board, and prearranged remedies should UP's service falter. As explained below, this would partially remedy harm from the Transaction and increase competition.

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[89] MP/SP-Tex Mex Terms, § 5; SP-Tex Mex Houston-Beaumont Trackage Rights Agreement, § 4(a)-(b).

(d.) Provide Springing Dispatching Relief for Persistent Service Failures

141. If UP persistently fails to meet the applicable service standards, set by the Board through the process in Section VII, dispatching responsibility should shift to CPKC as an essential springing remedy for the following track segments: (i) Cuero Subdivision from Victoria (approximate MP 27.02) to South Placedo (approximate MP 15.17); (ii) the south end of the Angleton Subdivision from Placedo (approximate MP 224.07) to Bloomington Yard (approximate MP 221.0); and (iii) the portion of the Brownsville Subdivision from Bloomington Yard (approximate MP 221.0) to Tex Mex Junction (approximate MP 141.43).

142. Once the applicable activation requirements are satisfied, each preauthorized transfer should become effective on CPKC's written notice to UP and to the Board identifying the applicable trigger, supporting records, and commencement date. Applicants' objection should not suspend the transfer absent a Board stay. The transfer should remain effective unless affirmatively stayed, modified, or suspended by the Board; improved performance or expiration of a measurement, cure, review, or oversight period should not automatically return dispatching to Applicants.

(e.) Compensation Provided by Existing Agreements

143. Compensation for the revised rights should retain the existing compensation framework applicable to CPKC's South Texas trackage rights, including the rate basis and escalation formula. Applicants should not be permitted to use the merger or implementation of these conditions to reprice those rights, replace that formula, or circumvent this protection through additional charges. To the extent implementation requires the Board to address compensation, the Board should impose terms no less favorable to CPKC than the existing framework, including the adjustments that framework already prescribes.

2. Revisions to Existing Rights Between Chicago and Detroit

144. CPKC proposes revisions to its existing rights between Chicago and Detroit so that those rights can support an effective competitive service after a UP-NS merger and also to address UP's increased post-merger ability and incentive to impair the Chicago end of CPKC's MTRA route.

145. CPKC's existing Chicago-Detroit trackage and operating rights, including the connections necessary to use them, should be protected permanently against termination, suspension, nonrenewal, narrowing, or material impairment, subject to modification by the Board. Those protections should bind Applicants and their successors and remain effective after formal merger oversight ends. Effective service standards must be accompanied by protection of the underlying rights so that CPKC can continue to use the route and develop the competing services contemplated by these conditions.

(a.) Confirm the Right to Enter and Exit at CP 502

146. CPKC's current operations use two different points of connection in the Chicago area with its rights on NS between Chicago and Detroit: Train 137 operates through CP 502 to Gibson Yard for automotive interchange, as-needed Train 731 also uses CP 502, and Trains 230/231 and 730 use CP 509. Both connections are indispensable to CPKC's effective use of its Chicago-Detroit rights, yet CPKC had to battle NS in arbitration to preserve its right to access the trackage rights via CP 502. CPKC is concerned that UP will have even stronger incentives to try to end this access or end CPKC's rights altogether. CPKC's ability to carry finished automotive traffic (currently, from Canada) between Detroit and Gibson Yard is indispensable to its ability to provide efficient transportation of that commodity. If CPKC cannot operate between Gibson Yard and points east (i.e., Detroit) because it lacks a connection via CP 502,

CPKC's ability to compete would be radically diminished. Restricting that connection could force CPKC onto a circuitous and inefficient route through the Chicago terminal, impair automotive interchange at Gibson Yard, and otherwise reduce the reliability and practical value of CPKC's through service, while increasing terminal congestion by increasing the number of miles CPKC traffic would have to travel to reach Gibson Yard. Therefore, the conditions should confirm CPKC's right to enter and exit at CP 502 as well as CPKC's right to continue to operate over NS track, via CP 502, to reach Gibson Yard and CP 509.

(b.) Incorporate the Service-Assurance Framework

147. UP's obligations to support CPKC's performance between Chicago and Detroit should be governed by the Service-Assurance Framework set forth in Section VII, below. Persistent failures should result in springing transfer of dispatching authority to restore reliable service promptly. If the applicable standards set by the Board through the process in Section VII are not met during that cure period, CPKC should be entitled to activate the corresponding preauthorized remedy by notice under the Framework. Once activated, the transfer of dispatching authority would last until the end of the MTRA's contractual term, including any extensions. As explained above, this would partially remedy harm from the UP-NS transaction and increase competition.

(c.) Compensation Should Be as Provided in the Existing Agreements

148. Compensation for the revised Chicago-Detroit rights should remain as provided in the existing agreements because the distance of the trackage rights remains the same.[90] In addition, the penalty provision that effectively [redacted] were CPKC ever to gain

[90] *See, e.g.*, Michigan Trackage Rights Agreement (June 2, 2005), as amended, § 1.

access to automotive traffic to/from Southeastern Michigan should be stricken as contrary to the enhanced competition required to offset the many harms of the merger.

3. Revisions to the UP-CPKC Techny Line Agreement, Which Provides CPKC with Its Principal Route Between Chicago and Points North

149. CPKC's use of the Techny Line allows it to avoid much more frequent use of high-density commuter and Amtrak routes. CPKC uses UP's "Techny Line" to connect Bensenville Yard with its core route toward Milwaukee and the Twin Cities, including for 90% of CPKC traffic moving between points north of Chicago and CPKC's Bensenville Yard. [redacted][91] As a result, UP could terminate CPKC's use of the Techny Line on one year's notice any time [redacted] The Agreement should be modified to remove that vulnerability by making CPKC's protected rights permanent, subject to modification by the Board.

150. CPKC's use of the Techny Line is advantageous to Chicago area traffic because CPKC's only alternative route would impose added burdens on the operation of others and the terminal. Without rights on the Techny Line, CPKC would need to operate between Bensenville and Tower A20 via Tower A5, across CPKC's C&M Subdivision north of A5 and CPKC's Elgin Subdivision west of A5. Both of these lines are heavily used by passenger operations (west of A5 by 60-plus daily weekday Metra trains on its MD-W and NCS lines, and north of A5 by 54-plus daily weekday Metra trains on its MD-N line and 16 daily weekday Amtrak trains). In addition, CPKC's trains operating between Milwaukee and BRC's Clearing Yard would not be

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[91] *See* Techny Line Agreement (Mar. 9, 1977; effective Jan. 1, 1977), as amended, including the Feb. 2, 1981 escalation letter, § 17.1–17.2.

able to make a progressive connection with the BRC if they run via Tower A5 (as UP removed that connection via Mayfair and Cragin Junction years ago). Instead those trains would have to operate into Bensenville Yard and then reverse toward Cragin, magnifying the potential interference with passenger and freight operations. Therefore, routing more CPKC trains over the C&M and Elgin Subdivisions—as would occur if CPKC could no longer use the Techny Line—would lead either to more conflicts between freight and passenger trains or more delays to freight trains. The Techny Line is not used by commuter trains and avoids these conflicts.

151. UP's dispatching of the Techny Line can cause problems for Metra and Amtrak operations when UP's dispatchers do not admit southbound CPKC trains onto the Techny Line at Tower A20 promptly. When CPKC's trains need to wait for clearance north of A20, they can block or delay the movement of passenger trains; indeed, this precise source of delays has been a routine source of concern on the part of Metra. UP also sometimes holds CPKC trains on the Techny Line, making what should be a transit of around 40 minutes northbound or around 51 minutes southbound take as much as five hours northbound or six hours southbound. Obviously prolonged transit times can affect train crews' availability under the hours of service laws.

152. The UP-CPKC Techny Line Agreement should therefore also be revised to preserve CPKC's practical access to and capacity on the Techny Line at no less than a representative pre-merger baseline level of service performance and to prohibit UP from terminating, restricting, narrowing, or materially impairing those rights.

153. UP's obligations to support CPKC's Techny Line rights should be governed by the Service-Assurance Framework described in Section VII below. Persistent failures should result in CPKC obtaining dispatching authority over the Techny Line to restore reliable service promptly. If the performance standard set by the Board through the process in Section VII is not

met during a 30 day cure period, CPKC should be entitled to activate the preauthorized transfer by notice under the Framework.

154. Ordinary compensation for use of the Techny Line should continue to be governed by the existing agreements.

4. Polo Line

155. As described above, under the Airline Junction-Polo paired-track arrangement, UP and CPKC use parallel tracks between Airline Junction and Polo as an integrated operating corridor.[92] CPKC operates today over the UP-owned portion of the paired trackage. UP's acquisition of NS thus risks creating new incentives to terminate or disrupt the Polo Line agreement. For example, the merger would give UP a greater incentive to prioritize routes and resources supporting the combined UP-NS network over the paired trackage that is essential to CPKC's competing service.

156. The threatened harm is not limited to formal termination. UP could preserve the agreement nominally while altering dispatching, predominant train flows, the use of crossovers between paired tracks, maintenance practices, operating rules, or train priorities in ways that reduce the arrangement's practical capacity or reliability for CPKC.

157. The Polo Line Agreements[93] should be modified to prohibit UP from terminating, suspending, declining to renew, narrowing, or materially impairing the Polo Line agreement or CPKC's existing rights under the paired-track arrangement by giving them a term of 999 years.

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92 *See* Polo-Birmingham Trackage Rights Agreement (Aug. 1, 1931, as amended by Supplemental Agreements 1945, 1995, 1999), art. II, §§ 1, 3, 4, art. V, § 1.

93 *See* Polo-Birmingham Trackage Rights Agreement, art. I, § 1, art. VI (Aug. 1, 1931, as amended by Supplemental Agreements 1945, 1995, 1999).

The agreement should also be modified to protect CPKC's authority to operate over the UP-owned portion of the paired trackage between Airline Junction and Polo, together with the connections, crossovers, and incidental operating authority necessary to use the paired lines as an efficient and coordinated corridor. These protections should continue throughout that term notwithstanding any later separation of UP and NS, unless modified by Board order, and should bind any successor, affiliate, lessee, or other entity through which Applicants own, dispatch, maintain, or operate the affected trackage. The Polo Line paired-track agreement and its related operating and dispatching arrangements should be amended or supplemented as necessary to preserve those rights beyond any contractual expiration and give effect to these protections.

158. The Polo Line paired-track arrangement should also be governed by the Service-Assurance Framework, as described in Section VII below.

B. The Board Should Remove Paper-Barrier-Like Restrictions that Would Impede CPKC's Ability to Compete Effectively With Post-Merger UP

159. Many of CPKC's rights to operate on UP or NS track are already constrained by paper-barrier-like restrictions that would prevent competition with the merged UP.

160. CPKC recognizes that all of these dependencies on UP and NS, or limitations imposed on CPKC's competition with UP or NS, are conditions that predate the proposed UP-NS merger. However, such limitations were not created or agreed to in the context of a merger that brings nearly half of U.S. rail freight under the control of a single carrier. The creation of such a behemoth fundamentally alters the competitive landscape of the North American freight network, with consequences and trickle-down effects that will upend and undermine the core expectations and assumptions that previously guided interline partnerships and connections. As I explain below, the merger would fundamentally change post-merger UP's incentives to wield this control to hold back CPKC competition with the merged entity.

1. Restrictions on CPKC's Beaumont-Robstown Trackage Rights.

(a.) Existing Restrictions Would Impair CPKC Competition with UP

161. In South Texas, CPKC's use of its trackage rights on UP is generally conditioned on a prior or subsequent movement over the Tex Mex Laredo-Robstown-Corpus Christi Line, with an exception for traffic originating or terminating at shipper facilities on the Rosenberg Line Sale Portion and additional restrictions on connecting-line and transload traffic:

> …all traffic transported pursuant to such rights **must have a prior or subsequent movement on Tex Mex's Laredo-Robstown-Corpus Christi Line** or must have originated or terminated at shipper facilities located on the Rosenberg Line Sale Portion. However, traffic originating or terminating at locations on lines connecting to the Rosenberg Line Sale Portion or to/from transload facilities on the Rosenberg Line Sale Portion may not be transported over the Joint Trackage pursuant to the rights granted. [94]

162. This limitation is significant. For example, although CPKC has access to shippers in Houston served by the Port Terminal Railway Association ("PTRA"), the qualifying-haul restriction prevents CPKC from using those rights to handle traffic between Houston and the Southeastern United States, the Upper Midwest, and Canada.[95] Removing that restriction would permit CPKC to use the route without linking each movement to prior or subsequent haul on the Laredo-Corpus Christi line. This would greatly benefit CPKC customers and potential customers by creating new competition to offset UP's increased market dominance of shippers and by opening up new business development opportunities, particularly in South Texas.

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[94] MP/SP-Tex Mex Terms, § 2(b) (emphasis added); *see also* Rosenberg Line Trackage Rights Agreement, § 2(b).

[95] *See* MP/SP-Tex Mex Terms, § 2(b); *see also* Rosenberg Line Trackage Rights Agreement, § 2(b).

163. Likewise, the restrictions impede CPKC's ability to develop traffic on its own line between Victoria and Rosenberg by prohibiting transportation over the Joint Trackage of traffic moving to or from transload facilities on the Rosenberg Line Sale Portion or locations on connecting lines and build-ins or build-outs:

> …all traffic transported pursuant to such rights must have a prior or subsequent movement on Tex Mex's Laredo-Robstown-Corpus Christi Line or **must have originated or terminated at shipper facilities located on the Rosenberg Line Sale Portion. However, traffic originating or terminating at locations on lines connecting to the Rosenberg Line Sale Portion or to/from transload facilities on the Rosenberg Line Sale Portion may not be transported over the Joint Trackage pursuant to the rights granted.** [96]

164. This restriction has been a real barrier to CPKC playing a more robust competitive role in this region. The bar against CPKC's handling of traffic from any transload facility on CPKC's Rosenberg Subdivision to points north has killed the economics of multiple transload proposals and other opportunities brought to CPKC to support business growth between Victoria and Rosenberg.

165. Further, the restriction against CPKC serving any customer whose facilities are not directly adjacent to CPKC's Rosenberg Subdivision has prevented CPKC from working with customers that are captive to UP [redacted]

166. The UP-NS merger would make the above paper-barrier restrictions far more consequential. Although these restrictions were negotiated with a UP whose network ended at

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[96] MP/SP-Tex Mex Terms, § 2(b) (emphasis added); *see also* Rosenberg Line Trackage Rights Agreement, § 2(b) (emphasis added).

the Mississippi River, after the merger they would apply to dealings with a UP capturing both the western and eastern revenues on traffic it diverts from interline routes, thereby increasing UP's incentive to enforce the prior-or-subsequent-haul condition and Rosenberg Line restrictions to keep Houston and Gulf Coast traffic off CPKC routes to the Southeast, the Upper Midwest, and Canada. At the same time, the merger would eliminate NS as an independent eastern connection for that traffic, making CPKC's competitive role vital. Essentially, the merger would transform the existing restrictions into more potent instruments of foreclosure.

167. The Board should condition any approval of the UP-NS merger on removing the restrictions reflected in the bolded language in the quotations following paragraphs 161 and 163 above.

(b.) Provide Reciprocal Switching Access and Authority to Transport the Resulting Traffic Under Existing Rights

168. The Board should condition the transaction on UP providing CPKC with reciprocal switching access to eligible existing and future UP sole-served facilities within the Bloomington and Corpus Christi switching zones described below.[97] To effectuate that access, the Board should condition the transaction on revisions to CPKC's trackage rights agreements to allow CPKC to use the rights to serve local customers. Without local access, the rights would not allow CPKC to offer a complete competitive alternative to customers located along the route, leaving the expanded UP with leverage to force bundling of competitive traffic with traffic that UP controls. The reciprocal switching access would greatly benefit CPKC customers and potential customers against the increased leverage a merged UP would have due to the number of

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[97] *See* MP/SP-Tex Mex Terms, § 2(a)(i)-(vi), (g)-(h); *see also* Rosenberg Line Trackage Rights Agreement, §2(a)(i)-(vi) .

shipper facilities that would become captive to the much-expanded UP. UP would perform the customer switching and interchange the traffic with CPKC for onward transportation. This customer-access remedy should be implemented together with removal of the prior-or-subsequent-haul and related restrictions that would otherwise prevent CPKC from handling the covered traffic under its existing operating rights. Mr. Redd's Verified Statement provides more details about this.[98]

169. Accordingly, the Board should modify CPKC trackage rights agreements to remove any restrictions that prevent CPKC from using its existing trackage and operating rights between Robstown and Beaumont to transport covered customer traffic received or delivered through reciprocal switching. CPKC should be permitted to transport that traffic over the Robstown-Victoria and Rosenberg-Beaumont trackage-rights lines and the related HBT and Houston Terminal trackage included under its existing rights. CPKC's rights should include the right to pickup, setout, interchange, and perform any incidental operations necessary to receive and deliver blocks of reciprocally-switched railcars at designated interchange points.

170. CPKC's access to PTRA-served facilities also requires reliable terminal service and protection against changes that would eliminate that access. If the PTRA Agreement[99] terminates, PTRA ceases operations, or any facility served by PTRA comes to be served by UP, HBT, or another UP-NS entity, UP should be required to grant to KCSR trackage, haulage, or reciprocal-switching rights sufficient to reach the PTRA-served facilities KCSR could reach

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98 *See* Redd V.S. ¶¶ 167-80, 184-90.

99 *See, e.g.*, PTRA Operating Agreement (2016), Attachment A, Port Terminal Railroad Association Agreement (June 30, 1924, as amended).

through PTRA immediately before the relevant event, on terms no less favorable than those in effect under the PTRA Agreement.

2. Restrictions on CPKC's Chicago-Detroit Trackage Rights on NS

171. CPKC's trackage rights on NS between Chicago and Detroit contain similar paper-barrier-like restrictions.[100]

(a.) Existing Restrictions Would Impair CPKC Competition with UP

172. The Soo-Line-Norfolk Southern Michigan Trackage Rights Agreement ("MTRA") restricts CPKC's use of its trackage rights between [redacted] [101]

173. There also is a special prohibition against CPKC using the rights to [redacted] including a penalty provision that nearly [redacted] in the event CPKC ever gains the right to handle such traffic on the trackage rights without NS's consent:

[redacted]

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100 *See* Michigan Trackage Rights Agreement (June 2, 2005) §§ 2(e), 3(a)-(e).

101 *See* Michigan Trackage Rights Agreement (June 2, 2005) § 3(d) ("SOO shall not interchange any traffic with any other carrier at any point [redacted]

[redacted][102]

174. As a result, CPKC cannot compete for traffic opportunities for which its network would be particularly well-suited, including finished auto traffic moving between Detroit and Dallas and between Detroit and Mexico.

(b.) UP-NS Merger Would Change NS Incentives and Make CPKC Competition More Imperative

175. The Proposed Transaction similarly transforms the incentives surrounding existing paper barrier restrictions on NS trackage just as it does with those imposed by UP. Today, those restrictions protect NS's eastern franchise. After the merger, the same restrictions would protect the single-line UP-NS franchise between Detroit and the West, Texas, and Mexico—precisely the markets in which CPKC's network is best positioned to compete. The merged carrier would thus have a greater incentive to enforce the interchange and automotive restrictions, and CPKC competition on this route would become correspondingly more important.

(c.) Remove Commodity Restrictions

176. The Board should remove the MTRA's prohibition on CPKC handling [redacted] as well as the penalty provision that would increase the trackage rights charge for such traffic if the prohibition were modified. Doing so would greatly benefit CPKC customers and

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[102] Michigan Trackage Rights Agreement § 3(i); § 5(b) (emphasis added).

potential customers by fostering a competitive alternative between Detroit and Texas and Mexico.

(d.) Allow Interchange with Conrail and Ann Arbor Railroad

177. The revised rights should permit CPKC [redacted] and to use Applicants' trackage as necessary to facilitate [redacted] and require NS to support those interchanges. As CPKC's operating witness Mr. Redd explains, Oakwood Yard is the planned interchange point for Conrail and Ann Arbor traffic.[103] For Ann Arbor traffic, the preferred arrangement would use Ann Arbor's Toledo-Milan service and NS haulage between Milan and Oakwood in CPKC's account, with CPKC receiving and delivering the traffic at Oakwood Yard. Direct CPKC pickup and setout at Milan would remain an alternative, subject to operationally appropriate arrangements to avoid interference with through operations. Applicants should provide the haulage, interchange, connection, and incidental operating authority and procure the assents needed to implement the selected arrangement.[104]

178. This would greatly benefit CPKC customers and potential customers because it would provide greater competition, particularly for auto customers, to the south and west of Detroit, including to Mexico.

(e.) Allow Access to a CPKC-Served Intermodal, Automotive, or Transload Facility

179. The revised rights should permit CPKC to originate and terminate local traffic at future CPKC-served facilities in southeast Michigan connected to the trackage-rights route,

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103 *See* Redd V.S. ¶¶ 258-61 & Figure 32.

104 *See* Redd V.S. ¶¶ 259-60.

including intermodal, automotive, or transload facilities, whether or not CPKC owns or funds them or they are immediately adjacent to the route.[105] Through-trains could perform pickups and setouts at the facility, supplemented by local service, if necessary. This would provide CPKC the potential to grow to serve shippers' growing needs. The rights should include the connections and incidental operating authority necessary to provide that service. Any particular facility or construction project would remain subject to applicable approvals.

180. This would greatly benefit CPKC customers and potential customers by enabling CPKC to create and offer new services.

3. The Board Should Remove the "NS Traffic" Exclusivity on the Meridian Speedway

181. CPKC's contractual arrangements with NS relating to the Meridian Speedway limit the competitive role that CPKC can play on that key route. The MSLLC agreements granted NS [redacted] to so-called "NS Traffic," a defined category of specified intermodal traffic moving via the Speedway between points in the United States west of Dallas-Ft. Worth and points in the United States at or east of Meridian, including qualifying through traffic that does not require a Wylie lift or drop, subject to the governing agreements' definitions and exclusions.[106] NS can partner with either UP (via Shreveport) or BNSF (via Dallas-Ft. Worth), but CPKC is not allowed to participate in this traffic at all except as the provider of haulage services to NS. For that defined traffic, CPKC cannot form part of an interline route connecting BNSF with CSXT via Dallas and Myrtlewood, and it cannot grant

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105 *See* Michigan Trackage Rights Agreement, §§ 2(e)(iii); § 3(b)-(c), (e), (k).

106 *See* NSR-Meridian Speedway LLC Joint Use Agreement (May 1, 2006, as amended), §§1 (b), 2(b), 4(a)-(b); *see also* KCSR-Meridian Speedway LLC Joint Use Agreement (May 1, 2006, as amended), §§ 1(b), 2(d)(i)-(ii), 4(a)-(c).

either BNSF or CSXT haulage rights allowing them to connect directly. Although NS has thus far chosen UP as its primary western interline partner for NS traffic, the UP-NS merger would further entrench that choice and diminish BNSF and CSXT customers' prospects of accessing and benefiting from this premium route.

182. After the merger, NS's traffic exclusivity would pass to UP, the carrier with which NS already partners exclusively for that traffic. The combined UP-NS would thus hold a contractual gatekeeping right over premium intermodal traffic on a route CPKC operates. Removal of that exclusivity and the associated consent restrictions, together with provision of the operating and governance approvals needed to implement the relief, would allow CPKC to develop competing interline intermodal service over the Speedway with BNSF and CSXT (or provide haulage for either carrier's account), while preserving NS's underlying rights to continue availing itself of CPKC-provided haulage services between Shreveport and Meridian in support of its own transcontinental intermodal service using the Speedway, but in the future on a *nonexclusive* basis.

183. To make this relief effective, Applicants should be required to amend or waive provisions of the Speedway agreements that would prevent CPKC from developing and providing the authorized competing service, and to provide or procure the necessary approvals and consents. Specifically, the Speedway agreements should be amended to (i) carve intermodal traffic that CPKC transports for its own account in interline service with BNSF or CSXT, or hauls for the account of BNSF or CSXT, out of the "NS Traffic" definitions and [redacted] and sole-discretion consent rights, as well as any anti-rebilling

restriction that would bar the authorized service.[107] The agreements should also (ii) include that traffic within "KCSR Permitted Traffic" and permit CPKC to handle it in either carrier's account and grant either carrier haulage rights over the Speedway, with conforming changes to the "Third Party Traffic" restrictions and MSLLC's retained-rights provisions.[108] Finally, Applicants should be required to consent to, approve, and execute the amendments and provide or procure all operating and governance approvals needed for both forms of service, including approvals for service that does not satisfy the third-party-access standards under the applicable Speedway Agreements.[109] The implementing changes should give CPKC the traffic and service authority needed to exercise that opportunity without Applicants' discretionary commercial veto. They should preserve CPKC's existing traffic and service rights, including its Myrtlewood traffic rights and associated protections, and preserve Applicants' underlying transportation rights on their existing terms except as modified by the nonexclusive access condition. Removing exclusivity should not enlarge NS's contingent trackage rights or reinstate a volume guarantee that has otherwise terminated.

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[107] Relevant provisions include: NSR-Meridian Speedway LLC Joint Use Agreement (May 1, 2006, as amended), §§1 (b), 4(a), 4(b)(ii), 4(c); KCSR-Meridian Speedway LLC Joint Use Agreement (May 1, 2006, as amended), §§ 1(b), 4(c)(ii), (d); LLC Agreement of Meridian Speedway, LLC (May 1, 2006), Definitions ("NS Traffic").

[108] Relevant provisions include: KCSR-Meridian Speedway LLC Joint Use Agreement (May 1, 2006, as amended), §§ 1(b), 2(c)(iii), (d)(i)-(ii), 4(a), (b)(i), (c)(i); NSR-Meridian Speedway LLC Joint Use Agreement (May 1, 2006, as amended), § 4(b)(i)-(ii).

[109] Relevant amendment and approval provisions include: LLC Agreement of Meridian Speedway, LLC (May 1, 2006), Definitions ("Major Decisions," cls. (i), (xxi), (xxiii)), §§ 5.6, 8.1, Ex. A; *see also* NSR-Meridian Speedway LLC Joint Use Agreement (May 1, 2006, as amended), § 7(n)(iii); KCSR-Meridian Speedway LLC Joint Use Agreement (May 1, 2006, as amended), § 7(n)(iii).

4. The Board Should Prohibit UP From Enforcing Paper-Barrier Restrictions on CPKC's Service to Shippers Near Rosemount and Fairmont, MN

184. ***Rosemount, MN.*** Rosemount is southeast of the Twin Cities. At the Roseport Industrial Park near Rosemount, Section 13 of the 1968 Trackage Agreement imposes a paper-barrier restricting CPKC's handling of shipments to or from Roseport shippers based on geography and direction. In particular, CPKC cannot handle shipments between Roseport and [redacted] CPKC is allowed to handle traffic only to or from [redacted][110] This restriction has limited CPKC's opportunities to provide transportation services to important customers in the industrial park—including [redacted] because CPKC is not permitted to support their demand for rail transportation to legacy-KCS territory (*i.e.*, states [redacted][111] The Board should prohibit UP from enforcing these restrictions so that the direction or geographic origin or destination of a

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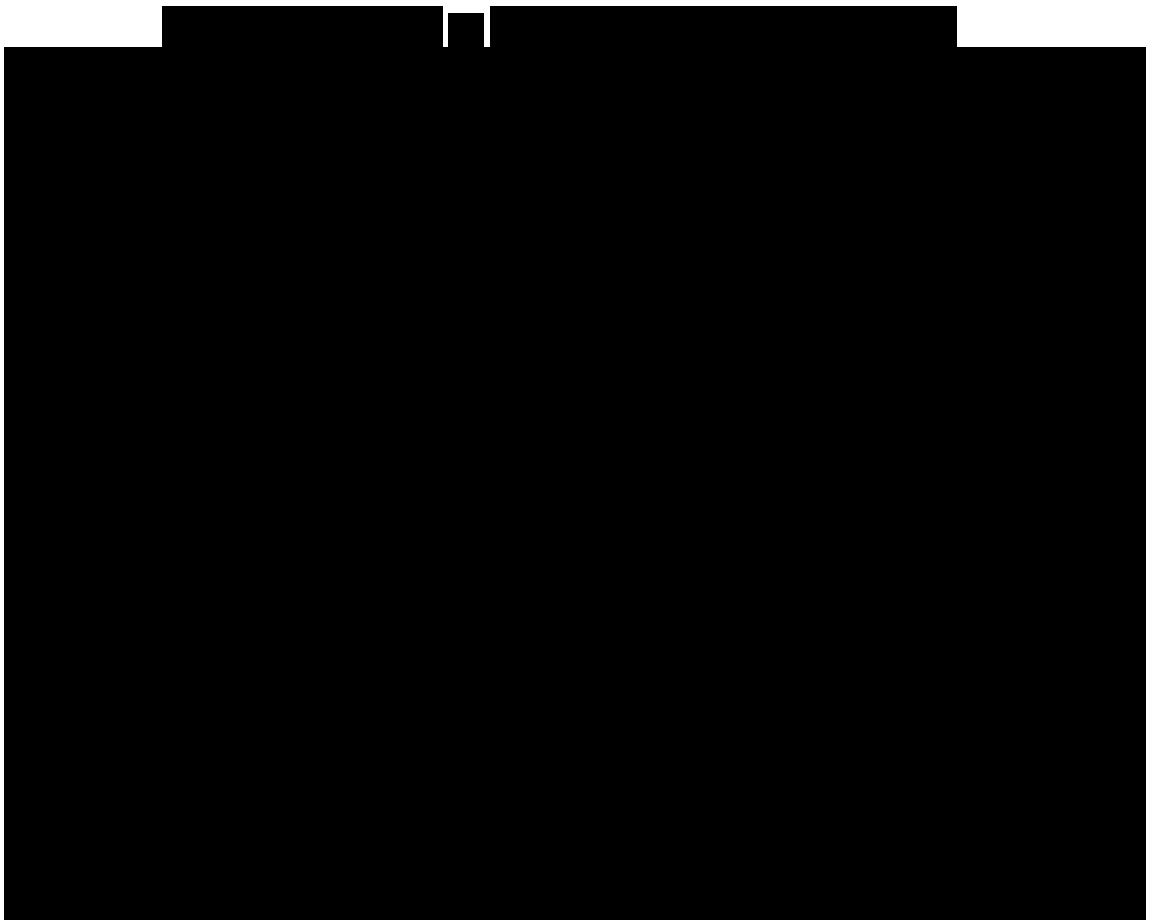
110 [redacted] Roseport Trackage Agreement, § 13.

111 *See* Brooks V.S. ¶ 233.

movement does not prevent CPKC from serving an otherwise eligible Roseport customer under its existing arrangements.

[redacted]



[redacted]

185. ***Fairmont, MN.*** Between Fairmont and Welcome, MN, CPKC operated over a short stretch of trackage rights on UP. CPKC's predecessor (Milwaukee Road) once had its own line here, but in 1974 Milwaukee and UP's predecessor (CNW) entered into a line rationalization project that resulted in Milwaukee's line being removed and Milwaukee receiving operating rights on CNW. Scroll forward, and there are now several important customers adjacent to the shared trackage that, because of a restriction inserted in the agreement in 1974, UP can serve but

CPKC cannot. Those customers—including [redacted] would like to do business with CPKC, but § 5.1 of the April 1, 1974 agreement [redacted][112] Paragraphs (a) and (b) prohibit [redacted] paragraph (d) separately prohibits [redacted][113] The Board should make those restrictions, and any overlapping provision, unenforceable to the extent necessary for CPKC to provide local service to shipper facilities on the Fairmont-Welcome line. UP should not be permitted to treat CPKC's service to such customers as a default or a ground for terminating CPKC's trackage rights.

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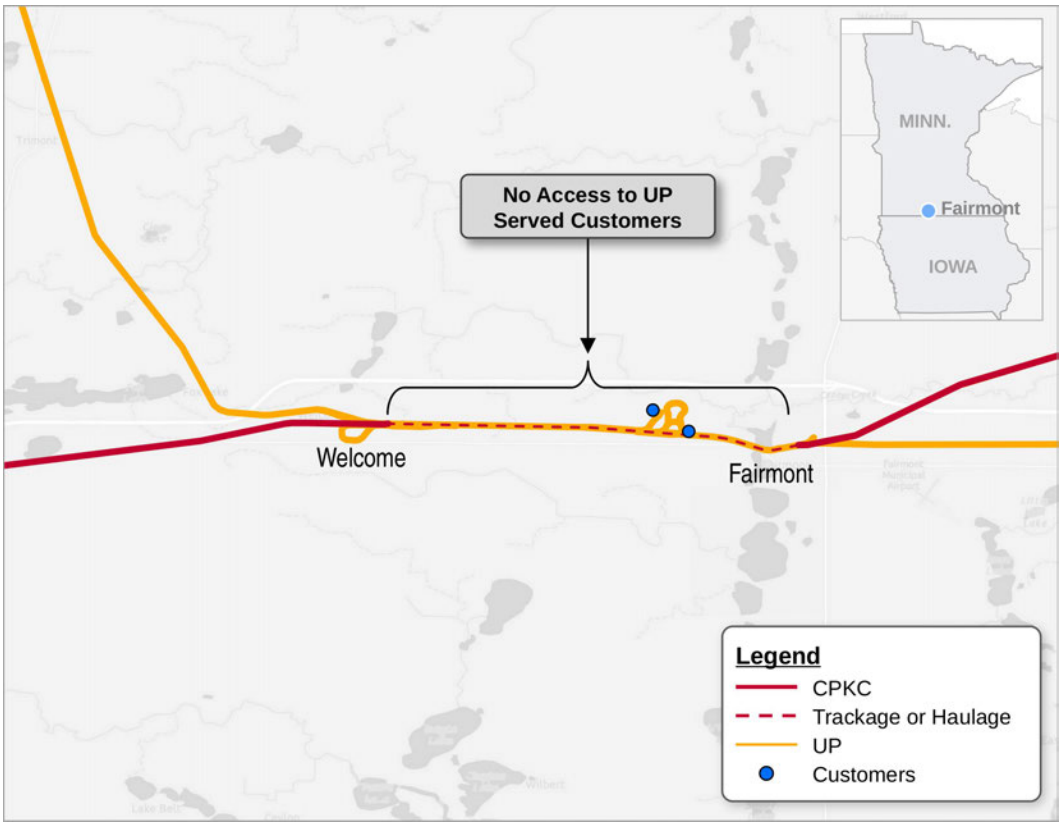
[112] *See* Chicago & Nw. Transp. Co. & Chicago, Milwaukee, St. Paul & Pacific R.R. Agreement, § 5.1; *see also* Brooks V.S. ¶ 235.

[113] [redacted]
Chicago & Nw. Transp. Co. & Chicago, Milwaukee, St. Paul & Pacific R.R. Agreement § 5.1(a)-(b), (d).

FIGURE 14: SERVICE OF CUSTOMERS NEAR FAIRMONT, MN



186. These Minnesota restrictions, like those described above, illustrate the degree to which UP and NS already hamstring CPKC's ability to compete. The Board should require Applicants to refrain from enforcing these limitations that restrict CPKC's ability to compete for customers it could otherwise serve along these segments of track.

C. Terms for New Rights that the Board Should Grant in the Event it Approves the UP-NS Merger

1. New Rights Between East St. Louis, IL and Mexico, MO

187. CPKC seeks new rights between Mexico, MO, and East St. Louis, IL. The requested route would use NS trackage from Mexico toward St. Louis and connecting TRRA trackage across the Mississippi River to reach CSXT and CPKC trackage in East St. Louis. This would greatly benefit CPKC customers and potential customers because it would save

approximately 47.8 miles on CPKC's current Mexico-East St. Louis route,[114] while making CPKC services and routings available to General Motors at Wentzville as well as to other customers.

(a.) Trackage Rights on NS from Mexico to St. Louis (May Street)

188. The Board should grant CPKC overhead trackage rights over NS's Midwest Division, Kansas City District, and St. Louis Terminal Subdivision from the CPKC-NS connection at Mexico, MO (approximately NS Milepost S 110.2) over approximately 105 miles of NS main line to the NS-TRRA connection at May Street Interlock (approximately NS Milepost S 5.2) in St. Louis. CPKC should also receive the authority to serve—either through reciprocal switching with NS or through direct access, at CPKC's election—current and future customer facilities on, adjacent to, or served via that line, including General Motors at Wentzville, and the yard, switching, staging, interchange, and other incidental rights necessary to provide operationally effective service.

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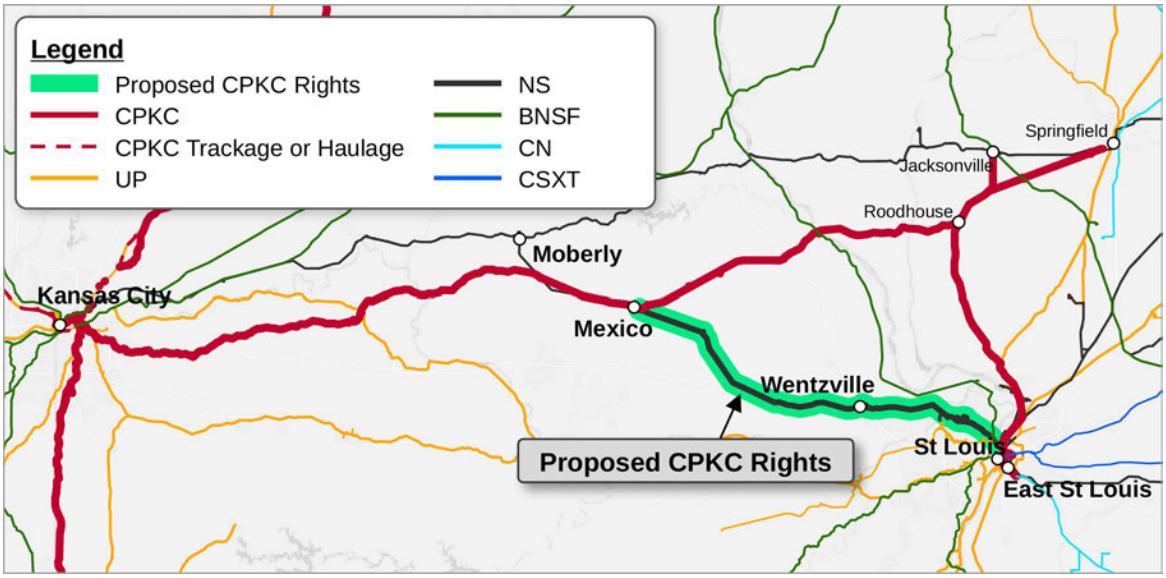
[114] *See* Gameiro Workpaper – Mileage Difference for Mexico-East St. Louis Routes.

FIGURE 15
PROPOSED CPKC RIGHTS ON NS FROM MEXICO TO ST. LOUIS



189. Initially, CPKC proposes that its requested access to shipper facilities located between Mexico, MO and St. Louis occur via reciprocal switching service provided by NS via NS's local serving yards at St. Louis (Luther Yard) and Wentzville, MO. CPKC would use UP-NS's reciprocal switching services at Wentzville for customers between Mexico and Wentzville and at Luther Yard for customers between Wentzville and St. Louis, with CPKC trains receiving and delivering assembled blocks. Although CPKC anticipates initially using reciprocal switching services, CPKC should also receive the authority to serve eligible facilities directly, at CPKC's election, to the extent traffic volumes would support such service.

190. To effectuate these rights, CPKC and UP-NS would enter into new Mexico-St. Louis trackage-rights and operating agreements (along with any agreements necessary to address access to Luther Yard, trackage or switching operations at Wentzville, or any other related facility or interchange arrangements). UP-NS should also amend or waive inconsistent restrictions in existing instruments, as well as procure all required third-party assents.

191. Compensation for the requested NS trackage rights and reciprocal switching services should be established through negotiated agreements or, if necessary, terms prescribed by the Board, using customary trackage-rights and terminal compensation principles. CPKC would propose applying the same trackage rights fee that is negotiated for the Michigan Trackage Rights Agreement, as discussed in greater detail in CPKC's Chicago-Detroit Responsive Application.[115] If a negotiated agreement is not reached within 90 days, the decision on compensation should be left with the Board as set forth in the Service-Assurance Framework discussed below in Section VII.

(b.) Close-the-Gap Rights on TRRA Across the Mississippi River

192. CPKC also seeks terminal trackage rights over the TRRA to cross the Mississippi River and connect the NS route with CSXT and CPKC trackage in East St. Louis. Those rights should close any gap between the new NS rights and the trackage over which CPKC already operates.

193. CPKC requests overhead trackage and operating rights over TRRA for the following segments: (i) the portion of the West Belt Subdivision from NS's connection at May Street Interlock to West Approach Interlock; (ii) the portion of the Merchants Subdivision from West Approach Interlock to SH Interlock; and (iii) the portion of the Illinois Transfer Subdivision from SH Interlock to CP Junction and Valley Junction. CPKC requests that those rights permit CPKC to move any and all traffic between its rights on NS that end at St. Louis and CPKC's yard in East St. Louis and connections with CSXT and other carriers at East St. Louis. To effectuate these rights, Applicants should procure amendments to the existing TRRA

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[115] *See generally* Responsive Application of Soo Line Railroad Company & Canadian Pacific Railway Company, Finance Docket No. 36873 (Sub No. 49).

trackage-rights, terminal-use, and interchange agreements, together with new agreements or grants, as needed.

194. Compensation for the TRRA rights would be established through negotiated agreements or, if necessary, terms prescribed by the Board, using customary terminal trackage rights compensation principles. If a negotiated agreement is not reached within 90 days, the decision on compensation should be left with the Board as set forth in the Service-Assurance Framework discussed below in Section VII.

2. New Access to Customers in Louisiana

195. CPKC also seeks reciprocal switching access to customers in the West Baton Rouge area in Louisiana. The competitive rationale and the operating feasibility of that relief are addressed in the relevant CPKC marketing and operating witness statements.[116] CPKC's proposed reciprocal switching access to customers in Louisiana would be accompanied by springing rights to serve those customers directly if UP's first-mile and last-mile service does not meet competitive needs.

(a.) Reciprocal Switching Terms

196. UP should be required to provide reciprocal switching between CPKC and all eligible existing and future UP sole-served facilities within a reciprocal switching zone that encompasses all shipper facilities on or reached through the West Baton Rouge route extending from Lobdell to Addis over the Avoyelles Subdivision alignment and necessary connecting trackage at Addis, and continuing south over the Livonia Subdivision to MP 79.7, including the

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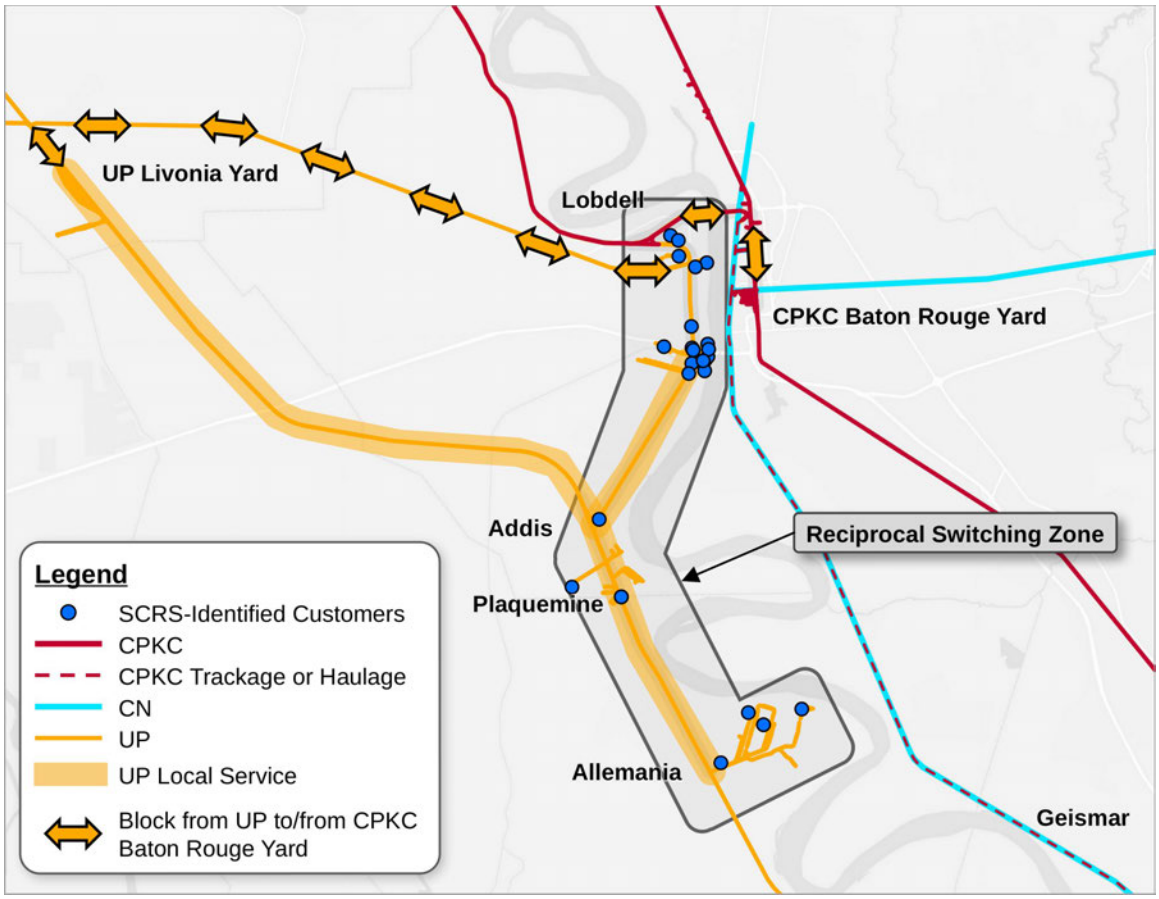
[116] *See* Brooks V.S. ¶¶ 210-11; *see also* Redd V.S. ¶¶ 195-206.

siding and industrial trackage along that route and the customer leads and connections necessary to reach the covered facilities.

FIGURE 16 – PROPOSED RECIPROCAL SWITCHING FOR CUSTOMERS IN BATON ROUGE



197. Under the proposed arrangement, UP should perform the required customer switching and block assembly, handle the traffic through Livonia, and deliver the cars to CPKC at Baton Rouge Yard for CPKC's onward line-haul service, with corresponding arrangements for traffic moving in the opposite direction.

198. Applicants should receive reasonable and nondiscriminatory compensation for the reciprocal switching and related terminal services they perform. Compensation should take account of the nature and cost of those services and should not be structured or applied to nullify the competitive value of the access. Compensation should be established through good-faith

negotiations or, if necessary, determination by the Board, using customary reciprocal switching compensation principles. If agreement is not reached within 90 calendar days after the approval order becomes effective, any unresolved compensation terms should be submitted to the Board for expedited determination, with either party entitled to initiate that referral, as set forth in the Service-Assurance Framework I discuss in Section VII. Interim service should be available on reasonable provisional terms during negotiations and Board review.

(b.) Trigger for Trackage Rights and Trackage Rights Terms

199. Reciprocal switching should serve as the initial remedy because it can introduce competition while continuing to use UP's existing local-service operation. But CPKC and affected customers should not remain dependent on UP-provided switching that proves commercially or operationally ineffective. The Board should therefore preauthorize nonexclusive direct operating rights over additional UP track necessary to connect the facility with CPKC's network, exercisable at CPKC's election by supported notice upon either (i) the satisfaction of the activation requirements in the Interline Service Agreement between CPKC and UP at Baton Rouge, LA (the "ISA"),[117] which are described below or (ii) a qualifying failure of UP-provided reciprocal switching to support effective competition under the separate substantive and cure requirements described below. Neither ground should require a further Board merits determination.

200. The reciprocal switching service should meet the agreed ISA window and frequency, currently between 1300 and 1700 hours, seven days per week,[118] or a replacement

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117 *See* UP-CPKC Baton Rouge Interline Service Agreement.

118 *Id.*

window adopted by the Board to ensure UP provides dependable reciprocal switching, including movement from customer facilities to our Baton Rouge Yard. Those standards should address the windows within which cars are picked up or delivered, the frequency of those pick-ups and deliveries at Baton Rouge Yard, the timely pickup once cars are available at customer locations and compliance with blocking protocols so that northbound and southbound cars are separated upon delivery. Following notice of a failure to meet the standards adopted by the Board or the ISA window and frequency, UP should have 30 days to cure by achieving the same compliance standard during the cure period. If UP does not do so, CPKC should be entitled to activate the preauthorized direct-access rights by filing notice with the Board and serving Applicants, identifying the measurement and cure periods, supporting records, covered facility or facilities, authorized route, and commencement date. Satisfaction of those requirements should establish the service-failure predicate without an additional cure period, a new showing of materiality or merger causation, or a further Board merits determination. Applicants' objection should not suspend activation absent a Board stay, and disputes should receive expedited resolution under the Framework without reopening the merits of the grant.

201. For failures outside the objective ISA trigger, an individual material failure, or repeated failures that collectively materially impair effective switching, should permit CPKC to activate the preauthorized direct-access rights by supported notice under the Framework after notice of the failure and a 30-day opportunity to cure. Where that ground rests on measured service performance, the Framework's 30-day measurement period should also apply. The notice should identify the affected facility or facilities, the obligation breached, supporting records, satisfaction of the applicable measurement and cure requirements, and the corresponding authorized route. Enforcement of an independent switching, service, or

nondiscrimination obligation should not require a fresh showing of merger causation. Where Applicants' contribution to deterioration is required, it should be enough that their conduct caused or materially contributed to the harm under the Framework. Activation should not require a further Board merits determination, and Applicants' objection should not suspend exercise absent a Board stay.

202. Once activated, the condition should permit CPKC to operate with its own crews, locomotives, and equipment over the identified track and necessary connections, with incidental pickup, setout, staging, runaround, interchange, and information rights. Reasonable compensation, applicable cost allocation, and documented nondiscriminatory safety and qualification requirements should apply. Compensation should be the same as the current GTM rate UP pays for utilizing CPKC's DeQuincy-Beaumont line. CPKC should be permitted to qualify its crews through locally qualified CPKC supervisory train-and-engine personnel, subject to documented, nondiscriminatory qualification requirements. An ongoing UP pilot or operating crew should not be required after completion of that process.

3. New Access to Customers in Bloomington and Corpus Christi and Protected Use of the Victoria Industrial Lead

(a.) Reciprocal Switching Terms

203. UP should be required to provide reciprocal switching between CPKC and all eligible existing and future UP sole-served facilities within the following defined switching zones: (1) the Bloomington switching zone, comprising the territory within a 35-mile radius of UP's Bloomington Yard in Bloomington, Texas, including Point Comfort and all of Victoria; and (2) the Corpus Christi switching zone, comprising the territory within a 35-mile radius of Corpus Christi, Texas, including Gregory, Sinton, and Odem. The competitive rationale and the

operating feasibility of that relief are addressed by Mr. Redd and Mr. Brooks in their Verified Statements.

FIGURE 17 – PROPOSED RECIPROCAL SWITCHING FOR CUSTOMERS IN BLOOMINGTON, TX

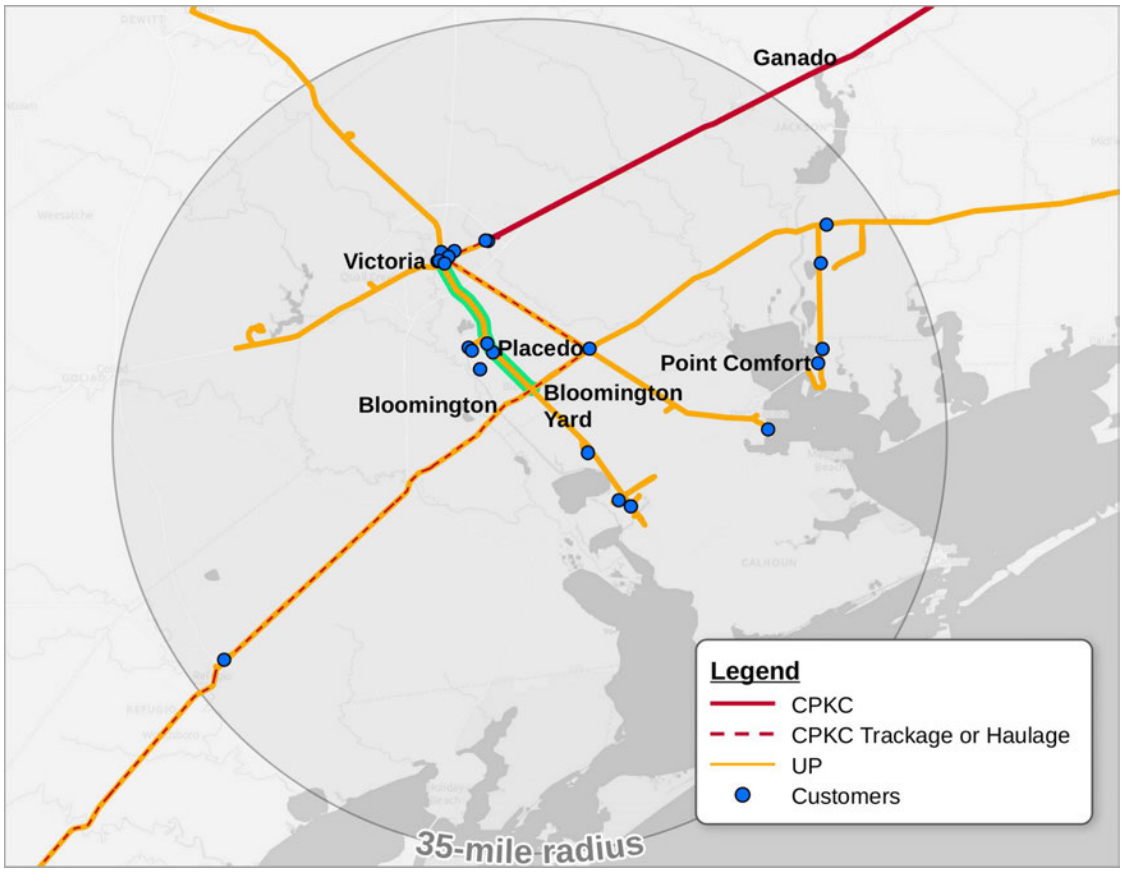
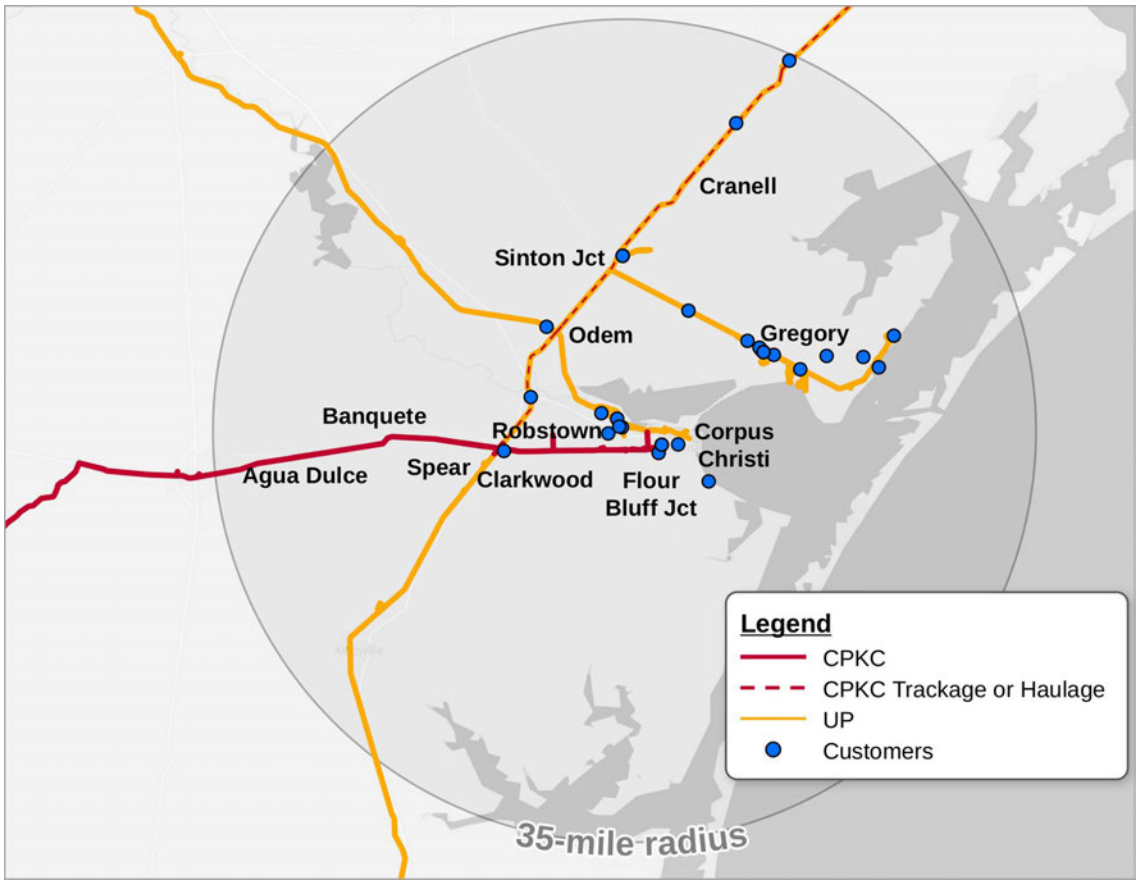


FIGURE 18 – PROPOSED RECIPROCAL SWITCHING CORPUS CHRISTI, TX



204. Applicants should receive reasonable and nondiscriminatory compensation for the reciprocal switching and related terminal services they perform. Compensation should take account of the nature and cost of those services and should not be structured or applied to nullify the competitive value of the access. Compensation should be established through good-faith negotiations or, if necessary, determination by the Board, using customary reciprocal switching compensation principles. If agreement is not reached within 90 calendar days after the approval order becomes effective, any unresolved compensation terms should be submitted to the Board for expedited determination, with either party entitled to initiate that referral, as set forth in the Service-Assurance Framework I discuss in Section VII. Interim service should be available on reasonable provisional terms during negotiations and Board review.

(b.) Protected Use of the Victoria Industrial Lead

205. CPKC's use of UP's Victoria Industrial Lead is subject to a written agreement that permits UP, at its discretion, to route CPKC trains over the Lead as necessary to maintain fluidity in the Victoria-Placedo-Robstown corridor, while UP maintains and operates the Lead.[119] [redacted] [120] UP's dispatchers regularly route CPKC through trains via the Victoria Industrial Lead, which provides a route between Victoria and Bloomington to bypass congestion on the Cuero Subdivision and at Bloomington Yard.

206. The Lead thus provides an important operating alternative when congestion affects CPKC's ordinary route, but CPKC's ability to use that alternative is subject to UP's routing discretion. This discretionary through use does not provide the durable operating right needed to protect CPKC's service. CPKC therefore seeks durable, nonexclusive rights to operate with its own crews and locomotives over the Lead between Victoria and Bloomington for through train operations and to transport traffic received or delivered through reciprocal switching for covered facilities on or directly accessible from the Lead. UP should perform the local customer pickups and deliveries and assemble the traffic into operationally usable blocks for interchange with CPKC, which would provide the competing line haul. CPKC's rights should include the pickups, setouts, interchange, and connecting and incidental operations necessary to receive and deliver those blocks and transport the resulting traffic. CPKC should be

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[119] *See* Ex. A to Supplement to the Rosenberg Line Trackage Rights Agreement (Apr. 29, 2009), ¶ 6; Supplement to the Rosenberg Line Trackage Rights Agreement (Apr. 29, 2009), ¶ 1.

[120] *See* Ex. A to Supplement to the Rosenberg Line Trackage Rights Agreement (Apr. 29, 2009), ¶ 6.

able to elect through use of the Lead when operationally appropriate to maintain fluidity, subject to nondiscriminatory dispatching and safety requirements. Neither the through-operation rights nor reciprocal-switching access should require a prior service failure. Reciprocal-switching access to covered facilities should not depend on congestion elsewhere or UP's discretionary authorization of a bypass movement. UP should execute the instruments and arrangements necessary to provide the authorized reciprocal-switching access.

207. Compensation for CPKC's Victoria Industrial Lead rights should be calculated using the current gross-ton-mile rates for trackage rights under the agreements governing the Cuero Subdivision.

4. Operating Rights Over UP-NS Tracks to Effect Direct Interchange Between CPKC and CSXT Through West Yard

208. CPKC accesses West Yard, its New Orleans yard, via CN tracks from Frellsen/Orleans Junctions to East Bridge Junction, then uses several hundred feet of NS's Back Belt to reach the West Yard connection track. CPKC does not hold operating rights over the remaining Back Belt track. West Yard connects with the New Orleans Public Belt Railway ("NOPB"), through which CPKC serves the Port of New Orleans and interchanges with NS and CSXT. The current operating rights—according to the position staked out by NS—create an impasse that precludes direct interchange between CPKC and CSXT through West Yard. Although CSXT may use the Back Belt as far as East Bridge Junction, it lacks the rights over CN track required to pull its trains forward far enough to reverse into West Yard. CPKC has rights over the relevant CN trackage, but NS maintains that CPKC cannot travel on the Back Belt

beyond the West Yard entrance, foreclosing the movement necessary for direct interchange.[121] Consequently, neither railroad can perform all of the movements required to interchange directly with the other through West Yard.

209. As a condition of the merger, UP and NS should provide or affirm nonexclusive operating rights over their tracks for the sole purpose of enabling direct interchange between CPKC and CSXT through West Yard. CPKC's request is limited to rights needed for interchange; it does not seek trackage rights to conduct independent overhead or local service on the lines of UP and NS.

210. The arrangements should cover all portions of the Back Belt, access and departure points, connections, and incidental train movements needed solely to carry out direct interchange between CPKC and CSXT through West Yard. They should authorize both the delivery and acceptance of interchange traffic, together with the related movements required to complete the operation into and out of the yard. Each carrier's rights must be sufficient to support an interchange that can actually be performed. These interchange operating rights should remain in effect permanently unless modified by the Board and should receive the protections afforded by the service obligations described in Section VII. Compensation and operating terms for the rights should be reasonable and nondiscriminatory.

211. Applicants should revise existing instruments or enter into new ones governing use of the Back Belt, interchange, access to West Yard, and associated connecting movements, and obtain the necessary assents so that the interchange arrangements required by this condition

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121 *See* Agreement for Detour of Military Train Over NSR New Orleans Back Belt (Jan. 15, 2021) [redacted]

are effective no later than consummation. Those implementing measures should eliminate geographic, interchange, operating, and equivalent restrictions only insofar as necessary to allow the specified movement, while retaining existing beneficial rights.

212. UP and NS should cause the entities under their control to execute the required instruments and furnish every approval and assent within their authority. The resulting arrangements should provide everything needed to carry out the interchange.

VI. THE BOARD SHOULD NOT ALLOW UP TO ACQUIRE CPKC'S WYLIE INTERMODAL TERMINAL, MUCH LESS NS'S EFFORT TO EXPAND ITS ACQUISITION TO BLOCK OTHER CPKC USE OF ITS PROPERTY

213. NS is currently seeking to create at Wylie, TX, a real, physical barrier to CPKC's ability to compete with the merged UP.

214. One of the MSLLC agreements—the Dallas Terminal Marketing Agreement ("DTMA")—granted NS [redacted] to acquire KCSR's Dallas area intermodal terminal.[122]

215. When KCSR relocated its Dallas area intermodal terminal from Zacha Junction to Wylie, the parties executed an agreement with a survey showing where NS's option applied.[123]

216. In late February 2025, after UP and NS preliminarily discussed the possibility of merging, NS notified CPKC that [redacted][124] But instead of notifying CPKC that [redacted] NS expanded its claim to

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[122] *See* Dallas Terminal Marketing Agreement (May 1, 2006, as amended Sep. 28, 2016 & Mar. 20, 2024), §§ 1(b), 3, 4(b) ("DTMA"); *see also* Wylie Memorandum of Agreement (Sep. 28, 2016), ¶¶ 1, 4, 6.

[123] *See* Wylie Memorandum of Agreement, ¶¶ 2-4.

[124] *See* Letter from Hanna Chouest to Mark Redd and Cassandra Quach (Feb. 24, 2025) (attached hereto as Exhibit 16).

include: [redacted]

[redacted][125] This overreach is shown in Figure 19 below.

[125] *See id.*

[redacted]

217. [redacted]

[redacted]

218. In May 2025, NS vaulted past a required face-to-face discussion of the issue between CPKC and NS senior management at the MSLLC Management Committee, instead [redacted] Both Wylie Intermodal Terminal and the property surrounding the Terminal remain owned and controlled by CPKC. CPKC's request for merger conditions addressing the additional property—in the event that [redacted] and that UP acquires NS—does not concede [redacted]

219. With respect to CPKC's ability to compete with UP-NS for intermodal services to/from Dallas, [redacted] to its acquisition of NS would have serious anticompetitive consequences. UP already controls two of the four intermodal terminals serving the Dallas-Fort Worth area.[126] If [redacted] and UP acquires NS, UP would control three of those four terminals and CPKC would own none. [redacted]

[126] *See* Rev. App. 2-647 (Gehringer & Orr Second Errata V.S. ¶ 76).

[redacted]

220. [redacted] The DTMA, Amendment 2, obligates [redacted] saying in pertinent part:

> NSR agrees to provide to KCSR, ***for KCSR intermodal traffic***, other than traffic to be interchanged at Meridian, on a nondiscriminatory basis with its own traffic and pursuant to agreements typical to the industry, ***all services normally provided by an intermodal rail terminal to a third party railroad***, including but not limited to: inbound and outbound gate inspections, inspection of seals, removal of trailers and containers, with or without chassis, from intermodal cars, loading and securing of trailers and containers on intermodal equipment, loading and unloading of containers, chassis, and trailers from trackside to designated parking space, loading and unloading of containers to chassis to ground, ground to chassis, and ground, inbound and outbound rail running inspections of trailers and containers under the applicable AAR rules, physical security for KCSR trailers and containers, intermodal cars and chassis to the same general level and quality as KCSR provides for its own equipment and business at the Terminal, storage for containers, trailers and chassis, on-site repair services for trailers, container, chassis, and intermodal rail cars, and reasonably suitable *and sufficient office space for two (2) KCSR employees*. [redacted][127]

221. The quoted intermodal handling obligation would not preserve CPKC's authority to use, maintain, and expand the disputed carload and bulk switching yard, support tracks, and other property to continue its existing non-intermodal/non-automotive operations that compete with UP in Dallas/Fort Worth. [redacted]

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127 *See* Dallas Terminal Marketing Agreement, Second Amendment § 2 (emphasis added).

[redacted] NS would be obligated to handle only CPKC intermodal traffic on any of the property NS acquired. CPKC's ability to continue those services could depend on obtaining additional rights or operating arrangements from NS or, after the merger, UP. The existing intermodal handling obligation therefore does not resolve the competitive harm threatened by NS's claims to the additional property.

222. UP's acquisition of the Wylie Intermodal Terminal and any additional CPKC property would also change the incentives governing those facilities. The combined carrier would compete with CPKC for Mexico-Dallas, Dallas-Chicago, and Dallas-Atlanta intermodal traffic, while the additional property supports CPKC carload traffic that competes with UP. Preserving a nondiscriminatory intermodal handling obligation would not preserve CPKC's independent control over the facilities and operating resources needed to compete for that business or respond to customers' future needs.

223. The Board should therefore condition any approval of the merger on preserving or restoring CPKC's ownership, operation, and independent control of the Wylie Intermodal Terminal, together with its continued ownership and use of the adjacent yard, support tracks, and property needed for existing operations and future growth. Applicants should release [redacted] and amend the DTMA and related instruments as necessary to implement that protection. If NS or UP acquires any covered interest before consummation, the condition should require reconveyance of that interest to CPKC, with CPKC reimbursing the purchase price actually paid to it for the interests reconveyed. Nondiscriminatory intermodal handling does not preserve

CPKC's independent authority to use, maintain, and expand its terminal, and does not protect the carload operations supported by [redacted] The merger condition should protect both forms of competition without depending on the outcome of [redacted]

224. The Board should also require NS to release CPKC from obligations to NS under the DTMA, especially Section 2 of the agreement, to give NS a two-week [redacted] on the movement of "Dallas Intermodal Terminal Traffic."[128] Dallas Intermodal Terminal Traffic, as defined in the DTMA, means [redacted] When this arrangement was implemented, NS did not reach Dallas and so was willing to cooperate with KCSR in trying to market domestic intermodal traffic from Dallas to the east. With NS becoming a part of UP, however, NS will reach Dallas, so Dallas Intermodal Terminal Traffic would compete with service the combined UP-NS could provide from Dallas over its own lines, including connecting to the MSLLC in Shreveport, LA. Giving NS a [redacted] would therefore become a significant roadblock for CPKC in competing with the combined UP-NS in this lane for domestic intermodal traffic moving to or from the Wylie Intermodal Terminal. Accordingly, NS should be required to release that anticompetitive

[128] The 2024 Second Amendment to the DTMA carved Myrtlewood Traffic out of Dallas Intermodal Terminal Traffic but otherwise left Section 2 in place. *See* Dallas Terminal Marketing Agreement, Second Amendment (March 20, 2024).

requirement in Section 2 of the DTMA, as well as wherever else it appears in the MSLLC agreements.

VII. CPKC'S PROPOSED TERMS FOR NEW OPERATING RIGHTS ARE APPROPRIATE TO SAFEGUARD EFFECTIVE COMPETITION – THE SERVICE-ASSURANCE FRAMEWORK

225. CPKC proposes that, if the Board approves UP's merger with NS, the Board impose as a condition the formulation and implementation of an overarching, permanent set of protections referred to herein as the "Service-Assurance Framework" or "Framework," for short. The Framework should govern all corridors, terminals, facilities, rights, and services protected by the conditions, including CPKC's operations over Applicants' trackage, Applicants' provision of switching and interchange service, and Applicants' obligations to provide or procure the access and terminal arrangements necessary to make the protected rights effective. Coverage should not depend on whether CPKC operates the train or Applicants perform the service.

226. The Framework should begin with up-front development of meaningful, measurable, and corridor-specific standards. Those standards should protect CPKC's ability to move reliably, should address timely acceptance and admission of trains that are offered and ready to proceed onto UP's lines, transit times across corridors, delays while being held en route, dispatching decisions including equal treatment and excessive recrews. Compliance should be measured over a 30-day period, followed by notice identifying any failure and a 30-day opportunity to cure. If the applicable targets are not met during that cure period, the corresponding preauthorized remedy should become exercisable by written notice to UP and to the Board, subject to the other substantive requirements of the particular condition. This approach should apply in Kansas City, Meridian, Baton Rouge, and other locations for which CPKC seeks performance-based springing operational relief. More protective existing

contractual standards should remain enforceable; the proposed thresholds for additional remedies should not reduce those duties or permit discriminatory treatment.

227. CPKC's experience is that joint service committees and similar consultation mechanisms, standing alone, do not produce the rigorous implementation and monitoring needed for effective oversight or adequate incentives. While the Beaumont- Robstown trackage rights have such devices, UP simply turns them into a mechanism for delay. The Framework should therefore combine a standing, Board-appointed monitor, prompt Board intervention, and enforceable service standards responsive to customers' needs and changing operations.

228. The Board should establish the substantive rights, governing duties, and available remedies in its approval order and use an expedited technical conference or comparable process involving affected customers and carriers, Applicants, and the monitor to adopt the governing standards and measurement conventions before consummation. That process should define the covered movements and service days, locations, start and end events, permitted exclusions, and method for determining compliance during the measurement and cure periods. The measures should be corridor-specific and should address all material aspects of performance, including the timeliness and reliability of acceptance and handling of offered traffic, transit times across corridors, delays while being held en route, the soundness of dispatching decisions, delivery of complete, operationally usable blocks and excessive recrews. The Board should decide disputed standards, and Applicants should not control the standards or postpone protection by withholding data or agreement.

229. The Framework also should establish defined triggers for consequences that take immediate effect upon notice once the adopted activation requirements, including the applicable measurement and cure periods, have been satisfied without requiring CPKC to return to the

Board for a new merits determination. UP's favorite defense to competition is delay—delay in scheduling capital projects; delay in performing capital projects after years of scheduling delay; delay in performing repairs required to lift slow orders on jointly-used track; delay or outright denial in acknowledging the plain meaning of a contract.

230. Competition delayed is competition denied. Accordingly, timely automatic and prearranged remedies are necessary to create incentives for good performance and to restore reliable service promptly when performance deteriorates.

231. To ensure effective monitoring and enforcement, the Board should appoint an independent monitor with substantial railroad operating expertise to serve for the duration of the permanent protections. The monitor should review compliance and planned changes, be able to compel Applicants to provide necessary information promptly, report independently to the Board and affected beneficiaries, and help resolve disputes before delay defeats the underlying right. Applicants should provide the monitor with regular service-performance and compliance reports in a standardized form, prompt notice of material service failures, and advance notice of planned operational changes capable of impairing protected service, and should promptly furnish the records, data, and explanations reasonably requested, whether or not a dispute is pending. Those reports would permit the Board to oversee implementation of the transaction, identify recurring failures, and determine whether additional action beyond the prearranged remedies is required. The monitor would support, not replace, the Board's responsibility for enforcement.

232. For each corridor, terminal, and service covered by the Framework, the Board's approval order should identify the protected operation and the minimum operating requirements needed to make CPKC's rights effective. Development of detailed performance measures should not delay the effectiveness of the protections. Applicants should not be permitted to

consummate the merger or implement merger-related operating changes until the Board determines that the initial service standards and monitoring, reporting, and enforcement arrangements are in place and operative. Pending completion of final measures, preserved contractual standards, nondiscrimination duties, information duties, and interim operating requirements in the approval order should protect existing services. Each standard should be measured against a representative pre-merger baseline or, for new services, the operating plan, customer requirements, and comparable operations; a restriction that previously prevented a service should not produce a zero-service baseline. Applicants should not be able to lower standards through unilateral rebasing, changed classifications, or exclusions.

233. The agreements, consents, and operating arrangements indispensable to exercising a preauthorized remedy should be established in advance, so that an activation event does not begin another negotiation over whether or on what terms the right may be used. Applicants should complete the arrangements within their control and secure necessary third-party participation through the implementation process established by the Board. Whenever a condition requires CPKC and Applicants to agree on commercial, operating, or other implementing terms, the parties should negotiate in good faith for up to 90 calendar days. If agreement has not been reached by the end of the 90-day period, the parties should be required to submit the remaining disputed terms to the Board for expedited resolution.

234. Once the applicable activation and cure requirements have been satisfied, CPKC should be able to exercise the authorized remedy under those arrangements, subject to the prescribed safety and qualification requirements.

235. The Framework may distinguish warnings requiring investigation or prevention, breaches requiring correction, and failures triggering additional remedies. Once the applicable

activation requirements adopted by the Board, including the 30-day measurement period and ensuing 30-day cure period for performance-based triggers, have been met, CPKC should be entitled to activate the corresponding preauthorized remedy by filing notice with the Board and serving that notice on Applicants, without a further Board merits determination, additional cure period, or new application. Where a remedy requires that Applicants' conduct contributed to deterioration, it should be enough that their conduct caused or materially contributed to the harm, and a rebuttable presumption of contribution should apply where material deterioration follows a post-merger change in Applicants' traffic, routing, operations, terminal work, or resources with a reasonable operational connection to the harm. Notice identifying a performance failure should begin the 30-day cure period; it should not create a separate 30-day notice period in addition to measurement and cure. Submission of a corrective plan should not be treated as cure.

236. CPKC, affected customers, and other carriers should be able to invoke a standing expedited procedure. The Board should establish short, definite deadlines for Applicants' responses and production of operating records, the monitor's findings or referral of unresolved disputes, and Board decisions, with accelerated consideration of requests for interim or emergency relief, including before expiration of a measurement or cure period where necessary to prevent material harm. Consultation, a committee meeting, mediation, or review by the monitor should not be an exhaustion requirement or add a waiting period before direct Board relief.

237. Applicants should bear the reasonable costs of establishing, administering, monitoring, and enforcing the Framework, including the monitor and necessary technical support and beneficiaries' reasonable legal and expert expenses in good-faith enforcement. While a dispute is pending or a cure period is running, CPKC's existing rights, current contractual service

standards, and the interim operating requirements in the approval order should stay in effect. Applicants' objection alone should not suspend a remedy that has been triggered; Applicants should have to obtain a stay from the Board. Activated rights or transferred dispatching should remain effective unless affirmatively stayed, modified, or suspended by the Board. Restoration of performance or expiration of a measurement, cure, review, or formal oversight period should not automatically end the relief. Applicants seeking its suspension or return of dispatching should demonstrate that corrective measures will sustain reliable and nondiscriminatory service after they resume control, except as otherwise ordered by the Board; improvement achieved because the remedy remains in place should not alone justify reversion. The underlying rights, service obligations, and availability of renewed activation should remain effective. In CPKC's experience, Applicants' most effective tool against competition has been delay, and the Framework must ensure that delay in resolving a dispute does not give Applicants the very advantage the conditions are meant to prevent.

VERIFICATION

I, Adolph Gameiro, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 18th day of November, 2026.



Adolph Gameiro

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

VERIFIED STATEMENT OF ADOLPH GAMEIRO

APPENDIX A

Highly Confidential Attachment

Filed under seal pursuant to Protective Order

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

VERIFIED STATEMENT OF ADOLPH GAMEIRO

APPENDIX B

Highly Confidential Attachment

Filed under seal pursuant to Protective Order

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

VERIFIED STATEMENT OF ADOLPH GAMEIRO

APPENDIX C

Highly Confidential Attachment

Filed under seal pursuant to Protective Order

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

VERIFIED STATEMENT OF ADOLPH GAMEIRO

APPENDIX D

Highly Confidential Attachment

Filed under seal pursuant to Protective Order

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SURFACE TRANSPORTATION BOARD

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

VERIFIED STATEMENT OF ADOLPH GAMEIRO

APPENDIX E

Highly Confidential Attachment

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

VERIFIED STATEMENT OF ADOLPH GAMEIRO

APPENDIX F

Highly Confidential Attachment

Filed under seal pursuant to Protective Order

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

VERIFIED STATEMENT OF ADOLPH GAMEIRO

APPENDIX G

Highly Confidential Attachment

Filed under seal pursuant to Protective Order

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

VERIFIED STATEMENT OF ADOLPH GAMEIRO

APPENDIX H

Highly Confidential Attachment

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

VERIFIED STATEMENT OF ADOLPH GAMEIRO

APPENDIX I

Highly Confidential Attachment

Filed under seal pursuant to Protective Order

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

VERIFIED STATEMENT OF ADOLPH GAMEIRO

EXHIBIT 1

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EXHIBIT 10

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EXHIBIT 12

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EXHIBIT 14

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EXHIBIT 15

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EXHIBIT 16

Highly Confidential Attachment

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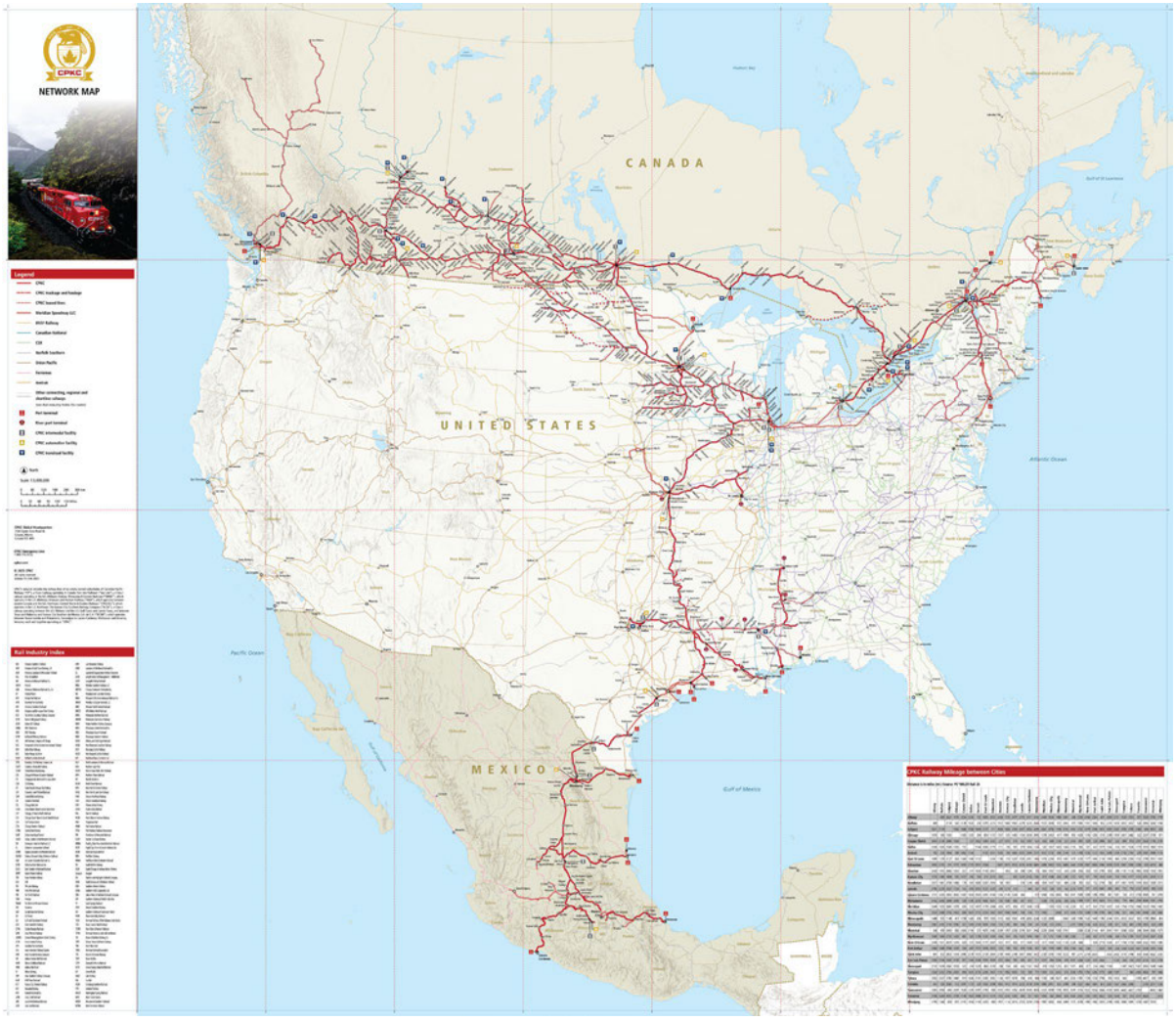
CPKC-77, FD 36873 (Sub No. 45)

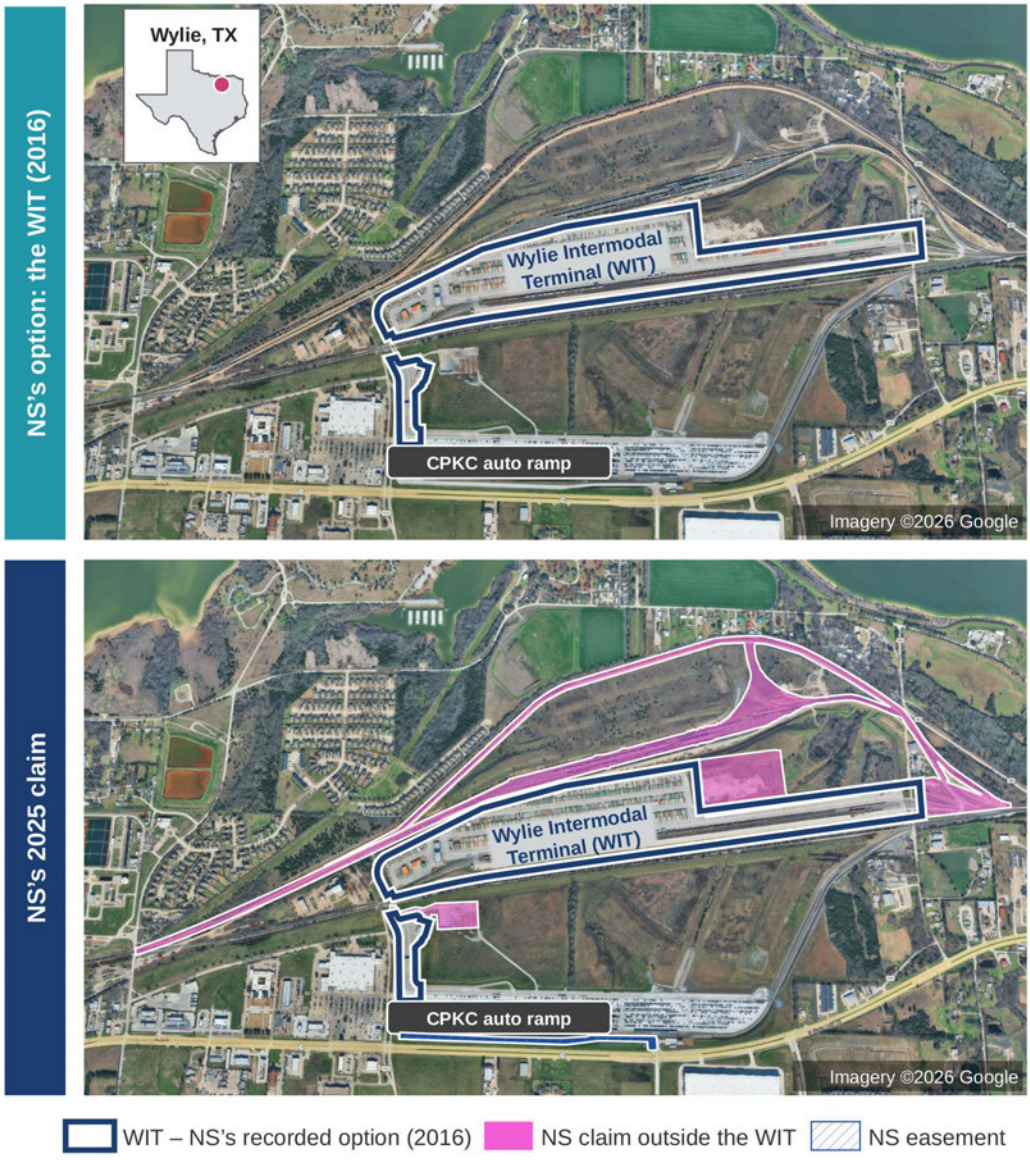
Exhibit 1
Maps

FIGURE 1
CPKC NETWORK MAP[57]



57 An electronic version of this system map has been uploaded separately.

FIGURE 2
DIAGRAM SHOWING OVERREACHING DIVESTITURE DEMANDED BY NS



CPKC-77, FD 36873 (Sub No. 45)

Exhibit 2
Agreements

Highly Confidential Attachment

Filed under seal pursuant to Protective Order

CPKC-77, FD 36873 (Sub No. 45)

Exhibit 4
Environmental Data

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November 13, 2026

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Danielle Gosselin
Director
Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Docket No. FD 36873 (sub-no. 45) – Union Pacific Corp. & Union Pacific R.R. – Control – Norfolk Southern Corp. & Norfolk Southern Ry. – CPKC Responsive Application (Wylie Intermodal Terminal)

Dear Ms. Gosselin:

Canadian Pacific Railway Company, d/b/a Canadian Pacific Kansas City, on behalf of itself and The Kansas City Southern Railway Company (collectively, CPKC), submits to the Surface Transportation Board's Office of Environmental Analysis this environmental information for CPKC's Wylie Terminal Responsive Application, which CPKC will file on November 18, 2026 in Docket No. FD 36873 (sub-no. 45).

Relief Sought

The relief CPKC seeks in the Wylie Terminal Responsive Application would be necessary only if the Board approves the underlying UP-NS merger—which CPKC urges the Board not to do. For reasons CPKC has explained and will continue to explain in its merits-docket filings, the UP-NS merger is not in the public interest and the Board should deny it. If the Board concludes otherwise, it should mitigate the merger's anticompetitive effects by imposing the conditions proposed in CPKC's Wylie Terminal Responsive Application.

NS has already served notice that it intends to acquire CPKC's Wylie Intermodal Terminal near Dallas, TX under an agreement related to CPKC's Meridian Speedway joint venture with NS. NS also seeks to force the sale of CPKC trackage outside the terminal. In the Wylie Terminal Responsive Application, CPKC will ask the Board, as a condition of any approval, to bar Applicants from exercising or retaining any option or other right to acquire or control the Wylie

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Intermodal Terminal. That condition does not require a responsive application. If NS or UP nonetheless acquires any interest in the terminal or other ancillary CPKC property, CPKC will ask the Board to require Applicants to divest and reconvey it to CPKC. CPKC is filing the Wylie Terminal Responsive Application out of an abundance of caution, because CPKC's reacquisition of its own trackage could fall within the Board's licensing authority.

No Environmental Documentation Required

Today, CPKC owns and operates the Wylie Intermodal Terminal and the adjacent trackage. Two possible scenarios exist between now and any Board decision approving the UP-NS merger.

Scenario 1 – No acquisition before the Board acts. If NS does not acquire an interest in the Wylie Intermodal Terminal before the Board acts—which CPKC understands to be the more likely scenario—the relief requested in the Wylie Terminal Responsive Application would simply prevent a future change of ownership. In other words, CPKC's ownership and operations would continue unchanged.

Scenario 2 – Acquisition before consummation. If NS does acquire an interest before consummation of the proposed merger, the relief requested in the Wylie Terminal Responsive Application would require NS to reconvey the terminal to CPKC, thus restoring the status quo ante.

Under either scenario, the result from an environmental perspective is the same: no change in rail operations, no change in traffic volumes or train counts, no change in yard or terminal activity, and no construction or abandonment. There is therefore no potential for significant environmental effects.

No Extraordinary Circumstances

The Wylie Terminal Responsive Application presents no extraordinary circumstances that are likely to have reasonably foreseeable significant adverse effects on the environment. Under either scenario (no acquisition before the Board acts or acquisition before consummation), there will be no change in rail operations, traffic volumes, train counts, or yard or terminal activity. The requested relief simply formalizes and preserves CPKC's current ownership and operations, protecting competition in the corridor.

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Operating Plan and Supporting Evidence

CPKC will file an operating plan and verified statement with the Wylie Terminal Responsive Application on November 18, 2026. Those materials, which are still being finalized, will provide additional support for the operational facts discussed in this letter, and CPKC incorporates them by reference. If the final Responsive Application is materially different from what is described in this letter, CPKC will supplement its submission to OEA.

* * *

For the reasons discussed above, the Wylie Terminal Responsive Application should not require environmental documentation under 49 C.F.R. § 1105.6(c).

As always, we are happy to provide any additional information OEA may need. Please contact me if you have any questions.

Sincerely,



Jay C. Johnson

cc: Elizabeth Webster
Joe Van Humbeck
Glen Wilson
Alan Summerville
Waymon Peer

CPKC-77, FD 36873 (Sub No. 45)

Exhibit 12
Impact Analyses

Verified Statement of W. Robert Majure Volumes I and II

CORNERSTONE RESEARCH
ECONOMIC AND FINANCIAL CONSULTING AND EXPERT TESTIMONY

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873
UNION PACIFIC CORPORATION AND UNION PACIFIC RAILWAY COMPANY—CONTROL—NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

EXPERT STATEMENT OF W. ROBERT MAJURE, PH.D. VOLUME I OF II

November 18, 2026

HIGHLY CONFIDENTIAL MATERIAL: CONTAINS WAYBILL DATA

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1. Qualifications and assignment

1.1. Qualifications

1. My name is W. Robert Majure. I am a Senior Vice President at Cornerstone Research. Prior to joining Cornerstone Research, I worked for approximately 25 years in the Antitrust Division of the U.S. Department of Justice ("DOJ") as an economist, Assistant Section Chief, Section Chief, and ultimately as the Director of Economics.

2. I earned my Ph.D. in Economics from Massachusetts Institute of Technology in 1994 and a B.A. from the University of Virginia in 1990. My main area of expertise is the economics of industrial organization – particularly issues of competition.

3. While at the DOJ, I performed and supervised economic analyses of competition issues in various industries, including transportation, telecommunications, banking, computer software and hardware, heavy industry, mining and drilling, healthcare, entertainment, and railroads. I submitted testimony on competitive effects in the merger of the Union Pacific and Southern Pacific Railroads and on the suitability of remedy in *U.S. v. SBC Communications Inc. and AT&T Corp.* and *U.S. v. Verizon Communications Inc. and MCI, Inc.* I also served on the committee that drafted the 2010 Horizontal Merger Guidelines. I received awards for my work at the DOJ, including presidential recognition for my contributions as a senior executive of the civil service.

4. In my role at Cornerstone Research, I have worked with government agencies and private clients to examine competitive effects of contractual arrangements and mergers across many industries including support of the U.S. Department of Justice's challenges to a proposed merger of JetBlue and Spirit airlines and to a joint venture with the effect of a merger between American Airlines and JetBlue. I have testified for Canadian Pacific regarding the competitive effects of combining Canadian Pacific and Kansas City Southern ("CP-KCS") and on the effects of Canadian National acquiring Iowa Northern. I have also provided testimony in other proceedings which are described in my curriculum vitae which is attached as Appendix A.

1.2. Assignment

5. I have been asked by counsel for Canadian Pacific Kansas City ("CPKC") to examine competition issues related to the proposed acquisition of Norfolk Southern ("NS") by Union Pacific ("UP"). I have also been asked to review and respond to the verified statements submitted by Applicants (UP and NS) that relate to competition.

6. Cornerstone Research is being compensated at my standard billing rate of $1,400 per hour. I have been assisted by staff at Cornerstone Research, who worked under my direction. Cornerstone Research's compensation in this matter is not in any way contingent or based on the content of my opinion or the outcome of this or any other matter, nor is my compensation.

7. Appendix B contains a list of materials I have relied upon in preparing this statement. My work is ongoing, and I reserve the right to supplement this analysis as proceedings continue.

2. Overview and summary of opinions

8. The proposed UP-NS merger is unprecedented in its scope, scale, and potential adverse effects on competition. The Surface Transportation Board's ("The Board") 2001 Major Rail Consolidation Procedures ("2001 Rules") anticipated that a combination of this magnitude would have far-reaching implications for the national rail network and require Applicants to bear the heavier burden of showing that a merger would serve the public interest. To make that showing, Applicants would need to identify and evaluate all potential competitive harms, including those that conventional overlap screens miss, and demonstrate that such harms would not result from their merger. Applicants have not made that showing. They fail to analyze critical forms of competition the merger would eliminate, and their own evidence, when properly examined, demonstrates that shippers would face higher rates and diminished competitive options rather than the benefits Applicants promise.

9. UP-NS would account for {{REDACTED}} of rail revenues for all U.S. movements and participate in movements representing {{REDACTED}} of U.S. rail revenue, before any projected diversions. Its reach, combined with UP's and NS's existing local dominance West and East, would make it substantially harder for shippers to avoid the merged railroad or credibly threaten to shift business elsewhere. That is why the additional competitive analysis contemplated by The Board's 2001 Rules is essential here (Section 3).

10. My analysis identifies three principal sources of harm that the UP-NS merger likely would cause.

11. *First*, the merger would give UP-NS the ability and incentive to foreclose competition, especially where they today support competing interline services.

a. Today, shippers benefit from competition on portions of their interline service. UP supports competition between NS and other Class Is in the East, and NS supports competition between UP and other Class Is in the West. Shippers can build the pairing of railroads on either side of a gateway that benefits them the most. And even where the shipper has a sole-serving railroad on one side, separate negotiations, including under Rule 11, allow a shipper to benefit from competition on one side of the gateway or the other, with the sole-serving railroad on the other side of the gateway being unable to capture all the profits.

b. A combined UP-NS offering single-line service would have a financial incentive to change this relationship across the gateway—to avoid competing with its own service. It would have both the incentive and the ability to foreclose interline partners and insulate its rates and its profits from that competition, making shippers worse off (Section 4.1).

c. The data show that UP and NS already {{{REDACTED }}} where they can favor their own single-line service. Comparisons across existing corridors also show higher rates where a carrier has that incentive, as UP-NS will

post-merger than when it does not, as today. Across estimation approaches, these findings support estimated harm to shippers from foreclosed competition of approximately {{REDACTED}} million annually. The evidence thus points toward harm from the merger's impact on competitive incentives, not an automatic benefit from creating single-line service (Section 4.2).

d. Further, Dr. Israel's "one-lump" theory assumes away the bargaining constraints that allow shippers to benefit from this competition today. His flawed single-line/interline rate comparison does not measure the merger's effect on those constraints. Moreover, the record evidence indicates that UP pursues higher margins {{REDACTED

}} Unless UP were to suddenly switch its pricing strategy, the merger is more likely to result in increased rates on NS traffic, rather than lower rates in furtherance of winning the truck-to-rail diversions that Applicants' forecast. Such diversions are unlikely and so is the implication that UP would suddenly switch to a strategy of pursuing rate decreases. If Applicants could plausibly generate the sort of traffic diversions their experts' analysis predicts from small price changes, then UP and NS would have the incentive to reduce its rates and pursue this traffic today. A more realistic explanation is that no such gains are likely (Section 4.3).

e. If Applicants' projections of large traffic gains were actually realistic, Applicants have not explained why they cannot be accomplished without a merger.

There are many examples of railroads having success and benefitting shippers with effective interline agreements. Indeed, Applicants' own experts acknowledge successful interline agreements and rely on new interline cooperation among other railroads to constrain UP-NS. They do not reconcile that position with their claim that UP and NS must merge to coordinate effectively (Section 4.4).

f. The remedies Applicants offer for the harm to shippers from foreclosed competition due to their proposed merger ignore its unprecedented scale and scope and do not begin to address the harm it will have for shippers. Their Open Gateway Commitments ("OGCs") are inadequate to address the harm of this merger as are the other assurances and procedural options they have offered (Section 4.5).

12. *Second,* the proposed merger would weaken geographic competition and deprive shippers of bargaining strategies that support more competitive rates and service offerings.

a. Shippers can discipline rates and service terms by changing sources or destinations, shifting production, and investing in facilities served by competing railroads. They can also negotiate across facilities and movements to obtain better terms. Combining UP and NS would place more of those alternatives under common control, reduce shippers' ability to shift business, and increase the merged railroad's geographic bargaining leverage (Section 5.1).

b. UP's own internal documents recognize that {{REDACTED }} (Section 5.2).

c. Applicants' experts ignore such competition completely. Dr. Israel claims to {{REDACTED }} despite shippers' direct claims to the STB that the merger will harm their bargaining leverage. Mr. Hunt's analysis of diversions does not incorporate any analysis of shipper bargaining leverage. Dr. Bailey purportedly screens for geographic competition in her "between-corridor" analysis, but the "50/10" screen she uses is incapable of assessing the options provided at each of the multiple locations to/from which a shipper may require transportation. Rather, the "50/10" screen focuses on competition for all the shippers in one single area across all the plausible origins or destinations for the products they ship. That is a different aspect of geographic competition than a single shipper bargaining over multiple distinct locations simultaneously (Section 5.3).

d. Likewise, Dr. Bailey's examination of competition that shippers have at any single facility is also incapable of assessing the benefits to those shippers of having multiple facilities sole-served by different railroads – {{REDACTED }}. None of Dr. Bailey's screens consider that a merger of this scale and scope would concentrate an individual shipper's geographically dispersed facilities on a single railroad's network. A shipper will lose significant competition across its own geography when those locations become more collectively dependent on a

combined UP-NS. Applicants' proposed regulations fail to preserve the competition that will be lost through UP-NS's increased geographic bargaining leverage (Section 5.4).

13. *Third*, the merger would eliminate competition between UP and NS for a greater portion of the interline movements in which they participate.

a. The networks of UP and NS are such that there are often multiple possible interchange points on current UP-NS interlines, which introduces opportunities for each of them to win a greater portion of the profit from any particular interline move. Some interchange points give UP the "longer haul" and some interchange points give NS the "longer haul." The railroad that carries the "longer haul" (or the middle part of the movement) tends to earn higher revenues and higher margins. This opportunity to earn higher profits (or the threat of earning less) generates competition between the railroads to win the middle of the movement and an incentive to offer the shipper more competitive rates to influence the choice of interchange point (Section 6.1).

b. The data show that the choice of interchange point is often at issue. UP and NS have published public routing guidelines, which identify regions of their respective networks and the corridors connecting those to indicate their pre-specified handoff points for each corridor. When I examine where traffic in these corridors was actually interchanged, I find that the point of interchange often varies from the

routing guidelines and that the difference in the portion of the route that each handle is often significant. That indicates that UP and NS often engage in this direct competition over who gets the benefit of the longer haul (who wins their competition for the middle segment) particularly for the movements traversing the Watershed. {{REDACTED }} (Section 6.2).

c. Applicants' screens do not analyze competition for the middle of interline movements (Section 6.3), and their commitments would not replace it (Section 6.4).

14. These competitive harms would be exacerbated by the further consolidation that UP-NS would likely trigger. UP-NS would create pressure for a BNSF-CSXT or other merger, culminating in a potential duopoly structure, which The Board's 2001 Rules require Applicants to address. My empirical analysis indicates that two transcontinental railroads would not restore today's competition: prices are higher in comparable structures with two single-line railroads than where four independent railroads compete to interline. Further consolidation would also increase shippers' dependence on individual carriers. Two independent carriers will have very little incentive to seek traffic where they have to compete with one another and instead seek to enjoy the benefits of their increased market power over their own bases of customers (Section 7).

15. Nor have Applicants demonstrated benefits sufficient to offset the lost competition. Shipper support letters may identify benefits for particular shippers, but they do not

establish the merger's overall competitive effects or answer the evidence of broader or longer-term harm. Indeed, shippers that are in favor of the merger sometimes have short-term or individualized benefits that do not weigh against the long-term harm to competition from this proposed consolidation (Section 8).

16. Applicants' Committed Gateway Pricing ("CGP") proposal is a price-cap regulatory program, not a competitive enhancement. Their own modeling projects small, temporary net benefits while predicting higher rates for some shippers. Dr. Israel's model also omits important competitive interactions and fails to reproduce observed prices or credible costs reliably. These flaws undermine reliance on its narrow projected net benefit to offset the competitive harms identified above (Section 9).

17. That leaves the question whether commitments or conditions could preserve the competition at risk. Applicants' OGCs would not restore incentives to support competing interline services, while facility-access and service-failure remedies do not protect bargaining leverage across a shipper's geography. And Applicants' proposed transparency commitments and dispute resolution programs will not constrain prices as effectively as being able to leverage an alternative competitor. CPKC's proposed conditions would preserve some competitive alternatives and mitigate some harms, but even they would not, and could not, fully replace the interline options, geographic bargaining leverage, and competition for the middle of movements that shippers would lose (Sections 4.5, 5.4, and 10; Volume 2).

18. Applicants have not met the heightened showing this unprecedented merger demands. In my opinion, preserving UP and NS as independent competitors is the only way to fully protect shippers from the competitive harms my analysis shows are likely.

3. The effect of a UP-NS merger will be unprecedented, necessitating more analysis than in prior mergers to identify and address likely harmful competitive effects

19. The proposed UP-NS merger is unprecedented in its scope, scale, and potential adverse effects on competition in the U.S. railroad industry. It would combine two of the largest Class I railroads into a single carrier with a reach and presence unlike any railroad operating today. Yet Applicants' competitive analysis does not grapple with the full range of consequences that a transaction of this magnitude could have for shippers.

20. The extraordinary scope and scale of the proposed combination create more—not fewer—ways in which competition could be affected. These effects are not limited to locations where UP and NS directly compete today. They can arise across geographies and commodities and through the direct and indirect alternatives that shippers use to obtain bargaining leverage and competitive rates.

21. The Board adopted its 2001 Rules in recognition of precisely these concerns. Following the last wave of rail consolidation, The Board recognized that further combinations among the remaining Class I railroads could affect competition throughout the North American transportation system and therefore required a more comprehensive assessment of both competitive harms and competitive enhancements.

A transaction of this magnitude thus calls for a particularly searching analysis of the ways in which competition could be lost.[1]

22. Applicants instead rely principally on conventional screens focused on direct competition and on analogies to prior rail mergers.[2] Those approaches do not adequately account for the broader competitive effects presented by this transaction. And the prior mergers on which Applicants rely arose in materially different competitive circumstances, preserved important competitive constraints, and did not create a carrier with the scope and scale that a combined UP-NS would possess.

23. The remainder of this section explains why Applicants' approach is inadequate. First, The Board's 2001 Rules anticipated that a combination of this magnitude would have far-reaching implications for the national rail network and require Applicants to bear the heavier burden of showing that a merger would serve the public interest. To make that showing, Applicants would need to identify and evaluate all potential competitive harms, including those that conventional overlap screens miss, and demonstrate that such harms would not result from their merger (Section 3.1). Second, the empirical evidence shows that UP-NS would account for {{REDACTED}} of rail revenue for all U.S. movements and participate in movements representing {{REDACTED}} of U.S. rail revenue, before any projected diversions.[3] Its reach,

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[1] Major Rail Consolidation Procedures Docket No. EP 582 (Sub-No.1), 5 S.T.B. 539, June 7, 2001. ("Major Rail Consolidation Procedures"), p. 599.

[2] See Sections 4.3, 4.4, 5.3, and 6.3.

[3] See workpaper 3-1.

combined with UP's and NS's existing local dominance West and East, respectively, would make it substantially harder for shippers to avoid the merged railroad or credibly threaten to shift business elsewhere. That is why the additional competitive analysis contemplated by The Board's 2001 Rules is essential here. Applicants have not made that showing. They fail to analyze critical forms of competition the merger would eliminate, and their own evidence, when properly examined, demonstrates that shippers would face higher rates and diminished competitive options rather than the benefits Applicants promise (Section 3.2). This unprecedented scope and scale, predicted by The Board in 2001, would harm shippers significantly and in many ways, which I discuss throughout the rest of this statement.

3.1. The Board's 2001 Rules envision that a combination like UP-NS can reduce competition in ways not flagged by standard screens

24. In 2001, The Board issued new "Major Rail Consolidation Procedures" stating that, with only a small number of Class I railroads remaining, applicants for future proposed mergers would have a heavier burden to meet to demonstrate that their merger is in the public interest.[4] It anticipated—correctly, based on the available data—that a future proposed merger would be almost necessarily "end-to-end" and would impact

[4] Major Rail Consolidation Procedures, p. 546 ("Our revised rules reflect a significant change in the way in which we will apply the statutory public interest test to any major rail merger application. Because of the small number of remaining Class I railroads, the fact that rail mergers are no longer needed to address significant excess capacity in the rail industry, and the transitional service problems that have accompanied recent rail mergers, we believe that future merger applicants should bear a heavier burden to show that a major rail combination is consistent with the public interest.").

transportation across North America.[5] Thus, its new rules require applicants to address not only standard screens of direct competition, but also additional analyses of both direct and indirect competition.[6]

25. The Board indicated it would "strive to remedy every competitive harm that would stem from any proposal that [it] decide[s] to approve."[7] To do so, The Board implicitly recognized that *all* potential competitive harms would need to be evaluated and identified, including those that may not have been relevant to smaller-scale transactions. For example, in the 2001 Rules, The Board outlined, non-exhaustively, certain forms of indirect competition (also referred to as "geographic competition") that would be relevant for applicants to address in their analysis of a potential coast-to-coast merger:

[5] Major Rail Consolidation Procedures, p. 551 ("Thus, while the prior policy statement focused on greater economic efficiency and improved service as the most likely and significant public interest benefits, our new policy statement adds enhanced competition as an important public interest benefit. The policy statement also recognizes that, with only a few Class I carriers remaining, a transaction involving two Class I rail carriers would affect the entire transportation system, including highways, waterways, ports, and airports.") and p. 555 ("The carriers argue that, because future merger proposals would likely be for end-to-end rather than parallel mergers, there would be little loss of direct competition ('2-to-1 points') and thus extensive trackage rights or other remedies … would not be needed").

[6] Major Rail Consolidation Procedures, p. 555 ("But we believe the carriers underestimate the difficulties we could face in attempting to remedy, in a direct and proportionate manner, losses of both direct and indirect competition.").

[7] Major Rail Consolidation Procedures, p. 557.

a. Shippers' leverage, even when sole-served on one end of a movement, to obtain the same product from a different source or ship the same product to a different destination.[8]

b. Shippers' leverage in bargaining from the ability to shift production to facilities outside of a railroad's network.[9]

c. Shippers' leverage from competition at different points of interchange.[10]

26. The Board requires applicants to evaluate the potential for effects through these forms of indirect competition in addition to more traditional forms of direct competition, such as head-to-head competition, and to ensure that all major gateways will remain open post-merger.[11]

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[8] Shippers who are sole-served on one end may be able to leverage alternative sources or destinations as leverage against railroads. See Major Rail Consolidation Procedures, p. 556 ("significant losses in geographic competition could occur even where carriers truly are 'end-to-end', because there are many commodities…that have a limited number of sources.") and Market Dominance Determinations Docket No. EP 627, 3 S.T.B. 937, December 10, 1998 p. 937 ("geographic [competition]…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.") (emphasis removed).

[9] Major Rail Consolidation Procedures, p. 556 ("They [shippers] also may benefit from the opportunity to negotiate a long-term contract before choosing to locate a new plant along either of two carriers' lines or to adjust production levels at plants already located along those lines.").

[10] Major Rail Consolidation Procedures, p. 556 ("A quick glance at a rail map confirms that the eastern and western railroads do not simply meet end-to-end at Chicago and the Mississippi River crossings; there is a fair degree of overlap. This situation seems to exist with regard to many of the connections of large U.S. and Canadian systems as well. Thus, a merger between any two U.S. Class I rail carriers or between major U.S. and Canadian rail carriers would surely threaten certain shippers with a loss of some indirect competition.").

[11] Major Rail Consolidation Procedures, p. 546 ("we believe that future merger applicants should bear a heavier burden to show that a major rail combination is consistent with the public interest. Our shift in policy places greater emphasis in the public interest assessment on enhancing competition while

27. The Board also recognized that further consolidation was likely after future major railroad mergers.[12] It stated that its goal in the review process is to ensure that the end result of further mergers is to preserve effective competition as it exists today and into the future.[13] Thus, as part of the review process in any given merger, The Board will consider the impacts of such follow-on mergers.[14]

28. The Board's concerns are not theoretical. The data show that a combined UP-NS would have precisely the systemwide reach and control over shipper alternatives that make the loss of these indirect forms of competition consequential.

3.2. Empirical evidence indicates that the proposed merger would create a railroad that is so large that many shippers would lack a meaningful alternative to its service

29. A combined UP-NS would be, by a substantial margin, the largest Class I railroad in the U.S. rail industry. It would account for over $36 billion in gross freight revenue

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ensuring a stable and balanced rail transportation system."), p. 563 ("We will require applicants to present an effective plan to keep open major existing gateways, and will impose conditions on any transaction that we approve to ensure that result.").

[12] Major Rail Consolidation Procedures, p. 549 ("That being said, the prospect of reducing the already small number of major Class I railroads even further, perhaps to the point where only two major railroads remain in the U.S. and Canada, gives us substantial concern.") and p. 545 ("future major merger proposals would trigger other proposals that, if approved, could result in the consolidation of the Class I railroad industry into only two North American transcontinental railroads.").

[13] Major Rail Consolidation Procedures, p. 551 ("Any companies resulting from an additional (perhaps final) round of consolidations must be able to compete effectively and deliver necessary services, now and into the future.").

[14] Major Rail Consolidation Procedures, pp. 549–550 ("More importantly, we need to look down the road and determine whether approving not just the immediate proposal that may be before us, but others like it, would ultimately result in a rail industry structure that continues to provide at least the existing level of competitive options for shippers, and continues to make railroads pass on most of the beneficial results of their merger efficiencies to the shipping public.").

in 2024,[15] and would participate in {{REDACTED}} of U.S. movements (by revenue).[16]A railroad of that scale will be difficult (or, in some cases, impossible) for shippers to avoid or credibly threaten to avoid. Shippers gain bargaining leverage from having credible alternatives, such as another carrier, another mode of transportation, or another facility to which they can shift traffic. As discussed above, The Board's 2001 Rules recognize this kind of leverage and indirect competition as important to shippers.[17]

30. As I will show below, a combined UP-NS would dominate U.S. rail revenues across the country, in different commodities, in many individual geographies, and would be a dominant presence both in the East and the West.

31. The data demonstrate the sheer scale of a combined UP-NS. To measure a firm's market power in industries that include a wide range of services of different value to the particular customer, economists typically look at the revenue the firm collects from its customers as a share of all revenues collected in the industry.[18] In Exhibit 1, I show

[15] Second Errata Verified Statement of Dr. Elizabeth M. Bailey, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, September 4, 2026 ("Bailey Second Errata VS"), ¶ 31 ("In 2024, UP transported 8.3 million carloads, earning $24.1 billion in freight revenues and NS transported 7.1 million carloads, earning $12.1 billion in freight revenues.").

[16] See Exhibit 2.

[17] Major Rail Consolidation Procedures, p. 552 ("the new merger guidelines were prompted largely by the fact that there are now only 6 large carriers remaining in the North American rail industry and there are significant risks associated with further consolidations between any of those carriers.").

[18] Merger Guidelines, U.S. Department of Justice and the Federal Trade Commission, December 18, 2023 ("2023 Merger Guidelines"), p. 50 ("Revenues in a relevant market often provide a readily available basis on which to compute shares and are often a good measure of attractiveness to customers. Unit sales may provide a useful measure of competitive significance in cases where one

that a combined UP-NS would earn {{REDACTED}} of rail revenues for all U.S. movements, even before accounting for any of the purported diversions Applicants claim would accrue to the merged railroad.[19] Among intra-U.S. moves (i.e., those originating and terminating in the U.S.), the combined UP-NS would earn {{REDACTED}} of revenue for such movements reported in the combined data set of the 100% tapes submitted by all six Class I railroads (the "Six-Railroad Tapes Data").[20]

unit of a low-priced product can serve as a close substitute for one unit of a higher-priced product. For example, a new, much less expensive product may have great competitive significance if it substantially erodes the revenues earned by older, higher-priced products, even if it earns relatively low revenues.").

[19] U.S. movements are defined as movements where the origin or termination point is in the U.S. (i.e., excluding intra-Mexico and intra-Canada movements and movements between Mexico and Canada, but including movements between the U.S. and Mexico or Canada).

[20] References to the Six-Railroad Tapes Data herein refer to a modified version of Dr. Bailey's July 27, 2026, Six-Railroad Merged Tapes Data (Loaded) (2019–2024). I follow Dr. Bailey's methodology to process this data, along with including additional variables used throughout my report. Dr. Bailey's Six-Railroad Tapes Data does not contain geographic coordinates. I include Dr. Israel's stationmaster {{REDACTED }} in the Six-Railroad Tapes Data. See Data Dictionary for further discussion.

Exhibit 1
UP and NS combined share of U.S. rail revenues (based on average annual revenues reported in the Six-Railroad Tapes Data)

{{{*REDACTED*

}}}

32. Participation shares are more informative in measuring the difficulty shippers would face in avoiding UP and NS. They reveal that the combined UP-NS would be more dominant than even their large, combined share of revenues suggests.[21] UP and

[21] I define participation shares as the share of movements handled by UP or NS for any portion of the movement weighted by the total movement revenue.

NS each participate in a substantial volume of traffic (as either the originating railroad, terminating railroad, or as a bridge railroad). As seen in Exhibit 2, according to the Six-Railroad Tapes Data, UP and NS participate in {{REDACTED}} of U.S. movements weighted by rail revenue. This participation share rises to {{REDACTED}} if I focus on movements within the U.S.[22] Exhibit 2 further shows that among the movements Applicants identified as the "major points on the parties' combined system, major corridor-commodity pairs, and major origin-commodity pairs / major destination-commodity pairs," UP and NS *earn* a combined {{REDACTED}} of revenue.[23] As Mr. Hunt reports in his Appendices, the Applicants expect to increase their presence on these "major" movements, which would make them even more difficult for a U.S. shipper to threaten to avoid.[24]

[22] See workpaper 3-3.

[23] Bailey Second Errata VS, ¶ 25. I understand that Applicants produced workpapers on August 28, 2026, that include all traffic in addition to their claimed "major" points and commodities.

[24] Second Errata Verified Statement of David T. Hunt, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, September 4, 2026 ("Hunt Second Errata VS"), Appendix E, p. 204 ("The following market share tables were produced, as shown in Exhibit E-2, which include all major commodity traffic flows that correspond to 80% of all current state UP and NS traffic. The projected increases in UP-NS market shares reflect diversions from truck and other rail competitors driven by improved service offerings.").

Exhibit 2
UP-NS would participate in a dominant share of U.S. rail movements (weighted by revenue) and {{REDACTED }} in "major movements" (based on rail revenues reported in the Six-Railroad Tapes Data and movements identified as "major")

{{REDACTED

}}

33. At the bargaining table, not all threats are equally credible. In particular, for traffic that is already moving by rail, the most credible threat (the closest competitor) is

naturally the prospect of that shipper taking the movement to another rail carrier. In negotiating against a railroad that will span the country, many shippers will find that their only credible rail options all need UP or NS somewhere. For those shippers, the threat of taking their traffic to their next best alternative after the merger will no longer provide the sort of bargaining leverage they enjoy today. Economists take a situation like that as a clear prediction of higher rates for the shipper. For some of these shippers, the merger will even mean that they no longer have any credible way to threaten UP-NS to take their business elsewhere and will have to pay whatever UP-NS demands.

34. This scope and scale of the merged UP-NS will significantly reduce the leverage of a variety of shippers as they try to negotiate with the combined firm. Consider a large shipper, with multiple facilities spread across the U.S. Today, that shipper has credible options it can use in negotiations for better rates.[25] It can threaten to shift its production between its many facilities to gain some bargaining leverage with the railroads it contracts with. It can also offer to bundle its business across various facilities or corridors as an inducement to lower rates where it might not have an alternative for the specific movements. If UP and NS were to merge, that same shipper will find that most

[25] In Section 5, I analyze data on individual shippers to examine this situation and the merger's effect on them. I find {{REDACTED }} with multiple locations and rates consistent with this sort of bargaining. For example, {{{REDACTED }}} originated shipments from {{{REDACTED}}} stations via {{{REDACTED}}} different Class I railroads, which is more than most similar shippers (among {{REDACTED }} moving similar commodities over similar distances in the same year, the median number of facilities is {{REDACTED}} and the median number of Class I railroads they use is {{REDACTED}}). Consistent with {{{REDACTED}}}'s geographic bundle of locations giving them leverage to negotiate with individual railroads, {{{REDACTED}}} paid approximately {{{REDACTED}}}% less than other {{REDACTED }} moving similar commodities over similar distances in the same year. See workpaper 3-4.

of its traffic *has* to be carried by the combined UP-NS (a likely outcome since UP-NS would participate in {{REDACTED }} ({{REDACTED}}) of U.S. rail traffic (weighted by revenue). A lot of that shipper's options that today give it competitive rates would suddenly be off the table. A combined UP-NS would see the loss to that shipper as a gain in its own bargaining leverage against the shipper.

35. While I have described this effect as the shipper losing the ability to threaten to go to their next-best alternative, the affected routing could just as easily be the one that the shipper prefers. For example, the route that is fastest for a particular movement of a given shipper might be a UP-CSXT routing. Before the merger, NS might compete against this route by offering the shipper a $200 lower rate if they take a UP-NS route and perhaps the shipper gives them some of their less time-sensitive traffic on the route. After the merger, UP would be bargaining against itself if it continued to be indifferent between the offer it makes on its side for that UP-CSXT routing and the UP-NS routing. Every dollar's worth of delay it can introduce for that shipper on the UP-CSXT movements will be a dollar less it has to offer to still win the UP-NS moves. And, if UP-NS can make the UP-CSXT route uncompetitive, it wins the whole move with no need to discount. CSXT might look to pair with BNSF, but if that was a routing that wasn't even in the shipper's consideration pre-merger, the shipper is still worse off.

36. Smaller shippers that already depend on UP and NS will be even more vulnerable, especially if they operate in commodities where the combined UP-NS particularly dominate rail service. As The Board's 2001 Rules anticipated, competition for specific

commodities across geographies can be affected even with "end-to-end" mergers.[26] The Board recognized that shippers of a given commodity often compete with one another in their own downstream markets which indirectly puts competitive pressure on the movements of that commodity in different areas. A large shipper might internalize that competition and use the leverage of different origins or destinations for its products to bargain down its own rates. Smaller shippers will be unable to pay more than their large competitors or than small competitors in other areas. That is the indirect competition limiting what railroads can charge, but it is a constraint that a railroad with a large share of all the moves for competitors across the map can relieve with the power to raise rates to the whole industry across the board.

37. In Exhibit 3, I demonstrate that the Six-Railroad Tapes Data show the combined UP-NS would immediately earn more than {{REDACTED}} of {{REDACTED }} revenues (a ${{REDACTED }} industry, annually), {{REDACTED}} of {{REDACTED }} revenues (a {{REDACTED }} industry, annually), and {{REDACTED}} of {{REDACTED }} revenues (a ${{REDACTED }} industry, annually). Among smaller industries, the Six-Railroad Tapes Data identifies that a combined UP-NS would earn {{{REDACTED}}} of {{{REDACTED }}},

[26] Major Rail Consolidation Procedures, p. 556 ("significant losses in geographic competition could occur even where carriers truly are 'end-to-end,' because there are many commodities (such as phosphate and soda ash) that have a limited number of sources."). I expand on this below in Section 6.

{{{REDACTED}}} of {{{REDACTED }}}, and {{{REDACTED}}} of {{{REDACTED }}} revenue.[27]

[27] {{REDACTED }} See {{REDACTED }} UP_1559554–7 at UP_1559556.

Exhibit 3
UP-NS share for select commodities (STCC2) by average annual revenue

{{{REDACTED

}}}

38. The exhibit shows the proposed transaction would significantly consolidate the service of rail movements provided to the shippers of many major commodities. To see how significant that effect is, I employ the standard outlined in the Merger Guidelines published by the Department of Justice and the Federal Trade Commission. The Merger Guidelines call for using the Herfindahl-Hirschman Index ("HHI") to measure how a merger will change concentration among competitors. The screen speaks to a presumption established by the Supreme Court that a merger that creates or further consolidates a highly concentrated market will tend to substantially harm competition and the economy.[28] The agencies evaluate a merger's effect on this HHI measure against a threshold derived from case law to identify mergers that can be presumed

[28] Opinion of the Court, *United States v. Philadelphia National Bank*, 374 U.S. 321, June 17, 1963 ("Philadelphia National Bank"), p. 363 ("we think that a merger which produces a firm controlling an undue percentage share of the relevant market, and results in a significant increase in the concentration of firms in that market is so inherently likely to lessen competition substantially that it must be enjoined in the absence of evidence clearly showing that the merger is not likely to have such anticompetitive effects.").

unlawful and likely to harm customers.[29] That is, a merger is presumptively illegal in a particular market if it triggers either of the following conditions:[30]

a. If the post-merger HHI exceeds 1,800 and the change in the HHI due to the merger exceeds 100;[31] or

b. If the merged firm's post-merger market share exceeds 30% and the change in the HHI due to the merger exceeds 100.

39. In Exhibit 4, I compute the HHI values for the proposed UP-NS merger associated with all the commodities I analyze in Exhibit 3. The changes in concentration

[29] 2023 Merger Guidelines, p. 2 ("Guideline 1: Mergers Raise a Presumption of Illegality When They Significantly Increase Concentration in a Highly Concentrated Market. Market concentration is often a useful indicator of a merger's likely effects on competition. The Agencies therefore presume, unless sufficiently disproved or rebutted, that a merger between competitors that significantly increases concentration and creates or further consolidates a highly concentrated market may substantially lessen competition.") (emphasis removed) and p. 6 ("The first merger guidelines to reference an HHI threshold were the merger guidelines issued in 1982. These guidelines referred to mergers with HHI … above 1,800 as 'highly concentrated,' while they referred to an increase in HHI of 100 as a 'significant increase.' … During this time, courts routinely cited to the guidelines and these HHI thresholds in decisions."). See also Philadelphia National Bank, p. 364 ("Without attempting to specify the smallest market share which would still be considered to threaten undue concentration, we are clear that 30% presents that threat.").

[30] 2023 Merger Guidelines, pp. 5–6 ("Markets with an HHI greater than 1,800 are highly concentrated, and a change of more than 100 points is a significant increase. A merger that creates or further consolidates a highly concentrated market that involves an increase in the HHI of more than 100 points is presumed to substantially lessen competition or tend to create a monopoly. The Agencies also may examine the market share of the merged firm: a merger that creates a firm with a share over thirty percent is also presumed to substantially lessen competition or tend to create a monopoly if it also involves an increase in HHI of more than 100 points.").

[31] HHI is a widely used measure of concentration with a maximum value of 10,000. See 2023 Merger Guidelines, p. 5 ("The Agencies generally measure concentration levels using the Herfindahl-Hirschman Index ('HHI').… The HHI is defined as the sum of the squares of the market shares; it is small when there are many small firms and grows larger as the market becomes more concentrated, reaching 10,000 in a market with a single firm.").

demonstrate that the proposed UP-NS merger would {{REDACTED }}[32] For example, for rail shipments of {{REDACTED }}, (i) UP-NS's post-merger share ({{REDACTED}}) {{REDACTED }}, (ii) the commodity's post-merger HHI ({{REDACTED}}) also {{REDACTED }}, and (iii) the merger would {{REDACTED }} by {{REDACTED}} points. {{REDACTED }}. Many of the commodities {{REDACTED }} Beyond the set of select commodities in Exhibit 4, I find that {{REDACTED}} out of all {{REDACTED}} STCC2 commodities {{REDACTED }}[33] Thus, even the generalized presumption thresholds associated with the conventional concentration metrics—not just the merger-specific analyses that follow—already reveal {{REDACTED }}. Those conventional metrics, however, capture only part of the competitive concern: as The Board's 2001 Rules recognize, a merger of this scale can also reduce indirect competition and the alternatives that give shippers bargaining leverage.

[32] In Exhibit 4 I analyze market shares treating non-Class-I railroads as a single combined competitor. When I restrict the analysis to Class I railroads, {{REDACTED }}. See workpaper 3-5.

[33] See workpaper 3-6.

Exhibit 4
A UP-NS merger would so consolidate movements of many major commodities *{{REDACTED }}* ***(STCC2)***

{{{REDACTED

}}}

40. The difficulty shippers will have avoiding a combined UP-NS is also a product of how many places currently have no real competition with UP or NS. This is not a merger where one party competes for all traffic in the West and the other competes for all traffic in the East, as Applicants imply. Instead, for many shippers, this merger would result in a combination of monopoly power in the East with monopoly power in the West. The combined UP-NS would have substantially more opportunities to hold

up a shipper, to foreclose options the shipper might prefer and utilize today, and all but ensure that the combined UP-NS can extract every last dollar the shipper is willing to pay for its movements.

41. When I look at the East, West, and the Watershed region surrounding the Mississippi River, a combined UP-NS would participate in at least {{REDACTED}} of Class I revenue originating or terminating any of these three parts of the country.[34] No matter where shippers are shipping within the U.S., a combined UP-NS {{REDACTED }}. Exhibit 5 shows that a combined UP-NS would participate in {{{REDACTED}}} of movements (weighted by revenue) originating in the West, {{REDACTED}} of movements (weighted by revenue) originating from the Watershed, and {{{REDACTED}}} of movements (weighted by revenue) originating in the East.

[34] I adopt Mr. Hunt's definition of the "East," "West," and "Watershed" regions of the U.S., which are mutually exclusive and collectively exhaustive of the continental U.S. See Hunt Second Errata VS, Exhibit 4-8.

Exhibit 5
Share of total revenues that a combined UP-NS would participate in for movements within the U.S. originating in the East, West, and Watershed regions

{{{REDACTED

}}}

42. Similarly, Exhibit 6 shows that a combined UP-NS would participate in {{{REDACTED}}} of movements (weighted by revenue) terminating in the West, {{REDACTED}} of movements (weighted by revenue) terminating in the Watershed, and {{{REDACTED}}} of movements (weighted by revenue) terminating in the East.

Exhibit 6
Share of total revenues that a combined UP-NS would participate in for movements within the U.S. terminating in the East, West, and Watershed regions

{{{REDACTED

}}}

43. The broad shares across the East, West, and Watershed do not tell the whole story, however. When I look at individual counties—which speak to the options particular shippers have to originate or terminate movements—Exhibit 7 and Exhibit 8 below show that there is even less direct competition in the East or in the West than the broad shares across those regions suggest. Much of the U.S. is already only served by one Class I Railroad. The West is full of counties where BNSF does not effectively compete with UP and the East is similarly full of counties where CSXT does not effectively compete with NS.

44. Exhibit 7 shows that many counties in the West throughout all six years in the Six-Railroad Tapes Data only had service from one Class I railroad. These are the dark colored counties in the map and they are, as a practical matter, either sole-served by UP or sole-served by BNSF.[35] The lighter colored counties add areas where the local monopoly is not literal, but these counties still have one Class I railroad providing the preponderance of service to/from them in the entire Six-Railroad Tapes Data (that is, there was one Class I associated with over 75% of moves weighted by revenue).

[35] The shares in this exhibit account for Class II and Class III railroads serving counties. I attribute Class II or Class III revenue in a county to UP (BNSF) if a Class II or Class III railroad interchanges with UP (BNSF).

Exhibit 7
Counties where BNSF or UP has at least a 75% share of Class I Revenue, 2019–2024

{{{REDACTED

}}}

45. Similarly, Exhibit 8 shows that many counties in the East are either sole-served by NS or sole-served by CSXT.[36] Again, this is true in the literal sense of dark colored counties that are 100% served by the associated railroad in the Six-Railroad Tapes Data and more broadly true if one uses a more typical threshold for effective monopolization of the local traffic (colored counties have one Class I railroad associated with at least 75% of movements weighted by revenue).

[36] The shares in this exhibit account for Class II and Class III railroads serving counties. I attribute Class II or Class III revenue in a county to NS (CSXT) if a Class II or Class III railroad interchanges with NS (CSXT).

Exhibit 8
Counties where NS or CSXT has at least a 75% share of Class I Revenue, 2019–2024

{{{REDACTED

}}}

46. The control that UP and NS have over counties in the West and East, respectively, gives them power over competition for rail service connecting to those counties. The

2023 Merger Guidelines recognize this concern: a firm that controls an important input or route to customers may be able to use that control to weaken competition in a related market.[37] As the Merger Guidelines describe, combinations of firms that have an ability to foreclose a competitor in the related market can substantially harm competition.[38] Where UP and NS today work as partners with other railroads, and where shippers can benefit from competition somewhere on their move—either between potential destinations or to reach the remaining areas where both of the current partner railroads are good options—the merger turns one of those partners into a competitor and creates the opportunity and incentive to eliminate (or severely degrade) the competition that shipper currently enjoys in favor of steering traffic onto its own network.

47. This ability to harm competition is widespread. Counties where a combined UP-NS will account for at least 75% of movements (weighted by revenue) by Class I rail revenue represent {{REDACTED}} of revenue on all U.S. movements and {{REDACTED}} of within-U.S. rail revenue. Counties where the combined UP-NS would be the only Class I option account for {{REDACTED}} of rail revenue on all U.S. movements and {{REDACTED}} of within-U.S. rail revenue. In other words,

[37] 2023 Merger Guidelines, p. 13 ("The Agencies evaluate whether a merger may substantially lessen competition when the merged firm can limit access to a product, service, or route to market that its rivals may use to compete. … These problems can arise from mergers involving access to any products, services, or routes to market that rivals use to compete, and that are competitively significant to those rivals, whether or not they involve a traditional vertical relationship…").

[38] 2023 Merger Guidelines, pp. 13–14 ("A merger involving products, services, or routes to market that rivals use to compete may substantially lessen competition when the merged firm has both the ability and incentive to limit access to the related product so as to weaken or exclude some of its rivals … in the relevant market. … Dependent rivals can be weakened if limiting their access to the related product would make it harder or more costly for them to compete; for example, if it would lead them to charge higher prices or offer worse terms in the relevant market… .").

{{REDACTED }} movements shipped in the U.S. (weighted by revenue) comes from a shipper who will have only one rail option—UP-NS—in their county post-merger.

48. The ability to harm competition is even more widespread when considering counties across the country where the dominant position of a combined UP-NS could be used to effectively foreclose competition from current interline partners. I described above the example of a shipper that might today enjoy some competition between CSXT (to win its portion of a UP-CSXT routing) and NS (to win its portion of a UP-NS routing for the same move) and that post-merger CSXT might find it difficult to compete as a partner with BNSF. The data reveal in these exhibits that this scenario will be particularly true for many movements. Indeed, it is a significant portion of all movements where, if a combined UP-NS chooses not to work with a railroad that it currently partners with in some options for a shipper, that rail partner could be completely foreclosed or effectively foreclosed from offering the shipper a competitive alternative. This extraordinary power over shippers is described more in Exhibit 9 below, which shows how often this scenario meets various thresholds that would all constitute the sort of ability over an input market that the Merger Guidelines identify.

Exhibit 9
A combined UP-NS would participate in {{REDACTED }} for significant portions of the country

{{REDACTED

}}

49. Further, as I demonstrate in Section 5, there are {{REDACTED }} shippers that utilize both a sole-served UP facility and a sole-served NS facility. These shippers account for {{REDACTED }} in total revenue.[39]

50. A combined UP-NS would also {{REDACTED }} the interline movements that cross the Watershed which are so central to this case.[40] Instead, the effect of the merger is to limit to an even more extreme degree those shippers' ability to avoid the combined railroad by contracting with other Class Is. A combined UP-NS would participate in {{REDACTED}} of cross-Watershed interline movements (that involve multiple Class I railroads), weighted by Class I rail revenue. This means that shippers would only be able to *avoid* a combined UP-NS on {{REDACTED }} ({{REDACTED}}) of those movements weighted by revenue.

[39] See Exhibit 35. Note that due to the methodology used to aggregate shipper names, the number of shippers is overstated and the amount of revenue moved by shippers that are sole-served by UP and NS is understated.

[40] Applicants' experts claim that the merger is "designed" to improve movements between the East and West of the country but seem to acknowledge the {{REDACTED }} UP-NS would have among these movements. See Second Errata Joint Verified Statement of Kenny Rocker and Claude E. Elkins, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, September 4, 2026 ("Rocker and Elkins Second Errata VS"), ¶ 10 ("This merger is designed to fix that problem by giving customers coast-to-coast, seamless, single-line service."). See also Hunt Second Errata VS, pp. 42–43, Exhibit 4-8 ("Much of US Class I interline traffic involves traffic within or crossing the watershed region, the traditional dividing line between the eastern and western US railroads.").

Exhibit 10
For shippers on U.S. cross-Watershed movements involving two or more Class I railroads
{{REDACTED }}

{{REDACTED

}}

51. Exhibit 11 shows that shippers' dependence on a combined UP-NS to interline between the East and the West is consistent across various major commodity groupings as well. Shippers who move these commodities across the country would be particularly dependent on a combined UP-NS. These shippers will be the ones who no

longer have credible alternatives they can use to get competitive rates in their negotiations.

Exhibit 11
A combined UP-NS would dominate cross-Watershed interline movements involving multiple Class I railroads for many commodities (STCC2s)

{{{REDACTED

}}}

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52. Taken together, the data on scope and size of a combined UP-NS show that the proposed merger would create a railroad that would dominate U.S. rail movements. Regardless of whether I look at the entire U.S., specific geographies, or specific commodities, combining UP and NS would create a single railroad controlling an enormous share of revenues—shippers would need to negotiate with UP-NS on {{REDACTED }} of U.S. rail traffic, making it difficult for them to avoid (or even to threaten to avoid) UP-NS.

53. Applicants and their experts do not adequately analyze how the combined railroad's unprecedented reach would affect the competitive alternatives and bargaining strategies available to shippers. My analysis identifies three principal sources of harm that the UP-NS merger likely would cause:

a. The proposed merger would give a combined UP-NS the ability and incentive to foreclose or weaken competing interline services that UP and NS support today. This would reduce shippers' options, increase rates, and harm shippers (Section 4).

b. The proposed merger would weaken geographic competition and deprive shippers of bargaining strategies that support more competitive rates and service offerings. Today shippers can negotiate across facilities and movements to obtain better terms. Combining UP and NS would place more of a shipper's alternatives under common control, reducing the shipper's ability to shift business and increasing the merged railroad's bargaining leverage, harming shippers (Section 5).

c. The proposed merger would eliminate competition between UP and NS to carry the longer portion of an interline movement, depriving shippers of the lower rates that competition over the choice of interchange point can produce (Section 6).

4. A combined UP-NS will undermine competition that UP today supports between NS and other Class Is and that NS today supports between UP and other Class Is

54. The proposed merger will have a vertical competitive effect. Vertical effects, like horizontal effects, ultimately involve a reduction in head-to-head competition. However, unlike horizontal effects which arise from the loss of direct competition between merging parties, the vertical effects here would reduce competition between the combined UP-NS and other railroads that depend on UP or NS as an interline partner. Today, UP facilitates competitive service offered by both NS and its competitors in the East. Likewise, NS facilitates competitive service offered by both UP and its competitors in the West. If NS's competitors can no longer use UP effectively as an interline partner, and UP's competitors can no longer use NS effectively as an interline partner, those railroads will be less able to compete with the combined UP-NS. As a result, shippers will lose options and UP-NS will not have to offer shippers rates and service as favorable as competition requires today. In this section, I show that the proposed UP-NS merger will lead to foreclosure of these competitors, substantially reducing shippers' competitive options and raising the rates where competitors are foreclosed.

55. First, I explain how, today, shippers benefit from competition on portions of their interline service. UP supports competition between NS and other Class Is in the East, and NS supports competition between UP and other Class Is in the West. Shippers can build the pairing of railroads on either side of a gateway that benefits them the most. And even where the shipper has a sole-serving railroad on one side, separate

negotiations, including under Rule 11, allow a shipper to benefit from competition on one side of the gateway or the other, with the sole-serving railroad on the other side of the gateway being unable to capture all the profits.

56. A combined UP-NS offering single-line service would have a financial incentive to change this relationship across the gateway to avoid competing with its own service. It would have both the incentive and the ability to foreclose interline partners and insulate its rates and its profits from that competition, making shippers worse off (Section 4.1).

57. Second, the data show that {{{REDACTED }}}. {{{REDACTED }}} Across estimation approaches, these findings support estimated harm to shippers from the foreclosure of competition of approximately {{REDACTED}} million annually. The evidence thus points toward harm from the merger's impact on competitive incentives, not an automatic benefit from creating single-line service (Section 4.2).

58. Third, I discuss how Applicants and their economists have failed to admit even the possibility of this harm. Dr. Israel's "one-lump" theory assumes away the bargaining constraints that allow shippers to benefit from this competition today. His flawed single-line/interline rate comparison does not measure the merger's effect on those constraints. Moreover, the record evidence indicates that UP commands higher rates than other railroads, with a stated strategy of favoring price increases at the expense of

volume growth. Unless UP were to suddenly switch its pricing strategy, the merger is more likely to mean increased rates on NS traffic, rather than lower rates in furtherance of winning the truck-to-rail diversions that Applicants forecast. Such diversions are unlikely and so is the implication that UP would suddenly switch to a strategy of pursuing rate decreases. If Applicants could plausibly generate the sort of traffic diversions their experts' analysis predicts from small price changes, then UP and NS would have the incentive to reduce its rates and pursue this traffic today. A more realistic explanation is that no such gains are likely (Section 4.3).

59. Fourth, if Applicants' projections of large traffic gains were actually realistic, Applicants have not explained why they cannot be accomplished without a merger. There are many examples of railroads having success and benefitting shippers with effective interline agreements. Indeed, Applicants' own experts acknowledge successful interline agreements and rely on new interline cooperation among other railroads to constrain UP-NS. They do not reconcile that position with their claim that UP and NS must merge to coordinate effectively (Section 4.4).

60. Fifth, the remedies Applicants offer for the harm to shippers from foreclosed competition due to their proposed merger ignore its unprecedented scale and scope and do not begin to address the harm it will have for shippers. Their OGCs are inadequate to address the harm of this merger as are the other assurances and procedural options they have offered (Section 4.5).

4.1. The merger would give UP-NS the incentive and the ability to weaken its current partners and degrade facilities and services that today compete as interline options. UP will stop competitors to NS where it can and NS will stop competitors to UP where it can

61. The proposed merger would create a railroad with the incentive and ability to foreclose competition that UP and NS today support among their respective interline partners. Today, all else being equal, UP should be indifferent to whether it interchanges with NS or CSXT, and NS should be indifferent as to whether it interchanges with UP or BNSF. After the merger, a combined UP-NS would have the incentive to favor UP-NS's routings because the combined firm would retain all of the revenue from traffic moving over its new single-line route, but only part of the revenue from traffic interchanged with BNSF or CSXT.[41] This dynamic would give UP-NS an incentive to weaken competing interline options and steer traffic onto its own single-line routes, where it would capture the revenue that would otherwise go to its interline partners. And where UP-NS can, it will act on that incentive by making those competing interline options less attractive through its pricing, service, equipment, and interchange decisions.[42] In many cases that will be enough to completely foreclose

[41] Applicants' expert Dr. Bailey explained how single-line carrier incentives operate. Bailey Second Errata VS, ¶ 58 ("When creating blocks at its yards, UP's economic incentive is to consider the commercial implications only for its own business. Its incentives will differ from those of the combined railroad for at least two reasons. First, UP receives only a part of the profit for interline services with NS as independent entities, but the combined railroad would receive all of the profit from single-line services. Second, UP has little incentive to incur costs itself in order to reduce NS's costs of delivering interline services. As a result, as an independent entity pre-transaction, UP has weak economic incentives to support the capacity and expend the resources needed to sort and reclassify cars to better serve NS's interests.").

[42] Applicants' expert Dr. Bailey explained this when describing the incentives for the single-line carrier to ensure reliable services. Bailey Second Errata VS, ¶ 67 ("Compared to a combined entity, standard economic reasoning shows that a standalone UP will generally put less weight on ensuring that interline services arrive on time for two reasons. First, UP shares the benefits (i.e., gets partial

competition, particularly where UP-NS controls a necessary input for the shipper such as a sole-served origin or destination. And even where UP-NS may not be able to preclude competition altogether, it can significantly weaken the shipper's options if it no longer partners effectively with those interline partners UP or NS support today. Whether complete or partial, the merged UP-NS will gain power to insulate itself from competition and raise rates for shippers.

62. {REDACTED

[43]}

63. This loss in competition is illustrated in a hypothetical example in Exhibit 12. Even though the merger will not change the routes that are theoretically possible, if shippers recognize that they can no longer use the pairs UP-CSXT and BNSF-NS—whether that requires the combined UP-NS to exercise its ability to discontinue interline service with CSXT and BNSF or shippers merely recognize that those options no longer have any

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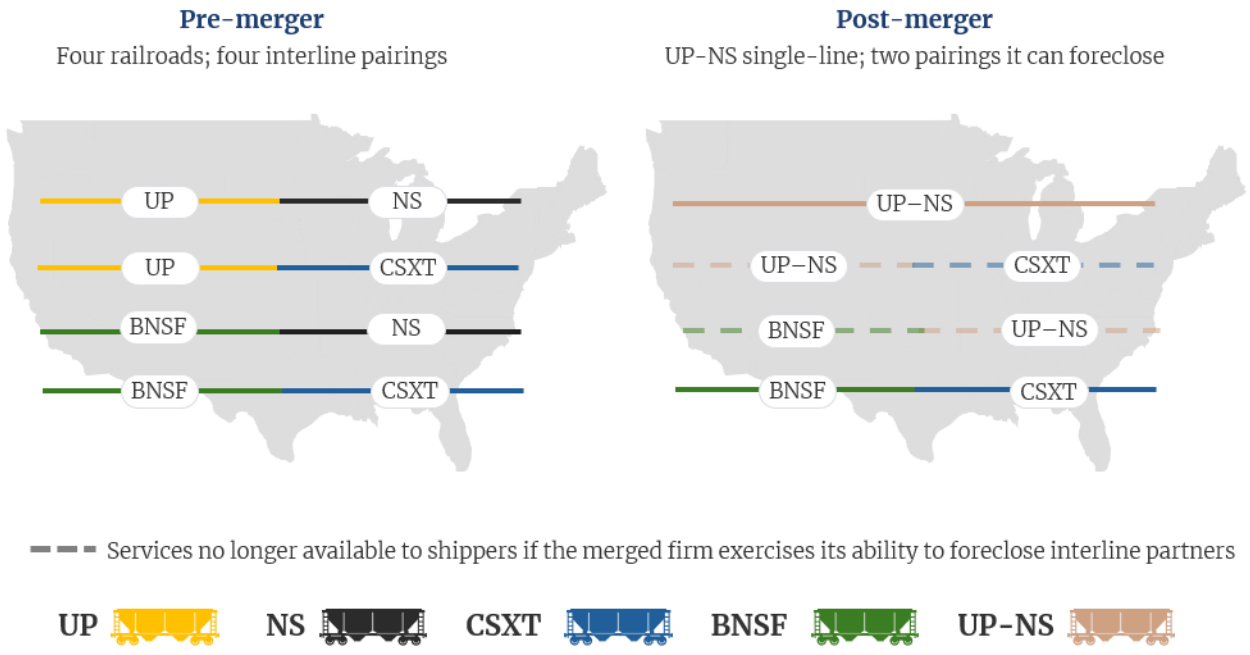
benefits) of meeting the expectations of interline customers with NS, whereas the proposed combined railroad would gain the full benefit. Second, customers have limited visibility into interline operations, making it difficult to determine which railroad is responsible when delays occur. … As a result, neither railroad fully internalizes the (positive) benefits from high service quality nor do they fully internalize the (negative) costs of low service quality.").

[43] Deposition of Grant Janke (Assistant VP, Capital Planning & Finance, UP), September 1, 2026, Exhibit 84, UP_0039326.

credibility at the negotiating table—the effect is less competition for shippers. Some shippers may insist and use whatever bargaining power they can to obtain a rate for one of these pairs, but in terms of options that can discipline pricing, shippers will not see these routes as relevant options anymore. It is effectively the same as if two of the route pairings were destroyed by the merger.

Exhibit 12
Illustration of competition today and post-merger when UP-NS forecloses interline partners



Source: Illustrative Graphic
Note: This exhibit is a visual representation of both (i) a reduction in railroads involved and (ii) likely reduction in service options available on a corridor following the proposed merger of UP and NS, moving from West to East. The dashed lines represent services that would no longer be available to shippers, if the merged firm exercises its ability to foreclose interline partners.

64. A good example of this effect is Schneider, an intermodal service provider, that has used different combinations of railroads to generate competition for its business, first

switching its western business from BNSF to UP, and more recently announcing that it would switch its eastern business from CSXT to NS. Along the way, it has relied on various pairings for its East-West moves, including BNSF-CSXT, UP-CSXT, and soon UP-NS.[44] Because Schneider could choose any of those pairings, NS competed with CSXT to serve Schneider in the East, and UP supported that competition by collaborating with whichever carrier Schneider picked in the East for interline services.

65. {{REDACTED

}}[45]

66. However, this type of competition would be lost after the proposed UP-NS merger. While Schneider cites its record of switching between two major providers in each of the East and West as evidence of competition that it expects will continue post-merger, that is not consistent with Applicants' internal expectations which are, instead,

[44] "Union Pacific Railroad and Schneider to Team Up for Intermodal Service in 2023," *Union Pacific Newsroom*, January 19, 2022, available at https://www.up.com/press-releases/service/schneider-intermodal-service-nr220119; "Norfolk Southern and Schneider partner to expand domestic intermodal capacity across the eastern U.S.," *Norfolk Southern Newsroom*, October 29, 2026, available at https://norfolksouthern.com/en/newsroom/news-releases/norfolk-southern-and-schneider-partner-to-expand-domestic-intermodal-capacity-across-the-eastern-us.

[45] {{REDACTED }} NS_00239039–97 at NS_00239044 ({{REDACTED }}); {{REDACTED }} NS_00126707–37 at NS_00126729 ({{REDACTED }}).

consistent with my own findings below that such switching will be foreclosed.[46]

According to a UP {{REDACTED

}}[47] {{REDACTED

}}

67. Indeed, Schneider's expectations of benefits from the merger appear to be at odds with the evidence in this case, as well. In his letter of support for this merger, Schneider's President and CEO points to the increased coordination Schneider observed after the CP-KCS combination, noting that CPKC is an example of "[t]he enhanced speed, reliability and service consistency of a new single-line network improved rail's ability to compete for freight, encouraged investment, and increased competition across the broader transportation market" that they expect to see with the proposed UP-NS merger.[48] But, as I discuss in Section 4.5.1, the CP-KCS combination

[46] Letter from James Filter (President and CEO, Schneider National Carriers, Inc.) to Chairman Fuchs and Members of the Board, "Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, November 11, 2026 ("Schneider Letter"), pp. 2–3 ("Concerns that the proposed combination would diminish competition or lead to higher rates do not reflect the competitive dynamics of the freight transportation market. Schneider today negotiates with at least two major rail providers in each relevant geography, and that competitive choice will remain following the transaction.").

[47] {{REDACTED }} UP-STB-D13-0000430–51 at UP-STB-D13-0000440 {{REDACTED }}; {{REDACTED }} UP_0080839–53 at UP_0080850 {{REDACTED }}.

[48] Schneider Letter, p. 2.

differed from the proposed UP-NS merger on essentially all of the facts that are relevant to this sort of comparison. Of particular import, CP and KCS had been unable to align their incentives in arm's-length negotiations for reasons that were peculiar to that combination, but which meant that there was unusual potential to improve their coordination; and their new single-line service competed with already existing single-line service from three Class Is, which is a level of competition (and incentive to share with shippers the benefits of improved service) that UP-NS will not face.

68. {{REDACTED

}} Today, they regularly partner with other Class I railroads that compete with one another on the other side of a gateway. As shown in Exhibit 13, {{REDACTED

}}[49] {{REDACTED

}}[50] After the merger, {{REDACTED

}}.

[49] {{REDACTED

}} NS_00103605–56 at NS_00103654.

[50] {{REDACTED

}} NS_00103605–56 at NS_00103654 ({{REDACTED

}}); {{REDACTED

}} NS_00155457–59 at NS_00155457 57({{REDACTED

}}).

Exhibit 13
Today, NS regularly *{{REDACTED*

}}

Source: {{REDACTED
}} NS_00103605–56 at NS_00103654
Note: {{REDACTED

}}

69. Both UP and NS anticipate that {{REDACTED

}}.[51] The reasoning provided by NS's Chief Strategy Officer, Mr. McClellan,

[51] {{REDACTED }} UP-STB-D13-0000430–51 at UP-STB-D13-0000440 {{REDACTED }}; {{REDACTED }} UP_0080839–53 at UP_0080850 {{REDACTED }}; Deposition of Michael R. McClellan (Chief Strategy Officer, Norfolk Southern Corporation), October 9, 2026, Exhibit 409, NS_00482221–26 at NS_00482223 ({{REDACTED }}).

{{REDACTED

}}[52] {{REDACTED

}}[53] {{REDACTED

}}

70. {{REDACTED

[54]}}

[52] Deposition of Michael R. McClellan (Chief Strategy Officer, Norfolk Southern Corporation), October 9, 2026, pp. 415:4–416:1 ({{REDACTED

}}).

[53] {{REDACTED

}} NS_00130381–85 at NS_00130384.

[54] Deposition of Michael R. McClellan (Chief Strategy Officer, Norfolk Southern Corporation), October 9, 2026, Exhibit 409, NS_00482221–26 at NS_00482223 ({{REDACTED

}}).

71. By allowing UP-NS to benefit financially from favoring its own single-line service in many more corridors, the merger would extend its incentive to weaken competing interline options. To evaluate the merger's effect therefore requires accounting for the change in railroad incentives and the role of competitive options available to shippers. The proposed merger is more than a change in the mode of production (i.e., new single-line service) for specific options. Rather, the merger would also reduce the number of railroads shippers can bargain with and change the mix of competitive incentives for railroads. This change in competitive structure would impact the rates of single-line and interline services in the same corridor simultaneously. Therefore, to evaluate the merger's effect, it is important to consider the change in competitive structure to examine whether shippers are harmed when they lose options on either side of a gateway.

72. The central question is whether shippers are better off or worse off when a carrier faces the incentive to favor its own single-line option. Specifically, the question is whether that incentive corresponds with lower rates of the single-line service (which presumably the interline services would have to respond to with their own lower rates) or does it correspond with fewer or less effective interline options for shippers and higher overall rates (which presumably raises the rate observed for both the remaining interline and the new single-line service). To address this central question, I compare rates in markets where carriers have an incentive to favor their own single-line service with rates in markets with otherwise similar competitive conditions where carriers lack that incentive. As I show in Section 4.2.2, the evidence confirms that shippers pay more

where carriers have that incentive, supporting my conclusion that the merger would harm shippers due to foreclosed competition.

4.1.1. The popularity of Rule 11 demonstrates that shippers value separate negotiations that preserve discounts from competition on one side of the gateway without offsetting price increases on the other

73. A particularly popular tool for shippers negotiating interline rates is Rule 11, an arrangement under which each railroad separately quotes and bills for its portion of an interline move. Its popularity demonstrates that shippers do benefit from competition on one end of their moves. Rule 11 helps shippers generate competitive pressure on their rates by allowing them to negotiate directly with each railroad without having to disclose the rate negotiation with the railroad on the other side of the gateway. For example, a shipper might negotiate a discounted rate to use a different interchange point. Although that shipper still must obtain a rate from the railroad serving the other side of that interchange, the shipper does not have to reveal the amount of the discount. Likewise, if a shipper has a volume discount or other arrangement related to its overall portfolio with one railroad, it can keep the exact discount confidential when bargaining with the other railroad.

74. As a result of separate negotiations, Rule 11 helps ensure that discounts shippers get from competition on one side will not simply raise the rate they will pay on the other side of the gateway and will instead turn into net savings for shippers. This is because when a railroad does not have full information of a shipper's rate or discounts

on the other side of a gateway, it is unable to raise its rate to a level to extract the full monopoly rent and fully offset the savings from competition on the other side of the gateway. Thus, a shipper that is captive to a sole-serving railroad on one side of the gateway can benefit from competition on the other. As I explain further in Section 4.3.1, this is contrary to Dr. Israel's one monopoly-rent theory and consistent with UP's own acknowledgement before The Board.

75. The proposed merger would eliminate the benefit of Rule 11, and therefore would eliminate the benefit of separate negotiations, on UP-NS movements. A combined UP-NS would have the ability to charge a total price higher than the combined Rule 11 quotes UP and NS separately offer today. This is because UP and NS would no longer be separate railroads to contract with; instead, the combined UP-NS as a single entity would know exactly what it was doing with that shipper for the entire movement. Indeed, once it has a single-line option for the entire length of the move, Rule 11 does not require UP-NS to make a rate available for the portion a shipper may have been using with another railroad.[55] And, while Applicants have offered to commit that they

[55] Railroads are required to provide rates upon request, but they are allowed to determine the type of rate they quote shippers (e.g., interline or single-line). This means that a railroad that has a single-line offering can choose to only quote the single-line rate (as opposed to the interline or Rule 11 rate). See Decision, "Central Power & Light Company v. Southern Pacific Transportation Company," Docket No. NOR 41242, December 27, 1996, pp. 1067–1068 ("In summary, a shipper may not insist upon local rates for what is really a through service. If a shipper seeks a rate from an origin that is not currently served by the bottleneck carrier, either directly or in interline service, the carrier must accept the traffic at a reasonable interchange and establish a rate over the bottleneck segment to complete the transaction. A shipper seeking an alternative routing from an origin from which it is already served by the bottleneck carrier, either directly or in interline service, must proceed under the competitive access provisions of the statute."). This embraces previous STB decisions. See Decision, "Central Power & Light Company v. Southern Pacific Transportation Company," Docket No. NOR 41242,

will continue to offer interconnecting service in certain ways, it is not clear that shippers would get the same benefits out of the structure of pricing that UP-NS would offer – particularly if UP-NS does not have to give them a tool that helps the shipper get competitive pressure on rates.

76. This loss of separate bargaining will be especially detrimental on routes where shippers are sole-served by UP at one end or NS on the other but can still benefit from separate Rule 11 quotes. The merger will eliminate that separation and force shippers to contract with a combined UP-NS. Even though these shippers are sole-served at one end today, and would remain so after the merger, negotiating with two independent railroads rather than one matters for the total rate they pay. As I explain below, Dr. Israel dismisses this concern by relying on the "one-monopoly-rent" or "one-lump" theory—but Rule 11 is one of the commonly used levers that allow shippers to negotiate lower rates even where a railroad has monopoly power.

77. The value shippers receive from the ability to negotiate separately on each side of a gateway is also demonstrated by the popularity of Rule 11. The data show that {{{REDACTED }}}, {{{REDACTED }}}.

December 27, 1996, fn. 1 ("This case embraces No. 41295, *Pennsylvania Power & Light Company v. Consolidated Rail Corporation*; and No. 41626, *MidAmerican Energy Company v. Union Pacific Railroad Company and Chicago And North Western Rail Company*."). As such, the number of rates available to shippers would decrease. Applicants' own experts acknowledge that additional rate optionality benefits shippers. See Deposition of Katherine N. Novak (General Director of Interline Operations, Union Pacific Railroad Company), September 24, 2026, p. 199:7–16 ("Q. Well, let me ask you, what, if any, additional access does CGP provide to shippers? A. Well, by offering additional rates, it offers them the ability to have additional competitors fighting for their business. So through the rate optionality it does offer additional access or could offer additional access.").

In 2024, UP {{{REDACTED }}} among the Class I railroads and NS {{{REDACTED }}}, as can be seen in Exhibit 14 below.

Exhibit 14
Rule 11 carloads touched by Class I railroad, 2024

{{{REDACTED

}}}

78. Moreover, the share of UP's interline movements (movements that involve more than one Class I railroad) that are contracted under Rule 11 {{{REDACTED

}}}.[56] This trend means that {{{REDACTED

}}}

4.2. Empirical evidence confirms that a combined UP-NS would degrade competition

79. As discussed in Section 4.1, shippers benefit when multiple railroads compete as effective options to serve a portion of their movement. The question is whether an interline option remains an effective competitive alternative when one of the railroads needed to provide that service gains an ownership incentive to steer the traffic to its own single-line service. If a combined UP-NS can weaken enough of a shipper's alternatives, it will face less competitive pressure and can charge higher rates for both interline and single-line service.

80. In this section I show evidence that UP and NS already {{{REDACTED }}} where they can favor their own single-line service (Section 4.2.1). I then compare rates across existing corridors with competitive structures resembling those before and after the merger and show that shippers pay higher rates where a carrier has the incentive to favor its own single-line service, as UP-NS would post-merger. Across estimation approaches, these findings support an estimated harm of approximately {{REDACTED}} million annually (Section 4.2.2). The evidence thus indicates that the

[56] See workpaper 4-1. UP's share of carloads from Rule 11 movements {{{REDACTED }}} based on the Six-Railroad Tapes Data.

merger's changes to competitive incentives would harm shippers, undermining Applicants' claim that creating single-line service would necessarily benefit them.

4.2.1. Today UP and NS act on their more limited incentives to foreclose competition

81. Corridor-level analyses show that most corridors with competitive structures resembling the "post-merger" setting in Exhibit 12 do not use all potential interline services. By contrast, corridors with competitive structures resembling the "pre-merger" setting are much more likely to show traffic moving over all potential interline services.

a. In the left panel of Exhibit 15, I analyze corridors that are served by two railroads on each end and require interlines. These corridors have competitive structures like the "pre-merger" setting in Exhibit 12. In these corridors, shippers have four potential interline routing options. Shippers frequently use all four options, doing so in corridors account for {{REDACTED}} of total revenue across all corridors with this competitive structure.

b. In the right panel of Exhibit 15, I analyze corridors served by two railroads on each end where one single-line option is available. These corridors are like the "post-merger" setting in Exhibit 12. In these corridors, shippers have three potential interline options. However, shippers rarely use all three, doing so in corridors that account for only {{REDACTED}} of total revenue. This is because shippers tend

not to use interline options that involve the railroad that can offer single-line service.[57]

[57] For example, in corridors accounting for {{REDACTED}} of total revenue shippers do not use any interline option that involves a single-line provider. See workpaper 4-2.

Exhibit 15
The presence of a single-line service is associated with diminished use of interline options

{{REDACTED

}}

82. Carrier-level analyses also show that both UP and NS are {{{REDACTED }}} to engage with interline partners when they can offer single-line service. For corridors where a carrier can offer both interline and single-line service, Exhibit 16 shows the

share of revenue that comes from interline movements. For example, for corridors where UP can offer interline and single-line service, Row 1 shows that {{{REDACTED}}} of revenue generated by movements involving UP (including both single-line and interline movements) come from interline service. In other words, in corridors where UP could offer either single-line or interline service, {{{REDACTED}}} of the revenue generated by UP's movements comes from its single-line services. Similarly, in corridors where NS could offer either single-line or interline service, interline movements account for only {{{REDACTED}}} of the revenue from movements involving NS. While it is true that all railroads show an incentive to favor their own single-line, other Class I railroads are {{{REDACTED }}} to interline with partners even when they can offer single-line service. In corridors where other Class Is could offer either single-line or interline service, interline movements account for {{{REDACTED}}} of revenue in their movements, which is nearly {{{REDACTED }}} than the comparable share for UP or NS.

83. This analysis, as shown in Exhibit 16, demonstrates more than the prevalence of single-line service. To test whether the rare use of interlines reflects foreclosure beyond any shipper preferences for single-lines, I compare the interline shares in two cases:

a. In the first case (Row 1.a), I consider corridors where a railroad providing single-line service faces a competitor at each end of a shipper's movement. These resemble corridors that, for example, post-merger, will be served by a UP-NS single-line and a BNSF-CSXT interline. On such corridors, shippers will continue

to have a routing option independent of the merged UP-NS, thus the merged UP-NS will have less ability to steer traffic to its single-line service, even if they decline to work with interline parters BNSF or CSXT.

b. In the second case (Row 1.b), I consider corridors where a railroad providing single-line service is the only carrier serving one end of a shipper's movement and faces a competitor at the other end. These resemble corridors that, post-merger, will be served by a UP-NS single-line and a potential UP-CSXT interline. On such corridors, shippers will no longer have a routing option independent of the merged UP-NS, giving the merged UP-NS greater ability to steer the shippers to its single-line service if they decline to work with interline partner CSXT.

84. A comparison of these two cases therefore measures how a railroad's use of interline service varies when it has a greater ability to determine whether shippers can choose an interline option.

85. This comparison is shown in Row 2 of Exhibit 16 (the "Foreclosure Index"), where a Foreclosure Index greater than one indicates that a railroad engages in an effort to steer traffic from their interline service to their single-line service where it has a greater ability to do so. To see this, first note that if a railroad did not act on that ability, and shipper preferences were otherwise comparable across the two cases, its interline shares would be the same and the foreclosure index would equal one. By contrast, if a railroad more effectively discourages competing interline service where it has greater ability to

do so, its interline share would be lower in those corridors (Row 1.b) than in corridors where it has less ability to steer traffic (Row 1.a), producing an index greater than one. That is not to say that either case necessarily reflects pure shipper preferences or the total effect of foreclosure, just that the difference we can observe between these two cases reveals that railroad's responsiveness to an increase in its ability to foreclose. Under the assumption of comparable shipper preferences, a higher index indicates that the railroad's conduct contributes more to the observed predominance of single-line service. UP's and NS's foreclosure indices, {{{REDACTED

}}}

Exhibit 16
{{{REDACTED

}}}

86. UP and NS stand out both for how much {{{REDACTED

}}}. When sole-served by the railroad, interline service accounts for {{{REDACTED}}} of the revenue on relevant movements UP participates in, and {{{REDACTED}}} of NS's revenue in their relevant movements –

{{{REDACTED }}} average for other Class I railroads. And, while the average Class I {{{REDACTED }}}, UP and NS have ratios indicating it roughly {{REDACTED }} the likelihood of working cooperatively with another railroad to offer an attractive interline offering.

87. UP's and NS's own {{REDACTED }} and past conduct {{REDACTED }}. As I discussed in Section 4.1, {{REDACTED }} This is not surprising as UP has taken similar actions in the past, using its control over equipment sharing programs or shared junctions to make it harder for other railroads to offer competing services and to retain or {{REDACTED }}. For example, in 2022, UP removed CP from the EMP program – a domestic intermodal, interline container service managed by UP and NS that allows shippers to use the containers on authorized railroads – {{REDACTED }}.[58] Commentary in an NS internal document and communication suggests that {{REDACTED

[58] "EMP Domestic Container Program," *Union Pacific*, available at https://www.up.com/shipping/intermodal/emp ("EMP is a domestic interline container service offered by Union Pacific and Norfolk Southern. EMP provides a fleet of more than 40,000, 53' domestic containers and and [sic.] demonstrates both carriers' commitment to maximize customers' shipping options, while featuring truck-competitive services."). Shippers may only use EMP on authorized railroads. See "Intermodal Equipment Glossary," *Union Pacific*, available at https://www.up.com/customers/premium/emp/empgloss/index.htm ("Off-Route ... A unit is considered Off-Route when it travels ... on a non-participatory railroad (such as BNSF Railway). An [Intermodal Marketing Company] will be charged off-route charges by Blume Global until that unit is brought back to a valid terminal."). {{REDACTED }}, NS_00152716–34 at NS_00152721 {{REDACTED }}

}}.[59] The removal from the EMP degraded CP's service and a {{REDACTED

}}[60]

[59] See {{REDACTED }} NS_00136603–9 at NS_00136606 {{REDACTED

}} See also {{REDACTED }} NS_00162764–67 at NS_00162764 {{REDACTED

}}

[60] {{REDACTED

}} UP_0215372–75 at UP_0215373 {{REDACTED

}}. See "Rail Map," *Canadian National*, available at https://www.cn.ca/-/media/images/our-services/images/rail-map-download-en.jpg. See also "Coverage," *Ferromex*, available at https://ferromex.mx/en/cobertura/. An industry publication also reported that UP decided to remove CP from the EMP in 2022 "because the proposed CP-KCS merger would create a new single-line competitor to UP in intermodal lanes linking Mexico and Texas with Chicago." See also Daniel O'Donohue, "Interactive US Railroad Map – Complete Rail Network Explorer," *Mapscaping,* September 4, 2025, available at https://mapscaping.com/interactive-us-railroad-map/. See Bill Stephens, "Union Pacific drops Canadian Pacific from EMP intermodal program," *TrainsPro*, September 16, 2022, available at https://www.trains.com/pro/freight/intermodal/union-pacific-drops-canadian-pacific-from-emp-intermodal-program/.

88. As another example, UP has also used interchange fees to foreclose competition at a shared junction. In 2018, Colorado Pacific Railroad ("CXR") rehabilitated the Towner Line, creating an alternative route to UP for Kansas and Colorado grain shippers.[61] UP and its lessee, Kansas & Oklahoma Railroad ("K&O"), then amended their 1997 lease without STB approval to impose an uncapped interchange fee — alleged to exceed $500 per car — on any traffic interchanged with a carrier other than UP.[62] Farmers, Weskan Grain, and CXR sued UP and K&O, alleging the fee was designed to block the route and no carloads have interchanged between K&O and CXR

[61] The Soloviev Group, "Local Farmers, Weskan Grain, and Colorado Pacific Railroad File Antitrust Lawsuit Against Union Pacific Railroad and Kansas & Oklahoma Railroad," *PR Newswire*, January 28, 2026, available at https://www.prnewswire.com/news-releases/local-farmers-weskan-grain-and-colorado-pacific-railroad-file-antitrust-lawsuit-against-union-pacific-railroad-and-kansas--oklahoma-railroad-302672873.html ("CXR attempted to give shippers and farmers in the Relevant Market an alternative and more direct route west by purchasing the Towner Line in early 2018 and rehabilitating it. The line reopened for freight service in 2019.").

[62] Bill Stephens, "STB Rejects Kansas & Oklahoma-Union Pacific Lease Renewal Over Interchange Concerns," *Trains.com*, March 20, 2026, available at https://www.trains.com/pro/freight/stb-rejects-kansas-oklahoma-union-pacific-lease-renewal-over-interchange-concerns/ ("K&O and UP twice renewed and amended the lease agreement in 2018 and 2019 without board approval."). See also The Soloviev Group, "Local Farmers, Weskan Grain, and Colorado Pacific Railroad File Antitrust Lawsuit Against Union Pacific Railroad and Kansas & Oklahoma Railroad," *PR Newswire*, January 28, 2026, available at https://www.prnewswire.com/news-releases/local-farmers-weskan-grain-and-colorado-pacific-railroad-file-antitrust-lawsuit-against-union-pacific-railroad-and-kansas--oklahoma-railroad-302672873.html ("As part of the 2019 amendment, Defendants agreed to impose a significant interchange fee on any railcar that originated or terminated on the UP Lease Track and interchanged with the Towner Line ("the interchange fee"). Based on information and belief, the Interchange Fee exceeds $500 per railcar[.]").

since.[63] In 2026, the STB found that the arrangement had effectively foreclosed interchange with CXR.[64]

89. This pattern is significant because UP's and NS's {{REDACTED }} is informative of their behavior if the proposed merger were to be consummated. As a result, contrary to Dr. Israel's characterization, the combined UP-NS is unlikely to offer interline service in situations where it can serve a route with a single-line and no longer needs to depend on interline partners.[65] As shown above, {{REDACTED }}. As demonstrated above in Exhibit 7 and Exhibit 8, shippers often have only one choice of Class I railroad in a given county (and

[63] Bill Stephens, "STB Rejects Kansas & Oklahoma-Union Pacific Lease Renewal Over Interchange Concerns," *Trains.com*, March 20, 2026, available at https://www.trains.com/pro/freight/stb-rejects-kansas-oklahoma-union-pacific-lease-renewal-over-interchange-concerns/ ("CXR and Weskan have presented evidence that no carloads originating or terminating on the Lines have interchanged with CXR. … [T]his lack of interchanged traffic creates a strong inference that the interchange commitment has effectively foreclosed interchange with CXR"); The Soloviev Group, "Local Farmers, Weskan Grain, and Colorado Pacific Railroad File Antitrust Lawsuit Against Union Pacific Railroad and Kansas & Oklahoma Railroad," *PR Newswire*, January 28, 2026, available at https://www.prnewswire.com/news-releases/local-farmers-weskan-grain-and-colorado-pacific-railroad-file-antitrust-lawsuit-against-union-pacific-railroad-and-kansas--oklahoma-railroad-302672873.html ("Thirteen Kansas- and Colorado-based farmers, Weskan Grain and Colorado Pacific Railroad (CXR), two subsidiaries of Soloviev Group, yesterday filed an antitrust lawsuit in the U.S. District Court for the District of Kansas against Kansas & Oklahoma Railroad (K&O), LLC and Union Pacific Railroad Company (UP) … alleg[ing] that the Defendants engaged in conduct designed 'to stifle competition from a newly rehabilitated rail line and preserve control over westward shipments of grain.'").

[64] Bill Stephens, "STB Rejects Kansas & Oklahoma-Union Pacific Lease Renewal Over Interchange Concerns," *Trains.com*, March 20, 2026, available at https://www.trains.com/pro/freight/stb-rejects-kansas-oklahoma-union-pacific-lease-renewal-over-interchange-concerns/ ("'Given that the interchange commitment was already in effect, this lack of interchanged traffic creates a strong inference that the interchange commitment has effectively foreclosed interchange with CXR,' the STB said. 'K&O has offered no rebuttal on this point.'")

[65] Second Errata Verified Statement of Dr. Mark A. Israel, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, September 4, 2026 ("Israel Second Errata VS"), ¶ 92.

that sole railroad is often UP or NS). Moreover, UP and NS already participate in {{REDACTED }} of intra-U.S. rail revenue.[66] These statistics showing UP's and NS's dominant presence do not account for diversions to the combined UP-NS network (from other railroads or from other modes of transportation), which means the combined railroad would dominate shippers' choices even more than they do today.

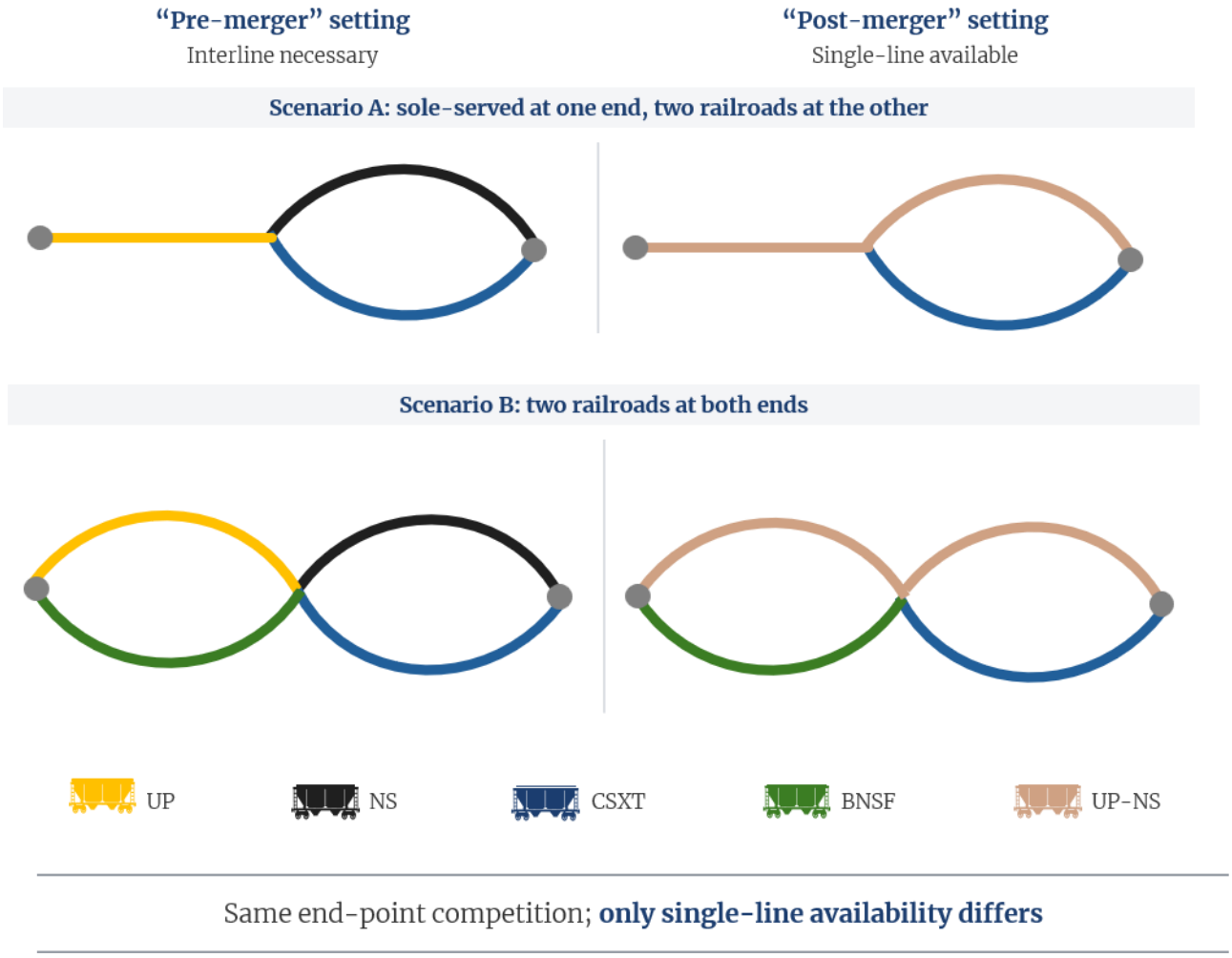
4.2.2. Shippers pay significantly more on routes where one railroad has this incentive and ability to foreclose competitors in favor of its own single-line

90. The data show that when a railroad operates on both sides of a gateway, it has both the incentive and a greater ability to favor its own single-line service over a competing interline option, thereby harming shippers who, absent the single-line carrier spanning the gateway, would have benefited more from rate competition between independent carriers.

91. Specifically, comparing corridors with otherwise similar competitive structures, I find that shippers pay higher average rates where there is a single-line option in addition to the potential interline pairings. In other words, rates are higher in the situation illustrated on the right of Exhibit 17 than in the situations illustrated on the left, all other things equal.

[66] See workpaper 3-3.

Exhibit 17
Rates are higher in corridors with competitive structures resembling the post-merger setting compared to the pre-merger setting



Source: Illustrative Graphic
Note: The "pre-merger" setting on the left illustrates competitive structures where interlines are necessary. The "post-merger" setting on the right illustrates competitive structures where a single-line option is available. Scenario A describes the scenario where a corridor is sole served at one end and served by two railroads at the other end. Scenario B describes the scenario where a corridor is served by two railroads at both ends.

92. Note that this empirical exercise looks at how a particular mix of competitive incentives affects the rate shippers pay, not merely how specific options (such as

interline and single-line) are priced relative to one another.[67] It reflects the fact that a merger that allows new single-line service inextricably changes the incentives of the merging railroads and can affect whether they continue to work as partners to support competitive options. Within that empirical framework, one possibility is that the new single-line service is so efficient that rates go down for all shippers, but the analysis needs to also allow other possible interactions including the possibility that the loss of support for competitive options means shippers end up paying higher rates because competition across the gateway (i.e., between eastern carriers or between western carriers) is diminished.

93. In order to predict the effect of a merger that is not yet consummated, the analysis compares rates in corridors that reflect pre-merger competitive conditions with rates in other corridors that reflect the proposed merger's transformation of UP-NS interconnects into UP-NS single-lines.[68] Doing this econometrically and isolating the comparison of the change in competitive structure that will happen if UP and NS merge allows the comparison across corridors to reliably estimate the effect of this change in competitive conditions.

94. Although every corridor is different, the raw data show that shippers tend to pay {{REDACTED}} in corridors that resemble the post-merger competitive environment

[67] This empirical exercise contrasts with Dr. Israel's analysis which, as I explain in Section 4.3.2 and Appendix 12.1, is fundamentally flawed.

[68] Specifically, the corridors are normalized using a set of control variables identified by Dr. Israel to make them comparable, with the exception that the structure of competition changes.

than in corridors that resemble the pre-merger competitive environment. Exhibit 18 compares average revenue per carload-mile in corridors with competitive structures that will be transformed by the merger. I focus on two situations in which competition on one end of a movement may be affected by a railroad's incentives arising from its presence at the other end: first, corridors that are sole-served at one end and served by two railroads at the other ("Scenario A"); and second, corridors served by two railroads at both ends ("Scenario B").[69] For each situation, the exhibit compares corridors that resemble the relevant "pre-merger" and "post-merger" competitive structures. On the left, it compares corridors in Scenario A (sole-served at one end and served by two railroads at the other), examining the difference associated with whether the sole-serving railroad can also provide single-line service from the two-railroad end. On the right, it compares corridors in Scenario B (served by two railroads at both ends), examining the difference associated with whether one of those railroads can provide single-line service across the corridor.[70]

[69] For a given origin-destination pair, I consider an origin (destination) sole-served if only one Class I railroad originates (terminates) movements and consider it dual-served if two Class I railroads originate (terminate) movements.

[70] No corridor can be observed both before and after the proposed merger. This analysis approximates that comparison using corridors that today either require interline service or already support single-line service, holding constant the number of railroads capable of serving each end.

Exhibit 18
Shippers pay** {{REDACTED}} **in similar scenarios when a railroad on one side of a gateway has a stake in the other side

{{REDACTED

}}

95. The presence of a single-line service corresponds with shippers paying higher rates in both scenarios. In Scenario A, when a sole-serving railroad faces two independent railroads on the other side of a gateway for a movement, shippers have an average rate of {{REDACTED}} per carload-mile compared to {{REDACTED}} if that sole-serving railroad has a single-line option for the other side. In Scenario B, movements where four railroads all compete to get a portion of the shipper's revenue on an interconnecting move have an average rate of {{REDACTED}} per carload-mile compared to {{REDACTED}} if one of the potential pairings in that scenario were replaced with a single-line.

96. Exhibit 18 shows that rates are higher in corridors with competitive structures resembling those after the proposed merger, without controlling for differences in route or commodity characteristics. To test whether this finding is robust to accounting for those differences, I perform the same comparison using a regression analysis that controls for observable characteristics that may also affect rates. This allows me to assess whether the relationship persists when comparing otherwise similar movements, rather than reflecting differences in the routes or commodities being compared.[71]

97. In Appendix 12.2, I detail this analysis using two approaches: (1) one that utilizes Dr. Israel's regression (comparing single-line and interline rates leaving his data

[71] Jeffrey M. Wooldridge, *Introductory Econometrics: A Modern Approach* (6th ed.), (Boston, MA: Cengage Learning, 2016), p. 67 ("The power of multiple regression analysis is that it provides this ceteris paribus interpretation even though the data have not been collected in a ceteris paribus fashion.").

handling and regression controls unchanged) but compares rates for different competitive structures;[72] (2) and one that further corrects for flaws in his empirical approach and uses the Six-Railroad data to address deficiencies in his data.[73] In the second approach, I also replace Dr. Israel's assumption that a railroad's mere presence makes it an equally effective competitor with a measure more consistent with The Board's past practice: counting railroads based on whether shippers actually use them for the relevant movement. This measure better reflects the reality that not every theoretically available route is practical and that a railroad's rights at a location may not permit every move. It also produces a conservative estimate of foreclosure effects because it necessarily treats any instance where a railroad is not chosen by any of the shippers as the shippers' choice, even though that can also happen because of complete foreclosure by another railroad. Even under this more conservative approach, I find that shippers pay higher rates where a railroad can offer single-line service and has an incentive to weaken competing interline options.

98. As shown in Exhibit 19 below, the two regression analyses confirm the same pattern after controlling for observable shipment and corridor characteristics. Using the second approach correcting for multiple flaws in Dr. Israel's regression, I estimate that: (i) in Scenario A where shippers are sole-served at one end and served by two railroads at the other, rates are 7% higher when one of the potential interline pairings is a single-line, and (ii) in Scenario B where shippers are served by two railroads at both ends,

[72] Israel Second Errata VS, Figure 10, and Section 12.2.1.
[73] See Section 12.2.2.

rates are 15% higher when one of the potential interline pairings is a single-line.[74] These estimates are directionally consistent with the raw data comparisons of Exhibit 18.[75] When leaving Dr. Israel's data handling and regression controls unchanged in a generalized form of Dr. Israel's regression, the estimated effects are directionally similar for both scenarios, 9% and 8%, respectively.[76] The estimates from both regression approaches are all statistically significant, but not necessarily significantly different from one another.[77] Taking the mid-point across these estimated price effects, 11% higher rates, implies that shippers will pay around {{REDACTED }} more each year as a result of UP-NS's incentive to foreclose competition with their current interline partners.[78]

[74] See Exhibit 59.

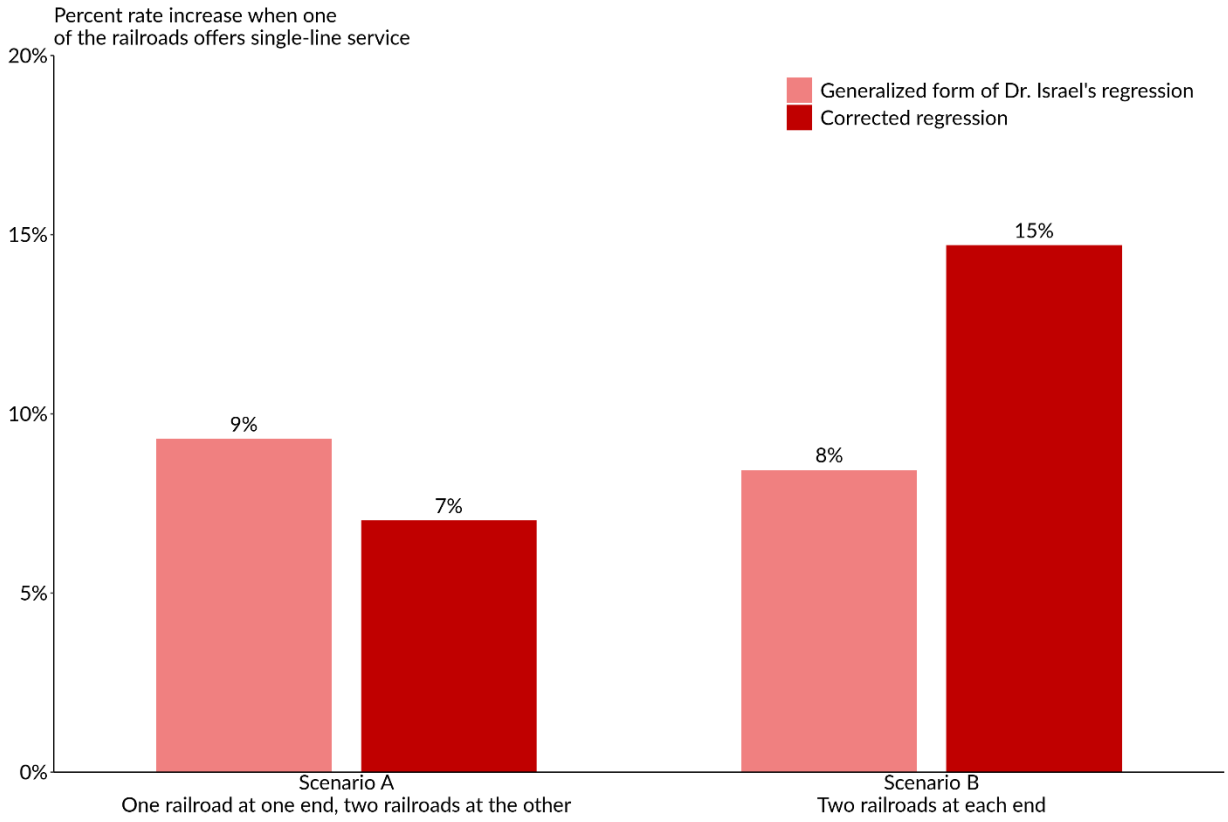
[75] See Exhibit 59.

[76] See Exhibit 57. I focus on movements from UP and NS (i.e., the "UP↔NS Traffic" sample in Dr. Israel's Figure 10), which focuses on traffic most likely to be affected by the proposed merger.

[77] See Exhibit 57 and Exhibit 59.

[78] I apply the price effects on corridors that contain UP-NS interline traffic and have competitive structures of either (1) sole-served at one end and served by two railroads at the other or (2) served by two railroads at both ends. The 2024 revenue on these corridors is around {{REDACTED }}. See workpaper 4-3.

Exhibit 19
Regression analysis confirms that shippers pay higher rates where a carrier has the incentive and ability to favor their own single-line service



Source: Six-Railroad Tapes Data; Israel's Second Errata Backup (Tapes)
Note: This figure shows the percentage increase in rates measured as revenue per carload-mile in corridors that have the competitive structures that resemble the proposed merger. The light red bars show the percent increase based on a modified version of the regression used in Dr. Israel's Figure 10. See Appendix 12.2.1 and Exhibit 57 for details. The dark red bars show the percent increase based on a corrected version of Dr. Israel's regression. See Appendix 12.1.2 and Exhibit 59. All the percent effects are statistically significant at the 95% confidence level.

99. Because my analyses only account for changes to the combined UP-NS's incentives to cooperate with interline partners within each individual corridor, the estimated potential harm to shippers from foreclosed competition of {{REDACTED }} is conservative. The merger, however, would likely weaken the combined UP-NS's incentive to continue supporting the investments, institutions, and operational efforts

that facilitate East-West moves in general, as evidenced, for example, in NS's anticipation of {{REDACTED }}.[79] These additional incentives would yield additional harm to shippers by further limiting shipper options and lowering service quality.

100. Rates are higher when there is an incentive to impair competition due to the presence of a single-line. That is seen in the raw data and both empirical specifications. Moreover, it is seen whether UP-NS would have a monopoly on one end or would face one other railroad. All show the same relationship: shippers pay higher rates when a railroad operates on both sides of a gateway and has an incentive to steer traffic away from competing interline services onto its own single-line service. By contrast, shippers pay lower rates where the railroads serving one side have no ownership interest in those serving the other and therefore no incentive to favor one interline partner over another to protect their own single-line service.

4.3. Applicants ignore these harms from the proposed merger and present flawed analyses to suggest rates will go down

101. In this section, I explore Applicants' failure to engage with the vertical competitive harms from the proposed merger and identify at least four flaws in their

[79] Deposition of Michael R. McClellan (Chief Strategy Officer, Norfolk Southern Corporation), October 9, 2026, Exhibit 409, NS_00482221–26 at NS_00482223 ({{REDACTED }}).

analysis that contribute to this failure. First, I explain how Dr. Israel's "one-lump" theory assumes away the bargaining constraints that allow shippers to benefit from this competition today (Section 4.3.1). Second, I demonstrate that Dr. Israel's flawed single-line/interline rate comparison does not measure the merger's effect on those constraints (Section 4.3.2). {{REDACTED }} with a {{REDACTED }}, and the merger is more likely to mean increased rates on NS traffic (Section 4.3.3). Finally, I explain that Applicants' claimed truck diversions are unlikely to materialize and why UP is unlikely to suddenly adopt the rate-cutting strategy those projections imply (Section 4.3.4).

4.3.1. Dr. Israel's one monopoly-rent theory conflicts with the evidence and the realities of the railroad industry

102. Dr. Israel cautions that "basing policy and enforcement decisions on what might be possible *in theory* is a recipe for welfare-harming decisions."[80] Yet, his foreclosure analysis rests almost entirely on theory. He dismisses any prospect of competitive harm for all interline traffic other than the rare movements subject to tariff rates—and even in that context, his empirical analysis is ill conceived, as I discuss below. The premise built into the one monopoly-rent or "one-lump" theory is one that The Board has rejected as a poor fit for the railroad industry, that UP itself has argued does not fit the

[80] Israel Second Errata VS, ¶ 14.

industry,[81] and Dr. Israel's own analysis repeatedly shows to be inconsistent with railroad realities.

103. Fundamentally, Dr. Israel oversimplifies railroad pricing in ways that assume away competition. For example, he assumes that railroads serving the endpoints of a movement do not compete over which railroad will receive the longer haul[82]—which I explain further in Section 6.1. He also assumes that every movement is negotiated independently, disregarding shippers' ability under standard principles of bargaining theory to use a bundle of movements to obtain lower rates on particular movements—which I go into more detail in Section 5.1. That assumption also precludes the possibility that the merger would reverse that dynamic by making shippers more dependent on UP-NS across their bundle of locations and undermining the bargaining power those shippers have used to generate competition between UP and NS across

[81] Decision No. 35, "Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.," Docket No. FD 36500, March 14, 2023, p. 43–44 ("UP disputes Applicants' contention that the proposed Transaction would not enhance Applicants' incentive or ability to foreclose. … UP notes that modern economic analysis indicates that when an upstream monopolist and downstream rivals lack full information about each other's costs and prices, the monopolist may be unable to extract the full 'lump,' allowing the customer to retain a surplus; contrary to the one-lump presumption, a merger in such a market would increase the combined firm's ability and incentive to foreclose efficient interline options.").

[82] Deposition of Dr. Mark A. Israel, October 15, 2026, ("Israel Deposition"), pp. 241:16–242:10 ("Q. And after the merger, UP and NS would carry the whole movement in these scenarios and would no longer compete with each other over the interchange point with the revenue split; is that right? … A. Again, I'm not sure I would describe it as a negotiation that's happening now. It's separate from what I, as an economist, would call 'competition.' And I'm not sure I say they will carry the haul. It depends on what the nature of the route you're describing, if they face competition from others who might carry it. But to the extent it's carried by UP and NS after the merger, they would carry it as a single line. There wouldn't be any discussion of interchange. Well, it would be a single line.").

those locations. As I discuss in Sections 5 and 6, shippers do benefit from precisely these forms of competition, which Applicants' analysis leaves out.

104. In Dr. Israel's simplified model of railroad pricing, a railroad sole-serving one side of a gateway can always capture any benefit that a shipper might otherwise obtain from competition on the other side (or elsewhere).[83] His model thus incorporates the one-monopoly-rent, or "one-lump," premise that The Board has considered before and determined "does not justify a presumption that a vertical combination will not result in competitive harm."[84] That premise equates a railroad's ability to foreclose competition on one side of a gateway with a perfect ability to extract all of the shipper's potential gains from competition on the other side of the gateway. If the premise was true, the sole-serving railroad would have no incentive to foreclose competition, it would already earn all the available profit. And, because the theory rules out any form of foreclosure by assumption, it only considers vertical integration as possibly neutral or a benefit to shippers.

[83] Israel Second Errata VS, ¶ 41 ("A long-standing response to these concerns has been that the sole-serving carrier can charge the monopoly rate for the movement and earn the monopoly profit *prior to a merger*. If so, then the sole-serving carrier is already earning all the profits possible and cannot increase them by foreclosing an unintegrated carrier, meaning there should be no concern about foreclosure due to the merger").

[84] Decision No. 35, "Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.," Docket No. FD 36500, March 14, 2023, p. 47 ("However, while merger applicants are free to argue that the facts in an individual proceeding warrant application of the one-lump theory, the Board concludes that the one-lump theory does not justify a presumption that a vertical combination will not result in competitive harm.").

105. The "one-lump" premise also explains why Dr. Israel concludes that separate, interlining railroads may produce a rate above the monopoly level through successive markups, his "double moral hazard."[85] The idea is a little convoluted. The sole-serving railroad is presumed to get the full "one-lump," but at the same time, this "double moral hazard" version of the theory assumes that the sole-serving railroad *cannot* extract all the profit of railroads on the other side. That is, the theory presumes it can take every dollar of rate decrease offered by the interline partner from the shipper's hands, but somehow does not have that same assumed power over its rail partner who offered the rate decrease to secure the business at a lower profit for itself in the first place. The result of this chain of assumptions is that the total profit on the move is the sum of both the one lump to the sole-serving side and this positive profit of the competitive-side partner. To the economic theory, that is too much profit. It would mean prices are too high, even for a monopolist on the route, and perhaps investment is too low. That is the chain of logic behind Dr. Israel's counterfactual claim that "only"

[85] Israel Second Errata VS, ¶¶ 100–101 ("The theory of incentives described above (i.e., double moral hazard) is powerful because it is quite general. Specific examples of the way double moral hazard can play out in practice—here, when complementary rail networks are operated by separate railroads—include pricing inefficiencies (referred to by economists as 'double marginalization'), suboptimal operational and scheduling decisions (i.e., failing to consider the benefits to the complementary network), and insufficient investment. One specific example of an inefficiency created by separate networks is double marginalization. Double marginalization occurs because each railroad raises its price to maximize its own profits without regard for the negative impact of its price on the sales of its partner on joint movements.").

integration can eliminate that excess—getting rid of the competitive-side profit gets the theoretical solution of "only" the monopoly profit.[86]

106. In reality, there is no excess. Instead of single-line service driving prices down by eliminating this hypothesized excess, it drives prices up by allowing foreclosure of the competition directly (as I showed in Section 4.2). And, unintegrated railroads can achieve similar competitive effectiveness to a single-line rather than being inherently stymied by the difficulty of contracting (as I will discuss below in Section 4.4).[87] Dr. Israel's theoretical predictions of merger benefits are based on a convoluted chain of assumptions that are inconsistent with reality.

107. The Board has previously determined that these assumptions (and the overly-simplistic notion of railroad rate bargaining they are based on) do not provide a sound basis for evaluating railroad mergers, and Dr. Israel offers no reason for The Board to change that conclusion. To the contrary, his theoretical models repeatedly produce predictions that conflict with actual railroad pricing, validating The Board's concern.

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[86] Israel Second Errata VS, ¶ 99 ("Bringing the two railroads under common ownership and control is the only solution that corrects the railroads' suboptimal incentives. Thus, there is no question that the merger's benefits are, in fact, the result of the merger itself. They cannot be obtained by other means").

[87] Israel Second Errata VS, ¶ 97 ("Nor can the problem be solved with sufficiently rich contracts. In practice, it is impossible to write a complete contingent contract that specifies how the two railroads must manage their interline business on a day-to-day basis. Such a contract would require dictating decisions or rules in every state of the world: every service choice, every investment decision, every price, and so on, accounting for every possible outcome of everything that is uncertain. They would have to say how each railroad should operate under any scheduling circumstance, what investment decisions should be made under all operational and economic conditions, how prices should be set under all demand scenarios, and so on.").

108. Although Dr. Israel meticulously avoids the term "one-lump" in his statement, and Applicants deny invoking it as a legal presumption,[88] Dr. Israel acknowledged his reliance on its logic in deposition,[89] and it is explicit in his statement:

> "For these theories to hold, [i.e., for there to be any foreclosure issue to analyze] it would have to be the case that the carrier that solely serves one segment of the route can earn greater profits by merging with a carrier on the competitive segment of the route and foreclosing the remaining unintegrated carrier(s). A long-standing response to these concerns has been that the sole-serving carrier can charge the monopoly rate for the movement and earn the monopoly profit *prior to a merger*. If so, then the sole-serving carrier is already earning all the profits possible and cannot increase them by foreclosing an unintegrated carrier, meaning there should be no concern about foreclosure due to the merger."[90]

109. Dr. Israel thus assumes a model that has no room for foreclosure and does not account for the more complicated ways in which shippers negotiate in practice.[91] Those

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[88] Applicants' Response Regarding Their Prima Facie Case, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, August 26, 2026 (Public) ("Applicants' Prima Facie Response"), p. 16 ("Neither Applicants nor Dr. Israel rely on or argue for the application of a rebuttable presumption that the proposed transaction will result in no vertical foreclosure because it is end-to-end.").

[89] Israel Deposition, pp. 210:20–211:14 ("Q. Well, there's various things that can be going on in the marketplace that constrain the sole-serving carrier from charging the monopoly price. A. If it's a monopolist, it's – if it's a sole-served carrier, then it's a sole-served carrier. It doesn't face competition … So the answer to your question is, nothing in economics that I know of says that the way in which – the one-lump theory, as broken down, has been on the side of the sole-served carrier. I have not seen that. I don't know any economist who says that they're rejecting the one-lump theory because they're saying the sole-served carrier might not set the monopoly price.").

[90] Israel Second Errata VS, ¶ 41.

[91] Israel Deposition, pp. 210:20–212:15 ("Q. Well, there's various things that can be going on in the marketplace that constrain the sole-serving carrier from charging the monopoly price. … A. So I know of nothing in economics that would say the sole-served carrier is not going to set the monopoly price, and I certainly don't know anything about the breakdowns that have happened in the one-lump theory that are about some reason to believe the sole-served carrier doesn't set the monopolist price.

complications create mechanisms through which shippers can develop bargaining leverage and obtain the benefits of competition even when a monopolist serves part of the movement. His argument also ignores modern frameworks that consider critical non-price dimensions of competition.[92] Indeed, UP itself has previously acknowledged before The Board that modern economic analysis shows that a monopolist may not be able to extract the full monopoly rent when the upstream monopolist and downstream rivals lack complete information about one another's costs and prices. UP also acknowledged that its witness' models showed that vertical mergers can harm some shippers.[93]

110. Despite Applicants' prior positions before The Board, Dr. Israel claims that "standard theories of foreclosure. . . rely on pre-merger rates being below the level that the vertically merged carrier would charge" and on "there being something preventing the vertically dis-integrated railroad from raising prices pre-merger, even though it

… Q. In that long answer there, you are equating a sole-served carrier with monopolists in a way that makes it seem kind of like a truism. … A. A sole-served carrier faces no competition, direct competition, on the route when it sets the price.").

[92] U.S. Department of Justice and the Federal Trade Commission, "Merger Guidelines," December 18, 2023, p. 1 ("Mergers can lessen competition when they diminish competitive constraints, reduce the number or attractiveness of alternatives available to trading partners, or reduce the intensity with which market participants compete.").

[93] Decision No. 35, "Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.," Docket No. FD 36500, March 14, 2023, p. 44 ("UP notes that modern economic analysis indicates that when an upstream monopolist and downstream rivals lack full information about each other's costs and prices, the monopolist may be unable to extract the full 'lump,' allowing the customer to retain a surplus; contrary to the one-lump presumption, a merger in such a market would increase the combined firm's ability and incentive to foreclose efficient interline options. UP states that its witness's models find that vertical mergers can benefit some shippers and harm others, although the models do not attempt to predict the likelihood of any particular outcome.").

provides sole service on one end."[94] He could have tested those criteria directly—and thus tested the premise he uses to dismiss vertical foreclosure concerns: that nothing prevents the sole-serving railroad from extracting the full monopoly rent before the merger. As I showed in Section 4.2.2, applying Dr. Israel's own data handling and regression framework demonstrates that this premise is wrong: premerger rates are below the level that the vertically merged UP-NS would charge.

111. Instead, Dr. Israel constructs a regression that analyzes rates in corridors that are sole-served on one end and competitively served on the other end. He compares rates that are quoted from the monopolist against rates that are quoted from the competitive end. That regression does not test whether there is "one-lump" (i.e., one monopoly profit)—or, more to the point, whether prices are higher or lower after a merger introduces the possibility of foreclosing competition.[95] Instead, it tests a straw-man assumption that is neither necessary nor sufficient for Dr. Israel's conclusion that prices are already fully monopolized (or worse). Dr. Israel's test of whether rates are higher when the monopolist, rather than one of the competing railroads, sets the through rate addresses neither the criterion Dr. Israel identifies nor his underlying theory. In particular, it does not identify whether or how rates will change when the monopolist

[94] Israel Second Errata VS, ¶ 17.

[95] Israel Deposition, pp. 208:20–209:15 ("Q. You're assuming that the longstanding response to such concerns in this situation folks have referred to as the 'one-lump theory' holds in those situations? … A. This result has nothing to do with the one-lump theory. The one-lump theory says that there is no possibility of a price below the integrated price if there's a sole-served carrier anywhere. I'm not assuming that. I'm testing that. The one-lump theory applies everywhere. It says it can't happen. I just talked about how I tested that. This result that a sole-served carrier sets the monopoly price is the result of, in all of economics, that says monopolists set monopoly prices.").

merges with one of the railroads on the competitive end. If, as I found, the monopolist would raise rates after such a merger, Dr. Israel's regression could suggest that his assumption is correct, even though it is not. That is because the competitiveness of the shipper's rate does not necessarily depend on which railroad quotes the through rate. It depends on how shippers are currently keeping their rates lower than the integrated monopolist would set (which may have nothing to do with through rates but certainly need not depend on which railroad set that rate). It is therefore unsurprising that Dr. Israel's "test" of his straw-man assumption finds nothing.[96]

112. Ultimately, Dr. Israel's analysis sidesteps the possibility of foreclosure and harm to shippers. He assumes away the features of real-world negotiations that allow shippers to benefit from competition on one side of a gateway before the merger. He then fails to address how a combined UP-NS could harm shippers by foreclosing that existing competition.[97] The proposed combination would not only curtail competition where UP-NS can foreclose competing railroads; it would also give UP-NS greater

[96] Israel Second Errata VS, Figure 7; Israel Deposition p. 201:10–16 ("[Q.] Given that shippers can choose to solicit rates from either the sole-serving railroad or dual-serving railroads, then the rates they receive from either end, all else equal, should, likewise, not be materially different, correct? A. Again, all else equal is an awful lot of stuff. But if literally everything else in the world was equal, then I think I agree with that.").

[97] Applicants also incorrectly claim that Dr. Israel's "independent routes analysis" addressed concerns related to vertical foreclosure. As discussed in Appendix 12.4.1, this analysis is not designed to, and is incapable of, analyzing vertical foreclosure. See Applicants' Prima Facie Response, p. 16 ("Dr. Israel directly addressed potential harms flowing from vertical foreclosure highlighted in comments filed by CPKC on Applicants' original application. He used a counting algorithm deployed in the *CP/KCS* proceeding to identify all independent routings that create competition that could be diminished by the UP/NS merger.").

power to defeat the strategies that shippers currently use to bring competitive pressure to bear on UP and NS.

4.3.2. Dr. Israel's claim that single-line rates are lower than interline rates is a product of his flawed data work

113. Dr. Israel claims that single-line service is 15%–29 % cheaper than interline service, yet his own regression data show that single-line service is, on average, more expensive. His regression reverses that observed relationship through a flawed design that does not adequately account for differences among the movements he compares. More fundamentally, his comparison does not address how the proposed merger would change competitive incentives and the options available to shippers.

114. Comparing single-line and interline rates does not, by itself, measure the proposed merger's likely effect. The merger would do more than convert an interline service into a single-line service. It would change the railroads' incentives to work with interline partners and the competitive options available to shippers, potentially affecting rates for both single-line and interline services. Dr. Israel's regression does not account for that change in competitive structure.

115. Setting aside this conceptual flaw, a simple rate comparison using Dr. Israel's own regression sample contradicts his finding. Without using Dr. Israel's regression framework, the Tapes data Dr. Israel analyzes show that single-line services are on average higher priced than interline services. Exhibit 20 shows the average single-line

and interline rates in the samples underlying Dr. Israel's Figure 10. The first set of bars shows the rates he compares in the "All Simple Interline Traffic" sample (Column 1) of his Figure 10. In this sample, UP or NS single-lines are on average {{REDACTED}} per carload-mile, through rates involving UP or NS are on average {{REDACTED}} per carload-mile, and Rule 11 rates quoted by UP or NS are on average {{REDACTED}} per carload-mile. The other two samples show the same pattern: single-line rates are higher than interline rates. These averages do not control for differences in shipment characteristics, but they establish that Dr. Israel's claimed single-line discount is a product of his regression specification, rather than a relationship apparent in his underlying data.

Exhibit 20
Dr. Israel's regression sample shows that interlines are cheaper than single-lines

{{REDACTED

}}

116. Dr. Israel's regression that flips the raw data relationship is, however, based on a flawed design. Dr. Israel's regression fails to compare movements with sufficiently similar characteristics. While he claims that his regression controls "ensure that the

measured price differences are the result of interlining and not due to differences in shipment characteristics or costs,"[98] they fail to account for the inherent differences in characteristics or costs across movements in different parts of the country.

117. Specifically, in Dr. Israel's sample, single-line and interline movements of the same commodity and similar length run in different parts of the country. His distance control (which does not account for where that distance is covered) forces these apples-to-oranges comparisons and is the control that reverses the relationship in the data, as I show in Appendix 12.1.1.

118. Exhibit 21 illustrates this problem using plastics shipments carried between 1,950 and 2,050 miles in Dr. Israel's sample. The yellow lines indicate single-line movements between origins and destinations, and the blue lines indicate interline movements between origins and destinations.

[98] Israel Second Errata VS, ¶ 112.

Exhibit 21
Plastics shipments of 2,000 miles in Dr. Israel's comparisons of interline and single-line rates span very different geographic areas

{{{REDACTED

}}}

119. The exhibit shows clear differences in shipment characteristics across the map. There are no single-line movements to, from, or within the East. All single-line movements are within the West where, for example, there is less congestion. By

contrast, interline movements are predominantly between the Gulf Coast and the Mid-Atlantic and Northeast. Even if these movements were single-line movements, factors such as more congestion can tend to increase costs associated with movements in the East. Dr. Israel's controls do not account for these differences. As a result, he assumes that the only difference in rates between these movements is the fact that one is a single-line and the other is an interline, incorrectly attributing geographic cost differences to markups for interline services.

120. Correcting the flaws in Dr. Israel's regression also produces findings contrary to his claimed single-line benefit. As discussed in Section 4.2.2, my corrected analyses show that shippers pay higher rates in corridors where a carrier can offer single-line service and has an incentive to weaken competing interline options. That finding persists in the generalized form of Dr. Israel's regression where I leave Dr. Israel's flawed data handling and regression controls unchanged, but I replace his comparison of single-line and interline rates in the abstract with a comparison of rates across corridors representing the competitive situation before and after the proposed merger introduces single-line service and all the incentives that go with that transformation.[99]

121. Dr. Israel's regression also suffers from other conceptual and implementation errors in his data processing, which I further explain in Appendix 12.1.2. Taken together, his claimed single-line discount therefore provides no reliable basis for predicting lower post-merger rates. His own raw data show higher average single-line

[99] See Exhibit 57 and Appendix 12.2.1 for details.

rates, and my analyses that account for the merger's changes to competitive structure likewise point toward higher rates for shippers.

4.3.3. UP's approach to pricing indicates that the merged firm is more likely to raise rates on NS traffic rather than lower rates on any traffic

122. Contrary to Applicants' experts' claim that Applicants will lower rates to attract traffic,[100] UP is unlikely to pursue a lower price strategy. Evidence in the record indicates that UP sets higher rates and has higher margins than other Class I railroads. Such a strategy reflects UP's extensive network and is consistent with the ability of a railroad to better resist or avoid altogether competitive pressure when more shippers are dependent on that railroad. Dr. Israel's own pricing analysis shows that UP charges higher rates than other railroads, including NS, even after controlling for the other factors he identifies as affecting rates. Consequently, not only are Applicants' claims that they will lower rates to attract traffic post-merger specious, there is also good reason to expect that the merged firm will raise rates, particularly on newly-acquired NS routes.

[100] Israel Second Errata VS, ¶ 130 ("[A.] direct demonstration of the benefits generated by the merger comes from the fact that the merged carrier's single-line service is expected to attract business from its competitors. This follows from the law of demand—a railroad offering lower prices and/or better service, which together mean lower quality-adjusted prices, will make sales at the expense of its competitors.").

123. UP has been the largest Class I railroad, with the highest annual revenue, since at least 2023.[101] UP generates this high revenue despite carrying fewer ton-miles than BNSF.[102] That is to say, across its large volume of business, UP is particularly effective at preserving its profit margins and, according to its own documents, its {{REDACTED }}[103] UP has an {{REDACTED }}[104] In addition, UP also has indicated a {{REDACTED }}[105] Despite

[101] Oliver Wyman, "North American Freight Rail Performance: Q1 2025 Financial and Operations Review," May 2025, available at https://www.oliverwyman.com/content/dam/oliver-wyman/v2/publications/2025/may/q1-2025-class-I-railroad-performance.pdf ("North American Freight Rail Performance Q1 2025, Oliver Wyman"), p. 6.

[102] Industry reports indicate that BNSF has had the largest revenue ton-miles since 2018. See North American Freight Rail Performance Q1 2025, Oliver Wyman, p. 18.

[103] See {{REDACTED }} UP_0209007–12 at UP_0209009.

[104] {{REDACTED }} See {{REDACTED }} UP_1626615–23 at UP_1626615 ({{REDACTED }}) (emphasis removed). See also {{REDACTED }} UP_0208474–505 at UP_0208480–84 ({{REDACTED }}) (emphasis added); {{REDACTED }} UP_0282009–12 at UP_0282011 ({{REDACTED }}); {{REDACTED }} UP_1535760–63 at UP_1535763 ({{REDACTED }}).

[105] See {{REDACTED }} UP_0694815–985 at UP_0694858 ({{REDACTED }}); {{REDACTED }} UP_1641198–200 at UP_1641198–9 {{REDACTED }}).

{{REDACTED }}[106] UP has been able to {{REDACTED }}[107] which suggests it generally lacks competition and enjoys substantial market power. As the largest railroad by revenue,[108] UP has multiple ways of leveraging its geographic network and size. The market power over shippers that it has achieved in this way is evident in its history.

a. A recent analysis by Oliver Wyman indicates that UP has the highest operating income of the Class I railroads ($2.371 billion) and the highest operating margin (39%). NS is the railroad with the next highest margin, at 38% and an operating income of $1.146 billion.[109]

b. Since 2010, UP has been brought before the STB from shippers seeking rate relief more than other Class I railroads including if one compares them on a case-per-carload basis to allow for UP's greater volume of traffic.[110]

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[106] See {{REDACTED }} UP_0890262–84 at UP_0890276 ({{REDACTED }}).

[107] See {{REDACTED }} UP_0282009–12 at UP_0282011 {{REDACTED }}

[108] North American Freight Rail Performance Q1 2025, Oliver Wyman, p. 6.

[109] North American Freight Rail Performance Q1 2025, Oliver Wyman, p. 20, where NS's 2025 Q1 operating income was $1.146 billion compared to BNSF's $1.817 billion. See also workpaper 4-4.

[110] Surface Transportation Board, "Quarterly Report of Rate Complaint Cases," Q2 2025, available at https://www.stb.gov/wp-content/uploads/2Q-Report-on-Rate-Case-Review-Metrics-2025.pdf. UP was involved in 8 cases, CSXT 5 cases, BNSF 4 cases, and NS 3 cases. Based on a Q1 2025 quarterly carload volume of 2,097 thousand for UP, 2,357 thousand for BNSF, 1,518 thousand for CSXT and

c. UP is also much more likely to reduce service quality—in 2022 UP issued {{REDACTED }}[111] {{REDACTED }}[112]

124. Evidence from both UP's strategy and economic facts from the record are clear: as {{REDACTED }}[113] confirmation that {{REDACTED }}, which is to say that {{REDACTED }}

125. {{REDACTED }} For example, in 2019,{{REDACTED

1,740 thousand for NS, that corresponds to an approximate case-per-thousand-carloads of 0.38% for UP, 0.17% for BNSF, 0.33% for CSXT, and 0.17% for NS. For Q1 2025 carloads see North American Freight Rail Performance Q1 2025, Oliver Wyman, p. 7. In the recently concluded Omaha Public Power v. Union Pacific Railroad Company, Omaha Public Power complained that "UP's charge is excessive and unreasonable." See Complaint, "Omaha Public Power District v. Union Pacific Railroad Company," Docket No. NOR 42173, July 22, 2022. This case settled in November 2023.

[111] See {{REDACTED }} NS_00569895–923 at NS_00569918.

[112] See {{REDACTED }} NS_00205551–71 at NS_00205553 ({{REDACTED }}).

[113] See Deposition of David Welch (General Director of Corporate Strategy, Union Pacific Railroad Company), July 29, 2026, Exhibit 10, p. 29.

}}[114] Additionally, {{REDACTED

}}[115]

126. UP has also been aggressive in implementing precision scheduled railroading ("PSR") to an extent that imposes more cost (in the form of decreased service) to shippers. PSR is an operational strategy focused on reducing railroads' costs and improving margins through greater asset utilization. According to the U.S. Government Accountability Office, while PSR is not defined by a prescribed set of operational changes, stakeholders—including railroads, shippers, and employee unions—associate it with staff reductions, longer trains, and reductions in assets.[116] UP executives frame PSR as being "unequivocally … a benefit to the railroad."[117] PSR is focused on schedule predictability and less idling time,[118] and it achieves these reduced congestion effects with reduced customer services and commitments.[119] {{REDACTED

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[114] {{REDACTED
}} NS_00205551–71 at NS_00205551 ({{REDACTED
}}).

[115] In {{REDACTED}} documents, NS notes the need to {{REDACTED
}}. See {{REDACTED
}} NS_00205551–71 at NS_00205553.

[116] U.S. Government Accountability Office, "Freight Rail: Information on Precision-Scheduled Railroading," GAO-23-105420, December 2022 available at https://www.gao.gov/assets/gao-23-105420.pdf.

[117] "UP Defends Precision Scheduled Railroading Amid Service Struggles," *FreightWaves,* April 21, 2022, available at https://www.freightwaves.com/news/up-defends-precision-scheduled-railroading-amid-service-struggles.

[118] Carl Van Dyke, "The Operational Nuts and Bolts of Precision Scheduled Railroading," *Federal Highway Administration, Webinar*, March 2020, available at https://www.fhwa.dot.gov/Planning/freight_planning/talking_freight/march_2020/talkingfreight3_18_20cvd.pdf ("FHWA Webinar, March 2020"), p. 14.

[119] FHWA Webinar, March 2020, p. 15 ("Fewer customer specific services ... do not run one-off unit trains … No single customer commitments.").

}}[120] {{REDACTED

}}[121] UP's longstanding commitment to aggressively implement PSR for its own gain is at odds with the suggestion that it would seek out lower-margin traffic.

127. {{REDACTED

}}[122] To the extent that UP's {{REDACTED }} will be applied to NS movements, that is another form in which the merger would harm shippers as lowering the quality of their experience is effectively raising the price of what they get from the railroad. It also represents a greater willingness to forgo lower-margin traffic to raise the profit that can be extracted from the remaining NS volumes.

128. As discussed in earlier sections, a combined UP-NS will have unprecedented scale and scope to apply UP's pricing approach and existing market power to the NS system and its shippers. The likely effect is not just higher rates of existing interlines,

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[120] {{REDACTED }} UP_1858492–6 at UP_1858494 {{REDACTED

}}.

[121] {{REDACTED

}} NS_00130381–85 at NS_00130382 and NS_00130385.

[122] {{REDACTED }} NS_00205551–71 at NS_00205559.

where a combined UP-NS can reduce options or foreclose competition from rivals, but higher rates for shippers using NS single-lines and NS interlines that don't involve UP.

129. Applicants' experts do not account for or discuss UP's pricing approach borne out of its large scale and scope, and the implications of applying that approach to existing NS routes in their analysis of the potential effects of the merger. As the merger will give UP additional market power that it can exploit against its own existing shippers as well as the acquired NS shippers, the likely effect of the merger is even higher UP pricing than is estimated in the current data. Nevertheless, the effect of simply applying the current UP rate premium to existing NS traffic would be harm to shippers.

130. Although not expressly discussed in his testimony for Applicants, Dr. Israel quantified this effect. He found that UP prices significantly higher than other railroads for moves he deems otherwise comparable. Exhibit 22 shows Dr. Israel's estimate of UP's rate premium—the additional cost to a shipper of their movement if UP is involved in the movement compared to if NS were involved in the movement—after he accounts for other factors which could determine the price. As discussed further in Section 12.1.4, Dr. Israel specifically tests the impact of UP's involvement on prices, but fails to interpret his model holistically, and does not acknowledge the impact of UP's high-price regime on existing NS routes.

Exhibit 22
Israel Figure 10 – UP premium on rates paid over NS

{{REDACTED

}}

131. Dr. Israel's results indicate that, after controlling for other factors, if UP is involved in a movement, shippers' rates increase by {{REDACTED}} relative to similar movements that involve NS. When he restricts his analysis to only UP-NS traffic, Dr. Israel finds that UP charges a rate {{REDACTED}} higher than NS on

purportedly comparable movements, according to his regression.[123] The {{REDACTED}} premium is {{REDACTED }} the 15% "discount" he finds for single-line service instead of through rate service, and is {{REDACTED }} the 23% "discount" he finds for Rule 11s. [124] Put more simply—Dr. Israel finds that UP's ability to price higher {{REDACTED }} he identifies with single-lining.

132. When appropriately investigating the reduction in shippers' interline options above, I found evidence of harm. Even if I were to ignore that evidence and assume that interline shippers will benefit from the merger in the way Dr. Israel claims, the full implication of Dr. Israel's regression is still that {{REDACTED

[123] In all Dr. Israel's reported regressions, UP and NS are the only single-lines. When analyzing "All Simple Interline Traffic," Dr. Israel analyzes all interlines involving UP or NS including interline movements with other railroads (e.g., a UP-CSXT interline). When limiting to UP↔NS traffic, Dr. Israel further restricts to only UP-NS interlines. I utilize Dr. Israel's analysis for both UP↔NS traffic and All Simple Interline traffic because, based on how Dr. Israel created his railroad controls, the "UP premium" is not identified for interlines when restricting to UP and NS traffic only. For more details, see Appendix Section 12.1.4.

[124] Dr. Israel estimates three regressions restricting to different types of traffic. Each regression reports two coefficients for interlining, through rates and Rule 11s. Taking his regression at face value, when restricting to UP-NS traffic only in his third regression, he finds that through rates are 15% more expensive than single-lines and Rule 11s are 23% more expensive than single-lines. Israel Second Errata VS, Figure 10, Column (6).

}}

133. In addition, given {{REDACTED }} the fact that long-haul routes account for 78% of projected truck-to-intermodal diversions,[125] the evidence points to the merger creating transcontinental single-line routes and charging higher rates for those long-haul shipments—all consistent with UP's historical practice.

134. In Exhibit 23 {{{REDACTED

}}}[126] {{{REDACTED

}}}

[125] Hunt Second Errata VS, p. 63 ("Some 78% of truck-miles [that are diverted] are in long-haul lanes over 2,000 miles, as shown in Exhibit 5-5.").

[126] Israel Second Errata VS, Figure 10, Column 1, where Rule 11 rates are 29% higher than single-lines. For simplicity and to be conservative, I assume a 29% reduction in UP-NS Rule 11s and Through Rates. {{REDACTED

}} See workpaper 4-5. {{REDACTED

}}

Exhibit 23
Predicted yearly change in what shippers pay, unpacking Dr. Israel's Figure 10

{{{REDACTED

}}}

135. All told, based on Dr. Israel's model, even if Applicants' purported efficiencies of single-lines "as the result of cost savings and the elimination of double marginalization"[127] are passed on to shippers, the claimed benefit {{{REDACTED }}}. Even if Dr. Israel might contend that his Figure 10 should not be interpreted in this way, the fact is that my own analyses of the data reached similar conclusions. Specifically, {{{REDACTED }}}[128] Across multiple analyses, both Dr. Israel and I consistently find that {{{REDACTED }}}

136. The bottom line is that UP is already able to impose significantly higher rates on shippers, and the merger will extend that existing ability to even more shippers while also expanding the power that UP can exert over all shippers. Attempts to reframe UP's

[127] Israel Second Errata VS, ¶ 112.

[128] This is based on the regression analysis I present in Section 4.2.2 where I correct for multiple flaws in Dr. Israel's regression. See workpaper 4-6.

pricing as something innocuous, perhaps a suggestion that UP's higher rates reflect higher quality, {{REDACTED

}}[129]

137. Alternatively, Dr. Israel may suggest that UP's pricing approach is only reflective of the competition it faces, and that rates on newly acquired NS lines will be held in-check by existing competition with CSXT. This is incorrect: when I generalize this empirical analysis to test that possibility directly in Section 4.2, I find that shippers will be harmed by the foreclosure incentives of the merger as well as UP-NS gaining leverage to increase rates.

4.3.4. Applicants' claims of reducing rates and improving quality are baseless and claimed subsequent truck-to-rail diversions are unrealistic

138. Applicants emphasize truck-to-rail diversion as a leading benefit from their proposed merger.[130] Their traffic expert, Mr. Hunt, estimates that 72% of gross

[129] See, {{REDACTED
}} UP_0282009–12 at UP_0282011 {{REDACTED
}}; {{REDACTED }} UP_1535760–63 at UP_1535763 {{REDACTED
}}

[130] Amended Railroad Control Application, Volume 1, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, April 30, 2026, p. 20 ("The Board has also recognized that enhanced opportunities for truck-to-rail conversion are a public benefit. Applicants project that the combined UP/NS will convert approximately 2.1 million truckloads of traffic from long-haul trucking to rail, including approximately 1.2 million truckloads of intermodal containers, by offering new single-line service.").

diversions to a combined UP-NS would be from current truck traffic.[131] This large portion of total diversions coming from trucks is unrealistically high given that competing rail services are much more natural substitutes for each other than truck. Further, Applicants' economic consultants do not explain why UP or NS do not lower rates today to capture such large opportunities from trucks. What is more likely is that such gains from current truck traffic are unlikely today and post-merger.

139. Mr. Hunt's estimate of traffic that would divert from truck to rail would constitute a meaningful prize that would increase UP and NS profits significantly today if they lowered rates. Further, 86% of Mr. Hunt's predicted truck-to-rail diversions come from intermodal traffic.[132] Mr. Hunt predicts that UP and NS would gain 44% of addressable intermodal truckloads after the merger, which would represent a 16% increase in UP and NS's total intermodal traffic.[133] This is not based on Dr. Israel's economic model nor any formal economic model.[134] Rather, Mr. Hunt finds this large diversion rate from truck to rail using what he calls a "lookalike methodology."[135] Dr. Powers

[131] Hunt Second Errata VS, Exhibit 2-4. 72% = 1,397 ÷ 1,934.

[132] Hunt Second Errata VS, Exhibit 2-4 86% = 1,201 ÷ (1,397).

[133] Hunt Second Errata VS, pp. 62, 83. Mr. Hunt estimates that UP and NS shipped 7,385,000 intermodal units in 2023, and that 1,201,000 intermodal units would divert from truck to UP-NS post-merger. (1,201,000 ÷ 7,385,000 = 16%).

[134] Mr. Hunt is not familiar with econometric tools for estimating demand response and did not consult any UP-NS's paid economist when deciding what model to use. Deposition of David T. Hunt, October 7–8, 2026 ("Hunt Deposition"), Vol. I, pp. 295:14–19, 297:15–18 ("Q. Okay. Are you an economist, sir? A. I am not. Q. Okay. Are you familiar with different econometric tools to measure demand response? A. No. Not -- I'm not. […] Q. Did you ever ask UP-NS's paid economist what model he would use to measure truck-to-rail diversions? A. I did not.").

[135] Hunt Second Errata VS, p. 57 ("A lookalike methodology at the lane level was employed to size the potential intermodal traffic gains that could result from the merger.").

exposes numerous flaws that undermine Mr. Hunt's methodology and demonstrates that his estimate is not credible on its face.[136] For the sake of argument, I explore what Mr. Hunt's prediction would suggest, if it were credited but placed within an economic model of the increased volume hypothetically achievable if UP and NS lowered rates on their interconnected service.

140. Mr. Hunt's analysis suggests at least one effective strategy for UP and NS today would be to agree to reduce prices by {{REDACTED}} in lanes of {{REDACTED}} miles or more, gain {{REDACTED}} units from trucks per year, and increase profit.[137] Applicants' rivals have had such arrangements for more than twenty years.[138] Mr. Hunt

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[136] Verified Statement of Nicholas E. Powers, Ph.D., "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, November 18, 2026.

[137] For intermodal shipments on lanes more than 2,000 miles long, Mr. Hunt predicts a {{REDACTED}} increase in quantity from {{REDACTED}} units to {{REDACTED }} units post-merger due to diversion from trucks. For these lanes, Mr. Hunt's data also shows that UP and NS would need only a {{REDACTED}} rate cut to offer shippers a 10% discount compared to trucks. If, as Mr. Hunt's analysis implies, this discount could win traffic from trucks to increase quantity by {{REDACTED}}, UP and NS could have coordinated to do this already if their margins exceed {{REDACTED}}. Specifically, a price decrease from p_0 to $p_1$with associated quantities q_0 to $q_1$increases profits if $\left(\frac{p_1-c}{p_1}\right)\left(\frac{q_1-q_0}{q_0}\right) > \left(\frac{p_0-p_1}{p_1}\right)$. The new margin on the additional quantity must outweigh the drop in price. In other words, high diversion increases the incentive to lower price. Rearranging and plugging in numbers: {{REDACTED }}. Assuming UP and NS earn {{REDACTED}} margins on intermodal traffic, they could earn more than {{REDACTED }} in net additional profits by coordinating to offer rates on these {{REDACTED}} mile shipments at a {{REDACTED}} discount to truck. See workpaper 4-7.

[138] See, e.g., Rip Watson, "Can interline agreements bring intermodal growth?" *trains.com*, June 1, 2026, available at https://www.trains.com/pro/freight/intermodal/can-rail-alliances-bring-intermodal-growth/ ("Jon Gabriel, BNSF group vice president-consumer products, told Trains in a recent interview that the long-standing haulage agreement with CSX 'is almost like being one railroad. Nothing magical comes out of being a merged entity. Partnerships help to expand our network.' The two railroads late last year announced extension and expansion of the agreement that is in its 20th year, Gabriel said, moving 3 million loads. Most recently, the service was enhanced between the Los Angeles area and Atlanta to add Charlotte, N.C., and points in Florida[.]").

himself acknowledges that when railways collaborate to establish run-through services, like when CPKC and NS collaborated to improve service on the Meridian Speedway, they can deliver the same supposed benefits of single-lining without merging.[139] Given that Mr. Hunt's assumptions, an {{REDACTED }}, and a {{REDACTED }} all indicate that UP and NS have {{REDACTED }},[140] they certainly have {{REDACTED }}.

141. Dr. Israel's own interpretation of Mr. Hunt's projected diversions supports that if Mr. Hunt's projections were accurate, Applicants would not need a merger to win intermodal business from truck. Based on Mr. Hunt's projections, Dr. Israel makes his own set of assumptions to calculate that "the *value* provided by the new UP/NS option is estimated to be equivalent to a[n] 11.1% percent reduction in price."[141] Applicants could implement a rate cut of this magnitude today. Given that Applicants ship

[139] Hunt Second Errata VS, pp. 77, 109, 113.

[140] Mr. Hunt's analysis of intermodal truck-to-rail diversion assumes a ratio of revenue to variable cost of {{REDACTED}}, which implies a {{REDACTED}} operating margin. See {{REDACTED }}{{REDACTED }}. See {{REDACTED }} NS 00038359–66 at NS_00038359. {{REDACTED }} See {{REDACTED }} UP_0041285–90 at UP_0041289.

[141] Israel Second Errata VS, ¶ 138. Whereas I calculate a {{REDACTED }}, Dr. Israel calculates an 11.1% rate cut by assuming a cross-price elasticity of 4 to calculate the equivalent value of the merger. Both Dr. Israel's and my own calculations obtain estimates of the rate cut that would be necessary, based on Mr. Hunt's analysis, to obtain all the diversions he projects.

intermodal traffic with a {{REDACTED}} operating margin, they have {{REDACTED }}.[142]

142. Discounting rates is not necessarily the strategy Applicants would follow if Mr. Hunt's estimates were correct, but it does demonstrate that the Application is premised on an assumed elasticity of demand—the amount of truck-to-rail diversions estimated from a small decrease in their own prices—that is so high that UP and NS should be gaining this traffic today. It is telling that Applicants' economic consultants, Dr. Bailey and Dr. Israel, did nothing to address this premise within an economic framework of profit-maximizing firms. Instead, Dr. Israel simply presumes that UP and NS cannot achieve the purported benefits by working together.

143. What is more likely is that such a high elasticity of truck-to-rail diversion is unlikely today or even post-merger. UP's testimony in this matter confirms this. Mr. Michael Houston (Director of Corporate Strategy at Union Pacific) testified that {{REDACTED

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[142] Given that Applicants earn a {{REDACTED}} operating margin today, an 11.1% rate cut would {{REDACTED }}. Even conservatively assuming a {{REDACTED}} operating margin, if this rate cut could yield the same intermodal traffic gains Mr. Hunt predicts from the merger, Applicants could {{REDACTED }} from implementing this rate cut today. See workpaper 4-8.

[143] Deposition of Michael Houston (Director of Corporate Strategy, Union Pacific Railroad Company), July 30, 2026, pp. 125:15–126:7 ({{REDACTED

}} Such a high projected elasticity also seems unlikely given the operational constraints Applicants are already facing. For example, {{REDACTED

}}[144]

144. Mr. Hunt predicts most of his diversions in relatively long-distance moves, particularly for intermodal traffic. Exhibit 24 reports the mean and median length of haul for Mr. Hunt's predicted diversions by service type. The median length of haul for intermodal diversions is {{REDACTED}} miles. Mr. Hunt predicts that finished vehicles and merchandise/bulk will divert along lanes that tend to be {{REDACTED}} than intermodal (medians of {{REDACTED}} and {{REDACTED}} miles, respectively).

}}).

[144] {{REDACTED

}} NS_00148838–47 at NS_00148838–39 {{REDACTED

}}; {{REDACTED

}} NS_00148874–80 at NS_00148874 {{REDACTED

}}

Exhibit 24
Length of haul by diversion and service type

{{REDACTED

}}

145. The data from Dr. Israel's empirical analyses, however, suggest that

{{REDACTED

}} Dr. Israel's data show that

{{REDACTED

}}. Not only does this result {{REDACTED

[145]

}}. This all suggests that {{REDACTED

}}.

[145] See Section 12.1.

146. Specifically, Exhibit 25 shows the average revenue per carload-mile that Dr. Israel analyzes in his regression from Figure 10 of the second errata to his VS.[146] Each blue dot is the average rate of interline movements involving UP or NS for moves of a given distance. Each orange dot is the average rate of UP or NS single-line movements for the same distances.

[146] Israel Second Errata VS, Figure 10.

Exhibit 25
Mr. Hunt predicts the majority of intermodal diversions at longer distances where Dr. Israel finds that single-line rates are generally *{{REDACTED}}* ***than interline rates***

{{REDACTED

}}

147. While {{REDACTED }}. There is no longer a noticeable gap between the rates when moves are longer than approximately {{REDACTED}} miles. Interline movements longer than approximately {{REDACTED}} miles {{REDACTED }}. For reference, the exhibit shows the medians of the move lengths of different types in Mr. Hunt's projected diversions. Both median {{REDACTED }} and {{REDACTED }} diversions are near or well into the range where Dr. Israel's analysis shows that {{REDACTED }}. Or, putting this another way, Mr. Hunt largely assumes that UP and NS will do something they appear to have already done effectively without a merger.

148. This key premise of the Application is backwards. As a general matter, UP and NS do not need a merger to overcome contracting barriers. They are hardly precluded from delivering lower rates today where those can realistically drive traffic to divert from other modes. The foundation of Applicants' analysis should reflect the reality that railroads do not necessarily need a merger to divert traffic from trucks where that makes economic sense. Mr. Hunt appears to have identified a lot of corridors where it does not make economic sense to UP and NS to offer lower rates today and no reason to think that will change with a merger.

4.4. Applicants have not shown that they, and they alone, can only coordinate interconnections with a merger

149. If Applicants' projections of large traffic gains were actually realistic, Applicants have not explained why they cannot be accomplished without a merger. As I previously addressed, Dr. Israel asserts that interline service is inherently inferior to single-line service as a competitive alternative, except when he is speculating that a competitive route to UP-NS would be viable. He posits that independent railroads operating complementary networks are structurally incapable of efficiently coordinating operations or incentivizing network investments. Under this logic, he avoids asking how much of the service improvement he assumes will happen between UP and NS could have been achieved without a merger. From there, he sidesteps examining which interconnections between the UP and NS have failed to achieve these benefits or why contractual solutions fell short.

150. Yet, there are examples of voluntary interconnections that provide efficient, highly competitive service today. The hypothesized failure of UP and NS to emulate those successes leaves only two possible answers to the questions Dr. Israel avoids: either the gains from the merger improving interconnections are not real or there is some specific barrier to achieving them which would be something Dr. Israel has not considered and cannot assume will be solved through a merger.

151. Applicants have not shown that common ownership is necessary to achieve their claimed coordination benefits. There are many examples of railroads having success

and benefiting shippers with effective interline agreements (Section 4.4.1). Dr. Israel does not reconcile these successful agreements with his claim that UP and NS must merge to coordinate effectively, and his analysis of independent routes demonstrates this inconsistency (Section 4.4.2).

152. The success of past interline agreements in delivering operational improvements, cost savings, or traffic gains demonstrate that these benefits are not specific to mergers. Even if common ownership could produce additional efficiencies, Applicants must distinguish those incremental gains from improvements available through less anticompetitive alternatives. Their failure to examine those alternatives leaves them without a basis to attribute the full claimed benefits of the merger.[147]

[147] Israel Deposition at pp. 268:14–269:15 ("Q. Did you do any sort of analysis of whether or not there's still additional interlining that could be done between UP and NS to achieve some of the merger benefits that they would set out? … A. No, not specifically interlining, no. Q. So what's your basis for saying that none of the benefits could be achieved by a means short of a merger? A. I mean, much of the benefit is -- that I talk about and contribute is single-lining and elimination of double marginalization, which I think are inherent to a single railroad. Beyond that, I guess I'm not saying there's absolutely nothing that someone could do better as alliances. It's just economics saying they have been a long time trying to maximize profits as separate railroads. And so, again, I wouldn't say my opinion is there's nothing they could probably do better, but there's a fundamental failure when you maximize separate profit pools that can only be overcome as a matter of a merger. That's an opinion based on economics."). Bailey Deposition at p. 162:7–19 ("Q. So fair to say that you never assessed whether UP and NS could improve their interline operations without a merger? ... A. That wasn't my assignment in this matter. Q. For example, you never quantified how much of the service benefits they could achieve without a merger, right? ... A. That wasn't my assignment in this matter.").

4.4.1. Independent railroads can, in appropriate circumstances, interconnect efficiently through voluntary agreements

153. To dismiss the viability of non-merger alternatives, Dr. Israel relies on abstract theories of "double moral hazard" and contracting frictions, asserting that independent railroads operating complementary networks are structurally incapable of efficiently coordinating operations or incentivizing network investments.[148] His comparison of theoretical frictions among independent railroads to assumed perfect operations of an integrated railroad is false in theory and empirically. The economics literature identifies how agents or employees operating within one firm can fail to achieve a standard of optimality.[149] Further, as I discuss in this section, independent railroads frequently coordinate to provide competitive service. So, it is not clear why Dr. Israel believes that a merger will assure perfection in the coordination between current UP and NS operations. Nor is it clear why his observation that perfection is impossible to achieve today is at all relevant to whether UP and NS interchanges can compete effectively.

154. In practice, where railroads have clear commercial incentives to compete for long-haul freight, the real-world evidence demonstrates that they can remain independent

[148] Israel Second Errata VS, ¶ 95 ("Collaborations and cooperation notwithstanding, independent railroads cannot operate complementary railroad networks together as efficiently as a merged railroad can…In such a situation, each railroad will maximize its own individual profits at the expense of optimal outcome that maximizes joint profits across the complementary networks. This is often referred to as double moral hazard.").

[149] N. Gregory Mankiw, *Principles of Economics* (8th ed.), (Boston, MA: Cengage Learning, 2018), p. 481 ("Moral hazard is a problem that arises when one person, called the agent, is performing some task on behalf of another person, called the principal. If the principal cannot perfectly monitor the agent's behavior, the agent tends to undertake less effort than the principal considers desirable … The employment relationship is the classic example. The employer is the principal, and the worker is the agent.").

and still overcome Dr. Israel's theoretical impossibility of perfect coordination. These railroads have resolved operational frictions by establishing interconnections through voluntary agreements, joint ventures, or run-through train operations—all without the mergers Dr. Israel insists are required.[150]

155. Applicants' own submission recognizes that, in a number of circumstances, independent railroads have worked together to make interline service an effective competitive option. Despite Dr. Israel's assertion that such agreements "would be impossible … to come close" to the competitive significance of a merged firm, these interconnections achieved competitive service without a merger.[151]

156. In his verified statement, Mr. Hunt identifies the Meridian Speedway as a prime example of a successful joint venture capable of capturing share in the market without

[150] Israel Second Errata VS, ¶ 97 ("In practice, it is impossible to write a complete contingent contract that specifies how the two railroads must manage their interline business on a day-to-day basis. Such a contract would require dictating decisions or rules in every state of the world: every service choice, every investment decision, every price, and so on, accounting for every possible outcome of everything that is uncertain. They would have to say how each railroad should operate under any scheduling circumstance, what investment decisions should be made under all operational and economic conditions, how prices should be set under all demand scenarios, and so on. While economists may be able to talk of such "complete contingent contracts," they have no relation to industry reality. Once again, only a merger—with its full alignment of incentives—can solve this problem.").

[151] Israel Second Errata VS, ¶ 11 ("[I]t would be impossible for other alternatives short of a full merger between the parties (e.g., contracts or trackage agreements) to come close to addressing every possible situation that arises in the daily operations of two independent railroads, and thus, those alternatives could not deliver the benefits that this merger will create. These benefits include: more effective competition and service from increased single-line options—an improvement that will allow rail to compete more effectively with trucks and to serve historically underserved areas; improved quality, faster transit times and increased reliability; and increased investment in the rail network, including planned investment of a billion dollars to accommodate merger-related growth on main lines and in yards and terminals.").

common ownership.[152] NS's Chief Strategy Officer, Mike McClellan, {{REDACTED }}[153] Established in 2006 by CPKC (then the Kansas City Southern Railway (KCSR)) and NS, the Meridian Speedway LLC oversees a 320-mile rail line between Shreveport, Louisiana and Meridian, Mississippi, which was created to provide a high-speed, high-capacity intermodal corridor connecting the Southeast and the Southwest.[154] The Meridian Speedway LLC, operated by KCSR (now CPKC), grants haulage rights to NS for certain categories of intermodal traffic, and supports efficient interline service between UP and MSLLC (via Shreveport) and between MSLLC and NS (via Meridian), with CPKC handling the traffic across MSLLC between Shreveport and Meridian. Upon establishing the joint venture, the railroads committed real assets and $300 million in capital improvements to expand line capacity and reduce transit times.[155] This investment funded extensive infrastructure upgrades including "the

[152] Hunt Second Errata VS, p. 113 ("Where interline intermodal rail service has been able to capture share has been in run-through service, such as NS-CPKC on the Meridian Speedway.").

[153] Deposition of Michael R. McClellan (Chief Strategy Officer, Norfolk Southern Corporation), October 9, 2026, p. 349:6–19 {{REDACTED

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[154] "KCS, NS joint venture to start Meridian Speedway trackwork in August," *Progressive Railroading*, July 24, 2006, available at https://www.progressiverailroading.com/mow/news/KCS-NS-joint-venture-to-start-Meridian-Speedway-trackwork-in-August--8459 ("Under the joint venture formed earlier this year, KCS contributed the 320-mile Meridian, Miss.-to-Shreveport, Speedway and NS agreed to invest $300 million in capital improvements to expand the lines capacity and improve transit times."). See {{REDACTED }} NS_00134944–61 at NS_00134946 {{REDACTED }}

[155] "KCS, NS joint venture to start Meridian Speedway trackwork in August," *Progressive Railroading*, July 24, 2006, available at https://www.progressiverailroading.com/mow/news/KCS-NS-joint-venture-to-start-Meridian-Speedway-trackwork-in-August--8459 ("Under the joint venture formed earlier this year, KCS contributed the 320-mile Meridian, Miss.-to-Shreveport, Speedway and NS agreed to invest $300 million in capital improvements to expand the lines capacity and improve transit times.").

construction of new mainline and siding tracks, bridge replacements, large-scale rail and tie replacement programs, reconfiguration of major interchanges, and various other capital improvements."[156]

157. Mr. Hunt's own diversion model recognizes that joint-ventures and run-through agreements more broadly are essentially as efficient as single-line service. Under Mr. Hunt's baseline traffic modeling, a standard uncoordinated interchange between independent Class I railroads is assigned an impedance penalty to model operational friction (e.g., yard switching, dwell times, and crew changes). By contrast, Mr. Hunt assigns the Meridian Speedway a much lower impedance penalty—equating it to a simple crew change—to explicitly reflect the operational efficiencies realized through this joint venture without a merger.[157] Likewise, Mr. Hunt acknowledged the efficiency and current competitive significance of other exemplar corridor routes—the BNSF-CSXT interchange at Birmingham, all BNSF-CSXT traffic between BNSF's Los Angeles terminals and CSXT's NW Ohio terminal in North Baltimore, OH, and all

[156] "Projects," *Foster Jones Engineering*, available at https://www.fosterjonesengineering.com/projects.

[157] Hunt Second Errata VS, Exhibit 6–3 ("Interchange impedances were set to 350, 450, 550, or 650 miles. Historically high-volume interchanges received an impedance of 350, while historically low-volume interchanges received an impedance of 650. (An impedance of 350 can be thought of as a 350-mile additional 'cost' to a trip). Intermodal trains that operate run-through haulage services were given an impedance of 90 miles, reflecting an approx. three-hour delay for crew change… These include UP, CPKC, and NS for Meridian Speedway traffic, BNSF-CSXT for traffic to/from Northwest Ohio and Atlanta Fairburn terminals, and CN-INRD for traffic to/from Indianapolis (see Appendix A for full list).").

routes that include NS and Ayer, MA—by modeling them with an impedance equivalent to a basic crew change. [158]

158. Furthermore, Applicants' experts make much of the success of the I-5 Agreement—another example of independent railroads coordinating under a structured agreement—when it is needed to defend the viability of their CGP proposal.[159] Originally negotiated with BNSF as part of a deal for support in UP's acquisition of Southern Pacific (SP) in 1996, the I-5 Agreement established a framework for coordinating certain interconnections of traffic along the Pacific coast between BNSF and UP.[160] Under the agreement, UP sold a rail line to BNSF to establish single-line

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[158] Hunt Second Errata VS, Appendix Section A.6.5. ("The following adjustments were made to route impedances to better reflect the penalties of run-through haulage agreements being lower than true interchanges…The UP-CPKC-NS interchange lanes via Shreveport, LA onto the Meridian Speedway…The BNSF-CSXT interchange at Birmingham…All BNSF-CSXT traffic between BNSF's Los Angeles terminals and CSXT's NW Ohio terminal in North Baltimore, OH…The NS-KCS interchange at Meridian…All service types: All routes that include NS and Ayer, MA.").

[159] Israel Deposition, p. 267:11–21 ("Q. Despite being an agreement between independent railroads, the I-5 agreement has been a commercial success, has it not? … A. Yeah, I think that's fair. I think there can be agreements between railroads that can be successful. There's just degrees of success. So it's – you're limited by the lack of integration, but you can certainly still do things that succeed."). {{REDACTED }} UP-STB-D13-0000430–51 at UP-STB-D13-0000448 {{REDACTED }}; Israel Second Errata VS, ¶ 154 ("[T]he I-5 Agreement between BNSF and UP regarding movements and rates between the Pacific Northwest and the U.S. Southwest— demonstrates the competition-enhancing effects of market-based gateway rates…In this way it is very similar to CGP and served as an inspiration for parts of the CGP proposal.").

[160] Decision No. 44, "Union Pacific Corporation, et al. – Control – Southern Pacific Rail Corporation, et al.," Docket No. FD 32760, August 6, 1996, at p. 17 ("*Proportional Rate Agreement*. The BNSF agreement includes, among other things, a proportional rate agreement over the Portland gateway (hereinafter referred to as the BNSF PRA) that will allow UP/SP to participate in joint rates with BNSF for traffic moving between points in an area north of Portland, OR, and west of Billings and Havre, MT, on the one hand, and, on the other, points in an area extending from Oregon to West Texas."); "Union Pacific merger family tree," *Trains.com*, June 2, 2006, available at https://www.trains.com/trn/railroads/history/union-pacific-merger-family-tree/ ("Union Pacific acquired the SP on Sept. 11, 1996.").

BNSF service between the Pacific Northwest and southern California, creating a new single-line service along the I-5 corridor.[161] The agreement also granted UP the ability to market transportation services directly to BNSF-served shippers in Washington (across the Portland gateway) without requiring BNSF's direct involvement.[162] Despite this being an agreement between independent railroads (that have not merged with each other), Dr. Israel reports the growth in the volume of traffic utilizing this interconnection arrangement as demonstrating commercial success.[163]

159. Agreements over a specific interconnection are not the only investment-enabling arrangements that independent railroads have implemented to improve interline service. Equipment pools like the Equipment Management Program ("EMP") and UMAX demonstrate another way in which interline service can be improved when partners are willing to cooperate.[164] EMP and UMAX are domestic interline intermodal container

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[161] Decision No, 44, "Union Pacific Corporation, et al. – Control – Southern Pacific Rail Corporation, et al.," Docket No. 32760, August 6, 1996, p. 17 ("*Line Sales*. Under the BNSF agreement, BNSF will purchase: (1) UP's Keddie Line (in California) between Keddie, CA at MP 0 and Bieber, CA at MP 111.8, including both legs of the wye at Keddie[.]").

[162] "Improved Shipping in the I-5 Corridor," *Union Pacific*, available at https://www.up.com/shipping/metals-minerals-forest/i-5 ("The I-5 Proportional Rate Agreement was established in 1997 to allow Union Pacific to compete with BNSF for traffic moving between the Pacific Northwest/Canada and the Southwest/Mexico. The agreement allows Union Pacific to unilaterally establish rates between these points, skipping the concurrence process. As a result, shippers get rates quickly and have more options for shipping product farther and faster throughout the I-5 corridor.").

[163] Israel Second Errata VS, ¶ 158 ("[S]ince 2009, UP has moved over {{{REDACTED}}} carloads under the I-5 Agreement, accounting for nearly {{{REDACTED}}} billion in revenue to UP. The volume of traffic moving under the I-5 agreement has generally grown over this period, with carload volume in 2024 more than {{{REDACTED }}} of 2010 volume.").

[164] {{REDACTED

programs designed to provide truck-competitive, coast-to-coast container shipping across North America[165] Offered jointly by UP and NS (along with agent railroads), EMP provides access to a fleet of tens of thousands of 53-foot rail-owned containers.[166] NS's Chief Strategy Officer, Mike McClellan, {{REDACTED }}[167] UMAX is a similar partnership between UP and CSXT Intermodal, extending access to an expansive network of 53-foot domestic containers and hundreds of service lanes connecting the western and eastern United States.[168] Together, these programs allow shippers to move domestic freight more efficiently across these networks by aligning incentives to handle the pool equipment efficiently when it goes onto another railroad.

160. The success of these joint coordination agreements has motivated Class I railroads to plan for more such projects between them and to modernize current programs.[169]

}}. See {{REDACTED }} UP-STB-D13-0000430–51 at UP-STB-D13-0000440.

[165] "Intermodal Equipment," *Union Pacific*, available at https://www.up.com/shipping/resources/rail-equipment/intermodal.

[166] Railroad, "EMP Domestic Container Program," *Union Pacific*, available at https://www.up.com/shipping/intermodal/emp.

[167] {{REDACTED }} NS_00569895–923 at NS_00569917 {{REDACTED }}

[168] "CSX Intermodal and Union Pacific Railroad Announce UMAX Domestic Interline Container Program," *CSXT*, February4, 2010, available at https://www.csx.com/index.cfm/about-us/media/press-releases/csx-intermodal-and-union-pacific-railroad-announce-umax-domestic-interline-container-program/. See also Deposition of Michael R. McClellan (Chief Strategy Officer, Norfolk Southern Corporation), October 9, 2026, p. 378:14–15 {{REDACTED }}

[169] {{REDACTED }} {{REDACTED

These real-world examples demonstrate that whether railroads have an effective and coordinated interconnection depends on their incentives. Where commercial demand exists on both sides of the interchange, independent railroads face clear economic incentives to compete for long-haul freight traffic and overcome theoretical coordination barriers through joint ventures, voluntary agreements, and run-through operations. Investments do not get made when there is a lack of opportunity and the incentives that stem from it. They also do not get made (or are actively managed to disadvantage) when incentives do not align because one of the railroads sees the would-be partner as competition. The practical lesson economics suggests in this context is not about the impossibility of perfection, it is about the importance of incentives in determining whether independent railroads act on their ability to coordinate well enough to compete effectively.

4.4.2. Dr. Israel makes inconsistent assumptions about effectiveness of interline coordination

161. As I have noted throughout my analysis, Dr. Israel takes inconsistent positions on whether independent railroads can interconnect effectively. When discussing UP and NS, he treats a merger as necessary for effective coordination. When discussing their competitors, he treats contractual arrangements, including some that do not yet exist, as

}} NS_00155457–59 at NS_00155457. See also, {{REDACTED
}} NS_00103605–56 at NS_00103613 {{REDACTED

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particularly effective means of enabling interline services to compete. Neither position adequately accounts for the circumstances of a particular arrangement. Instead of examining those circumstances, Dr. Israel relies on whichever assumption supports his conclusion: that UP and NS must merge to compete effectively, while their rivals can constrain the merged railroad through contracts alone.

162. These two extreme assumptions are front and center in Dr. Israel's view that CGP will substantially benefit shippers—a stark contrast to his stance on railroads' ability to coordinate on interline movements without a merger. As I explain in Section 9.1, his estimates of CGP's benefits are contingent on an assumption that railroads will resolve any operational and incentive hurdles to meet CGP-induced demand increases *without merging*, thus conveniently abandoning his premise that a merger is necessary for effective interlines. Dr. Israel cannot have it both ways—either meeting the CGP-induced increased demand for interconnections is impossible without a merger, in which case CGP will not benefit shippers as much as he claims (due to railroads' inability to coordinate resulting in poor service), or his claims that a merger is the only way to align incentives and improve interconnections is false. CGP is just one striking example of how his reliance on extreme assumptions calls into question whether the merger's claimed benefits will materialize, let alone outweigh its harms.

163. Dr. Israel's inconsistency is apparent in his analysis of independent routes, where he relies on new (and never observed in the data) interline cooperation among other railroads to constrain UP-NS despite their claim that UP and NS need to merge to be

effective competitors. In Dr. Israel's analysis of independent routes, he claims to follow an algorithm that I utilized for the CP-KCS merger and identifies 74 corridors where the proposed merger will result in shippers having a reduction from three independent routes to two, or two independent routes to one.[170] As I discuss further in Appendix 12.4, for these routes, he assumes that other Class Is can readily interconnect to serve the relevant traffic, even though such an interconnection has not been observed for at least five years. That assumption conflicts with his claim that UP and NS must merge to interconnect efficiently. As discussed above, independent railroads can and do interconnect efficiently, but whether they can do so on a particular route requires analysis rather than assumption. Dr. Israel cannot have it both ways—either interconnection is impossible without a merger, and the shippers in those 74 routes are harmed, or efficient interconnection is achievable without a merger, and the merger is unnecessary.

164. Instead of undertaking a route-by-route analysis using evidence from the record, Dr. Israel makes this determination solely based on existing trackage and *possible* interchanges between railroads. He provides no evidence on whether a specific interchange or routing would be reasonable, feasible, or in any way economically useful for shippers. He also does not investigate whether the creation of these routes would require additional investment from competitors.

[170] Despite his claims to the contrary, his analysis is substantially different than the one I utilized in the CP-KCS merger. For more details, see Appendix 12.4.

165. On their face, several of Dr. Israel's proposed interchanges are particularly difficult to square with his core claim that a merger is necessary for interchange service to compete effectively. First, several rely on an option with multiple interchanges that he posits will compete effectively with an existing single-line. Between {{REDACTED }} and {{REDACTED }}, Dr. Israel identifies that {{REDACTED}} currently single-lines, and the "viable route" would be based on {{REDACTED}} interchanging with {{REDACTED}} first in {{REDACTED }} and interchanging again in {{REDACTED }} with {{REDACTED}}. Similarly, between {{REDACTED }} and {{REDACTED }} he assumes that an interchange between {{REDACTED}} and {{REDACTED}} in {{REDACTED }} followed by another interchange with {{REDACTED}} can readily compete effectively with existing single-line service by {{REDACTED}}, which currently carries {{REDACTED}} of the traffic on that corridor.[171]

166. In his analysis of independent routes, Dr. Israel thus treats coordination among independent railroads as effective when invoking alternatives to UP–NS, but ineffective when arguing that UP and NS must merge. Neither his assumption that the identified "viable alternative independent routes" would offer effective competition nor his assumption that UP and NS must merge to coordinate effectively are supported by evidence;[172] both rest on speculation.

[171] Israel Second Errata VS, Table D - 3.

[172] Israel Second Errata VS, Appendix D ¶ 3.

167. In Exhibit 26, I summarize Dr. Israel's findings of independent routes and show that for {{REDACTED}} of the corridors (representing {{REDACTED }} annual carloads) he dismisses, he does so on the basis that never-before-seen interline service not only will be readily established but will compete effectively with the very UP-NS single-line service he claims requires the merger.[173] As I discuss below, his claim that UP and NS, as independent railroads, "cannot coordinate their operations and investments as efficiently as a single combined railroad" is patently inconsistent with his conclusion that so many other railroads can and will interconnect well enough to be effective competitors to UP-NS.[174]

[173] Israel Second Errata VS, ¶ 11 ("As I discuss in detail below, it would be impossible for other alternatives short of a full merger between the parties … to come close to addressing every possible situation that arises in the daily operations of two independent railroads, and thus, those alternatives could not deliver the benefits that this merger will create. These benefits include: More effective competition and service from increased single-line options—an improvement that will allow rail to compete more effectively with trucks and to serve historically underserved areas; improved quality, faster transit times and increased reliability.").

[174] Supplemental Verified Statement of Dr. Mark A. Israel, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, July 17, 2026 ("Israel Supplemental VS"), Section IV.A.1.

Exhibit 26
Theoretical routes identified by Dr. Israel highlight his inconsistency over the assumed difficulties of interconnect service

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168. Exhibit 27 summarizes where Dr. Israel contradicts himself on critical issues including: (1) whether independent railroads can write contracts and coordinate outside of a merger; (2) whether single-lines are inherently more efficient than interlines, and (3) whether routes among railroads that have never been observed as a choice by any shipper for a particular corridor at any point in the Six-Railroad Tapes Data are nevertheless a viable competitor to an integrated carrier. Row 1 of Exhibit 27 highlights that Dr. Israel argues that independent railroads cannot coordinate or invest efficiently

through contracts, yet when addressing vertical foreclosure "edge cases," he relies on Applicants' voluntary OGCs—which are themselves long-term contractual commitments governing rates and service—to mitigate any harms.[175] Row 2 shows that Dr. Israel likens single-line service to a nonstop flight and interline service to a connecting one with unavoidable frictions and markups—yet to justify CGP, he points to the successful interline coordination seen under the I-5 Agreement.[176] Finally, Row 3 highlights that Dr. Israel argues not only that a UP-NS merger will benefit shippers—and that a follow-on vertical merger (which I discuss in detail in Section 7) would create similar benefits[177]—but also that existing "viable" routes with no previously observed traffic across 74 corridors will be enough for independent railroads to

[175] Israel Second Errata VS, ¶ 100 ("The theory of incentives described above (i.e., double moral hazard) is powerful because it is quite general. Specific examples of the way double moral hazard can play out in practice—here, when complementary rail networks are operated by separate railroads—include pricing inefficiencies (referred to by economists as "double marginalization"), suboptimal operational and scheduling decisions (i.e., failing to consider the benefits to the complementary network), and insufficient investment."). Israel Second Errata VS, ¶ 90 ("While I will address any theories of foreclosure raised in opposition to the proposed merger in subsequent reports, they will almost surely be edge cases, not well suited to this industry. Nevertheless, to the extent there remains any concern that some of these edge cases may "slip through" and apply to isolated, atypical transactions, those are precisely the situations open gateway commitments are designed to address.").

[176] Israel Second Errata VS, ¶ 105 ("For shippers, eliminating the need for an interchange is akin to the difference between connecting air travel service and a nonstop option. The introduction of direct, single-line service eliminates the cost, scheduling uncertainty, coordination, and added transit time associated with interchanging traffic, and is a clear benefit to shippers and railroads."). Israel Second Errata VS, ¶ 154 ("An existing analogous agreement—the I-5 Agreement between BNSF and UP regarding movements and rates between the Pacific Northwest and the U.S. Southwest—demonstrates the competition-enhancing effects of market-based gateway rates… In this way it is very similar to CGP and served as an inspiration for parts of the CGP proposal[.]").

[177] Israel Second Errata VS, ¶ 144 ("[T]he merger of UP and NS will generate significant vertical benefits for shippers. These vertical benefits—including the expansion of single-line service, more efficient service and operations, and increased investment—are unlikely to be undermined by any subsequent mergers. Instead, a future U.S. transcontinental merger would also tend to be predominantly vertical with similar effects.").

coordinate effectively so as to provide a competitive check against a combined UP-NS.[178]

169. That is, every substantive topic Dr. Israel opines on is touched by one or the other of his extreme and contradictory positions on whether a merger is necessary for efficient interline coordination.[179]

[178] Israel Second Errata VS, ¶¶ 82–83 ("[T]he algorithm identifies 74 corridors as losing an independent route due to the UP/NS merger. In fact, however, there should be no concern about loss of competition in any of these corridors … Because carriers serving different segments of a corridor at a common gateway can connect (even if such a connection is not observed in the Waybill data) to create a route in the corridor, I treat those connections as alternative viable routes in my analysis.").

[179] Dr. Israel has a related internal inconsistency in his more formal discussion of the economics of vertical mergers. He dismisses vertical foreclosure models as theoretical "edge cases." Yet, when responding to an academic study on incomplete information, he acknowledges that merged railroads gain private cost information that enables them to extract shipper surplus on sole-served legs. He then claims that elastic demand forces the carriers to lower total rates and expand volume—contradicting his core premise that sole-serving carriers gain no post-merger leverage. Israel Second Errata VS, ¶ 74 ("[T]hat is not to say that other economists could not present alternative theories of foreclosure and claim they apply to this industry and this transaction. Here, I can confidently say any such theories would describe, at best, "edge cases," based on unreasonably restrictive assumptions about firm behavior or other assumptions ill-suited to the railroad industry."), ¶ 72 ("In the Moresi model [] the merger reduces shipper surplus…[h]owever, this finding is an artifact of Moresi's assumptions that: (i) shippers have perfectly inelastic demand… I find that for the case of linear demand and uniformly distributed costs, a merger increases shipper surplus in addition to increasing output and total welfare. The increase in shipper welfare is the result of the railroad making more sales at lower prices and the fact that it cannot fully extract the shipper's surplus as it can in Moresi.").

Exhibit 27
Dr. Israel's contradictory extreme assumptions about interconnection coordination

{{REDACTED

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4.5. Applicants proposed conditions will not adequately address the merged firm's incentive and ability to weaken and degrade interline options

170. The remedies Applicants offer are insufficient to address the harm to shippers from foreclosed competition. Applicants' experts perversely point to analysis from the CP-KCS combination as if reliance on the condition imposed in that case, which largely implemented CP's commitment to "keep gateways open on commercially reasonable

terms,"[180] ensures no harm is possible in this case. The facts of that earlier combination are not at all comparable to the unprecedented scale, scope, and market context of the proposed UP-NS merger. Instead, they illuminate the much greater risk from the scale and scope of a UP-NS combination – consistent with The Board's waiver of major merger treatment in the CP-KCS combination. Applicants' references to CP-KCS are "apples and oranges" to the competitive issues of a UP-NS combination. Their OGCs are inadequate to address the harm of this merger, as are the other assurances and procedural options they have offered.

4.5.1. The CP-KCS merger, where open gateway commitments were accepted, did not pose similar competitive issues and is not a suitable reference for evaluating this merger

171. Prior mergers, which were evaluated under less-restrictive regulations than The Board's 2001 Rules (including CP-KCS, which was exempted from The Board's 2001 Rules), stand in stark contrast to the size of the proposed UP-NS transaction.[181] Those prior deals did not result in a railroad that went nearly everywhere and touched nearly everything transported by rail. In other words, those mergers left intact many of the

[180] Decision No. 35, "Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.," Docket No. FD 36500, March 14, 2023, p. 12 ("The Board is approving the acquisition by CP of control of KCS, subject to the following conditions, as set forth more fully in the decision below: (1) Applicants' commitments to keep gateways open on commercially reasonable terms and create no new bottlenecks, with the clarifications and enhancements described herein…").

[181] See Decision No. 35, "Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.," Docket No. FD 36500, March 14, 2023, p.10 ("By decision served April 23, 2021, following a public comment period, the Board found the Transaction to be subject to the regulations set forth at 49 C.F.R. part 1180, subpart A, in effect before July 11, 2001, pursuant to the regulatory waiver in 49 C.F.R. § 1180.0(b) for a merger transaction involving KCS and another Class I railroad as set forth in Major Rail Consolidation Procedures, 5 S.T.B. 539, 553 (2001).").

competitive constraints that the proposed UP-NS would not. For a host of reasons, the proposed merger has much more potential for competitive harm than CP-KCS, and as a result, Applicants are incorrect to assume that "voluntarily embracing" the same OGC that The Board imposed in CP-KCS will address all competitive concerns.[182]

172. For instance, consider the CP-KCS transaction—the most recent merger between two Class I railroads—evaluated under an exemption to The Board's 2001 Rules and one Applicants and their experts often cite to provide the veneer of support for their approach to evaluating their proposed merger.[183] The CP-KCS transaction combined the sixth and seventh-largest Class I railroads and following the merger, CPKC was still the *smallest* Class I railroad by U.S. operating revenue.[184] Indeed, according to the Six-Railroad Tapes Data CPKC only earned {{{REDACTED}}} of revenue on U.S. movements, while the proposed UP-NS would earn {{REDACTED}} of that revenue

[182] Rocker and Elkins Second Errata VS, ¶ 163, App. Vol. 1, p. 348 ("We therefore are voluntarily embracing the same robust and readily enforceable open gateway requirement and bottleneck pricing conditions that the Board imposed in the recent Canadian Pacific-Kansas City Southern ('CP-KCS') merger proceeding. These commitments will thoroughly address any customer fears (even if speculative and groundless) about foreclosure or competitive harm.").

[183] See, e.g., Bailey Second Errata VS, fn. 22 ("Prior railroad transactions also conducted economic analyses at the BEA level. See Verified Statement of W. Robert Majure, 'Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.,' Finance Docket No. 36500, October 29, 2021, ('Majure VS')"), fn. 75 ("For example, see the between-corridor analysis in Majure VS at pp. 52-72."). See also Israel Second Errata VS, ¶ 79 ("I have applied an algorithm for counting independent routes (the 'algorithm') based on and consistent with the method used in CPKC's merger proceeding.").

[184] Decision No. 4, "Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.," Docket No. FD 36500, April 23, 2021, p. 2. CPKC is also the smallest of the Class I railroads by carloads and tons carried in 2024. CPKC had slightly higher gross freight revenue than CN in 2024. See Bailey Second Errata VS, Exhibit 3.

before any of the predicted traffic diversion.[185] The Board's 2001 Rules recognized "as a general matter, that a potential transaction involving KCS and another Class I carrier would not necessarily raise the same concerns and risks as other potential mergers between Class I railroads."[186] That conclusion is consistent with the magnitude of difference between the scale and scope of a CP-KCS combination and the proposed UP-NS combination. That difference also makes the CP-KCS transaction (and the analyses performed in the review of that transaction) an inappropriate reference point for evaluating a merger the scale and scope of the proposed UP-NS deal.

173. Even under the pre-2001 standard, the CP-KCS transaction warranted a careful review of potential competitive effects. That analysis examined both horizontal overlaps within corridors and potential losses of geographic competition where substantial commodity flows might be combined. In the limited instances where the initial screens identified a potential concern, more detailed analysis showed that shippers retained credible competitive alternatives, including routes confirmed by railroad executives as commercially viable.[187] The result reflected the materially

[185] These shares represent shares of revenue earned on movements between 2019 and 2024, based on the Six-Railroad Tapes Data. Additionally, according to the Six-Railroad Tapes Data from 2019 to 2024, CPKC participated in about {{{REDACTED}}} of U.S. movements (weighted by revenue), while a combined UP-NS would have participated in {{REDACTED }} of U.S. movements (weighted by revenue). See workpaper 3-1.

[186] Major Rail Consolidation Procedures, p. 552.

[187] For example, in one corridor, the new single-line CPKC route was found to still compete against an existing route. In another corridor, the new single-line CPKC route was found to still compete against two other routes. Expert Statement of W. Robert Majure, Ph.D., "Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.," Docket No. FD 36500, October 29, 2021 ("Majure CP-KCS VS (Public)"), Exhibits 8, 9, pp. 42–45.

different competitive circumstances of CP-KCS—not a lesser need to examine potential harms.

174. CP-KCS did not present an ability to foreclose competition that is comparable to the proposed merger. Although UP argued that KCS's position at the Laredo gateway could give the combined railroad foreclosure power, the evidence showed otherwise.[188] Shippers retained meaningful alternatives both among gateways and among parallel U.S. routes, and traffic patterns demonstrated that those alternatives were in fact used. BNSF, for example, had developed service through Eagle Pass connecting Mexico to its main line between the U.S. Southwest and Chicago, providing an alternative to routes through Laredo, which have to navigate a more congested route through Houston.[189] Those facts distinguish CP-KCS from the proposed UP-NS transaction, where UP and NS already occupy positions across large portions of the western and eastern U.S. that would allow the combined railroad to restrict or degrade competing routes.

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[188] Majure CP-KCS VS (Public), p. 17–19.

[189] "BNSF, GMXT and J.B. Hunt Collaborate to Launch New Intermodal Service Through Eagle Pass Gateway to and From Mexico," J.B. Hunt Transport Services, Inc., November 13, 2023, available at https://www.jbhunt.com/our-company/newsroom/2023/11/eagle-pass-gateway ("BNSF Railway (BNSF), North America's largest intermodal rail, GMXT (BMV: GMXT), the largest rail provider in Mexico, and J.B. Hunt Transport Services Inc. (NASDAQ: JBHT), one of the largest supply chain solutions providers in North America, announced their new intermodal service between Monterrey, Silao-Bajio and Pantaco-Mexico City regions, key markets in Northern and Central Mexico, through the Eagle Pass, Texas border gateway."); Marybeth Luczak, "BNSF, GMXT to Run J.B. Hunt's Intermodal Service Via Eagle Pass Border Gateway (Updated, Blaze Commentary)," *Railway Age*, November 14, 2023, available at https://www.railwayage.com/intermodal/bnsf-gmxt-to-run-j-b-hunts-intermodal-service-via-eagle-pass-border-gateway/ ("The Laredo route is more congested and can be subjected to traffic conflicts between Corpus Christi and the Houston region. Eagle Pass less so.").

175. In short, CP-KCS demonstrates why foreclosure must be evaluated based on the competitive facts of the particular transaction, rather than through a general assumption, which Dr. Israel adopts,[190] that railroads lack incentives to foreclose competitors. In the case of Laredo, shippers had multiple meaningful alternatives, and the CP-KCS combination *enhanced* rather than reduced those options.[191] The proposed UP-NS transaction presents materially different competitive circumstances and therefore requires a different analysis.

176. Also, in contrast to the proposed UP-NS merger, CP's and KCS' networks were highly complementary and connected at only one location—Kansas City—as Exhibit 28 shows.

[190] I discuss Dr. Israel's assumptions regarding railroads' lack of incentives to foreclose competitors in Section 4.3.1.

[191] Majure CP-KCS VS (Public), Section 3.

Exhibit 28
Exhibit 1 from Majure 2021 VS: A Canadian Pacific and Kansas City Southern deal is a vertical combination of complementary networks

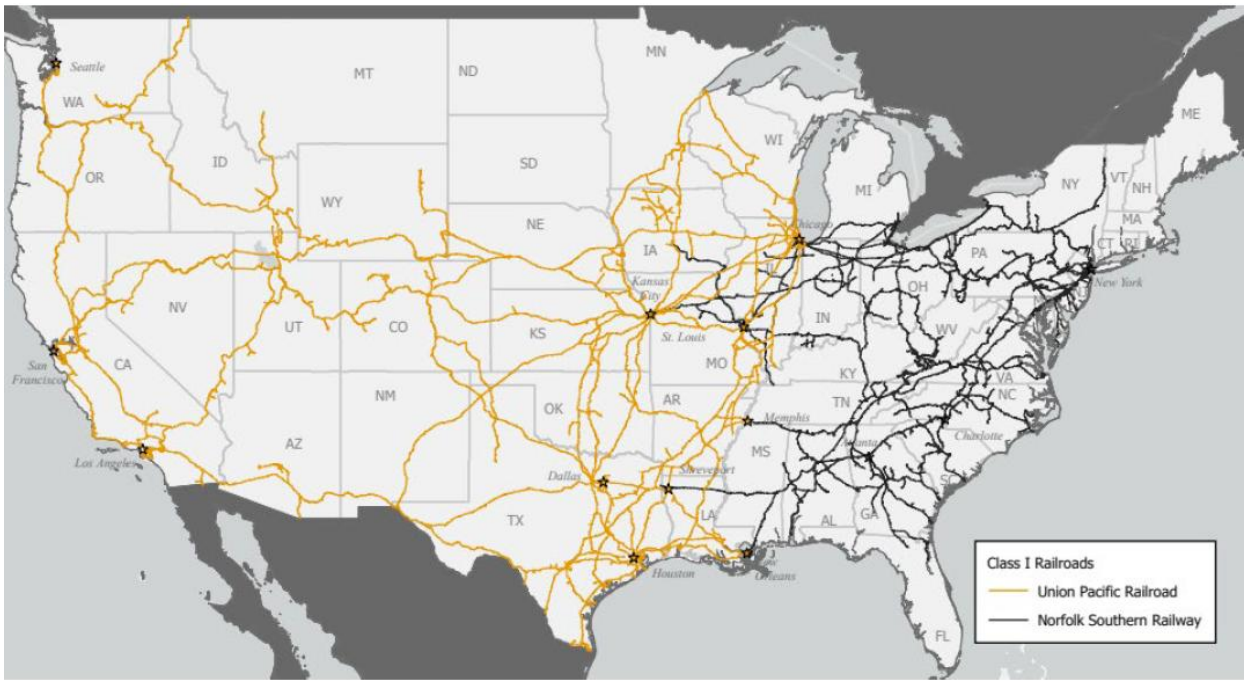


Source: Majure CP-KCS VS (Public), Exhibit 1
Note: This map plots the rail networks of CP and KCS including tracks that each railroad either owns or has trackage rights over.

177. Shippers did not rely on competitive bidding between CP and KCS over alternative interchange points in the way that may occur with UP and NS, which can be seen from UP's and NS's networks overlapping at multiple possible interchange points

in Exhibit 29.[192] The proposed UP-NS transaction therefore raises a distinct competitive issue that was not present in CP-KCS.

Exhibit 29
Bailey Second Errata VS Exhibit 4: Combined Railroad (UP + NS) Map



Source: Bailey Second Errata VS, Exhibit 4

178. And, unlike the claims of interconnection improvements between UP and NS, the CP-KCS merger addressed a very specific failure to improve their interconnection at that one point through negotiated arrangements. CP had tried to improve their service, and their ability to compete as a partner with KCS alongside existing single-line rail competition, but KCS had good reason to worry that doing so would upset its other rail partners.[193] {{REDACTED

[192] Majure CP-KCS VS (Public), Exhibit 1.
[193] Majure CP-KCS VS (Public), Section 3.1.

}}.[194] The benefit of aligning incentives between CP and KCS has no parallel in the proposed UP-NS combination.

179. CP-KCS enhanced rather than reduced the options for shippers.[195] The new single-line routes CPKC introduced following the merger competed with existing Class I service, meaning they enhanced options and competition for shippers rather than removed it. The Board's decision on CP-KCS stated: "Increased Competition. The Transaction will allow CPKC to compete more effectively against the larger Class I railroads that surround it. … Figure 1 below highlights that the new CPKC network will provide stronger competitive options, particularly for north-south traffic flows in which these larger railroads already offer single-line routes."[196] Exhibit 30 below shows Figure 1 from The Board's decision on CP-KCS. The figure shows that the merger's introduction of new single-line service from the North to the South through Kansas City would be along the existing networks of and would compete with the service of CN, BNSF, and UP.

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[194] {{REDACTED }} UP_0215372–75 at UP_0215373 ({{REDACTED }}).

[195] Majure CP-KCS VS (Public), Section 3.

[196] Decision No. 35, "Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.," Docket No. FD 36500, March 14, 2023, p. 26.

Exhibit 30
Board decision on CP-KCS: Figure 1, Larger Class I Systems Will Face New Competition from the Combined CPKC Network

FIGURE 1
LARGER CLASS I SYSTEMS WILL FACE NEW COMPETITION FROM THE COMBINED CPKC NETWORK



Canadian National	BNSF	Union Pacific
Would Face New Competition from CPKC Single-Line Routes Between Gulf/South Central States and Upper Midwest/Canada	Would Face New Competition from CPKC Single-Line Routes Between Gulf/South Central States/Texas/Mexico and Upper Midwest/Canada	Would Face New Competition from CPKC Single-Line Routes Between Gulf/South Central States/Texas/Mexico and Upper Midwest

Source: Decision No. 35, "Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.," Docket No. FD 36500, March 14, 2023, p. 26 (Figure 1)

180. In short, the proposed UP-NS merger is different from the facts in CP-KCS in every important regard. The proposed UP-NS combination is not about overcoming a peculiar misalignment of incentives in order to respond to competitors who can already offer the same service. As I demonstrated above, for many shippers in the East and the West, there is no (or no significant) rail option to explore (Exhibit 7 and Exhibit 8). Without that competitive pressure to be faced after the merger, merely being an "end-to-end" merger does not create any reason to share prospective cost savings with shippers. The merged UP-NS can, unlike CPKC, pick and choose whether it wants to

work with competitors or enjoy the fruits of monopoly where it does not have to act as a rail partner and can instead use its ability to foreclose competition. That is not an ability CPKC ever had, so drawing inferences from the CP-KCS transaction is simply avoiding consideration of the problems with the proposed UP-NS merger.

181. Applicants commit to the same OGC as in the CP-KCS merger in order to provide "assurances to [their] customers and to the Board that this transaction will offer more, not less, competition and customer options."[197] But they have not even attempted to explain why the same commitment applied to a merger between the two smallest Class I railroads who interchange at one point will sufficiently address competitive concerns for a merger between two of the largest Class I railroads who interchange at all major east-west gateways. Given the undeniable differences between this proposed merger and CP-KCS, there is no reason to expect that Applicants' OGC will prevent them from foreclosing at those gateways.

4.5.2. Applicants' open-gateway commitments do not preserve effective interline competition

182. Applicants propose a series of "voluntary gateway commitments" that they claim will "thoroughly address any customer fears (even if speculative and groundless) about foreclosure and competitive harm."[198]

[197] Rocker and Elkins Second Errata VS, ¶ 162.
[198] Rocker and Elkins Second Errata VS, ¶¶ 163, 166.

183. The first such commitment, the OGC, promises to keep open all gateways "on commercially reasonable terms," and that they will "not make it impossible to construct viable interline options for customers by refusing to quote commercially reasonable rates."[199] However, simply keeping gateways open will not ensure robust competition. As I show in Section 4.2.1, UP and NS already exhibit a strong preference not to work with other railroads, and this preference becomes more apparent as their ability to foreclose increases. That is the commercial norm that presumably establishes what is "commercially reasonable." If they extend this preference to gateways with new UP-NS single-lines, Applicants will end up gradually pushing out competitors even while these gateways technically remain "open."

184. Applicants could have gone further with their commitments, but they did not. For example, they do not offer any solution to the typical regulatory problem of identifying the benchmark that their post-merger behavior can be effectively judged against. Their proposal to set "commercially reasonable" rates invites a rate increase based on the very incentives that an effective commitment would need to protect against. After the merger, a combined UP-NS could justify higher rates with any number of costs and complications from continuing to offer the rates that an independent NS, for example, would have set for the eastern leg and which would have supported competition between BNSF and UP, say, on the western leg of a move. Even if Applicants did offer a benchmark that tried to protect against this incentive to raise rates rather than one that

[199] Rocker and Elkins Second Errata VS, ¶ 166.

includes it, shippers and connecting railroads (and ultimately The Board) need the benchmark to be clearly defined so they can readily monitor it and so the commitment can be enforceable enough to offer any effective protection. Applicants have offered nothing to address these common issues that often limit even well-intentioned commitments.

4.5.3. Applicants' additional commitments do not replicate the discipline of competition

185. Applicants propose additional commitments and programs that fall short of addressing the foreclosure harms that will follow from the merger.

186. First, Applicants propose a "Targeted Access Program" ("TAP") as a "safeguard against unforeseen merger-related service disruptions" during the implementation of the merger.[200] The program is particularly short-term as switching orders granted through TAP terminate after six months, and the program itself will be in place for only three years.[201] That limited duration stands in stark contrast to the loss of competition, which is effectively forever. The program also has limited applicability as only certain

[200] Applicants' Second Response to Decision No. 21, "Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, July 27, 2026, *SUPP PAGE 23*.

[201] Applicants' Second Response to Decision No. 21, "Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, July 27, 2026, *SUPP PAGE 9, 128, 195* ("Applicants are committing to a new Targeted Access Program … Under the program, a sole-served customer located in a terminal area becomes eligible for expedited reciprocal switching… Switching prescriptions would be in place for six months and would terminate automatically. … This Targeted Access program shall remain in effect for three years from the effective date of STB approval of the Union Pacific-Norfolk Southern merger transaction.").

sole-served shippers located in terminal areas can make a claim of having their service disrupted under this program (while it is in effect). Even those shippers would have to show their disruption in the form of a dramatic change in one of two metrics that Applicants nevertheless reserve the right to dispute or to "cure" (which presumably only means bringing service "up" to the threshold of 70% or 85% degradation of the respective measure) in 30 days.[202] Whatever limited benefit, if any, the TAP may offer to some shippers in the short run, it will not address the harm to shippers from foreclosed competition that the merger causes. As I showed above, this foreclosure takes the form of both higher rates and a lot more of the traffic being carried on the single-line service – not a service disruption.[203] For almost all of the affected shippers, there will not be any disruption because they will agree to pay the higher rate and use the UP-NS service. TAP offers those shippers no recourse at all.

187. Second, Applicants commit to providing shippers written justification for rate increases over inflation and reporting monthly gateway interchange volumes.[204] These

[202] Applicants' Second Response to Decision No. 21, "Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, July 27, 2026, *SUPP PAGE 23–24* ("During the merger implementation period, if any UP/NS customer that is sole-served and located in a terminal area can show that its Original ETA or its ISP had deteriorated from pre-merger levels and is below 70 percent for Original ETA or below 85 percent for ISP, then that customer would be eligible for reciprocal switching without having to demonstrate the deterioration in service was merger related, unless the railroad proves an affirmative defense or cures the service deterioration within 30 days.").

[203] To the extent that higher rates are accepted based on a fear that, if the shipper does not accept the UP-NS single-line service, their existing interline service will be disrupted, TAP also does not prevent this fear from affecting the shipper's choice. A shipper that has access to the program would first need to experience the service degradation they fear before making a claim and would likely get, at most, a "cure" that is still a degradation.

[204] Rocker and Elkins Second Errata VS, ¶¶ 167–168.

commitments may enhance transparency but fail to meaningfully condition the merged firm's pricing behavior in scenarios where they have market power or the capacity to foreclose.

188. Third, Applicants propose an optional Alternative Dispute Resolution Program ("Rate ADR Program") to streamline rate disputes between customers and UP-NS.[205] However, even streamlined, the program does not replicate competition. When NS competes with CSXT, for example, to win the portion of a movement from the gateway to a destination in the East, they have to react in real time to improved offers from CSXT and they do that within a dynamic where both railroads try to make their service more attractive to the shipper. Competition works for shippers because of the immediate and automatic feedback railroads face of losing business if a rate is higher than the competitor's rate or if a railroad has not kept up on service improvements or any other aspect that matters to the shipper. Competition drives a railroad to set all of those factors where they have to be to win the business and balances the return of winning that business against all the legitimate considerations a railroad will have – direct operating costs, opportunity costs, investment costs, labor relations, and so many more. A regulatory process, whether it is streamlined arbitration or not, is not automatic. To be completely effective, it has to replicate that balancing process across all the relevant decisions. As a practical matter, that means even the most streamlined

[205] Applicants' Second Response to Decision No. 21, "Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No.0392FD 36873, July 27, 2026, SUPP PAGE 196.

process will be slower and rely on rules that imperfectly replicate the balancing act competition performs between the offer to shippers and the considerations of the railroad. Mr. Brooks identifies specific issues the arbitrator would have to address which are likely to keep this offer from streamlining the process effectively.[206] The program is also limited in scope both because it is temporary and because it excludes the traffic that has historically had enough competition to be exempted from regulation—as if those shippers will necessarily continue to have that competition after a UP-NS combination.[207]

[206] Verified Statement of John Brooks, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, November 18, 2026, Section V.

[207] Verified Statement of John Brooks, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, November 18, 2026, Section V.

5. Shippers today employ bargaining strategies that put UP and NS effectively into competition with one another – competition that will be lost and cost shippers significantly

189. The proposed merger would weaken geographic competition and deprive shippers of bargaining strategies that support more competitive rates and service offerings. In Section 4.1 above, I discussed the example of Schneider and the competition it enjoys today in picking an eastern and western carrier independently. The proposed merger would preclude it from using the strategy of playing off UP and BNSF against one another for its business in the West (with either of them working with CSXT as Schneider's chosen rail provider in the East) and then generating competition between CSXT and NS for that eastern business. {{REDACTED

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190. Some of the strategies that will be lost to shippers place UP and NS into competition with one another today. One such bargaining strategy available to shippers today is the ability to leverage multiple facilities served by different railroads across the country to receive better rates ("geographic bargaining"). Many shippers operate facilities in, receive deliveries from, or have customers in both the East and the West. These shippers' ability to choose how much traffic is moved by a single railroad gives them leverage and allows them to receive better rates than a shipper who relies on solely a single railroad. This geographic bargaining strategy creates horizontal competition between UP and NS, by letting shippers with multiple options decide on

which railroad to use. Shippers with a larger geographic scope have the potential to leverage this scope into better rates. Applicants' experts did not investigate this bargaining strategy.

191. The proposed merger, however, will substantially reduce these shippers' ability to bargain or leverage UP and NS against each other. Rather than being able to bundle routes to receive lower rates or threaten to move production, many shippers will be wholly reliant on a merged UP-NS and will see higher rates as a result. By creating a railroad that would be particularly difficult for shippers to avoid, the proposed merger will give a combined UP-NS significant leverage when negotiating with shippers who bargain over multiple facilities simultaneously, or who can leverage multiple options to reduce rates.

192. In this section, I discuss the implications of the merger on this form of competition in four parts. First, I describe how combining UP and NS would place more of those alternatives under common control, reduce shippers' ability to shift business, and increase the merged railroad's bargaining leverage (Section 5.1). Second, UP's own internal documents recognize that {{REDACTED

}} I provide evidence from the data that shippers will pay {{REDACTED }} due to such a reduction in bargaining leverage (Section 5.2). Third, I discuss how Applicants' experts ignore such competition completely, and how their analyses in no way incorporate or address such changes in bargaining leverage (Section 5.3). Fourth, I

discuss how Applicants' proposed regulations fail to preserve the competition that will be lost through UP-NS's increased geographic bargaining leverage (Section 5.4).

5.1. Shippers use their geographic dispersion to generate competition, including between UP and NS, for their overall bundle of movements

193. Shippers can discipline rates and service terms by changing sources or destinations, shifting production, and investing in facilities served by competing railroads. They can also negotiate across facilities and movements to obtain better terms. This "geographic bargaining" can occur even for facilities which are sole-served and are on both sides of a gateway. For example, a shipper with a UP sole-served facility and an NS sole-served facility can threaten to move production from one facility to another,[208] which applies to many shippers that operate facilities on both the eastern and western sides of the country. This method of competition holds even if these facilities only utilize single-line movements. The former Chief Executive Officer of Union Pacific, Lance Fritz, specifically noted that {{REDACTED

[208] "Should You Bundle Your Moves When Negotiating Rail Rates?" *RSI Logistics*, available at https://www.rsilogistics.com/blog/should-you-bundle-your-moves-when-negotiating-rail-rates/ ("A more effective scenario is for shippers to use competitive traffic as leverage to secure better rates on their captive lanes. Evaluating current treatment by captive railroads can be a factor in determining which competing carriers are provided the opportunity to bid on competitive lanes."); Congressional Research Service, "Railroad Access and Competition Issues," CRS Report RL34117, April 4, 2011, available at https://www.congress.gov/crs_external_products/RL/PDF/RL34117/RL34117.11.pdf, p. 4 ("And shippers with multiple facilities may have bargaining power even if an individual plant or distribution center appears to be a captive, as the shippers can agree to tender freight at competitive locations in return for favorable treatment at captive locations.").

}}[209]

194. Shippers have made clear their concerns that the proposed merger will result in declines in shippers' geographic bargaining leverage. Shippers' motions before the STB present concerns that the proposed UP-NS merger would harm shippers by giving UP-NS ability to leverage captive traffic to affect competitive traffic.[210] In particular, shippers warned that "the combined captive origins and destinations on UP and NS would give the merged entity a far greater concentration of closed industries than any of the other Class I carriers."[211]

[209] Deposition of Lance Fritz (former Chief Executive Officer, Board of Directors, UP), November 3, 2026, pp. 132:19–133:20 (discussing UP_3141193–227 at UP_3141227) {{REDACTED

}}

[210] Joint Shipper Associations' Motion for Summary Denial, "Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, August 6, 2026 ("Joint Shipper Associations' Motion"), fn. 76 ("In multiple Board proceedings, shippers have described a railroad's ability to exert market power by leveraging its captive lanes to also dictate terms for other traffic.")

[211] Joint Shipper Associations' Motion, p. 30.

195. Shippers can also benefit from geographic bargaining by bundling geographically disparate traffic across multiple routes to secure volume discounts. For example, a shipper with five facilities where three are served by Railroad A and two by Railroad B might be able to secure more favorable terms (e.g., through a volume discount) from Railroad A by shifting some production to the facilities served by Railroad A. NS's own documents {{REDACTED }}[212]

196. In addition, shippers can benefit from geographic bargaining by leveraging railroad competition for new facilities to lower the shippers' rates at existing facilities. That is, railroads may offer discounts for a shipper's existing business as a way to compete to be the provider for the shipper's new business. UP's own documents {{REDACTED }}[213]

197. A shipper's threat to move production to another facility or offer to create a new facility along a certain railroad's track, to secure a lower rate is less credible the fewer

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[212] As an example, {{REDACTED

}} See {{REDACTED

}} NS_00041822–34 at NS_00041823–4, {{REDACTED

}} See also {{REDACTED

}} NS_00041822–834 at NS_00041830–31.

[213] See {{REDACTED }} UP_0208474–505 at UP_0208492 {{REDACTED }}; UP_0082686.xls, {{REDACTED

}}

facilities it has independent of a particular railroad. In the same example, if Railroad A serves four of the five facilities, the shipper will have less credibility with threats to shift enough production to just the one facility not served by Railroad A to defeat a price increase at all of the others.

198. As the example illustrates, a shipper's ability to use its portfolio of movements and locations to generate bargaining leverage depends on how diversified those locations are relative to each railroad it faces on the other side of the bargaining table. The more of the shipper's network is dependent on one railroad, the more that railroad can leverage the *shipper's* dependence to demand higher prices or increased volume at competitive locations.[214] In effect, shippers that are less dependent on a single railroad will have more bargaining leverage (which they can use to get lower rates across all of their movements) and shippers that are more dependent on a single railroad will have less bargaining leverage and higher overall rates.

199. In the first instance, a merger can only either leave shippers unchanged or make them more dependent on the merged railroad.[215] This is because the merger can only increase the merged railroad's options to bargain over more routes simultaneously. At

[214] "Glossary of Terms," *Freight Rail Customer Alliance*, available at https://railvoices.org/the-issue/glossary-of-terms/ ("When railroad serves a customer at multiple locations, with at least one location 'captive,' the railroad sometimes quotes very high rates at the captive location. Then, the railroad may offer to reduce the rate at the captive location if the customer will also contract with the railroad at its competitive locations at higher than market rates.").

[215] Applicants may assert that shippers can eventually choose new locations to potentially counter this effect, but for a merger affecting as much commerce as the proposed UP-NS combination the amount of relocating of U.S. production capacity it might take to reverse this phenomenon is impractical to consider and would be tremendously disruptive.

the same time, the merger can only decrease shippers' alternative options to leave the bargaining table and turn to a different railroad. A merger like the proposed UP-NS combination would significantly disrupt this balance for many shippers, weakening their ability to negotiate discounts across routes while increasing the merged railroad's leverage to avoid price competition and prevent shippers from using previously available competitors. As stated by Lance Fritz, the former CEO and Chairman of UP's Board of Directors, {{REDACTED

}}.[216] The merger will result in UP getting substantially more {{REDACTED }} because for many shippers, they will become the sole option across a larger portion of their facilities, or even the sole option across all of the shipper's facilities.[217]

[216] Deposition of Lance Fritz (Chairman, Board of Directors, UP), November 3, 2026, pp. 132:19–133:20 (discussing UP_3141193–227 at UP_3141227) {{REDACTED

}}

[217] As discussed in Section 4.3.1, Dr. Israel relies on "one-lump" or "one monopoly rent" theory, which precludes these types of cross-route negotiations, and instead assumes that sole-served carriers cannot extend that leverage beyond the existing route. Dr. Israel refers to these as "bundling theories" and claims that he doesn't "know of a theory that holds up that says that combination creates more

200. I provide examples of this mechanism below. In the example shown in Exhibit 42, a shipper whose factory needs 150 units of input to operate can source between three geographically distinct UP, NS, and BNSF single-lines from facilities that each have a capacity of 100 units. Pre-merger, the shipper utilizes volume discounts to source a full 100 units from the cheapest carrier (BNSF) and sources the remainder from the second cheapest carrier (NS). Post-merger, the combined UP-NS can threaten to withhold the remaining 50 units as leverage to win additional traffic and will have capacity to serve all of the factory's needs. This shipper cannot credibly threaten to utilize only BNSF—that is not enough volume—meaning the shipper is now beholden to a higher-cost combined UP-NS to source its factory input, and UP-NS is able to win all of the traffic. This is a stylized example, but it illustrates how the merger shifts bargaining leverage to the merged UP-NS and leaves the shipper with higher rates post-merger.

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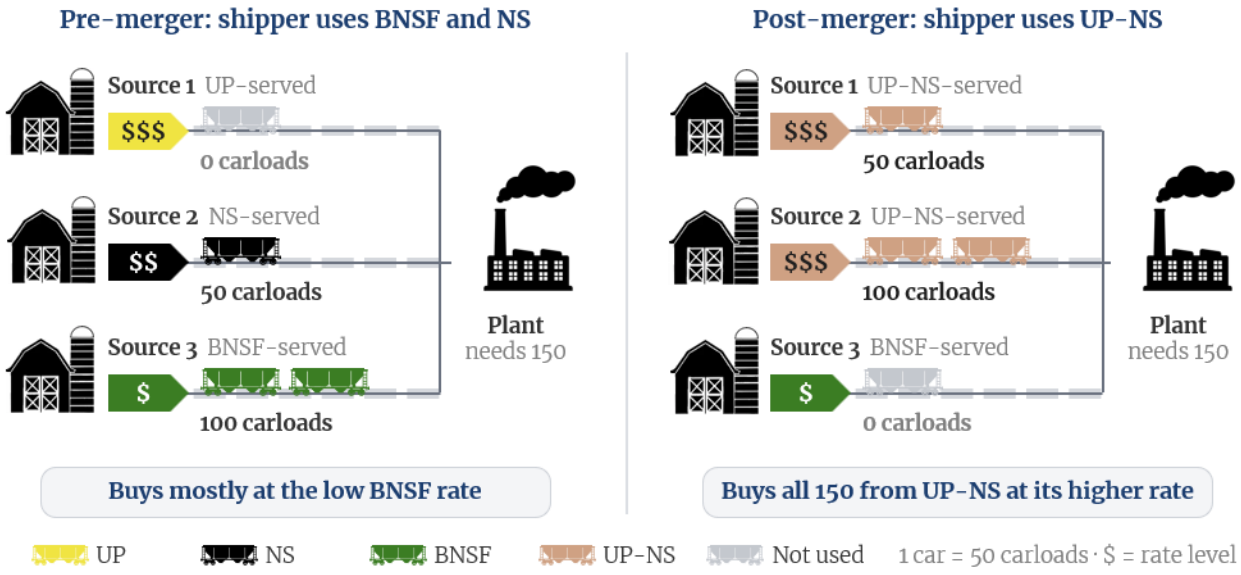
market power or something in a way that's anticompetitive." As I show in the remainder of this section, {{REDACTED }}. In addition, Dr. Israel's reference to "bundling theories" likely refers to a literature that models sellers as posting prices or making take-it-or-leave-it offers. That literature, however, generally does not consider the dynamics of price bargaining and thus is not applicable to this matter. Simply put, Dr. Israel's analyses—both theoretical and empirical—are completely at odds with the demonstrated realities of how prices and competition work in the railroad industry. See Israel Deposition, pp. 296:4–297:2 ("Q. So it's your testimony that there's no valid economic theory that you've ever seen that would find an anticompetitive effect to a shipper becoming more dependent upon a supplier as a result of a transaction? A. You know, certainly, the way you asked that, at a given shipper level, I have I don't know of an economic theory that concludes that that -- a valid economic theory that concludes that will have an anticompetitive effect. People have written down theories that say -- these are bundling theories, right. People have written down theories that say there may be reasons or that railroads or other businesses might try to raise prices on some of those routes they brought together in various ways. But those -- I don't know of a theory that holds up that says that combination creates more market power or something in a way that's anticompetitive.").

Exhibit 31
The proposed merger would shift the balance of shippers' bargaining leverage



Source: Hypothetical example
Note: The example above depicts a hypothetical shift in bargaining leverage following the proposed merger between UP and NS. Pre-merger, the shipper uses BNSF and NS, the cheapest carriers. Post-merger, UP-NS can refuse to serve the necessary 50 carloads and will leverage its bargaining power to win additional traffic and raise the shipper's rates.

201. As shown in its own documents, UP {{REDACTED

}}. For example, {{REDACTED

}}[218] As another example, UP's own strategic planning {{REDACTED

[218] {{REDACTED }} UP_2168208–13 at UP_2168213 {{REDACTED

}}

}}[219] Other record evidence likewise shows UP {{REDACTED }}.[220] As discussed above, this effect can go both ways—shippers can also utilize this type of cross-route leverage to obtain better terms. However, the proposed merger will enhance and expand the combined UP-NS's ability to raise rates, allowing the combined railroad to use its control over more captive traffic and facilities in negotiations over contestable business.

202. Notably, the type of competitive harm illustrated in Exhibit 31 {{REDACTED }} As I further explain below in Exhibit 33, a {{REDACTED

}}

[219] {{REDACTED }} UP_0884487–96 at UP_0884496 {{REDACTED

}}.

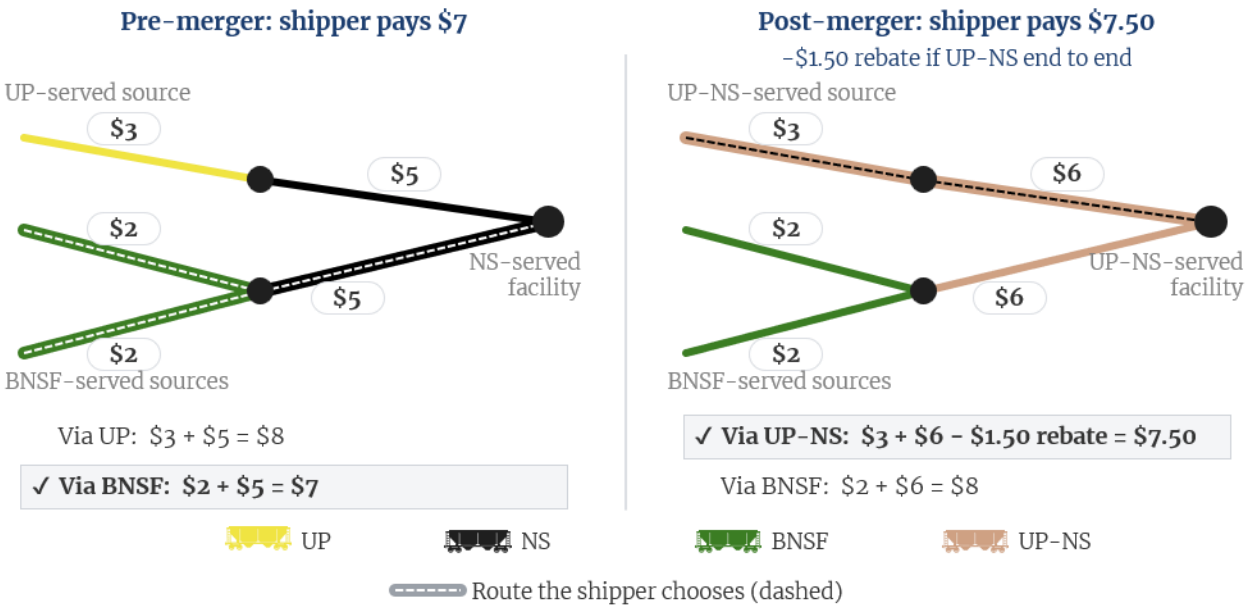
[220] {{REDACTED }} UP_1123948–60 at UP_1123958 {{REDACTED }}, UP_1123958 {{REDACTED }}; {{REDACTED }} UP_0209007–12 at UP_0209011 {{REDACTED }}. As another example, internal UP {{REDACTED

}} See {{REDACTED }} UP_0208474–505 at UP_0208486 {{REDACTED }}. {{REDACTED }} See workpaper 5-1.

203. The proposed merger will also result in harmful effects due to geographic bargaining if the combined UP-NS exercises its ability to foreclose other railroads. For example, a facility in the East may be sole-served by NS but has many options to procure an input from the West, some of which may be sole-served by UP and others sole-served by BNSF. Even though this facility is sole-served in the East, the shipper benefits from competition from different sources that are served by different railroads and are in different geographies. In Exhibit 32, I provide an illustrative example of such a shipper. Pre-merger, the shipper could source significant volume from facilities sole-served by BNSF and may bundle routes served by BNSF and pay rates ($2 per ton-mile) more favorable than UP's quote ($3 per ton-mile). The rate on the NS portion of the move is $5 per ton-mile, regardless of which railroad they interchange with.

204. Post-merger, the combined UP-NS can charge a higher rate on interchanges with BNSF ($6 per ton-mile). At the same time, UP-NS can offer a $1.50 per ton-mile rebate for volume or "bundle discount" if the shipper utilizes UP-NS only (for both the western and eastern portions of the move). This shipper chooses the cheaper option ($7.50 per ton-mile total), but is worse off post-merger, because they were paying $7 per ton-mile before.

Exhibit 32
Shippers benefit from source competition, and UP-NS will have an incentive to utilize its leverage to foreclose other competitor railroads



UP-NS raises the BNSF interchange price and offers a bundle rebate: **the shipper pays more**

Source: Hypothetical example
Note: The example above depicts a hypothetical shipper's bundling options following the proposed merger between UP and NS. The dashed line represents the shipper's chosen input. Pre-merger, they utilize the cheaper input from BNSF. Post-merger, UP-NS has an incentive to make BNSF interchanges more expensive, as reflected by the higher costs on those routes. As a result of UP-NS's imposed higher costs on BNSF interchanges, the shipper is paying $0.50 per ton-mile more post-merger.

205. As another example, the merged UP-NS can also use its leverage to weaken competition in the bids for portions of an interline movement, i.e. which railroad receives the longer portion of a move which can interchange in multiple locations. Specifically, shippers raised concerns that a combined UP-NS could use its increased leverage to win the longer haul without competing on the merits.[221] This ability to

[221] Joint Shipper Associations' Motion, p. 30 ("That could substantially increase the merged carrier's leverage in negotiations with customers to favor its long-haul routes over alternative interline routes by tying its rates on single-line routes to the customer's willingness to use the UP long haul routes on

avoid competing for longer haul on interline routes will increase the overall rate UP-NS can extract from shippers on these routes. Additionally, shippers are also concerned that if CSXT and BNSF are left to only serve short hauls, the reduced traffic would increase their average costs, which would increase their prices and/or lower their service quality across their entire network.[222] I discuss Applicants' failure to consider competition in the bids for interline moves where a longer haul is a source of shippers' negotiating leverage in Section 6.

206. UP's {{REDACTED

}}[223]

interline moves. … UP could short haul CSX and BNSF on all interline routes to CSX and BNSF destinations.").

[222] Joint Shipper Associations' Motion, p. 31 ("CSX and BNSF will experience the opposite: line-haul revenue erosion, reduced traffic density, higher cost per mile, and higher operating ratios across the traffic that remains on their networks.").

[223] See UP_0082686.xls, {{REDACTED

}}. See {{REDACTED
}}, UP_0097551–62 at UP_0097559 {{REDACTED }}; {{REDACTED
}} UP-STB-D13-0000430–51 at UP-STB-D13-0000436 {{REDACTED
}}; {{REDACTED }} UP_0023295–311 at
UP_0023305–6 {{REDACTED

}}

5.2. Empirical evidence, {{REDACTED }}, demonstrates that a combined UP-NS would have stronger geographic bargaining leverage, substantially harming shippers

207. In this section, I provide evidence that a combined UP-NS would have stronger geographic bargaining leverage and that this would substantially harm shippers. I first show that {{REDACTED

}}

208. Next, I perform my own analysis, {{REDACTED

}}, confirming shippers would pay substantially more in rates (or have their terms of service degraded) due to such a reduction in their bargaining leverage following a UP-NS merger.

(1) {{REDACTED }} UP-NS's increased leverage would harm a {{{REDACTED }}} number of shippers

209. {{REDACTED

[224]

}} [225] This analysis of potential competitive

[224] Deposition of John Turner (SVP Operations - Northern Region, UP), September 2, 2026, Exhibit 116, UP_0082882–936 at UP_0082914.

[225] {{REDACTED }} UP_0082459–553 at UP_0082536 {{REDACTED

harm {{REDACTED }} that advocated in this proceeding by the Joint Shipper Associations, which argued that "[t]he combined captive origins and destinations on UP and NS would give the merged entity a far greater concentration of closed industries."[226]

210. The same {{REDACTED }}.

Specifically, {{REDACTED

}}[227] Exhibit 33 shows

{{REDACTED

}}

}}

[226]Joint Shipper Associations' Motion, p. 30 ("The combined captive origins and destinations on UP and NS would give the merged entity a far greater concentration of closed industries.").

[227] See, e.g. {{REDACTED }} UP_0082459–553 at UP_0082508 {{REDACTED }}

Exhibit 33
{{REDACTED *}}

{{REDACTED

}}

Source: Deposition of John Turner (SVP Operations - Northern Region, UP), September 2, 2026, Exhibit 116, UP_0082882–936 at UP_0082914

211. {{REDACTED

}}[228]

212. I extend {{REDACTED }} and find that a UP-NS combination will affect a {{REDACTED}} number of shippers and stations all across the U.S. {{REDACTED

}} In Exhibit 35, I supplement {{REDACTED}} as the underlying data source to get a measure that is not limited to {{REDACTED }}. To do this, I focus on shippers' non-intermodal traffic and calculate the number of stations {{REDACTED }}. I implement {{REDACTED }} by identifying (1) the shippers who utilized both traffic sole-served by UP and by NS in 2024, and (2) the sole-served UP and NS stations used by these shippers.[229] I then illustrate the scope and spread of these stations in a map. In this calculation, I define the unit of "a shipper" by performing a limited aggregation of shipper names in the data.[230]

[228] Deposition of John Turner (SVP Operations - Northern Region, UP), September 2, 2026, Exhibit 116, UP_0082882–936 at UP_0082914.

[229] Here, I define a sole-served facility as one where UP or NS is the only railroad that is observed originating or terminating traffic from the facility for one or more routes (defined at the 6-digit origin and destination SPLC code level) in the Six-Railroad Tapes Data.

[230] I perform limited aggregation of shipper names in this analysis. I aggregate shippers' names across tapes by expanding common contractions (e.g., "CORP" -> "CORPORATION"), removing white space, and removing punctuation. I make no other changes. I do not consider intermodal movements when determining whether a shipper relied on sole-served UP and NS stations.

Exhibit 34
Map of stations meeting {{REDACTED }} metric for increasing UP-NS's bargaining leverage over shippers

{{{REDACTED

}}}

213. When using a definition of whether stations are "sole-served" based on which railroads are observed to carry traffic on a route, I find that {{REDACTED}} stations

plausibly meet {{REDACTED }} for increasing UP-NS's bargaining leverage over shippers.[231] These stations represent {{REDACTED}} of all Class I stations and {{REDACTED}} of all UP and NS stations which had observed waybill traffic since 2019.[232] These stations are {{REDACTED }}, demonstrating the {{REDACTED }} from UP-NS's increased geographic bargaining leverage over shippers.

214. In Exhibit 35, I put into perspective the amount of railroad revenue utilized by the shippers who are {{REDACTED }} from reduced geographic bargaining leverage {{REDACTED }}. I first calculate the total railroad spending from the same set of shippers I analyzed above (shippers who utilized both traffic sole-served by UP and by NS in 2024 who, {{REDACTED }}, would be plausibly harmed by a loss of geographic bargaining leverage) as a measure of the potentially harmed traffic.[233]

215. As discussed above, because these shippers utilize *both* sole-served UP traffic and sole-served NS traffic, their bargaining leverage will be shifted to the merged railroad. The increase in bargaining leverage might not only impact these shippers' prices on existing UP and NS traffic but could theoretically subject the rest of their movements to

[231] These stations are utilized by {{REDACTED}} shippers based on the simple name aggregation I utilized. The number of shippers and stations are {{REDACTED }} if I use Dr. Israel's definition of which stations are sole-served. See workpaper 5-2. As I discuss in Section 12.1.3, Dr. Israel's definition assumes competition exists even if there has been no observed traffic by a railroad for the last five years.

[232] See workpaper 5-2.

[233] Some traffic may be more or less harmed due to geographic bargaining effects.

harm. For example, as discussed above, the merged UP-NS could use its increased leverage to win existing business from other railroads, or short-haul its interline partners. The total amount of spending among the shippers potentially subject to harm from a decline in geographic bargaining leverage is {{REDACTED }}.

216. For comparison, I then calculate all UP-NS interline spending in 2024, which is the amount of spending subject to Applicants' claimed "end-to-end efficiency." As shown in the exhibit, the amount of spending subject to Dr. Israel's claimed efficiency gains is {{REDACTED }}. Therefore, {{REDACTED

}} As discussed below, Dr. Israel does not analyze the possibility of geographic bargaining effects in his analysis.

Exhibit 35
Total railroad spending on shippers subject to harm by geographic bargaining following {{REDACTED }} total UP-NS interline spending subject to claimed end-to-end efficiency gain, 2024

{{REDACTED

}}

217. The revenue figures in this analysis provide conservative estimates of the amount of revenue theoretically subject to the combined UP-NS's increased bargaining leverage. As this analysis does not fully aggregate shipper names, it may leave out

revenue from shipper subsidiaries that only utilize UP-sole served traffic and subsidiaries that only utilize NS-sole-served traffic. Moreover, this analysis does not account for the fact that at facilities which may appear to be served by multiple railroads, shippers are still beholden to certain railroads for specific types of movements (e.g., for specific commodities) for reasons such as network availability, routing preferences, or allocation agreements among railroads.

218. For example, a facility may be served by both UP and BNSF, but BNSF's access may depend on trackage rights over UP's tracks that are restricted to certain movements, such as eastbound traffic. There are also similar separations of servable traffic or restrictions based on particular commodities, ability to serve certain destinations or any number of other factors. Applicants' documents acknowledge such patterns—in UP's recent agreement with CN related to this merger, they agreed to "eliminat[e] paper barriers,"[234] which, loosely speaking, is a recognition that various restrictions persist from the long history of railroads granting rights meant to be targeted for any number of reasons but which today amount to barriers so that not all railroads serving a facility can serve all movements to and from that facility.

[234] Applicants' Second Response to Decision No. 21, "Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, July 27, 2026, p. 207 ("Elimination of Paper Barriers. If Union Pacific (a) removes any paper barrier on the Kansas City Line, or (b) grants any exception to any paper barrier on the Kansas City Line, Union Pacific would similarly remove or grant an exception to CN for any paper barrier on the Kansas City Line").

219. In general, accounting for shippers' actual options based on observed traffic for specific types of movements will tend to find increases in shippers' degree of dependence on a single railroad. In the extreme, a shipper who may appear to have multiple rail options, based on their presence at a location (as Dr. Israel's definition relies upon), may in practice be fully dependent on a single railroad for all of their movements.

(2) A case study of chemical shipments shows increased railroad leverage would increase rates

220. The analysis in Exhibit 35 did not incorporate shippers' actual options for specific movements and did not fully aggregate shipper names across the tapes. I attempt to do both in the analysis I present below, which focuses on shippers in a single commodity—chemicals.[235] For chemicals, I have a reasonable expectation that service at the customer's facility could be identified from a narrow location—chemicals offer a commodity group that has both frequent practical and regulatory restrictions on a shipper's ability to truck chemicals to a rail facility I might not otherwise be measuring,[236] and common carrier obligations that help ensure any Class I railroad

[235] These shippers represent {{REDACTED}} of the total revenue associated with chemical shipments in 2019–2024. See workpaper 5-3. Cleaning and aggregating shipper names across the six Class I railroad tapes is enormously difficult due to misspellings, subsidiaries, differing punctuation, and other factors. Dr. Bailey's Six-Railroad Tapes Data does not contain shipper names. To conduct analyses using shipper names I revisit Dr. Bailey's data processing to include the relevant variables in the Six-Railroad Tapes Data.

[236] As an example, the National Hazardous Materials Route Registry limits travel routes for hazardous materials via truck, and there is specific licensing for drivers seeking to transport hazardous materials. See "National Hazardous Materials Route Registry," *Federal Motor Carrier Safety Administration*, available at https://www.fmcsa.dot.gov/regulations/hazardous-materials/national-hazardous-materials-route-registry; "HAZMAT Endorsement," *Transportation Security Administration*, available at https://www.tsa.gov/for-industry/hazmat-endorsement ("The Hazardous Materials

capable of transporting chemicals at a customer location is most likely to be observed in the data on those movements.[237]

221. To incorporate into my analysis shippers' actual options that reflect network availability and routing preferences, I use these shippers' chemical shipments and examine these shippers' dependence on specific railroads over the past six years. I start by focusing on individual stations, and measure how often chemical shippers are captive to each Class I railroad at a station. I then focus on each shipper's chemical movements within a corridor and evaluate whether that shipper is dependent on any Class I for movements between that origin and destination. Using this, I construct a measure that captures the extent to which each individual chemical shipper is dependent on each of the Class I railroads across the entirety of the shipper's chemicals movements. I use this measure to evaluate the relationship between a shipper's dependence on each Class I and the rates it pays to move its chemical shipments.

Endorsement Threat Assessment Program conducts a Security Threat Assessment for any driver seeking to obtain, renew or transfer a Hazardous Materials Endorsement on a state-issued commercial driver's license. You should apply if you have a state-issued CDL and you are required to transport materials that require placarding under the Department of Transportation hazardous materials regulations"). See also 49 C.F.R. §§ 1011 and 1111 (August 6, 2020), citing Olin ("Olin argues that the 500-mile threshold is unreasonable for its chlor alkali products and that this factor should be removed entirely for chlorine and other hazardous materials that cannot readily or feasibly move by truck.").

[237] See 49 U.S.C. § 11101(a) ("A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall provide the transportation or service on reasonable request. … Commitments which deprive a carrier of its ability to respond to reasonable requests for common carrier service are not reasonable.").

222. First, I examine whether a station is captive to a railroad. If, for a given station, all chemical shipments to and from that station, and within a mile radius around that station, utilize a specific railroad, then I identify the station as captive to that railroad.[238] In the first results column of Exhibit 36, I show that {{{REDACTED}}} and {{{REDACTED}}} of chemical stations (weighted by revenue) are captive to UP and NS, respectively. This means that, post-merger, {{{REDACTED}}} of chemical stations (weighted by revenue) will be captive to the combined UP-NS.

[238] Because of the ability to utilize trucking as an alternative option, or to ship to another Class I, I treat all non-hazardous intermodal chemical movements as non-captive by default.

Exhibit 36
Shares of chemical revenue and stations that are captive to each Class I railroad

{{{REDACTED

}}}

223. Next, I examine whether a shipper's chemical movements between a given origin and destination are dependent on a single railroad. If for chemical movements between

an origin and destination, and within a 1-mile radius around that origin and destination, a shipper utilized routes which *always* involved a specific railroad (e.g., UP), I identify that shipper's movements in that corridor as captive to that railroad (in this example, UP).[239] I can then aggregate across all origin-destinations and across all chemical shippers to measure what share of chemical movements are captive to each Class I railroad.[240] I report these results in the rightmost column of Exhibit 36. Across chemical shippers, {{{REDACTED}}} of chemical revenues are captive to UP, and {{{REDACTED}}} of chemical revenues are captive to NS. Post-merger, {{{REDACTED}}} of chemical revenues will be captive to the combined UP-NS.

224. Within the subset of chemical shippers that I have matched and using the measure of a shipper's dependence on each Class I for movements in particular corridors, I can (i) establish the relationship between a decline in geographic bargaining leverage and the rates paid by the shipper and (ii) perform a back-of-the-envelope calculation of the magnitude of the merger effects. As discussed above, in previous smaller mergers, the potential impact of changing geographic bargaining leverage was small—the mergers were smaller and there was less consolidation in the railroad industry. So, rather than trying to project the effect of a UP-NS combination from earlier, very different merger events, I am instead looking at differences across shippers in their dependence on any

[239] A shipper's movements from a given facility can be dependent on more than one railroad. For example, a shipper may be dependent on (always use) UP for its movements going from Origin A to Destination B and dependent on (always use) BNSF for its movements going from Origin A to Destination C.

[240] As a conservative assumption, I treat any non-hazardous intermodal movements as not captive to any railroad (i.e., I assume that there is some other railroad they could have used).

given railroad, how that affects the rates they pay, and then how the merger will change each shipper's dependence on UP and NS and the rates it pays.

225. To examine the relationship between dependence on a single railroad and rates, I create a measure of how dependent a particular shipper is on a single railroad or set of railroads.[241] Using this metric of a shipper's geographic spread and its reliance on specific railroads, I utilize regression analysis to examine the relationship between that concentration and rates paid while controlling for the other observable factors in a given movement which are most likely to impact rates, such as the route traveled, the type of chemical shipped, and macroeconomic effects. I find that the more concentrated a shipper's movements, the higher rates paid across all movements.[242] That is, when a shipper's business is more reliant on a single or small number of railroads, that shipper tends to pay higher rates, on average.

226. Combining these regression results with each chemical shipper's individual change post-merger in how concentrated its business is on UP-NS, I can measure the merger's anticipated impact on shippers' bargaining leverage on the prices paid by chemical shippers. In Exhibit 37, I show that solely due to the merger's increase in concentration of their reliance on a merged UP-NS, these chemical shippers would pay an {{REDACTED }} per-year post-merger, an amount {{REDACTED }} the ostensible yearly benefit of Applicants' CGP after the first year. To put this in

[241] I discuss the construction of this metric, and its interpretation and applicability to shipper bargaining leverage in more depth in Appendix 12.3.1.

[242] For more details on the regression results, see Appendix Section 12.3.

context for shippers more generally, I perform two back-of-the-envelope calculations to estimate the total harm. In Approach 1, I apply the average harm among chemical shippers ({{REDACTED }}) to the shippers identified in Exhibit 35, who have at least one UP sole-served station and at least one NS sole-served station ("{{REDACTED }}"). The predicted harm to those shippers from a loss in geographic bargaining leverage would be approximately {{REDACTED }} per year.[243] In Approach 2, I apply a simple projection methodology based on the ratio of traffic among harmed chemical shippers to all non-intermodal traffic. Under Approach 2, I find that UP-NS's increased geographic bargaining leverage would translate into an {{REDACTED }} paid by shippers per year.

[243] As discussed in Section 12.3.3, I find that the average harmed chemical shipper pays rates which are approximately {{REDACTED}} higher. In Exhibit 35, I identified that a conservative estimate of the scope of harmed traffic is {{REDACTED }}. Assuming the shipper-level average increase in rates on {{REDACTED }} in traffic results in shippers paying an {{REDACTED }} per year due to reduced bargaining leverage. See Exhibit 37.

Exhibit 37
Predicted post-merger change in select chemical shippers' rates, and projections to all shippers

{{REDACTED

}}

227. Both this analysis and {{REDACTED }} demonstrate the importance of shipper bundling and geographic bargaining on prices. Dependence on a single railroad reduces shippers' bargaining leverage, forcing shippers to predominately or completely work with one railroad, and pay higher prices.

5.3. Applicants' experts ignore the possibility of geographic bargaining

228. Applicants' experts completely ignore the possibility of geographic bargaining. In their application, Applicants' experts did not provide any analysis investigating the impact of how the merger could reduce shippers' bargaining leverage, and whether individual shippers' increased dependence on a combined UP-NS could lead to higher rates.

229. Even though Dr. Israel admits that "a large fraction of interline rail shipments are governed by sophisticated contracts,"[244] he proceeds in his analysis as though each movement is negotiated entirely independently. In fact, Dr. Israel fails to acknowledge or analyze the possibility that the merger would shift bargaining leverage towards the merged UP-NS at all.[245]

230. Moreover, none of Dr. Bailey's screens identify any shipper's bundle of locations, and therefore none of her screens can purport to analyze the bargaining leverage shippers would lose as they become increasingly dependent on a combined UP-NS.[246]

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[244] Israel Second Errata VS, ¶ 20.

[245] Israel Deposition, pp. 65:7–66:1 ("Q. I guess I'm asking a more specific question. Is there any part of your verified statements that address the bundling concerns that are described on Page 30 of the Joint Shipper Associations submission? A. I don't think this sort of bundling statement as it's made here is addressed explicitly in my verified statements thus far. These bundling -- these sort of bundling theories have a history in economics. Economists generally find it difficult to find a bundling theory like this that holds up as a matter of economics. So it's not something I addressed in my verified statements, but given that comments are coming in on this basis, you know, perhaps it's something I would reply to, and so it's something that I'm -- that I've been considering.").

[246] I discuss the flaws in Dr. Bailey's screen further in Appendix Section 11.

a. For example, Dr. Bailey's "customer analysis" screen focuses on individual customer facilities that are currently served by both UP and NS.[247] But it does not identify all of a customer's facilities and therefore cannot identify how a shipper's dependence on a combined UP-NS would change, based on that shipper's bundle of locations.

b. Similarly, Dr. Bailey purportedly screens for geographic competition in her "between-corridor" analysis, but the "50/10" screens she uses are incapable of assessing the options provided at each of the multiple locations to/from which a shipper may require transportation. Rather, the "50/10" screen focuses on competition for all the shippers in one single area across all the plausible origins or destinations for the products they ship. That is a different aspect of geographic competition.

c. Finally, her "within-corridor" screen cannot identify the merger-induced harm a shipper like the ones I have described above will face. This analysis focuses on "horizontal competition to transport freight along the same segment of specific

[247] Bailey Second Errata VS, ¶¶ 106, 109 ("I analyze the scope for adverse competitive effects from situations where UP and NS both serve the same customer location or the same geographic area. … This review provisionally identifies customer facilities where a combination of UP and NS would reduce the number of railroads accessible to the customer from 2-to-1 or from 3-to-2."); Bailey Deposition, pp. 188:19–189:19 ("Q. The access to customer analysis only looks at whether UP and NS serve the same customer location, right? A. I mean, it's asking are they serving that customer facility. That's what it's -- that's what it's looking at. It's looking at access to customers. Q. But the access to customer analysis doesn't assess whether UP or NS serve different facilities for the same customer, right? A. So what I looked at here was access to the -- who has access to that facility. That's the work that I did here. I mean, I have other access that's looking within the corridor or between corridors, but -- but for customer facilities, I'm looking at each facility.").

corridors."[248] It does not identify individual customers, or individual customer facilities, and so cannot gauge whether shippers will become more dependent on a combined UP-NS (and how that might impact their bargaining leverage or the rates they face).

231. Similarly, Mr. Hunt's analysis of diversions assumes that shippers decide on movements in separate lanes completely independently.[249]

232. As Dr. Bailey acknowledged in her December 2025 verified statement, "[s]hort run competition between railroads with direct connections to customer facilities is not the only way in which railroads compete."[250] Applicants' analyses of the impact of the merger are completely at odds with the reality of railroad pricing, where railroads and

[248] Bailey Second Errata VS, ¶ 120.

[249] Hunt Deposition, Vol. II, pp. 611:3–612:22 ("Q. Okay. So I think I'm getting it slightly different. So let me see if we can get on the same page. So with respect to a specific diversion prediction, you are taking a lane and predicting, based on the improved characteristics post merger, what decisions shippers will make in that lane post merger, correct? A. Yes. Q. Okay. What that same shipper might do in a separate lane has no impact on your prediction in the first lane, correct? A. Those are -- the lane characteristics would be different. Those are independent decisions. Q. Right. Your model treats them as independent decisions, correct? A. That is correct. Q. Okay. Your model doesn't take into account whether a shipper might be negotiating several lanes at a time and whether those decisions might be made jointly as opposed to independently, correct? A. I do not use shipper information in the model, so that is not a consideration. Q. Okay. Is it your testimony that -- that what I described doesn't happen in the real world? A. That is not my testimony.").

[250] Verified Statement of Elizabeth M. Bailey, "Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, December 17, 2025, ¶ 68. Dr. Bailey removed this statement from later verified statements. In her deposition, Dr. Bailey admits that it "is possible" that she did not analyze all potential forms of horizontal competition in her VS. Indeed, I identify many instances of missed competition (by both Dr. Bailey and Dr. Israel) in Sections 4–6. Bailey Deposition, pp. 152:23–153:6 ("Q. So it's possible that there are other ways of horizontal competition that you did not assess in this report? A. I mean, anything is possible, but it's not necessarily probable. And so my -- my assignment was to analyze potential losses of horizontal competition. And so these are the ways that I did it.").

shippers frequently bargain across geographically disparate routes and leverage options to leave the bargaining table to turn to a different counterparty. As I show above, the merger will substantially shift bargaining leverage, allowing the merged UP-NS to raise prices.

5.4. Applicants' proposed remedies fail to address UP-NS's combined bargaining leverage

233. Applicants' offered remedies to particular facilities do nothing to address geographic bargaining leverage. Dr. Bailey and Ms. Novak seek to identify particular facilities which they identify as potentially losing access to a Class I as a result of the merger. For example, Dr. Bailey examines SCRS data in order to "identif[y] customer facilities where a combination of UP and NS would reduce the number of railroads accessible to the customer from 2-to-1 or from 3-to-2."[251] Ms. Novak outlines a similar process, where Applicants "carefully reviewed their records and other available information to identify 2-to-1 shipper facilities."[252]

234. As I discuss further in Section 11, these investigations into specific facilities completely miss the mark on the ability of the merged UP-NS to be able to leverage its unprecedented size and scope when bargaining with shippers across multiple geographies. If there is a shipper with two separate facilities, one sole-served by UP

[251] Bailey Second Errata VS, ¶ 109.

[252] Verified Statement of Katherine N. Novak, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," April 30, 2026 ("Novak VS"), ¶ 53.

and one sole-served by NS, they will be directly harmed by the merger due to a loss of geographic bargaining leverage. Neither Dr. Bailey nor Ms. Novak's analyses address these concerns.

235. Beyond promises of access to specific facilities, Applicants have also offered additional regulatory commitments in an attempt to address specific potential harms to shippers. Again, these commitments fail to address the impact of UP-NS's increased geographic bargaining leverage.

236. First, the TAP only relates to service disruptions—a shipper who is forced to shift their traffic to UP or pay higher rates does not benefit from this program unless there is a service reduction.[253] Second, commitments to written justifications for rate increases fail to limit railroads' ability to raise rates. Third, Applicants' proposed Rate ADR program relies on proving UP-NS's market dominance. If UP leverages market dominance in one area to increase rates in other areas the shipper operates, the arbitrator may find that the combined UP-NS does not have market dominance in the affected routes. Even outside of that concern, shippers can only win rate relief under this system if UP-NS's rates are above the relevant cost threshold, regardless of any other proof of market dominance.[254]

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[253] Applicants' Second Response to Decision No. 21, "Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company", Docket No. FD 36873, July 27, 2026, *SUPP.* p. 189.

[254] Applicants' Second Response to Decision No. 21, "Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway

237. Overall, Applicants' claimed remedies, either through voluntary commitments or via proposed access to specific facilities, do nothing to address the specific concern of a merged UP-NS's increased geographic bargaining leverage.

Company," Docket No. FD 36873, July 27, 2026, Supp. p. 198 ("Notwithstanding anything to the contrary, a carrier does not have market dominance for any rate with a revenue-to-variable cost (R/VC) ratio below 180%.").

6. The merger would eliminate competition between UP and NS for a greater portion of the interline movements in which they participate

238. In this section, I discuss another way shippers benefit from competition between UP and NS that Applicants' experts have not considered: competition to carry the middle of an interline movement. Although UP and NS provide complementary service at opposite ends of the movement, they can compete head-to-head to carry a middle segment that either railroad could serve, by competing over the interchange point.

239. The networks of UP and NS are such that there are often multiple possible interchange points on current UP-NS interlines, which introduces opportunities for each of them to win a greater portion of the profit from any particular interline move. Some interchange points give UP the "longer haul" and some interchange points give NS the "longer haul." The railroad that carries the "longer haul" (or the "middle" part of the movement) tends to earn higher revenues and higher margins. This opportunity to earn higher profits (or the threat of earning less) generates competition between the railroads to win the middle of the movement and an incentive to offer the shipper more competitive rates to influence the choice of interchange point

240. In this section, I first explain how shippers benefit from this competition, which would evaporate if UP and NS were to merge (Section 6.1). Second, I show that the empirical evidence suggests that this interchange point is often at issue (Section 6.2). Third, I explain that Applicants' economists do not analyze or even acknowledge the merger's implication for this competition that shippers currently enjoy, despite

claiming to analyze instances where UP and NS directly compete (Section 6.3). Finally, I explain that Applicants do not consider the horizontal competition over the middle of the movement in any of their proposed commitments. The commitment they claim will protect shippers will not replace the loss of shippers' ability to put UP and NS in competition over the middle of the movement (Section 6.4).

6.1. Shippers benefit from UP and NS each trying to get the longer haul to maximize their share of revenues in interline movements

241. Railroads that serve either end of a movement (like UP and NS) can be seen as offering complementary service: neither railroad can offer single-line service, so one railroad offers the originating service, and the other railroad offers the terminating service. However, these railroads can still have head-to-head competition with one another over a segment that either railroad could provide.

242. This form of competition occurs when the networks of the two interlining railroads are such that there are multiple possible interchange points. This is especially the case for many interline movements involving the UP and NS networks, and especially for movements that cross the Watershed. Some interchange points give UP the "longer haul," meaning that UP gets to ship the movement farther toward its destination before interchanging. Other interchange points give NS the "longer haul," meaning that NS gets to ship the movement further. Whichever railroad gets the longer haul effectively wins the "middle" of the movement, the portion of an interline

movement that either UP or NS could ship depending on the chosen interchange. Carrying the longer haul tends to earn the railroad higher revenues.

243. This opportunity to earn higher revenues (or the threat of earning less) generates competition between the railroads to win a greater share of the origin-destination mileage on a move—the middle of the movement—that either of them can provide. Though the winner of this extra share of mileage will bundle it with the end they can provide, rather than set a separate rate for it, the competition to win it is effectively head-to-head competition between UP and NS. The prospect of winning the middle segment is an incentive to offer the shipper more competitive rates on hauls that include the middle to influence the choice of interchange point.[255] This form of competition would not be accounted for in traditional screens that look only at the number of independent railroad pairings available to a shipper.

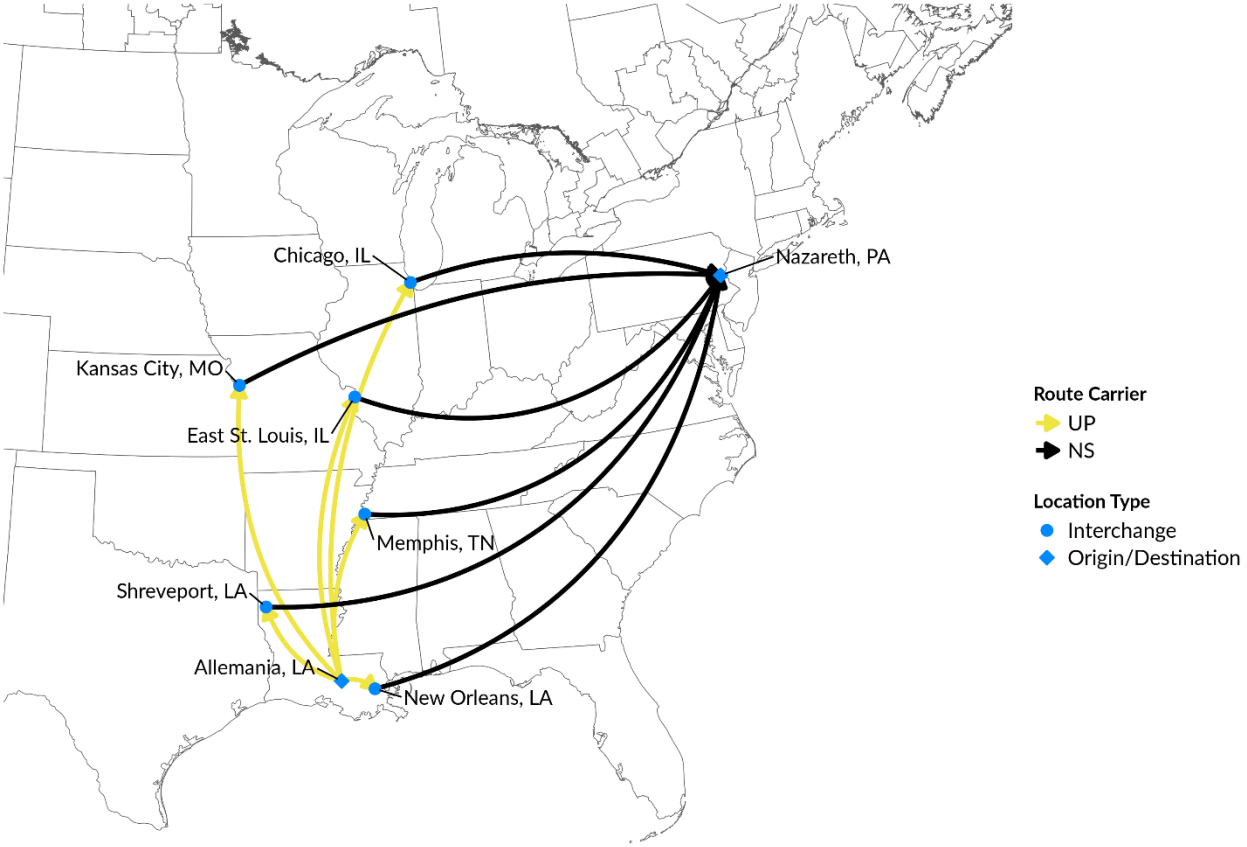
244. To see how this competition might play out in practice, consider a shipper that needs to move chemicals from Louisiana to Pennsylvania. The shipper is only served by UP in Louisiana and only served by NS in Pennsylvania. Neither UP nor NS could serve the full movement for this shipper (i.e., UP must always originate it, and NS must always terminate it), but both railroads could serve a large part of the movement as can be seen below in Exhibit 38. Because the UP and NS networks connect at multiple

[255] Applicants acknowledge this competition in their response to the motions seeking summary denial of the proposed merger application for failure to establish a prima facie case. See, e.g., Applicants' Prima Facie Response, p. 29 ("As the Interstate Commerce Commission recognized, 'Railroads compete with each other for the longest haul and maximum revenue on traffic.'").

points, the movement could interchange in, for example, Chicago, Kansas City, East St. Louis, Memphis, or New Orleans.[256] The interchange point will determine which railroad serves the larger part, i.e., carries the "middle" of the movement.

[256] I understand UP and NS both interchange in {{REDACTED }}. See e.g., {{REDACTED }} UP-STB-D13-0000381–402 at UP-STB-D13-0000389; {{REDACTED }} NS_STB_00001339–42 at NS_STB_00001339.

Exhibit 38
UP and NS can compete over the "middle" of a movement between Louisiana and Pennsylvania



Source: Hypothetical Example
Note: This exhibits shows a hypothetical example of various interchange points for a possible interline movement that UP originates in Allemania, LA and NS terminates in Nazareth, PA. Exhibit 29 shows the UP and NS rail networks. I understand UP and NS both interchange in {{REDACTED }}. See e.g., {{REDACTED }} UP-STB-D13-0000381–402 at UP-STB-D13-0000389; {{REDACTED }} NS_STB_00001339–42 at NS_STB_00001339.

245. As demonstrated in Exhibit 38, UP and NS compete over which railroad will carry the middle of the movement and for how long. For example, if the movement interchanges in New Orleans, UP will carry the movement just {{{REDACTED}}} miles from Allemania, LA to New Orleans representing just {{{REDACTED}}} of the total mileage, and NS will carry the movement for a longer haul from New Orleans, LA

to Nazareth, PA, representing {{{REDACTED}}} of the total mileage.[257] As the interchange point moves north, UP generally carries the movement longer and for a greater percentage of the total mileage. For example, if East St. Louis is the interchange point, UP will carry the movement {{{REDACTED}}} miles from Allemania, LA to East St. Louis, IL, representing {{{REDACTED}}} of the total mileage, and NS will carry the movement {{{REDACTED}}} miles from East St. Louis, IL to Nazareth, PA, representing {{{REDACTED}}} of the movement.[258] If the interchange point moved even further north (e.g., to Chicago, IL) UP would carry approximately {{{REDACTED}}} of the miles on the movement, and NS would carry approximately {{{REDACTED}}} of the miles on the movement.[259]

246. Based on the potential interchange points for the origin-destination pair in Exhibit 38, UP will carry the movement for at least {{{REDACTED}}} of the total mileage on its shortest possible movement. Similarly, NS will carry the movement for at least {{{REDACTED}}} on one of its shortest possible movements. So, the actual interchange point determines how much of the remaining "middle" (at least

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[257] See workpaper 6-1.

[258] See workpaper 6-1.

[259] {{{REDACTED

}}} UP carries the movement {{{REDACTED}}} miles, and NS carries the movement {{{REDACTED}}} miles. {{{REDACTED {{{REDACTED}}} {{{REDACTED}}}

}}} See workpapers 6-2, 6-3, and 6-4.

{{{REDACTED}}} of the mileage) each railroad gets to carry and correspondingly affects their split of the revenue.

247. This wide range permits the shipper to solicit—or either railroad to offer—competing packages built around different interchange points. Each railroad can lower its rate in exchange for the longer haul, and the shipper can select the package with the lowest total price.[260] After the merger, UP-NS would carry the entire movement by default and would no longer compete with itself over either the interchange point or the associated revenue, stripping shippers of the benefits of this competition.

6.2. UP and NS compete for the middle of interline movements

248. Competing over the middle of the movement is not only a hypothetical thought exercise: the data show that the choice of interchange point is often at issue. Railroads

[260] Railroads tend to earn higher profits on longer hauls because they can spread the fixed costs over more miles, lowering the average cost per mile. Applicants recognize this in their response to the Prima Facie case. See Applicants' Prima Facie Response, p. 29 ("As the Interstate Commerce Commission recognized, 'Railroads compete with each other for the longest haul and maximum revenue on traffic.'"). See also John D. Bitzan and Fecri Karanki, "Costs, Density Economies, and Differential Pricing in the U.S. Railroad Industry," *Transport Policy*, 119, 2022, pp. 67–77, at p. 68 ("…increased efficiency of longer hauls due to the spreading of fixed terminal costs over more miles."). See also Joint Shipper Associations' Motion, p. 31 ("…UP could short haul CSX and BNSF on all interline routes to CSX and BNSF destinations. Although the Application considers the first threat, it is silent on the second. Yet the second threat is more pervasive in scope and will have network impacts that redound well beyond just the directly affected movements. Also, unlike the first threat, which the Applicants claim as a public benefit because it would convert interline moves to single-line moves, the second threat offers no such benefit. The post-merger route will remain interline; only the interchange location will change. … First, CSX and BNSF will lose line-haul revenue as UPNS performs a larger share of the movement. Second, CSX and BNSF must recover substantially the same network fixed costs over fewer line-haul miles, increasing their average cost per remaining mile of service.").

(and specifically, UP and NS) compete for the longer haul in practice. {{REDACTED

}}[261]

249. Moreover, I can observe that UP and NS often interchange their traffic at locations that suggest they often compete for the longer haul between them rather than conform to their pre-agreed interconnect points.[262] That is, UP and NS have posted publicly available routing guidelines on their websites that outline the pre-arranged handoff points for general merchandise movements that are served by both UP and NS, as can be seen in Exhibit 39 below. For example, UP and NS provide guidance that general merchandise movements between the Livonia, LA ("LI") region and the mid-Atlantic ("A1") region (like a movement from Allemania, LA to Nazareth, PA, as depicted in Exhibit 38 above) will hand off in New Orleans, LA.[263]

[261] {{REDACTED

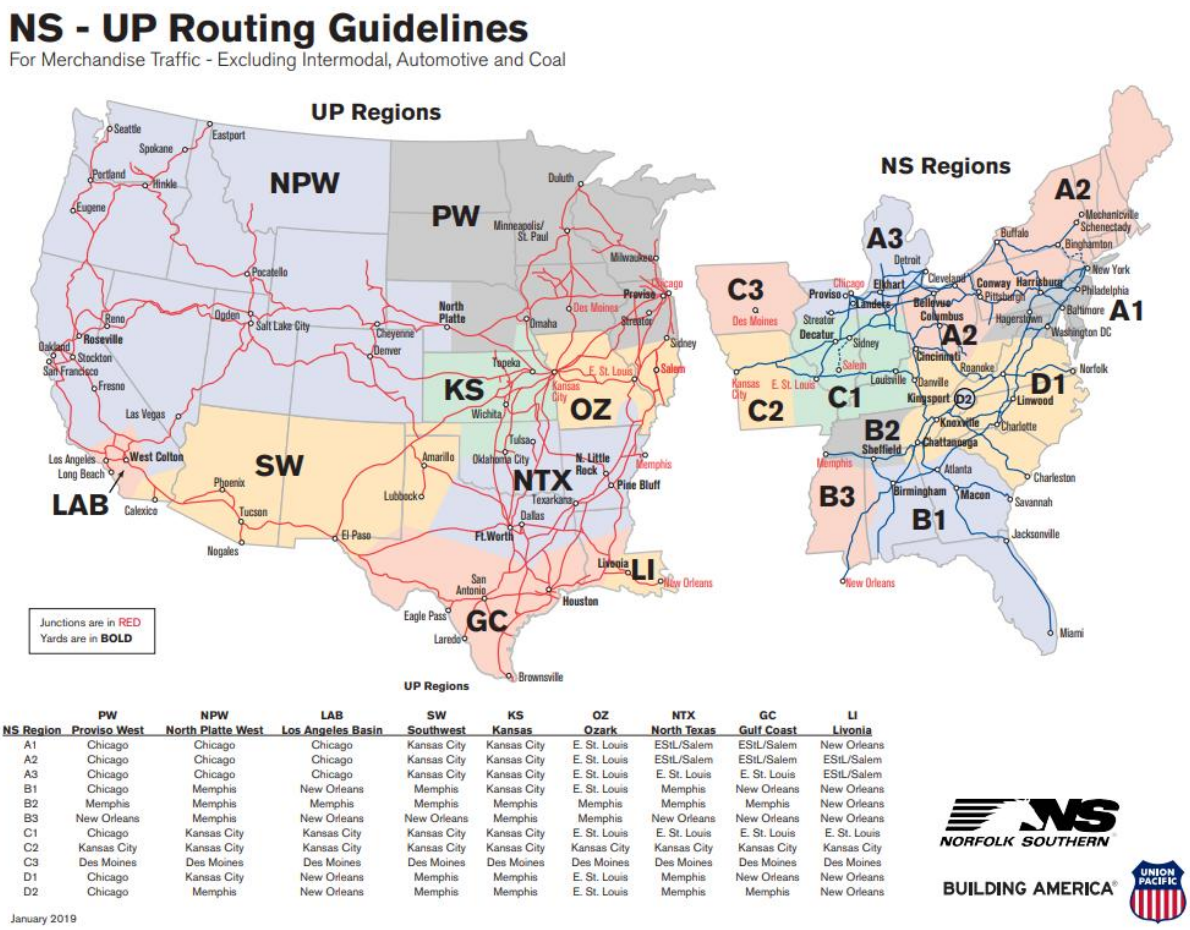
}} NS_00330522–30 at NS_00330524.

[262] This is not to say that every move that occurs at the pre-arranged interconnection point had no competition over the middle. During negotiations, the railroads and a shipper may make offers that include a set of rates at the designated location alongside other rates at other locations. Consequently, the data do not distinguish moves that had such negotiations from ones that may not have.

[263] I understand the UP-NS Routing Guidelines published on the UP website to be the current version. I understand {{REDACTED }} See, e.g., {{REDACTED

}} UP_1047843–87 at UP_1047851.

Exhibit 39
UP-NS routing guidelines for General Merchandise traffic



NS Region	PW Proviso West	NPW North Platte West	LAB Los Angeles Basin	SW Southwest	KS Kansas	OZ Ozark	NTX North Texas	GC Gulf Coast	LI Livonia
A1	Chicago	Chicago	Chicago	Kansas City	Kansas City	E. St. Louis	EStL/Salem	EStL/Salem	New Orleans
A2	Chicago	Chicago	Chicago	Kansas City	Kansas City	E. St. Louis	EStL/Salem	EStL/Salem	EStL/Salem
A3	Chicago	Chicago	Chicago	Kansas City	Kansas City	E. St. Louis	E. St. Louis	E. St. Louis	EStL/Salem
B1	Chicago	Memphis	New Orleans	Memphis	Kansas City	E. St. Louis	Memphis	New Orleans	New Orleans
B2	Memphis	Memphis	Memphis	Memphis	Memphis	Memphis	Memphis	Memphis	New Orleans
B3	New Orleans	Memphis	New Orleans	New Orleans	Memphis	Memphis	New Orleans	New Orleans	New Orleans
C1	Chicago	Kansas City	Kansas City	Kansas City	Kansas City	E. St. Louis	E. St. Louis	E. St. Louis	E. St. Louis
C2	Kansas City	Kansas City	Kansas City	Kansas City	Kansas City	Kansas City	Kansas City	Kansas City	Kansas City
C3	Des Moines	Des Moines	Des Moines	Des Moines	Des Moines	Des Moines	Des Moines	Des Moines	Des Moines
D1	Chicago	Kansas City	New Orleans	Memphis	Memphis	E. St. Louis	Memphis	New Orleans	New Orleans
D2	Chicago	Memphis	New Orleans	Memphis	Memphis	E. St. Louis	Memphis	Memphis	New Orleans

Source: NS-UP Routing Guidelines For Merchandise Traffic – Excluding Intermodal, Automotive and Coal, as of September 25, 2026

250. When I examine where traffic in these corridors was actually interchanged, I find that the point of interchange often varies from the routing guidelines and that the difference in the portion of the route that each handle is often significant. Indeed, UP and NS {{{REDACTED }}} deviate from the publicly posted guidance. For instance, more than {{{REDACTED}}} of UP-NS interline general merchandise carloads between the LI and A1 regions do not use the designated interchange point (New Orleans, LA). Instead, almost {{{REDACTED}}} of these deviating carloads

({{{REDACTED}}}) interchange in {{{REDACTED }}}.[264] When this deviation from the designated routing happens, UP gains a longer haul compared to the length of haul it would have according to the published UP-NS routing guidelines, as can be seen in Exhibit 40 below.

[264] See workpaper 6-5.

Exhibit 40
UP wins a longer haul when it deviates to {{{REDACTED }}}, while NS wins a longer haul when it interchanges in New Orleans

{{{REDACTED

}}}

251. The Louisiana-Pennsylvania example is not isolated. This type of competition can be generated in many places and on many movements—anywhere the UP and NS networks have multiple interchange points to complete the movement along the corridor, allowing one railroad to win the longer haul.

252. To illustrate this, I show in Exhibit 41 the rate at which the interchange point for interline movements between UP and NS deviates from the interchange point laid out in UP's and NS's publicly posted guidelines.[265] This analysis makes clear that such deviations happen frequently. There are {{{REDACTED}}} UP-NS region pairs that have {{{REDACTED }}} deviating from the publicly available guidance each year.[266] This {{{REDACTED}}} deviation is consistent with UP and NS competing over the middle of the movement and suggests that this is one significant way that shippers benefit from competition today.

[265] This exhibit focuses only on region pairs where deviating total revenue averages {{{REDACTED }}} annually.

[266] See Exhibit 41. There are 99 region pairs designated in the routing guidelines. There are 9 UP regions and 11 NS regions, leading to 99 region pairs (11*9=99). See "NS-UP Routing Guidelines For Merchandise Traffic - Excluding Intermodal, Automotive and Coal," *Union Pacific*, available at https://www.up.com/content/dam/upcom/migration/uprr/customers/documents/up-pdf-nativedocs/pdf-up-shortline-ns-routing.pdf.

Exhibit 41
Share of interline revenue deviating from UP-NS routing guidelines for merchandise traffic, 2019–2024

{{{*REDACTED*

}}}

253. This indicates that UP and NS often engage in this direct competition over who gets the benefit of the longer haul (who wins their competition for the middle segment) particularly for the movements traversing the Watershed. Even when movements interchange in the designated interchange spots, UP and NS may still have been competing over the "middle" of the movement and just landed where they had pre-arranged. So, for many movements that UP and NS interchange, shippers today are likely able to benefit from competitive pressure on the overall bids as a result of options over and competition for the interchange point—competition that will evaporate if UP and NS are allowed to merge.

254. The amount of traffic exposed to this lost competition is {{{REDACTED }}}. UP and NS currently interchange traffic generating {{{REDACTED }}} in average annual revenues including {{{REDACTED }}} in revenue from general merchandise movements.[267] Traffic generating {{{REDACTED }}} in average annual revenues from general merchandise moves between origins and destinations that are served only by UP and NS.[268] If UP and NS were to merge, shippers on these movements would lose the ability to benefit from this competition (and lose the more favorable rates it engenders from UP and NS).

255. Beyond the fact that UP and NS are competing over the interchange point of the movement on moves they interchange, the data also show that these "middles" of the

[267] See workpaper 6-6. Routing guidelines are for merchandise movements.
[268] See workpaper 6-6.

movement that railroads bargain over are often substantial. As Exhibit 42 below shows, in {{{REDACTED }}} ({{{REDACTED}}} of {{{REDACTED}}}) of the region pairs identified above, UP and NS bargain over at least one third of the movement, i.e., the "middle" of the movement is often at least 33%. In {{{REDACTED }}} of the region pairs ({{{REDACTED }}}), UP and NS bargain over at least half of the movement.[269] The longer the "middle" of the movement (i.e., the longer each railroad could feasibly carry the movement), the greater the stakes in terms of the portion of revenue each railroad could win. Railroads are likely to compete more intensely for the "middle" of the movement if there is more revenue at play. That the "middles" of these movements are often substantial indicates that both UP and NS have an incentive to engage in this bargaining today, when the railroads compete with one another for the "middle" of the movements.

[269] Moreover, as discussed above, it is likely that the true "middle" of the movement that shippers and railroads bargain over is longer than the observed deviations, as the deviation point is an outcome of bargaining.

Exhibit 42
General merchandise region pairs and contested distance shares

{{{REDACTED

}}}

256. Were UP and NS to merge, they would no longer compete, and shippers would cease to benefit from any competition over the "middle" of the movements involving

both UP and NS. As demonstrated above, the merger would eliminate that competition across {{{REDACTED }}}.

6.3. Applicants' screens do not analyze competition for the middle of interline movements

257. Any analysis of the competitive effects of this proposed merger must include an analysis of how loss of competition for the "middle" of the movement will affect shippers. Yet Applicants and their experts fail to even acknowledge that this form of competition exists today, let alone that it is at risk if UP and NS were to merge. Therefore, their analysis ignores completely an area of significant potential loss of competition and risk of harm to shippers.

258. For example, a shipper that currently benefits from railroads directly competing over the middle of a movement would not be picked up by any of the three screens Dr. Bailey runs, despite Dr. Bailey claiming to analyze direct, horizontal competition.

a. Dr. Bailey's "customer analysis" screen focuses on individual customer facilities that are currently served by both UP and NS.[270] By definition, a shipper such as the one I described above, shipping a movement from Louisiana to Pennsylvania—is served by UP on one end of an interline movement, and NS on

[270] Bailey Second Errata VS, ¶ 106 ("I analyze the scope for adverse competitive effects from situations where UP and NS both serve the same customer location or the same geographic area."), ¶ 109 ("This review provisionally identifies customer facilities where a combination of UP and NS would reduce the number of railroads accessible to the customer from 2-to-1 or from 3-to-2.").

the other—would not be picked up by this screen, since this shipper is not served by both UP and NS at its facility.

b. Dr. Bailey's "within corridor" screen focuses on "horizontal competition to transport freight along the same segment of specific corridors."[271] Despite the fact that—as I explained above—UP and NS directly compete for the middle of the movement, Dr. Bailey's screen would not identify a shipper such as the one I described above. This is because the data only show the observed winner of the competition: that UP serves one end of the movement and NS serves the other. The fact that UP and NS competed directly for the middle of the movement (and the winner of the middle segment bundled it with the endpoint it serves) is lost by her screen.

c. Finally, Dr. Bailey's "between corridor" screen also would not identify competition over the middle of a movement. Dr. Bailey's "between corridor" screen relies on a 50/10 screen as the first stage to flag a list of origin-commodity pairs (or destination-commodity pairs). A pair is "flagged for further review if (1) a combination of UP and NS would have a share of more than 50 percent of shipments of that commodity, aggregated over all the destinations served by that origin, and (2) each of UP and NS individually has a share of at least 10 percent of traffic of that commodity, aggregated over all destinations served by that origin."[272]

[271] Bailey Second Errata VS, ¶ 120.
[272] Bailey Second Errata VS, ¶ 163.

> In other words, this analysis starts with an origin (destination) point and aggregates across all destination (origin) points. But the specific origin-destination pair (and the possible interchange points between the pair) are paramount to understanding the competition between UP and NS over the middle segment of a movement—competition that is not flagged by Dr. Bailey's screen for geographic competition.

259. Similarly, this loss of competition is not picked up by any of Dr. Israel's analyses. Dr. Israel's use of a counting algorithm to identify independent routes (discussed in Sections 4.2.2 and 12.4) only focuses on the identity of railroads used. For the purposes of identifying the number of independent routes, Dr. Israel's counting algorithm treats a routing where a shipper utilizes UP and interchanges with NS in East St. Louis (UP-ESTL-NS) the same as a routing with a Chicago interchange (UP-CHGO-NS). In his deposition, Dr. Israel admitted that, contrary to economic evidence, he doesn't consider competition over the middle of the move to be "competition," but rather a negotiation over a split.[273] He further admits that he doesn't analyze the loss of competition over the middle of the move in any of his analyses.[274]

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[273] Israel Deposition, p. 242:12–19 ("Q. In your answer, can you explain to me what you mean by 'It's not what an economist would call 'competition'? A. I mean, they're not competing for the ability to do the same thing. They each provide part of the service, right. I mean, they're negotiating over a split. I distinguish those two things.").

[274] Israel Deposition, at 243:5–21 ("Q. And in your analysis, do you analyze at all how the loss of this kind of competition between UP and NS to carry the longer portion of a route impacts the rates that negotiate -- or impacts the rates that negotiated shippers will pay after the transaction? A: I don't -- I mean, I discuss why the ability to single line -- I don't know if I discuss it in those terms. I discuss why single line creates advantages, and I think that implies why the single-line option would be better than what either of them could provide and, therefore, should lead to lower costs, lower prices than either of those options.").

6.4. Applicants offer conditions that do not address the loss of competition between UP and NS over the middle of the movement

260. Applicants also do not consider horizontal competition over the middle of the movement in any of their proposed conditions. The conditions Applicants claim will protect shippers (including sole-served shippers) will not replace the loss of their ability to put UP and NS in competition over the middle of the movement. CGP, TAP, the Rate ADR Program, and Applicants' voluntary gateway commitments do not address the fact that UP and NS would previously have competed over the middle of a movement, which gave shippers bargaining leverage even if they were sole-served at both ends.

7. Follow-on consolidation would compound the merger's harm and increase the risk of a rail duopoly

261. These competitive harms would be exacerbated by the further consolidation that UP-NS would likely trigger. UP-NS would create pressure for a BNSF-CSXT or other merger, culminating in a potential duopoly structure, which The Board's 2001 Rules require Applicants to address.[275] My empirical analysis indicates that two transcontinental railroads would not restore today's competition: prices are higher in comparable structures with two single-line railroads than where four independent railroads compete to interline (Section 12.2). Further consolidation would also increase shippers' dependence on individual carriers, which will have very little incentive to seek traffic where they have to compete with one another, and instead seek to enjoy the benefits of their increased bargaining power over their own bases of customers.

262. Looking back to Exhibit 7 and Exhibit 8, the West is full of counties where UP solely serves the end of moves while the East is full of counties where NS solely serves the end of moves. BNSF and CSXT must anticipate that their service will be degraded,

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[275] NS's CSO {{REDACTED }}. See Deposition of Michael R. McClellan (Chief Strategy Officer, Norfolk Southern Corporation), October 9, 2026, pp. 139:4–13 {{REDACTED

}}, {{REDACTED
}} NS_00569895–923 at NS_00569912 {{REDACTED
}}; Major Rail Consolidation Procedures, p. 581–582 ("[A]nother merger involving two very large railroads would not likely be an isolated event, but instead would trigger responsive proposals that, if granted, could well lead to a transcontinental railroad duopoly. … Because from this point on any proposed major transaction would have a significant effect on the structure of the entire industry, we will consider reasonable arguments about likely future transactions and about the future structure of the industry. … [T]here is general agreement that applicants should address the likely effects of any other merger that is actually proposed in response to a particular transaction[.]").

their equipment will be slowed in returns, their ability to price competitively will be undercut by leverage over the customer's locations, and any number of other impediments will hinder their ability to compete.

263. To compete on more equal terms with UP-NS, BNSF and CSXT would face pressure to merge and gain a similar ability to foreclose competing interline services. For shippers, that response would compound the loss of competition. Just as the maps identify areas where UP and NS could weaken BNSF and CSXT, they show many counties where BNSF or CSXT is the sole Class I carrier serving one end of a movement. A combined BNSF-CSXT would therefore have similar opportunities to weaken competing interline services, and the empirical relationships that demonstrate harm from a UP-NS combination indicate that a BNSF-CSXT merger would cause additional harm.[276] While a combined BNSF-CSXT would at least be more competitive in some regards, the net effect is also identifiable from the same regressions that showed the foreclosure effects of individual mergers at this scale and scope.[277]

264. Even when shippers have two single-line options, the empirical results presented in Exhibit 43 show that they will pay more than they do today (when they choose between four individual railroads) and even more than they would if UP and NS were to merge. Rates under a two single-line arrangements—representing the follow-on merger setting—are 21% higher than the current pre-merger baseline involving four

[276] See Section 4.2.

[277] See Exhibit 55 and Exhibit 57.

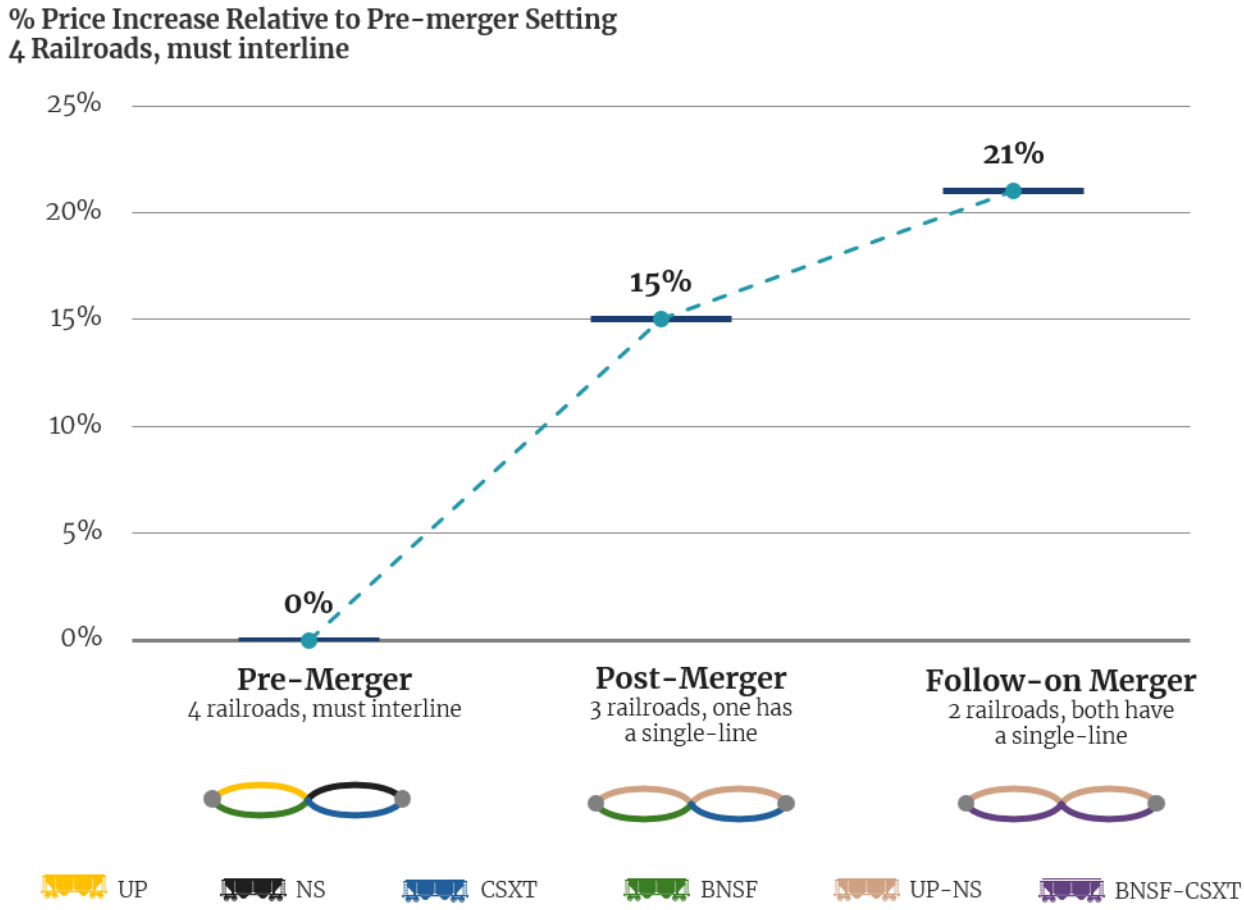
railroads (two on each side of a gateway); meanwhile, under the UP-NS post-merger setting of three railroads, rates under a one single-line arrangement are 15% higher than the pre-merger setting.[278] Fewer railroads to bargain with, an even higher concentration of shippers' overall bundle of rail needs on those fewer railroads, and just fewer levers overall for shippers to bargain prices down (e.g., bargaining for the longer haul) will lead to worse outcomes for shippers in this case.

265. Combining UP and NS does not make UP-NS more competitive. Instead, it harms shippers in numerous ways. Likewise, combining BNSF and CSXT will not make BNSF-CSXT more competitive. It will not bring back the competition that UP-NS takes away. Rather, UP-NS takes away competition such as CSXT competition with NS for the eastern portion of interlines (at least where UP is an important part of the interline) and BNSF competition with UP for the western portion (where NS is an important part of those interlines). A BNSF-CSXT deal would not restore that competition in those cases and the data show that shippers will continue to be harmed by the foreclosed competition.

[278]These individual estimates are all statistically significantly different from zero. However, it is worth noting that this can suggest a false sense of precision and that statistical significance does not extend to the comparisons across estimates. While the 21% point estimate of the net effect after a follow-on merger is significant and is larger than the point estimate of the proposed merger, the difference between those two estimates is not itself significant enough to conclude that a follow-on merger would necessarily be incrementally worse – just not a solution for shippers to the currently proposed merger. See workpaper 7-1.

Exhibit 43

In a follow-on merger setting, shippers will pay more than in the "pre-merger" setting in corridors served by two railroads at both sides of the gateway



Source: Six-Railroad Tapes Data

Note: This figure shows the percentage difference in price measured as revenue per carload-mile between corridors with single-line movements and those without single-line movements. The figure focuses on corridors that are served by two railroads at each end. The point on the left represents the pre-merger setting with four Class I railroads originating and terminating movements. This point is indexed to 100 as it represents the baseline. The point in the middle presents the indexed prices after the proposed UP-NS merger (post-merger setting). In the post-merger setting, three railroads originate and terminate movements and one of them provides single-line service. The point on the right presents the indexed prices after the proposed UP-NS merger and a following BNSF-CSXT merger (follow-on merger setting). In the follow-on merger setting, two railroads originate and terminate movements, and both railroads provide single-line service. I only consider corridors in which the Class I railroads that originate or terminate movements each accounts for at least one percent of the corridor's revenue. I only consider corridors in which the Class I railroads that originate or terminate movements each accounts for at least 1% of the corridor's revenue. The difference between the pre-merger and post-merger setting is statistically significant at the 95% confidence level, and the difference between pre-merger and follow-on merger setting is statistically significant at the 99% confidence level. For additional details, see Appendix 12.2.

266. Exhibit 43 isolates the empirical rate effect of moving from four railroads to two integrated carriers. It does not measure a separate risk: repeated interaction between two nationwide systems could further soften competition, particularly where each system controls different captive regions, customers, or traffic flows.

267. A two-system industry would increase the risk of tacit coordination.[279] Each carrier could observe the other's pricing and gateway conduct, anticipate retaliation, and have less incentive to compete aggressively for business concentrated on the rival's network. That risk is distinct from—and additional to—the higher rates shown in Exhibit 43; it does not depend on an express agreement between the carriers.

268. A BNSF-CSXT combination might be presented as restoring balance between the railroads, but it would level competition down for shippers by replacing today's four-railroad structure with two transcontinental systems. UP recognized where this is going in statements before The Board:

> "UP, which questions whether additional Class I mergers will ever be in the public interest, insists that we should evaluate the impact of and the need for any additional such mergers on the assumption that any such merger will be part of an "end game" that will result in transcontinental mergers and leave North America with only two major railroads… UP contends that, because any combination among the six largest remaining railroads in North America might well represent the start of the 'end game' in rail consolidations, we should

[279] Louis Kaplow and Carl Shapiro, "Antitrust" in *Handbook of Law and Economics*, (Vol II), (Amsterdam, Netherlands: Elsevier, 2007), pp. 1073–1224 ("Kaplow and Shapiro (2007)") at p. 1149 ("Mergers also can pose a risk to competition by increasing the likelihood that a collusive outcome will prevail. … [C]ollusion is generally thought to be easier to achieve and sustain when there are fewer suppliers in the industry.").

> consider, before approving any additional Class I merger, whether the "end game" would be in the public interest."[280]

269. Applicants' theory also offers no limiting principle against that result. If end-to-end combinations are presumed beneficial and foreclosure concerns may be dismissed without a fact-specific inquiry, the same reasoning would apply to other Class I combinations. That would depart from The Board's more nuanced approach, under which vertical effects depend on the transaction's actual incentives, ability, and competitive setting.[281]

270. Approval on that premise would also make follow-on consolidation more likely. BNSF and CSXT would have incentives to close the competitive gap created by UP-NS, replicate its single-line reach, and strengthen their bargaining position against shippers. The resulting pressure towards two transcontinental systems is itself a consequence The Board should consider before approving the first combination.

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[280] Union Pacific Corp. & Union Pacific Railroad Co., comments summarized in Major Rail Consolidation Procedures, Docket No. EP 582 (Sub-No. 1), 5 S.T.B. 1, September 25, 2000, pp. 116–117.

[281] Major Rail Consolidation Procedures, p. 582 ("We can meet our responsibility only if applicants file their preliminary evidence about the evolving structure of the industry that would likely result from their proposal and others like it; if they address the merits of such a structure; if they provide their views on how to deal with potential problems that structure could cause to service, efficiency, and competition[.]").

8. Shipper letters and voluntary commitments do not cure the merger's competitive harms

271. Applicants may claim that shipper letters filed in this proceeding or commitments they have made will, at least, preserve competition. Shipper support letters may identify benefits for particular shippers, but they do not establish the merger's overall competitive effects or answer the evidence of broader or longer-term harm. Indeed, shippers that are in favor of the merger sometimes have short-term or individualized benefits that do not weigh against the long-term harm to competition from this proposed consolidation.

272. Shippers have submitted letters both in support of and in opposition to the proposed merger. The proportion of letters on each side has been affected by Applicants' actions around this proceeding. While Applicants have facilitated letters of support,[282] they have also created fear of retaliation for any opposition, which appears to have chilled some shippers from participating.[283] The letters in this proceeding cannot be expected to give a comprehensive description of the merger's overall effects.

[282] Some of these shipper letters in support of the proposed merger are based on templates prompted from Applicants. Rocker and Elkins Second Errata VS, ¶ 183 ("We've not been shy to admit that railroads haven't always been the easiest partners to work with. So when we asked thousands of stakeholders to share their views on this merger, we wanted to make it easy for them to participate, so we offered letters they could use if they wished. Some personalized the letters, some didn't. But everyone took the time to think about what this merger means for them and their community. Whether the words were polished or plain, those letters are theirs.").

[283] James Baratta, "Union Pacific Tried to Conceal 'Offhand' Remarks Threatening Shippers," *The American Prospect*, November 12, 2026, available at https://prospect.org/2026/11/12/union-pacific-tried-to-conceal-offhand-remarks-threatening-shippers/ ("Shipper associations like the Alliance for Chemical Distribution (ACD) have attested to the chilling effect customers have experienced in connection with the merger review proceeding. 'The fear of retaliation is real, and many customers cannot afford to risk their business relationships by speaking out against the merger,' ACD President and CEO Eric Byer said in a statement. 'No business should have to choose between protecting its livelihood and speaking up about a merger that could impact its future.'").

Rather, each letter presents insight into that shipper's individual situation and, perhaps, their individual reasons for participating in the process despite the context of Applicants' heavy thumb on the scale. Those individual situations can be particularly useful for confirming that a model or prediction fits the facts a real-world shipper perceives about their business with railroads.

273. For example, United Sugar Producers and Refiners ("USPR") submitted a letter opposing the merger.[284] In the letter, USPR expresses concern that the merger will limit its access to eastern markets from its facilities in Minnesota, North Dakota, and Wyoming.[285] USPR points to the example of Hershey, Pennsylvania, "a large sugar-consuming market that currently benefits from competition among distributors served by different rail routings."[286] For the Hershey destination, USPR reports that, "purchasers can buy from USPR, which uses BNSF in the West and NS in the East, or from our primary competitor west of the Mississippi River, which is served by UP in

[284] Prior to submitting their letter opposing the merger, UP approached them about submitting a letter of support. Letter from Michael Barth (Vice President, Transportation and Logistics, United Sugar Producers and Refiners Cooperative) to Chief of Case Administration, Surface Transportation Board, "STB Docket No. FD 36873, Union Pacific Corp., et al. – Control – Norfolk Southern Corp. et al.," August 26, 2026 ("USPR Letter"), at p. 2 ("In early 2026, UP requested a letter in support of the proposed merger from USPR.").

[285] USPR Letter, at p. 1 ("[O]ur western facilities in Minnesota, North Dakota, and Wyoming rely primarily on BNSF and NS to deliver sugar to eastern businesses. After the merger, shipments currently served by NS in the east would become UP destinations. USPR is concerned that UP/NS will have little incentive to offer competitive rates or short-haul options for our western facilities if it can instead reach the same eastern customers by originating shipments on UP's western lines through our competitors. This could leave USPR at a competitive disadvantage and will leave businesses that USPR serves with fewer rail transportation options.").

[286] USPR Letter, at p. 1.

the West and would also use UP in the East, if the merger is approved."[287] USPR predicts the merger may restrict its access to Hershey because "UP/NS will have little incentive to offer competitive rates or short-haul options for our western facilities if it can instead reach the same eastern customers by originating shipments on UP's western lines through our competitors."[288] USPR's concern is consistent with the fact that, as I describe in Section 4.1, the post-merger combined firm will have both the incentive and ability to foreclose competition, harming purchasers and shippers who rely on interline services that compete with new UP-NS single-lines.[289]

274. While USPR's letter is useful in that it confirms the real-world relevance of the economic models I used to identify avenues of competitive harm from the merger, I would not suggest that every shipper should be relied on to identify whether and how much overall harm will come from the merger. I do not believe this letter (on its own or combined with similar letters from other shippers) can do more than support the considerations in the analysis of overall competitive effects that are relevant to those shippers.

275. Likewise, letters supporting the merger do not disprove the concern of USPR or of the analysis I have done of effects on shippers more generally, especially given the

[287] USPR Letter, at p. 1.

[288] USPR Letter, at p. 1.

[289] Applicants may claim that CGP will enable USPR to access competitive pricing post-merger. However, as I discuss in Section 9.2, CGP price caps may not bind in practice and CGP increases the incentive for UP-NS to foreclose competitors whose lower rates on interlines would decrease CGP prices.

context of Applicants' thumb on the scale. Such letters generally outline a shipper's expectation that Applicants' claims of improved service seem credible and would be beneficial to that shipper.[290]. But, these letters only speak to the specific perspectives of individual shippers, which can be relevant but do not disprove the effects on shippers more generally.

276. Consider, for example, Poet, which is a bioethanol producer that submitted a letter in support of the merger. Poet states that the merger will help its Iowa plants reach markets in the east from which the price of interlining currently restricts its access.[291] Looking at the Six-Railroad Tapes Data, I constructed Exhibit 44 to summarize Poet's shipments of its {{{REDACTED }}}[292] from Iowa. Poet ships {{{REDACTED }}} of the {{{REDACTED}}} carloads it originates in Iowa to the West via UP single-line movements. The rate it pays on those moves, {{{REDACTED}}} per carload-mile, is {{{REDACTED

[290] For example, Applicants submitted letters from shippers supportive of the merger as Volume 3 of their April 30th, 2026, revised application. Many of these repeat near-identical wording to extoll the purported benefits of the merger: "improved service reliability," "reduced transit times," "increased investment," and "expanded reach." See, e.g. Amended Railroad Control Application, Volume 3, "Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company", Docket No. FD 36873, April 30, 2026., at p. 73 (A&K Railroad Materials, Inc.), p. 103 (Airlite Plastics Company), p. 281 (Commercial Metals Company CMC), pp. 291–92 (Cornerstone Ag, LLC), p. 334 (Drax).

[291] Letter from Ben Sweat (Chief Operating Officer, POET Biofuels) to Chief of Case Administration, Surface Transportation Board, "STB Docket No. FD 36873, Union Pacific Corp., et al. – Control – Norfolk Southern Corp. et al.," September 16, 2026 ("Poet Letter"), at p. 1 ("While many facilities effectively access western and southern markets, substantial portions of our Iowa production network have limited participation in eastern markets due to the economics associated with two-railroad service.").

[292] I understand STCC5 {{REDACTED}} to be defined as {{REDACTED}}. See Dr. Bailey's STCC Codes Dictionary.

}}}. Poet {{{REDACTED

}}}. In contrast, when Poet uses UP interlines to access eastern markets, it pays a {{{REDACTED

}}}.

Exhibit 44
Poet shipments of STCC** {{{REDACTED}}} **from Iowa illustrate that their circumstances are special

{{{REDACTED

}}}

277. The available data {{{REDACTED

}}}. They instead show that {{{REDACTED

}}}. Poet's individual expectation therefore does

not rebut the broader evidence that a combined UP-NS could raise rates and diminish competitive alternatives for other shippers.[293]

278. Even when shippers might benefit in the short-run from the merger, these benefits will not outlast the competitive harms of the merger. Schneider, for example, in announcing its deal to move its business from CSXT to NS in the East, described their expectation of benefits from the merger would be "icing on the cake."[294] Schneider is an example of the fact that Applicants can sign a deal and garner support from shippers that expect some benefits – though the terms of that deal will be for a much shorter term than the proposed merger will affect competition.

279. The USPR and Poet letters and Schneider's recent switch from CSXT to NS illustrate how individual shippers' circumstances can inform the analysis without establishing the merger's overall competitive effects. My point is not that every supporting shipper is wrong about its own preferences or that every opposing shipper has correctly predicted the future. Rather, individual letters may show that particular

[293] Poet Letter, p. 1. I have not attempted to examine whether Poet's overall portfolio of shipments is better or worse, in terms of the merger's effect on their bargaining position, than other firms that Poet may compete against. I have also not attempted to examine how long any better rate that Poet may be getting today might have to last to offset for Poet the fact that after any such sweetened deal expired they would face the diminished competition this merger presents immediately to other shippers. If one were attempting to establish the effect on all shippers by looking at each and every shipper's special circumstances, those are certainly considerations that would need to be taken into account.

[294] Kelly Stroh, "Norfolk Southern, Schneider National team to scale East Coast intermodal reach," *Supply Chain Dive*, November 2, 2026, available at https://www.supplychaindive.com/news/norfolk-southern-schneider-national-team-to-scale-east-coast-intermodal-re/873340/ ("The railroad's potential merger with Union Pacific is 'the icing on the cake' of the partnership, Schneider CEO Jim Filter said.").

competitive mechanisms have real-world relevance, but no single shipper's circumstances establish the transaction's effects on shippers as a whole.

9. CGP does not offset the merger's competitive harms and is unlikely to benefit shippers

280. Applicants' CGP proposal is a price-cap regulatory program, not a competitive enhancement. Regulation often has perverse incentives and leads to more harm than good. CGP is no different. As Dr. Israel acknowledges, CGP perversely "creates incentives to raise rates" on UP-NS traffic.[295] Rather than "expand[ing] the benefits of the UP/NS merger to more shippers,"[296] CGP will harm shippers who currently utilize UP-NS, exactly the shippers Applicants claim the merger is going to benefit.

281. Dr. Israel's model omits important competitive interactions and is demonstrably bad at predicting railroad pricing—generally failing to reproduce observed prices and estimating costs that are inconsistent and not credible. The failure of his model to reliably predict real-world rates is particularly troubling for a model that has already very little margin for error between the net increases and decreases it predicts for shipper prices, meaning any small change could easily find net harm. These flaws undermine the reliability of the model's narrow projected net benefit as a way to offset the significant competitive harms I identified throughout my statement.

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[295] Israel Second Errata VS, ¶ 177 ("For interline shipments that are used as *inputs* to calculate the Committed Gateway Prices…the CGP proposal creates an incentive to compete less aggressively on some of the shipments used in the generation of Committed Gateway Prices.") and Israel Supplemental VS ¶¶ 46–47 ("CGP rates are calculated from UP/NS rates observed on those UP/NS and interline routes that are *not eligible* for CGP rates. These routes are called the 'input' set. … CGP price creates incentives to raise rates on some routes in the input set.") (emphasis in original).

[296] Novak VS, p. 3.

282. The remainder of this section explains why CGP cannot be credited as a meaningful merger benefit.

a. CGP's benefits are extremely small and are unlikely to outweigh any competitive harm. Moreover, CGP harms many shippers according to Dr. Israel's model (Section 9.1).

b. Dr. Israel's modeling of CGP precludes many strategic interactions that currently allow shippers to introduce more competition into negotiations – competition that Dr. Israel assumes away in his analysis (Section 9.2).

c. Dr. Israel assumes that shippers will retain the full benefit of CGP and ignores the possibility of CGP facilitating coordination (Section 9.3).

d. Because Dr. Israel ignores important aspects of competition, his model is highly inaccurate and does not properly account for the realities of the railroad industry (Section 9.4).

e. Dr. Israel's opinions on CGP are inconsistent with his stated views, and inconsistent with his own modeling of CGP (Section 9.5).

9.1. CGP's modeled benefits are small, temporary, concentrated, unrealistic, and result in substantial harm to individual shippers

(1) CGP's modeled benefits are small, and do not outweigh the many harms of the proposed merger

283. Taking Dr. Israel's modeling of CGP at face value, the net benefit he calculates is small, especially since he does not account for many risks to competition. In his Supplemental VS, Dr. Israel estimates that the total net benefit of CGP will be $86.5 million in the first year and then only $44.0 million in each year CGP continues.[297] All told, over the five years of CGP, the total benefit to shippers, as calculated by Dr. Israel, is $262.5 million.[298]

284. In comparison, as I showed in Section 4.3.3, Dr. Israel's estimates show UP has the potential to increase rates on NS shippers amounting to {{{REDACTED}}} billion in extra costs for shippers each year, before any theoretical CGP-related reduction in cost.[299] CGP as a $44.0 million per-year "enhancement" to competition is hardly a concession. Total revenue for UP and NS combined was $179.9 billion over 2021–2025.[300] This means that even if shippers fully benefitted from CGP as estimated by Dr. Israel, aggregate payments would decrease by only 0.15%.[301] Put simply, even if CGP does benefit shippers to the full extent modeled by Applicants, that benefit is

[297] Israel Supplemental VS, ¶ 33 and Figure 9.
[298] $44 × 4 + $86.5= $262.5
[299] See Exhibit 23.
[300] See workpaper 9-1, based on analysis of SEC Form 10-Ks for UP and NS from 2021–2025.
[301] $262.5 million divided by $179.9 billion is 0.146%

essentially a rounding error and unlikely to offset the competitive harms from the merger.

285. Further, the net benefit Dr. Israel presents in his Supplemental Verified Statement is an aggregation, meaning some shippers benefit and some are harmed, according to his model.[302] When asked to analyze the effects of expanding CGP to make more shipments eligible, Dr. Israel finds more net benefits, but with similar effects of benefitting some shippers while harming others.

286. The reason that Dr. Israel finds harm for some shippers is that CGP creates a balance of effects: a combined UP-NS has an incentive to raise prices on shippers whose rates determine the CGP price—any increase in these shippers' rates increases CGP prices and therefore UP-NS's profit. At the same time, Dr. Israel finds that a small number of shippers eligible for CGP receive an aggregate benefit, potentially outweighing the harm to other shippers. As I discuss in Section 9.4, Dr. Israel's model completely fails to capture important aspects of competition and is therefore unable to determine whether shippers truly benefit.

287. According to Dr. Israel, the net benefit of CGP is just $86.5 million in the first year and $44.0 million in each year until the oversight period ends.[303] These are small benefits and, as discussed above, Dr. Israel acknowledges the benefits could be even

[302] Israel Second Errata VS, ¶ 180.
[303] Israel Supplemental VS, ¶ 33 and Figure 9.

smaller since he finds that a merged UP-NS would have little incentive to invest in the additional interline service on CGP-eligible traffic that drives the net benefits he finds. The lack of investment on CGP-eligible traffic stems from UP-NS's reduced profit margin on high-value shippers utilizing CGP—because of the reduced profit motive, UP-NS has less incentive to invest.[304] As I discuss below, CGP also reduces UP-NS's incentive to invest on their own single-lines, an effect which Dr. Israel does not acknowledge.

288. In addition to unmodeled lower incentives to invest, Dr. Israel does not account for other harms in his modeling of CGP that would lower his predicted net benefits and will cause a net harm to specific shippers. As I showed in Exhibit 37, the negative impact of UP-NS's post-merger leverage over *just* chemical shippers {{REDACTED }} of CGP ($44.0 million per year after the first year). Simply put, the purported benefits of CGP are not only small but are also unlikely to outweigh any competitive harm.

289. Lastly, the time-limited nature of CGP means that even if the (small) benefits were understated, the harm to shippers is only offset for as long as CGP remains in effect. When CGP ends, even if it were beneficial, the harm to competition from the merger remains, and shippers will be worse off.

[304] Israel Supplemental VS, ¶ 53 ("[T]he CGP program reduces the profits that can be earned from [high-value customers], and thus economics predicts that it also reduces the incentive to invest to serve them.").

(2) The benefits of CGP are concentrated among very few shippers

290. Beyond CGP being small, Dr. Israel's model finds that the benefits of CGP accrue to only a {{REDACTED}} number of shippers and actually harms {{REDACTED}} others—according to Dr. Israel's estimates, {{REDACTED}} of shippers are harmed, while {{REDACTED}} of shippers benefit.[305] The remaining {{REDACTED}} shippers are unaffected.[306]

291. Dr. Israel's predicted gains for individual shippers are {{REDACTED}} and leave other shippers {{REDACTED }}. For example, according to Dr. Israel, {{{REDACTED }}} gains approximately {{{REDACTED }}} in annual benefit of CGP, based on a modelling result that they will ship nearly two and a half times their pre-CGP number of carloads. {{{REDACTED }}}'s per-year benefit represents approximately {{{REDACTED}}} of the yearly net benefit of CGP.[307]

292. Exhibit 45 shows the 20 shippers who gain the largest benefits from CGP and the share of each shipper's gain as a percent of CGP's modeled net benefits. Rather than CGP being a "windfall for shippers,"[308] as Applicants claim, {{REDACTED}} million

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[305] Calculated as the total number of unique shipper names in Dr. Israel's CGP model results, across both the input and application sets. {{{REDACTED }}} appear as separate shippers in Dr. Israel's data but are combined in the above calculation as {{{REDACTED }}}. Similarly, {{{REDACTED }}} are combined into {{{REDACTED }}} See workpaper 9-2.

[306] See workpaper 9-2.

[307] See Exhibit 45.

[308] Applicants' Second Response to Decision No. 21, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, July 27, 2026, *SUPP PAGE* 41 ("Applicants believe CGP's benefits to shippers…will be a windfall to shippers.").

out of the $44.0 million yearly net benefit {{REDACTED}} of CGP goes to only {{REDACTED}} shippers.

Exhibit 45
Revenue for top 20 winners from CGP

{{{REDACTED

}}}

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(3) CGP's estimated gains are based on unrealistic assumptions of increased demand, which Dr. Israel did not investigate

293. Dr. Israel's estimated benefits of CGP are also based on unrealistic assumptions of shippers' increasing output. To estimate his CGP model, Dr. Israel calculates how

much additional traffic shippers will move in response to a change in price. Based on these modelling results, Dr. Israel predicts that many shippers would have substantial increases in output arising only from the purported rate changes due to CGP, rather than the economics of their own industries.[309] Exhibit 46 shows Dr. Israel's estimates of the impact of lower prices (due to CGP) on volume shipped by the same 20 shippers most benefiting from CGP.

[309] Israel Second Errata VS, Appendix C ¶ 23.

Exhibit 46
Carloads for top 20 winners from CGP

{{{REDACTED

}}}

294. Column [A] shows Dr. Israel's modeled estimate of each shipper's carloads shipped post-merger, absent the CGP program. Column [B] shows Dr. Israel's modeled estimate of those same shippers' carloads shipped post-merger with the CGP program in place. Dr. Israel's model predicts that several shippers see {{{REDACTED }}} projected increases in traffic:

- Dr. Israel predicts that {{{REDACTED }}} will ship {{{REDACTED}}} more carloads.
- Dr. Israel predicts that {{{REDACTED }}} will ship {{{REDACTED}}} more carloads.
- Dr. Israel predicts that {{{REDACTED }}} will ship {{{REDACTED}}} more carloads.
- Dr. Israel predicts that {{{REDACTED }}} will ship {{{REDACTED}}} more carloads.

295. For any shipper, the decision and ability to ship more is dependent on their ability to increase production and whether there is demand for additional sales. In every case, Dr. Israel did not investigate or model whether it would be feasible for any individual shipper to expand production, railroads to meet that expanded production, or whether there would be sufficient demand for those shippers' goods to warrant such a large increase in volume. For example,{{{REDACTED }}}[310] {{{REDACTED }}} If the shippers in CGP could not expand volume, or there was not sufficient demand for their products to warrant expanded volume, the predicted effects of CGP would be substantially lower.

(4) CGP harms many individual shippers, and Dr. Israel potentially underestimates their harm

296. While some shippers purportedly benefit from CGP, others are far worse off under the program. As discussed above, CGP incentivizes a merged UP-NS to raise prices on

[310] In Section 8 I also discuss how CGP does nothing to address {{{REDACTED }}}

the routes which determine CGP rates. For shippers who primarily ship on those routes, CGP results in them paying higher prices. Exhibit 47 shows the 20 shippers who are the largest losers from CGP, based on the output of Dr. Israel's model. These shippers are {{REDACTED}} million worse off due to CGP. In total {{REDACTED}} shippers are worse off by an amount of {{REDACTED}} million under CGP.[311]

[311] See workpaper 9-2.

Exhibit 47
Revenue for top 20 losers from CGP

{{{REDACTED

}}}

297. Again, Dr. Israel's model relies on an estimate of shippers' anticipated change in shipments due to CGP-caused higher prices. As a result of CGP, the shippers listed above are assumed to move less traffic. Dr. Israel does not investigate shippers' reduction in carloads, including whether it would make economic sense for their

industries. Exhibit 48 shows Dr. Israel's prediction for these shippers' change in carloads due to CGP.

Exhibit 48
Carloads for top 20 losers from CGP

{{{REDACTED

}}}

298. Column [A] represents Dr. Israel's modeled estimates of these specific shippers' carloads shipped post-merger, absent the CGP program. Column [B] represents Dr. Israel's estimates of those same shippers carloads shipped post-merger with the CGP program in place. In particular, Dr. Israel finds that:

- {{{REDACTED }}} will ship {{{REDACTED}}} fewer carloads.
- {{{REDACTED }}} will ship {{{REDACTED}}} fewer carloads.

299. Dr. Israel did not analyze whether such reductions are realistic and what the impact would be. For example, {{{REDACTED }}} may not reduce its shipments to only {{{REDACTED}}} of the {{{REDACTED }}} it normally ships.[312] It may just lead to increased {{{REDACTED }}}).

300. If, alternatively, these shippers cannot feasibly scale down production, or are in long term contracts and obligated to deliver goods, CGP will be substantially more harmful to these shippers than estimated by Dr. Israel.[313]

[312] See Dr. Israel's July 27, 2026 Production, Baseline Expanded CGP Simulation, {{{REDACTED }}}.

[313] Dr. Israel may seek to argue that if this were the case, shippers could source from alternative locations. As discussed above, this is not modeled in CGP and would suggest a form of competition that Dr. Israel does not acknowledge exists. As I discuss in Section 5, a combined UP-NS is likely to reduce shippers' ability to bargain via source competition.

9.2. Dr. Israel's CGP model omits important strategic interactions and how CGP creates adverse incentives

301. Dr. Israel's CGP model incorrectly assumes that railroads maximize profits movement by movement and assumes that railroads will not change their behavior in response to CGP.[314] It therefore omits several ways in which CGP would alter railroads' incentives, bargaining strategies, investment decisions, and treatment of eligible traffic.

302. First, as I discussed in prior sections of this statement, the empirical evidence indicates that the merger will lead to UP having additional market power and leverage over shippers, likely leading to higher prices, even on routes that are sole-served by UP and NS. Price increases on UP-NS routes will likely increase the price cap on CGP because {{REDACTED}} of the carloads in the "Input Set" that set CGP price cap are UP-NS routes.[315] Increasing the price cap of CGP results in less likelihood of CGP benefiting any shipper.

303. Second, CGP creates incentives for a merged UP-NS to encourage shippers to shift traffic or production away from routes that benefit from CGP and towards routes which do not. As discussed previously in Section 8, USPR currently utilize BNSF-NS to deliver to goods to Hershey, PA, while their competitors utilize UP-NS. In response to USPR's concerns about foreclosure, UP claims that USPR would benefit from

[314] Israel Second Errata VS, Appendix C ¶ 12.
[315] See workpaper 9-3.

CGP.[316] {{{REDACTED

}}} What Dr. Israel's model does not account for is that CGP might give UP-NS an additional incentive to foreclose. Because of CGP, UP-NS {{{REDACTED }}} If USPR's prices are above the CGP rate, UP-NS is additionally incentivized to favor USPR's competitors who are not eligible for CGP.

304. Applicants' recent expansion of CGP to include routes with competition makes this effect worse by expanding the number of routes that a merged UP-NS will want to avoid or degrade service.[317] Dr. Israel does not consider in his model the incentives of a merged UP-NS to force shippers to change their source or destination away from CGP eligible routes.

305. Third, CGP's methodology only considers the rate.[318] As Dr. Israel discusses, rail contracts can "include volume commitments, different prices for different volumes, specific agreements on how much to ship, and so on."[319] Because CGP's methodology only considers the rate, UP has many workarounds to manipulate CGP prices. For example, if UP charges a very high rate on CGP "benchmark" routes and offers those shippers a rebate or a discount on an unrelated shipment, CGP quoted prices will

[316] Letter from Michael Barth (Vice President, Transportation and Logistics, United Sugar Producers and Refiners Cooperative) to Chief of Case Administration, Surface Transportation Board, "STB Docket No. FD 36873, Union Pacific Corp., et al. – Control – Norfolk Southern Corp. et al.," August 26, 2026, p. 2 ("UP's response was to point to its CGP proposal.").

[317] Israel Supplemental VS, Section III.B.

[318] Israel Second Errata VS, ¶ 167.

[319] Israel Second Errata VS, ¶ 75.

increase substantially. As a result, UP will be able to charge any price on the input set that determines the price cap for CGP eligible routes, allowing the price cap to grow and essentially have no effect.

306. Fourth, CGP gives a merged UP-NS an incentive to stop serving shippers who currently receive low prices on routes which determine CGP rates. For example, if an existing shipper on UP-NS has extremely low rates, this pulls down the CGP price. CGP gives UP-NS a stronger incentive to simply stop serving that low-margin carrier, because it will increase CGP prices, earning UP-NS additional profit on CGP-eligible traffic. Dr. Israel acknowledges this incentive in a footnote in his report but does not address it.[320]

307. Fifth, Dr. Israel notes CGP will have a "negative effect on investment incentives."[321] He claims that CGP's price cap lowers the incentive to invest in interchanges with BNSF and CSXT which serve high-value shippers but does not model this degraded quality. As an example, if a sole-served shipper currently uses UP-CSXT and has extremely high prices, UP would have an incentive to invest in an interchange with CSXT, reducing cost and generating additional profit. If that same shipper only has to pay the (capped) CGP rate, UP has less incentive to invest in that interchange.

[320] See Israel Second Errata VS, fn. 100 ("To the extent higher rates below the 70th percentile reduce output, it will tend to shift upward the 70th percentile price.").

[321] Israel Supplemental VS, ¶ 51.

308. Further, as discussed above, this argument extends to the UP-NS single-lines that the merger would create. Among the UP-NS single-lines that set the CGP price cap, an investment in those single-lines that purportedly lowers prices on CGP-eligible routes would lower UP-NS' profit on those routes. This means that UP-NS will have a reduced incentive to make investments in their own single-lines.

9.3. Dr. Israel assumes BNSF and CSXT will not raise prices in response to CGP and does not analyze whether CGP could facilitate coordination

309. Beyond Dr. Israel's lack of accounting for important aspects of competition, his model does not account for BNSF and CSXT's incentive to increase their prices to in response to CGP capping UP-NS's price in CGP-eligible routes. CGP works by generating a "price cap" on certain routes. This cap theoretically benefits any shipper utilizing CGP who currently pays more than that cap.[322]

310. However, as Dr. Israel acknowledges, whether and how much shippers benefit from CGP depends on BNSF's and CSXT's strategic response to CGP.[323] Dr. Israel assumes that both BNSF and CSXT will keep their prices the same, meaning CGP fully benefits shippers. Alternatively, BNSF and CSXT could increase their prices to capture additional profit, meaning shippers wouldn't benefit. In fact, on routes sole-served by BNSF or CSXT this is exactly what Dr. Israel's simplistic one-lump theory would

[322] Israel Supplemental VS, ¶ 13.

[323] Israel Supplemental VS, ¶ 13 ("BNSF and CSX will pass through some or all of [the CGP] price reduction to the shipper").

predict. On BNSF or CSXT sole-served routes, the CGP price cap is a reduction in BNSF and CSXT's input costs. If, as Dr. Israel claims, that "nothing stops the sole-serving carrier from setting the monopoly price,"[324] basic economic theory would suggest that BNSF and CSXT will raise prices to capture some, if not all, of any CGP-related cost reduction. Rather than benefiting shippers, CGP will result in BNSF and CSXT raising prices on CGP-eligible routes which they sole-serve. Dr. Israel cannot have it both ways—either his one monopoly rent theory is false, or CGP will not benefit shippers as he claims.

311. For routes which were newly added to CGP (routes where UP or NS sole-serves one end of the move), the same logic applies. Here, because there is a UP-NS option, rather than increasing prices to the monopoly level, BNSF and CSXT will be able to raise shipper prices to the level of the UP-NS option. As I stated above, UP-NS prices on these routes will increase due to CGP, again harming shippers. This does not account for the likely possibility of UP-NS foreclosing on BNSF and CSXT on these routes.

312. Dr. Israel acknowledges that BNSF and CSXT might raise their rates between origin and gateway or gateway and destination in those situations where CGP provides them with a lower UP or NS rate factor than had previously been the case.[325] However,

[324] Israel Second Errata VS, ¶ 42.

[325] Israel Supplemental VS, Appendix I, p. 2 ("[T]he reduction in marginal cost … due to the CGP is passed through into the through rate by an amount that depends on the curvature of the demand curve.").

instead of testing for this possibility, Dr. Israel assumes a specific model where BNSF and CSXT will always keep their prices the same.[326] Dr. Israel even identifies an alternative economic model which could plausibly find that BNSF and CSXT would raise prices due to CGP. He does not test whether that model (or any other alternative model) is plausible, or whether it better fits the data. This fact further illustrates how he has engineered his CGP model to find benefits to shippers. The more likely outcome is that BNSF and CSXT will attempt to capture the benefits of CGP—in other words, CGP incentivizes BNSF and CSXT to share in monopoly profits.

313. In addition, because the CGP formula is well known, and based on published rates, it could facilitate coordination. Collusive behavior requires a method to detect and punish deviating entities, as well as a way for all parties to share in monopoly profits.[327] CGP offers both. First, the public rate formula offers a way to detect and punish deviations—on any route, BNSF and CSXT will be able to receive a CGP-quoted through rate and thereby receive information on (1) UP-NS maximum prices on the existing route and (2) aggregate information about all UP-NS rates which determine the relevant CGP rate. They would be able to "punish" UP-NS by using more CGP rates. Second, as discussed above, CGP generates a way for BNSF and CSXT to share

[326] Israel Supplemental VS, Appendix I, p 2. Dr. Israel utilizes "log-linear demand [which] has a constant pass-through rate of 1."

[327] Kaplow and Shapiro (2007), p. 1103 ("The key elements are (1) *reaching consensus*: some understanding must be reached among the otherwise-competing firms regarding what conduct is permitted under the terms of the collusive agreement, such as the prices that the firms will charge; (2) *detection*: some reliable means must exist by which departures from the agreement can be detected; and (3) *punishment*: some credible mechanism must be established by which such departures are punished if and when they are detected.") (emphasis in original).

in UP-NS's monopoly profits because BNSF and CSXT stand to benefit from CGP by charging shippers higher prices. Therefore, it would be straightforward for UP-NS, BNSF, and CSXT to coordinate around CGP rates, allowing them to avoid competing with one another and instead share all of the available surplus they can extract from shippers.

9.4. Dr. Israel's CGP model does not reliably reproduce observed railroad prices or costs

314. Due to Dr. Israel's simplistic modeling, which ignores the potential harms of CGP, his model fails to capture realities of the railroad industries and is clearly unsuitable to determine any plausible impact of CGP. As discussed above, and as acknowledged by Dr. Israel, whether CGP harms shippers is based on a key economic tradeoff: UP-NS has incentive to raise prices on routes which determine CGP rates, in order to push up CGP prices.[328] His model is, in theory, meant to evaluate this tradeoff, and he finds that shippers benefit.[329] As I show in the remainder of this section, Dr. Israel's model is completely incapable of capturing real-world railroad prices and has findings which are completely nonsensical. This is ultimately because his model is extremely simplistic and does not account for important aspects of railroad pricing, such as negotiated

[328] Israel Second Errata VS, ¶ 167 ("[U]sing [UP/NS] rate[s]…as an input for establishing the gateway rates can potentially create an incentive for [UP/NS] to compete less aggressively and transact at rates higher than would otherwise occur absent the gateway rate mechanism.").
[329] Israel Second Errata VS, ¶ 173.

contracts, which he fully acknowledges exist.[330] As a result, his model cannot be relied upon to evaluate this key economic tradeoff. The more likely outcome, given the negative impacts of CGP on investments and likelihood of collusion, is that CGP harms shippers.

(1) The CGP model does not reliably predict observed prices

315. Evidence shows that the CGP model, as constructed, is not able to adequately predict existing prices. In Exhibit 49, I utilize Dr. Israel's CGP model to examine whether it can accurately predict *existing* railroad prices. I plot the difference between Israel's predicted prices and real-world prices in percentage terms from largest positive difference to largest negative difference. Economists often test their models against real world data to demonstrate the reliability of the model.[331] If the model can, within reason, predict real-world prices, it would provide confidence in its ability to predict the impact of CGP. I find the opposite—{{{REDACTED}}}% of the prices he utilizes do not correspond, within 5%, to their real-world prices—confirmation that Dr. Israel's model is incapable of accurately capturing competitive dynamics in the railroad industry and, consequently, the impact of CGP.

[330] Israel Second Errata VS, ¶ 21 ("A significant fraction of rail shipments move pursuant to negotiated non-linear contracts.").

[331] Jeffrey M. Perloff, *Microeconomics*, (7th ed.), (Boston, MA: Pearson/Addison-Wesley, 2015), p. 4 ("Economists test theories by checking whether predictions are correct. … A good model makes sharp, clear predictions that are consistent with reality."), fn. 3 ("If a model's prediction is inconsistent with what actually happened, the model must be wrong, so we reject it."); Kaplow and Shapiro (2007), p. 1180 ("Werden, Froeb, and Scheffman (2004) emphasize that the weight given to merger simulations should depend on how well the specified model fits the industry, based on historical evidence.").

Exhibit 49
Differences between real prices and predicted prices in the CGP model

{{{REDACTED

}}}

316. The predictions also are not systematic—{{{REDACTED}}}% of predicted prices are 5% larger than the actual price or above, and {{{REDACTED}}}% of predicted prices are 5% smaller than the actual price or lower.[332] In short, Dr. Israel's model is wrong in nearly every instance, and its errors do not consistently favor in one direction over the other.

317. The fact that Dr. Israel's model cannot reliably predict real-world prices provides strong evidence of the fact that his model is unreliable. Testing the ability of a model to fit existing data can help determine the model's accuracy. For example, when choosing between multiple models, it is important to evaluate the plausibility of the model.[333] At a minimum "empirical evidence should be provided that structural economic models can deliver reasonably accurate predictions."[334] In the context of merger simulations unreliability of a model can dramatically impact its ability to perform useful predictions.[335] In his analysis of CGP, Dr. Israel performed no tests to evaluate the reliability of his model or determine whether the model is appropriately capturing all aspects of railroad pricing. In fact, in his supplementary report, Dr. Israel identifies an

[332] See workpaper 9-4.

[333] See e.g., Daniel Greenfield, Nicholas Kreisle, and Mark Williams, "Simulating a Homogenous Product Merger: A Case Study on Model Fit and Performance," Federal Trade Commission Bureau of Economics Working Paper No. 327, October 2015, Abstract ("This hybrid model generates margins that are more plausible than those generated by the standard Cournot model.").

[334] Jonas Bjornerstedt and Frank Verboven, "Does Merger Simulation Work? Evidence from the Swedish Analgesics Market," *American Economic Journal: Applied Economics*, 8(3), 2016, pp. 125–164, p. 125 ("At a minimum, [Angrist and Pischke (2010)] write, empirical evidence should be provided that structural econometric models can deliver reasonably accurate predictions.").

[335] Vivek Bhattacharya, et al., "A Large-Scale Evaluation of Merger Simulations," NBER Working Paper 35473, 2026, p. 17 ("As such, one potential explanation for overprediction is that our demand estimates themselves could be biased.").

alternative model which could produce different estimates of CGP's benefits. Dr. Israel does not test whether that alternative models better fit the data.[336]

318. As discussed in prior sections of this statement, there are many aspects of railroad competition—bargaining over the longer haul, geographic bargaining effects, and options available for a move—which plausibly impact prices.[337] Dr. Israel has not modeled those aspects of competition and, as I have shown, his model is completely unable to capture real-world prices.

319. The fact that Dr. Israel's model is not able to generate appropriate predictions means that it cannot reliably estimate the crucial balance test that an analysis of CGP requires. As Dr. Israel acknowledges, CGP creates an incentive for UP-NS to raise prices on the movements which determine the CGP price. Whether this harm to shippers is outweighed by the ostensible benefit to other shippers is the crucial question his model seeks to answer. As I have shown, the fact that his model is incapable of replicating anything close to real-world prices suggests that it cannot accurately capture whether, on-balance, CGP would be beneficial or harmful to shippers.

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[336] Israel Supplemental VS, Appendix I, p. 2 ("[C]onsider three commonly used demand forms: linear, log-linear, and constant elasticity.") In his CGP model, Dr. Israel uses log-linear demand, which assumes BNSF and CSXT fully pass through any CGP price cap to shippers. See Israel Second Errata VS, Appendix C ¶ 12. A linear model would have less than full passthrough for shippers. There are alternative commonly used models that Dr. Israel does not mention which would also have BNSF and CSXT raise price.

[337] See Sections 4, 5, and 6.

(2) Dr. Israel's CGP model frequently produces implausible estimates of railroad costs

320. The fact that Dr. Israel's model cannot reliably predict existing prices is based on his simplistic assumptions on how railroads' costs are calculated, where for each movement, rather than relying on both firms' information on costs, he predicts one firms' cost (e.g. NS's cost) for a given route based on the *other* firms' data (e.g., UP's cost).[338] Evidence shows that this decision leads to substantial mis-predictions of costs, and therefore prices.

321. Following Dr. Israel's methodology, I utilize his model to calculate marginal costs for western railroads (UP, BNSF) based on the margins of the eastern railroad (NS, CSXT) which does the other end of a route. In Exhibit 50, I show that when following his methodology, Dr. Israel's model frequently finds {{{*REDACTED* }}} In fact, {{{REDACTED}}} of the predicted costs are negative, and {{{REDACTED}}} of the costs are more than 5% away from UP and BNSF's average costs, as estimated following his model. Put simply, his model frequently generates economically nonsensical results and completely fails to match real-world data.

[338] Israel Second Errata VS, Appendix C ¶ 39.

Exhibit 50
CGP model prediction of western railroads' costs using eastern railroads' margins

{{{REDACTED

}}}

322. When doing the reverse, using western railroads' margins to estimate eastern railroads' costs (which represent the majority of cases in Dr. Israel's model), as I show in Exhibit 51, the effect is similar—{{{REDACTED}}} of the model predicted costs are negative, and {{{REDACTED}}} of the costs his model estimates are more than

5% away from CSXT and NS's marginal costs, using his methodology. Even when taken at face value, Dr. Israel's model fails to generate appropriate predictions, and frequently generates nonsensical results.

Exhibit 51
Eastern railroads' costs when using western railroads' margins

{{{REDACTED

}}}

323. The fact that Dr. Israel frequently finds negative marginal costs flies in the face of both the observed facts in the data as well as basic economics. The cost data he utilizes *never* has negative marginal costs. It costs money to operate and move goods for shippers. The fact that Dr. Israel's finding suggests that railroads would benefit from moving goods *for free* suggests that his model is completely unreliable.

324. Even when he finds costs that are positive, in many instances they are completely outside the bounds of what the data suggests are reasonable. His model finds no apparent relationship between his estimates of true marginal costs and the predicted—if his model were simply imprecise we would expect to see *some* correlation between actual and predicted. Instead, we see no relationship between costs generated by his model relative to costs from the data. Again, Dr. Israel did not test whether the costs his model generated were reflective of costs in the industry or even made economic sense. Instead, he utilized a model which was guaranteed to find benefits to shippers and did not consider important aspects of railroad competition.

(3) Dr. Israel's CGP model does not account for systematic cost differences between eastern and western railroads, an example of its failure to capture real-world railroad pricing

325. Dr. Israel's model fails because it bears little resemblance to real-world railroad pricing. It ignores cross-route bargaining, contracting, competition for the longer haul, and the many other ways shippers negotiate with railroads—all of which the UP-NS merger would impair. These fundamental omissions would explain why the model

consistently mispredicts actual prices, produces nonsensical cost estimates, and cannot reliably estimate CGP's effects.

326. Dr. Israel's model even fails to account for the fact that the same route is used to estimate two CGP price caps, and he frequently predicts that the same route will have two different prices as a result. As an example, Dr. Israel's model predicts that CGP will result in two totally different prices for {{{REDACTED }}}. When being used to set the CGP price in the East, Dr. Israel's model predicts that the price would be {{{REDACTED}}} per carload-mile. Instead, when being used to set the CGP price in the West, Dr. Israel predicts that {{{REDACTED }}} would pay {{{REDACTED}}} per carload-mile.[339] Put simply, Dr. Israel predicts that the same route will have two totally different prices because his simplistic modeling doesn't even account for the fact that the same route is used to estimate two different CGP prices.

327. As an example of Dr. Israel's failure to accurately capture the realities of the railroad industry, in Exhibit 52, I follow Dr. Israel's methodology of estimating marginal cost for each route based on CCWS data. I find that western railroads (UP and BNSF) have {{REDACTED}} marginal costs than eastern railroads (NS and CSXT). On average, using the methodology for calculating costs from his model, western railroads' marginal costs are {{REDACTED}} per carload-mile and eastern railroads'

[339] See Dr. Israel's July 27, 2026 Production, Baseline Expanded CGP Simulation{{{REDACTED }}}

marginal costs are {{REDACTED}} per carload-mile. This fundamental difference is not accounted for in his model or in his analyses of the potential impact of the merger.

Exhibit 52
Marginal costs based on CCWS data, following Dr. Israel's modeling approach, eastern railroads versus western railroads

{{{REDACTED

}}}

328. As I have shown, Dr. Israel's simplistic modeling choices clearly fails to account for the fundamental differences between eastern and western railroads. Rather than incorporate this fact into his model, he ignores it. Instead, his model finds costs that are

wildly out of step with the data and are often negative. These simplistic assumptions render the CGP model unreliable.

329. In practice, this lack of accounting for other railroads' costs can have a large impact on the estimates of the model. If Dr. Israel were to assume that any negative marginal cost were unreasonable (as he does for some railroads), it would result in an estimate that shippers were more price sensitive.[340] Whether this results in a net benefit or harm to shippers depends on which routes are affected, but the evidence is clear that Dr. Israel's model is simplistic, does not account for many methods of competition, and cannot accurately predict existing prices.

330. As discussed above, whether CGP benefits shippers is dependent on a tradeoff—harm to shippers whose prices are used to set CGP rates, and benefits for shippers who are eligible for CGP rates. As I have shown, Dr. Israel's model is completely unreliable, and is therefore not able to appropriately estimate this tradeoff.

[340] Israel Second Errata VS, Appendix C, fn. 12. Dr. Israel's failure to appropriately measure price elasticity *within* his model, and the ultimate relationship between shippers' price elasticity and rates is distinct from Dr. Israel's failure to account for BNSF and CSXT's incentive to raise prices. Before estimating his model, Dr. Israel assumes that BNSF and CSXT will not raise prices, even though he acknowledges that under different assumptions BNSF and CSXT would be able to raise prices on inelastic shippers. Taking his model as given (which I do not) the direction of harm based on his mismeasurement of price elasticity is unknown.

9.5. Dr. Israel's changing views further undermine his claim that CGP unambiguously benefits shippers

331. Dr. Israel's views on CGP have changed throughout the proceeding. Rather than fully investigating the impact of CGP, Dr. Israel's contrasting and evolving opinions demonstrate that his modeling of CGP was engineered to support a conclusion that CGP is beneficial.

332. Dr. Israel praises the CGP proposal, which only applies to current interline shipments, as "enhanc[ing] competition … for certain routes that would not directly participate in the vertical benefits of the merger."[341] He concludes that CGP represents "an unambiguous welfare enhancement to shippers and the US economy."[342]

333. Dr. Israel's opinions on the "unambiguous" benefits of CGP have evolved in his Supplemental Verified Statement. Initially, he said that CGP should be re-evaluated after the oversight period because "[m]arket conditions change over time."[343] But when asked to analyze CGP's benefits over a longer period of time, Dr. Israel now claims that CGP will reduce a merged UP-NS's incentives to invest,[344] a new CGP-generated harm that he had not identified previously. He claims that a smaller investment incentive will reduce service quality over time but does not offer an analysis of when service quality would degrade, or any impact on shippers, leaving open the possibility

[341] Israel Second Errata VS, ¶ 14.
[342] Israel Second Errata VS, ¶182.
[343] Israel Second Errata VS, ¶ 166.
[344] Israel Supplemental VS, ¶ 53.

that quality will degrade in the oversight period.[345] Dr. Israel does not model how his new negative opinion on CGP affects his predicted net benefit during the oversight period or after it.[346]

334. Dr. Israel's interpretation of the net benefits of CGP also changed in his Supplemental Verified Statement when asked to analyze the effects of further expanding eligibility of CGP.[347] Using his model of CGP, Dr. Israel examined the effect of further expanding CGP eligibility to specific excluded commodities, routes with competition at both ends, intermodal traffic, finished vehicles, additional interchange points, additional rail carriers, dimensional loads, and rail carriers' facilities.[348] Dr. Israel found, after the first year, additional expansion of CGP resulted in larger net benefits to shippers in all cases, and in some cases would *more than double* the ostensible benefit of CGP.[349] Instead of concluding that such estimated

[345] Israel Supplemental VS, ¶¶ 24, 51.

[346] Israel Supplemental VS, ¶ 51 ("In addition, the simulation of benefits does not consider the program's negative effect on investment incentives (similar to the investment-reducing effects of most rate regulation), the life of the program the greater the effects on investment (a long-lived decision) are likely to be.").

[347] In the "expansion" of CGP, Applicants have allowed the program to apply to routes with competition on one end and bulk unit train traffic. See Israel Supplemental VS, ¶ 33.

[348] Israel Supplemental VS, ¶ 32.

[349] Israel Supplemental VS, Figure 9. For example, if, in addition to the recent expansion CGP included intermodal movements, Dr. Israel found shippers would benefit by an additional $37.6 million per year. If, in addition to the recent expansion, CGP included additional rail carriers, Dr. Israel found that shippers would benefit by an additional $56.4 million per year, larger than the stated benefits of the expanded CGP.

increases in net benefits would be a positive outcome for shippers, Dr. Israel found fault with additional expanded eligibility or had no opinion at all.[350]

335. As an example of this dismissal, Dr. Israel states that dual-served end points are already low cost and would not benefit from CGP. Moreover, he argues that removing these low-cost movements from the set of movements used to calculate CGP rates will only increase CGP rates and reduce investment.[351] However, despite his theoretical arguments, he finds a net benefit after the first year of $7.6 million of further expanding CGP to include routes where shippers have competition at either or both ends.[352] He does not explain why he reaches a different opinion on expanding CGP with results similar to those he found in his initial VS. The fact that his model says one thing while his statements reflect the inability of his model to accurately capture important aspects of competition.

336. Dr. Israel refuses to engage with his own model's findings of CGP's benefit and instead argues for reduced investment incentives and the lack of need for CGP on specific routes, revealing that his analysis of CGP has continually been designed to reach a specific outcome: the "current" version of CGP will benefit shippers.

[350] Israel Supplemental VS, ¶¶ 24–26, 35.
[351] Israel Supplemental VS, ¶ 24.
[352] Israel Supplemental VS, Figure 9.

10. There is no remedy short of stopping the UP-NS combination that fully protects shippers – even the provisions requested by CPKC would only partially mitigate harm

337. Economists widely understand that competition (not regulation) maximizes social welfare over time by facilitating the efficient allocation of scarce resources and enabling players in a market to respond dynamically to changing economic conditions (Section 10.1).

338. Applicants' OGC would not restore incentives to support competing interline services, and facility-access and service-failure remedies do not protect bargaining leverage across a shipper's portfolio. Furthermore, Applicants' proposed transparency commitments and dispute resolution programs will not constrain prices as effectively as being able to leverage an alternative competitor. CPKC's proposed conditions would preserve some competitive alternatives and mitigate some harms, but even they would not, and could not, fully replace the interline options, geographic bargaining leverage, and competition for the middle of movements that shippers would lose, which I discuss in more detail in Majure VS Volume II (Section 10.2). Ultimately, the only way to fully prevent harm is to prevent the proposed merger. Anything else leaves harm to shippers, competitiveness, and the overall efficiency of this vital part of the economy (Section 10.2).

10.1. The economic literature generally finds that competition is preferable to regulatory rules to benefit customers

339. A central finding from the economic literature is that competition maximizes overall social welfare.[353] Competition allocates the resources of the economy efficiently. It does this by generating efficient (low-cost, high-value) production, investment, and innovation, all of which ensure supply can meet demand at competitive prices and quality. Importantly, competition allows this efficient allocation of resources to be dynamic and to update over time. In a competitive environment, as one railroad innovates to offer lower prices or better service, it will gain more business. As the efficient railroad gains more business, more movements will have lower costs (and therefore offer lower rates) than before the innovation, benefiting shippers. Conversely, if one railroad degrades its quality or increases its rates above the competitive level, it will lose business to railroads offering better service or lower rates.[354]

340. In the absence of competition, regulation would be necessary to prevent a railroad from charging higher rates or providing lower-quality service than competition would permit. However, the economic literature generally finds that even though regulations set out with well-meaning goals, they are nonetheless slow or unable to adjust in order

[353] Dennis W. Carlton and Jeffrey M. Perloff, *Modern Industrial Organization* (4th ed.), (Harlow, England: Pearson Education, 2015) ("Carlton and Perloff"), p. 93 ("The competitive equilibrium has desirable efficiency and welfare properties. Indeed, no one can be made better off without making someone else worse off in the competitive equilibrium."); W. Kip Viscusi, Joseph E. Harrington, Jr., and David E. M. Sappington, *Economics of Regulation and Antitrust* (5th ed.), (Cambridge, MA: MIT Press, 2018) ("Viscusi, Harrington, and Sappington"), p. 591 ("Recall that social welfare is maximized in a competitive equilibrium.").

[354] Carlton and Perloff, p. 295 ("Firms can compete for customers by spending money to improve product quality, lowering price, or both.").

to account for the many changes that happen in a marketplace over time.[355] A regulation written today may help remedy certain competitive concerns in the immediate short term, but it likely would soon become obsolete as market conditions change, meaning new regulations would have to be continually written in order to ensure resources are allocated efficiently.

341. In fact, as industries are de-regulated, they often become both more competitive and more efficient, ultimately benefiting shippers. The railroad industry represents a clear example of this via the Staggers Rail Act in 1980. According to the GAO, "During the 1970s [when the railroad industry was heavily regulated], the profitability of Class I railroads—the nation's largest railroads—was among the lowest of major industries. A number of railroads had gone, or were on the verge of going, bankrupt, and railroads had accumulated over $4 billion in deferred maintenance and delayed capital spending."[356] The Staggers Rail Act of 1980 de-regulated the railroad industry

[355] Carlton and Perloff, p. 729 ("Regulatory lag may be unattractive during periods of rapid increases in the costs of factors of production, as with energy costs in the 1970s. … When regulators finally act, they may be tempted to grant extremely large price increases to make up for these lost profits, resulting in prices that were too high in some periods and too low in others."); Viscusi, Harrington, and Sappington, pp. 540–541 ("Rate hearings typically take many months to conduct, because the issues addressed at a hearing can be quite complex. Predictions about future costs (and thus required revenues) vary with underlying assumptions about such factors as likely input prices, levels of consumer demand, and prevailing production technologies.").

[356] U.S. General Accounting Office, "Railroad Regulation: Economic and Financial Impacts of the Staggers Rail Act of 1980," May 16, 1990, available at https://www.gao.gov/assets/rced-90-80.pdf ("GAO/RCED-90-80"), p. 2. The GAO further reported that "if poor financial performance continued, the industry would accumulate a capital shortfall of between $13 billion and $16 billion by 1985." See GAO/RCED-90-80, p. 11. See also Viscusi, Harrington, and Sappington, pp. 640–641 ("[P]roductivity growth in the railroad industry was 3.3 percent in Canada but only 0.5 percent in the United States between 1956 and 1974. … This evidence suggests that regulation of the railroad industry likely induced substantial productive inefficiency.").

as Congress recognized "that markets generally function effectively as a result of competition rather than regulation."[357] Therefore, the Staggers Rail Act "made it federal policy… to rely on competition and the demand for [rail] services… rather than on regulation, to establish reasonable rates."[358] Following de-regulation, railroads became more profitable, investment in track and structures increased, accidents due to track defects decreased, rates declined, and service improved.[359] In other words, competition (rather than regulation) in the rail industry led to an efficient allocation of resources that benefitted shippers (and railroads). While regulation may be able to stem some of the competitive harm resulting from a UP-NS merger in the short term, it falls woefully short of the long-term, dynamic discipline that healthy competition would provide.

[357] Rate Reform Task Force, "Report to the Surface Transportation Board," April 25, 2019, available at https://www.stb.gov/wp-content/uploads/Rate-Reform-Task-Force-Report-April-2019.pdf, p. 2.

[358] GAO/RCED-90-80, p. 2.

[359] GAO/RCED-90-80, p. 2 ("Overall, the Staggers Rail Act has helped improve Class 1 railroads' financial health and rehabilitate rail facilities—the legislation's two primary purposes. For example, profitability increased during the 1980s compared with the 1970s, and increased capital spending on track and structures, in combination with declines in accidents caused by track defects during the 1980s, suggests improvement in the condition of rail facilities. In addition, the shipping industry has gained from lower rail rates and improved service.").

10.2. CPKC's proposed provisions would help to ameliorate some lost competition

342. As I discuss in more detail in Majure VS Volume II, CPKC has proposed conditions aimed at partially mitigating merger-induced harm.[360] These conditions include modifications to Applicants' CGP; restrictions that ensure a combined UP-NS could not hold shippers captive beyond pre-merger levels; enforceable service quality standards; the removal of contractual barriers for shippers and railroads seeking relief; constraints on the merged firm's voting power in governance of shared resources.[361] CPKC also proposes more specific, structural remedies in geographic areas likely to be acutely affected by merger-induced harm and/or in areas where CPKC would be able to provide another competitive Class I option.[362]

343. CPKC's specific, enforceable conditions are more likely to partially mitigate merger-induced harm than Applicants' vague proposed remedies. While CPKC's proposals would improve upon the conditions Applicants have proposed as remedies, even these more effective regulations are an inferior option to preserving the competition they would have to replicate. Given the lasting consequences of a rail

[360] Expert Statement of W. Robert Majure, Ph.D. Volume II of II, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, November 18, 2026.

[361] CPKC's Comments on Application and Request for Conditions, Volume II, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, November 18, 2026 ("CPKC Comment Part II"), Sections III–VII.

[362] CPKC Comment Part II, Section VIII.

merger, no regulation can fully protect shippers over the long term; only preventing the merger can do so.

10.3. The only way to fully protect shippers is to stop the merger

344. This merger, if allowed to proceed, will cause substantial harm to shippers by foreclosing competing interline options, weakening their bargaining leverage, and eliminating competition between UP and NS. The only way for The Board to fully protect shippers is to reject the merger. No set of regulatory conditions can replicate the competitive discipline supplied by independent railroads. Even an extensive regulatory framework would leave some harms unaddressed and constrain railroads' and shippers' abilities to adapt to changing economic conditions, while the loss of competition would be permanent.

345. However, if The Board decides to approve the merger, Applicants' proposed regulations will not come close to preventing harm to shippers. Meaningfully mitigating that harm would require a far more detailed and extensive regulatory framework. Even the complicated patchwork of conditions proposed by CPKC (which I discuss in Majure VS Volume II) would be only one of many sets of protections The Board would need to impose to address the merger's wide-ranging competitive harms.

11. Appendix: The limited and narrow screens Dr. Bailey runs are flawed and irrelevant

346. As I discuss throughout this statement, Dr. Bailey's screens are too narrow for a merger of this size. This results in Dr. Bailey completely ignoring any *indirect* competition between UP and NS (the type of competition that stems from a merger of this size and scale, as recognized by The Board's 2001 Rules). By ignoring indirect competition, her analyses cannot account for the kinds of leverage I discussed above in Sections 4-6 (e.g., the foreclosure of interline competition, loss of Rule 11 contracts, captivity and bundling, and loss of competition over the middle of a movement), which is highly relevant to the outcome of this proposed merger. In this Appendix, I discuss additional ways that even the limited screens Dr. Bailey does perform are flawed, as she relies on inappropriate data and makes questionable assumptions to justify her findings.

347. As I established in Section 3, the proposed merger between UP and NS is of an unprecedented size and scale. A combined UP-NS would go nearly everywhere, touch more than {{REDACTED}} of U.S. rail revenues and be nearly impossible for shippers to avoid.[363] Therefore, any analysis that purports to study the effects of this merger on competition and on shippers needs to account for its scale, including the indirect competition that a merger of this scale will affect. Dr. Bailey runs three screens: a "customer access" analysis, a "within corridors" analysis, and a "between corridors" analysis. None of these screens address the interline foreclosure, use of Rule

[363] See Exhibit 2.

11s, bargaining over the middle of a movement, and geographic bargaining competition analyzed above, and therefore do not measure the forms of competition most threatened by a merger of this scope.

348. First, Dr. Bailey runs a customer access screen, using the SCRS data to identify customers that would become sole-served as a result of the merger. However, her analysis does not consider how the shippers she identifies as becoming sole-served might lose bargaining power against the combined UP-NS if they: lose an option on one side of the gateway, can no longer generate Rule 11 rates for legs of movements, become captive across multiple facilities, or lose the competition between UP and NS over the middle of movements (like I do).[364] Furthermore, as I explained in Section 5.3 (and expand on below), Dr. Bailey's analysis falls short of my captivity and bundling analysis: it does not identify the full set of shippers that would become sole-served by the proposed UP-NS because she relies on SCRS data, which only contain a subset of

[364] Bailey Deposition, pp. 196:8–198:3 ("Q. So on a movement where UP serves the origin and NS serves the destination, it is often the case that UP and NS can interchange at different gateways, right? … Q. Which gateway UP and NS used to interchange traffic can affect which railroad carries the longer portion of the haul, right? …. [A.] That's not something I looked at in my report."), 199:22–200:3 ("Q. Next topic: Are you aware whether shippers and railroads negotiate with one another considering multiple segments at one time? … [A.] I think I'm not aware of when one or the other. That's not an analysis I did in my report."), 189:1–9 ("Q. But the access to customer analysis doesn't assess whether UP or NS serve different facilities for the same customer, right? A. So what I looked at here was access to the -- who has access to that facility. That's the work that I did here. I mean, I have other access that's looking within the corridor or between corridors, but -- but for customer facilities, I'm looking at each facility.").

shippers and customer facilities—namely the customer facilities and shippers in common service areas that have been manually added to the dataset.[365]

349. Second, Dr. Bailey's "within corridors" analysis is a subset of the analysis I ran when evaluating CP-KCS. She states: "The evaluation of prior railroad mergers has included analyses of the effect on the number of options that shippers have within corridors. *See* Majure VS at ¶¶ 49-53. My approach differs in that it focuses on horizontal overlaps."[366] Contrary to The Board's 2001 Rules, Dr. Bailey has *narrowed* the scope of a screen meant for a much smaller transaction by focusing on corridors where UP and NS operate in the same segment, but not where they serve different segments: for each BEA-BEA corridor, she counts the number of railroads with access to a given segment of that corridor, looking for horizontal overlap only.[367] Dr. Bailey then defers to Dr. Israel's "counting algorithm" for an analysis of indirect competition

[365] Indeed, as I discuss in Section 11.1, Dr. Bailey only identifies a subset of the shippers that another one of Applicants' experts (Dr. Israel) identified. Neither Applicants nor their experts explain the discrepancy in these analyses. See workpaper 11-1.

[366] Verified Statement of Elizabeth M. Bailey, December 17, 2025, fn. 95. See also Bailey Deposition, p. 192:1–12 ("Q. So, for example, that analysis can't flag a situation where UP serves many segments for a customer in one area and NS serves other segments for that same customer, right? A. Other segments that are not the segments that UP is serving? Q. Correct. A. Right. Correct. Because this is an analysis of within-corridor. So the analysis -- I mean just as the first sentence says, it's to transport freight along the same segment of the specific corridor.").

[367] For example, consider a hypothetical east-to-west corridor interchanging at a major gateway like Chicago with one UP-CSXT route and one BNSF-NS route as available options. My approach from CP-KCS would flag this as a 2-to-1 because a combined UP-NS would participate in both routes post-merger. In contrast, Dr. Bailey's narrower screen would not flag this corridor because UP and NS do not serve the same *portion* of the route. A "BEA area" is defined by the Bureau of Economic Analysis to refer to relevant regional areas, I refer to these as "BEAs" throughout my report.

within corridors.[368] I explain the deficiencies of Dr. Israel's "counting algorithm" in Section 4.3. Taken on its own, Dr. Bailey's screen does not allow her to evaluate how shippers will be affected by the proposed merger when UP and NS serve different parts of a movement. In the prior sections, I have demonstrated numerous ways in which this merger will likely harm shippers and other railroads that will occur regardless of the extent to which UP and NS overlap at particular locations. For example, I have shown the effect that concentration of a shipper's full set of locations will have—a loss that cannot be captured by Dr. Bailey's narrow screen. Furthermore, as I explain below, even where her arbitrarily narrow screen does flag corridors as competitive concerns, Dr. Bailey applies a set of arbitrary and unsupported assumptions to dismiss them.[369]

350. Third, Dr. Bailey runs a screen for geographic competition, which she claims is like the "between-corridors" analysis I ran when evaluating CP-KCS. She does not offer any explanation for why the assumptions that were appropriate to screen a combination of networks that do not pose anywhere near the same dominant scale over the shipments of many industries and numerous geographic areas are appropriate for evaluating the proposed UP-NS merger, which does have that scale and scope. Evaluating the movements into or out of one BEA at a time, as the 50/10 screen does, fits a CP-KCS combination that only connects the two networks in one BEA, but this

[368] Bailey Second Errata VS, ¶ 155 ("Moreover, corridors in which there is the loss of an independent route will generally either (1) feature UP and NS operating on the same segment of the corridor, in which case they would be included in my analysis of within-corridor competition in this verified statement, or (2) feature UP and NS operating at different ends of the corridor, in which case I understand that analysis of the corridor would be included in Dr. Mark Israel's verified statement.").

[369] I discuss this further in Section 11.2 below.

screen leaves a lot of room for effects that span numerous economic areas or bargaining over moves that are not even for the same BEAs as a UP-NS combination would. In a merger of this scope and scale, where UP and NS often compete over large portions of a movement and for a large group of shippers' facilities simultaneously, Dr. Bailey's chosen screen falls woefully short. Because this screen considers corridors in isolation, it cannot observe how shippers and railroads bargain over movements across multiple facilities (including bargaining over multiple movements/facilities simultaneously) — and therefore this screen cannot observe how UP-NS might gain bargaining leverage over shippers' portfolios, a competitive concern in a UP-NS combination. Furthermore, as I explain below, even when her poorly justified screen does flag a BEA, Dr. Bailey arbitrarily dismisses competitive concerns on the basis of Applicants' vague, incomplete commitments.[370]

351. Because her screens do not identify the indirect competition highlighted by The Board in its 2001 Rules, Dr. Bailey assumes—rather than shows—that the proposed merger will not harm shippers. That reliance on assumptions is even explicit with respect to the commodities where The Board has deemed that competition is sufficient to exempt the commodity from regulation, such as autos and intermodal traffic.[371] Dr.

[370] I discuss this further in Section 11.3 below.

[371] Dr. Bailey excludes autos and intermodal traffic from her analysis of independent corridors in her Exhibit 12 as well as commodity-corridors which are transported by more than 50% non-rail modes. See Bailey Second Errata VS, ¶ 133 ("This figure represents the carloads on those corridors in 2023 exclusive of intermodal and automotive shipments and commodities that primarily travel by truck or other non-rail methods."). Dr. Bailey excludes autos and commodities she identifies are principally transported in intermodal containers from her 50/10 screens in her Exhibits 14 and 15 and includes non-rail modes in her analyses. See Bailey Second Errata VS, ¶¶ 179–180 ("Certain commodities are

Bailey treats the exemption as if it guarantees competition will exist in perpetuity rather than recognizing it does nothing of the sort. Current competition may be high enough to justify an exemption from regulation, but if those levels are not preserved by The Board—if a UP-NS merger eliminates the competition—the exemption would make consequences for shippers even worse. These commodities should, at the very least, have been looked at to see if there is such a threat for The Board to deal with.

352. When I run analyses looking at aspects of competition that Dr. Bailey overlooked,[372] I find that there is substantial competition at risk if UP and NS were to merge—and that the loss of this competition would harm shippers. Therefore, Dr. Bailey's analyses are wholly insufficient to evaluate a merger of this scope and scale. Moreover, the analyses she does run are flawed, as I expand on further below.

11.1. Dr. Bailey's screen for customer facility access does not identify the full set of customers losing competitive options

353. Throughout this statement, I have discussed how Dr. Bailey's analysis of access to customer facilities fails to consider many of the ways that shippers will lose bargaining

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principally transported in intermodal containers. Commodities that have 50 percent or more movements in intermodal equipment are defined as 'intermodal.' … Automotive products are also excluded from the analysis for the reasons described above."); ¶ 177 ("As in section 4.3, non-rail modes are also included as competitive freight transport alternatives.").

[372] Namely, the merger would give the combined UP-NS the ability and incentive to foreclose competition (Section 4.2); harm shippers by reducing their options (Section 4.2) and by curbing their ability to generate competitive bids on legs of movements via Rule 11 contracts (Section 4.1.1); would increase UP-NS leverage and reduce shipper leverage for bundling (Section 5); and would strip shippers of the ability to benefit from competition between UP and NS over interchange point and length of haul (Section 6).

power after the merger. In this section, I explain that her methodology also fails to identify all 2-to-1 and 3-to-2 facilities that would result from the merger.

354. Using SCRS registration data from August 2025, Dr. Bailey counts how many Class I, II, and III railroads have direct or reciprocal-switching access to each customer facility. She then flags facilities where the merger would reduce that count from 2-to-1 or 3-to-2.[373] Dr. Bailey's conclusions from this screen are flawed—if not irrelevant—because she relies upon a source of data that cannot capture the true set of customer facilities that would lose access to a competing railroad.

355. The SCRS data lists customer facilities and their reciprocal switching conditions for customers who have requested reciprocal switching.[374] However, if a customer has never been manually entered into by a railroad, they would not appear in this dataset (even if this proposed merger would render them sole-served at certain—or perhaps

[373] Bailey Second Errata VS, ¶¶ 107–109, Exhibit 11. I understand that Dr. Bailey also runs the same analysis using only Class I railroads in her Supplemental VS, Exhibit 1 and Exhibit 2.

[374] The SCRS dataset provides reference information about customers, serving carriers, and reciprocal switch changes. Class I railroads (and some Class II and Class III railroads) are responsible for updating and maintaining SCRS. Railroads are responsible for updating information upon changes, additions, or expirations in operations. "Serving Carrier & Reciprocal Switch (SCRS) Business Rules Guide," *RailInc*, June, 2017, available at https://public.railinc.com/sites/default/files/documents/SCRS_BusinessRules.pdf; Karyn A. Booth, et al., "Seventh Circuit Vacates STB's Reciprocal Switching Regulations," *Thompson Hine*, July 15, 2025, available at https://www.thompsonhine.com/insights/seventh-circuit-vacates-stbs-reciprocal-switching-regulations/ ("Reciprocal switching allows a shipper or receiver that is 'captive' to a single serving railroad ('incumbent railroad') **to request access** to a competing carrier via a 'switch,' where the incumbent carrier handles the customer's freight between its facility at the origin or destination and the tracks of the competing carrier.") [emphasis added].

many—facilities).[375] Therefore, there are customer facilities losing access to a railroad that Dr. Bailey cannot identify using SCRS data that she could have identified had she used her own railroad tapes data build that she relies on in other analyses.

356. Indeed, there is evidence that Dr. Bailey has omitted relevant customers and customer facilities that would lose competitive options as a result of this proposed merger. As just one example, {{REDACTED

}} {{REDACTED

}}[376] {{REDACTED

[375] For example, I observe many customers and customer facilities at UP or NS stations in the railroad tapes and centralized station master files that I do not observe in the SCRS data. See workpaper 11-2.

[376] UP_0041664.xlsx, {{REDACTED }}; Supplemental Verified Statement of Dr. Elizabeth M. Bailey, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, July 17, 2026 ("Bailey Supplemental VS"), Exhibits 1–2, SUPP. PAGE 222–227, fns. 11, 19. {{REDACTED

}}.

}} {{REDACTED

}}[377] {{REDACTED

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357. Moreover, Dr. Bailey's use of SCRS data to perform this analysis is inconsistent with the rest of her VS. For her within-corridor and between-corridor analyses (which I discuss below), Dr. Bailey relies on observed traffic data from the railroad tapes from the six Class I railroads, in conjunction with data from the CCWS.[378] She does not provide a justification for why she does not use railroad tapes data (potentially in conjunction with the SCRS data) to conduct her analysis of the count of railroads with access to customer facilities if UP and NS were to merge.

358. Dr. Bailey's use of SCRS data to perform this analysis is also inconsistent with Dr. Israel's approach to identify areas that would become sole-served as a result of the merger. Dr. Israel identifies whether a Class I railroad serves a commodity in an area directly from observed waybill traffic, rather than relying solely upon SCRS data.[379]

[377] See workpaper 11-3.

[378] Bailey Second Errata VS, Sections 4.3–4.4.

[379] Israel Second Errata VS, ¶¶ 50–51 ("My analysis considers two alternative definitions of competition: 'Competition Version 1,' which uses industry location data *and* observed traffic …

Using observed traffic data, Dr. Israel's methodology would identify areas that would become sole-served if UP and NS were to merge that Dr. Bailey omits from her analysis.[380] Thus, even by Applicants' own expert's standards, Dr. Bailey's analysis does not sufficiently assess the number of customers and customer facilities that would lose a competitive option or become captive to UP-NS if UP and NS were to merge. Moreover, as I discussed above, Dr. Bailey identifies fewer captive shippers than I do when I run my analysis of geographic bargaining (Section 5).

11.2. Dr. Bailey's "within-corridor" screen does not identify where shippers will lose independent, competitive options on a movement and assumes away competitive concerns

359. Throughout this statement, I discuss how Dr. Bailey's analysis of "within corridors" competition is narrower than how economic experts in prior mergers have analyzed within-corridor competition (including my analysis of CP-KCS, which considered the number of independent routes a shipper had within a corridor).[381] In this section, I explain that even when her narrow analysis does flag competitive concerns, Dr. Bailey relies on a set of arbitrary assumptions to dismiss them.

Using 'Competition Version 1' I find that roughly {{REDACTED}} percent of the through rate traffic under consideration is contracted with a carrier on the sole-served segment.").

[380] For example, Dr. Israel's flags for whether Class I railroads serve the origin or destination of movement would identify areas e.g., {{REDACTED }} as potential 2-1 but customers in these areas are not addressed by Dr. Bailey. See workpaper 11-1.

[381] Bailey Second Errata VS, ¶ 153 ("The evaluation of prior railroad mergers has included analyses of the effect on the number of options that shippers have within corridors. *See* Dr. Majure VS at ¶¶ 49–53. My approach differs in that it focuses on horizontal overlaps."). See also Verified Statement of Elizabeth M. Bailey, December 17, 2025, fn. 95.

360. Dr. Bailey does not dismiss competitive concerns based on evidence that shippers have alternative routes that they can credibly use. Rather, she excludes competitive concerns under four seemingly arbitrary categorical rules: a 50% non-rail-tonnage threshold,[382] an automotive and intermodal carve-out,[383] a single customer carve-out tied to a proposed commitment,[384] and a Kansas City-St. Louis carve-out based on shared terminal access.[385] Dr. Bailey primarily relies on the first rule, a 50% non-rail-tonnage threshold, to dismiss further analysis. She claims that "customers in corridors where trucks are a viable alternative have numerous competing truck options in addition to rail" and "[c]ustomers in corridors where water transport is a viable alternative also have competitive waterway options in addition to rail."[386] However, Dr. Bailey has not shown that shippers that use rail are willing or able to easily substitute to truck or waterway options, or that relevant routes even exist for shippers to do so. Dr. Bailey has not shown that there are no competitive concerns due to an elimination of options for shippers—she has instead made an assumption about the competitive importance of the options lost by shippers.

361. Moreover, this assumption is in tension with other analyses Applicants have put forward. In particular, the assumption that truck and waterway options are competitive if they carry 50% of the tons is difficult to reconcile with Applicants' own claimed

[382] Bailey Second Errata VS, ¶ 139.
[383] Bailey Second Errata VS, ¶ 140.
[384] Bailey Second Errata VS, ¶ 141.
[385] Bailey Second Errata VS, ¶¶ 142–145.
[386] Bailey Second Errata VS, ¶ 137.

benefits. Applicants have not explained how Mr. Hunt's claims of truck-to-rail diversion square with Dr. Bailey's claims of rail-to-truck and rail-to-barge diversion. Dr. Bailey assumes there is *already* intense close competition between transport modes whenever trucks or barges move a lot of a product. Indeed, she assumes it is so close that we can ignore any concern for lost competition within rail implicitly because so many shippers switch readily between transport modes. At the same time, Mr. Hunt assumes that rail cannot compete with other transport modes without a merger — that the large share of truck shippers represents a body of customers rail can only win if it can offer new single-line rail service, after which it will win them in large numbers. That is not at all compatible with the close existing competition Dr. Bailey assumed.

362. Similarly, Dr. Bailey *assumes* rather than *shows* that the other three categories for which she implements rules would not be affected by the proposed merger. She assumes that automotive and intermodal traffic will remain competitive due to The Board's carve-out.[387] But Dr. Bailey does not actually analyze whether this carve-out would continue to be reasonable in the face of a proposed merger of this scale, i.e., she does not analyze whether a combined UP-NS would have a large share of automotive or intermodal traffic, or if it would have an ability or incentive to foreclose competition in these types of movements. Indeed, UP-NS would participate in {{{REDACTED}}}of U.S. automotive revenues if they were to merge, casting doubt on the validity of this carve out, which Dr. Bailey applied without further analysis.[388]

[387] Bailey Second Errata VS, ¶ 140.

[388] Based on the Six-Railroad Tapes data from 2019-2024. See workpaper 11-4.

She also assumes that traffic in the Springfield, IL-MO–Evansville-Henderson, IN-KY corridor will remain competitive (despite the fact that it would be sole-served by UP-NS), because Applicants have committed to allowing another Class I railroad to serve a {{REDACTED}} customer in this corridor.[389] Finally, she assumes that traffic between Kansas City and St. Louis will remain competitive, despite some corridors being flagged as losing a competitive option, because she states that many Class I railroads can provide single-line service in, around, and between Kansas City and St. Louis via, e.g., the KCT and the TRRA.[390]

363. After applying these four seemingly arbitrary categorical rules, Dr. Bailey further dismisses competitive concerns by alleging that there may be "alternative feasible routes" that "are not observed in the combined waybill data."[391] These routes are not observed as actual routes used by customers. In her deposition, while she states that she has reasonable rules in place to identify these alternative routes, she admits that, hypothetically, shippers may not use these routes because they are too expensive.[392]

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[389] Bailey Second Errata VS, ¶ 141.

[390] Bailey Second Errata VS, ¶¶ 142–148.

[391] Bailey Second Errata VS, ¶ 150 ("The combined waybill data might not include movements on all the feasible routes that customers can choose from within a corridor. Many corridors have relatively few customers and customers may prefer to consolidate all of their volume in a corridor using just one route. To account for the possibility that alternative feasible routes exist on a corridor, traffic information in the combined waybill data on individual segments and traffic interchanges at the main gateways is used to add additional interline options that are available to customers, but which are not observed in the combined waybill data on a given route and so are not included when applying the initial screen.").

[392] Bailey Deposition, p. 220:15–23 ("Is one possible reason that those interline options are not observed in the data because they are too expensive for shippers? A. I mean, hypothetically, like

11.3. Dr. Bailey's "between-corridor" analysis uses the wrong screen to analyze geographic competition

364. Throughout this statement, I explain that Dr. Bailey's "between corridors" analysis relies on a 50/10 screen that is insufficient to analyze the sort of geographic competition that is relevant for a merger of this scale because it evaluates each movement in isolation. Treating a merger as having a relatively small effect on a shipper's overall portfolio of movements and their outside options (rather than evaluating if this is actually the case) dismisses rather than assesses any attempted exercise of market power. In this section, I explain how Dr. Bailey also errs when she claims that Applicants' various commitments (OGCs, CGP, and access commitments) will preserve competition in the corridors flagged by this screen.

365. Dr. Bailey analyzes competition between corridors (also referred to as geographic competition, or source and destination competition). For each origin-commodity and destination-commodity pair, she tests whether a shipper could substitute at the origin or destination, using the 50/10 screen followed by Critical Loss Analysis.[393] In her Second Errata VS, she concluded that every pair initially flagged by the screen was ultimately unflagged by the Critical Loss Analysis, finding no between-corridor competitive harm at all.[394] In her Supplemental VS, Dr. Bailey does not change the first-stage 50/10

anything is possible … I wanted to rule out things that were unrealistic. And so that's -- that's in part why I impose those requirements on what is a feasible route.").

[393] Bailey Second Errata VS, ¶¶ 158-167, Appendix G.

[394] Bailey Second Errata VS, ¶¶ 182, 185, Exhibits 14–15.

screen, but updates the second stage of the analysis from a critical loss analysis to a remedy-coverage analysis (which I discuss below).[395]

366. When Dr. Bailey updates this analysis in her Supplemental VS, she claims that competition would be preserved in the majority of corridors flagged in her updated "between-corridors" analysis due to three remedies (OGCs, CGP, and access commitments). However, her analyses are flawed and incomplete:

a. She claims that OGCs and CGP would apply to particular facilities because she can find another source or destination for the shipper to ship to where those proposals would apply. But she makes no effort to determine whether such shipments are economical, practical, or likely to happen.

b. She is vague about (and does not provide) the Access Commitments (or any drafts) that she reviewed to form that opinion. She admits that: "The remedies have not been finalized … commitments proposed to these shippers are not accounted for in the current analyses because they have not been finalized,"[396] yet she does

[395] Bailey Supplemental VS, ¶¶ 21–22 ("I start from the analysis of competition between corridors from my April VS, which applied the two-step approach from prior mergers to identify areas and commodities where the merger might lead to a loss in geographic competitive constraints. Step 1 used the 50/10 screen to flag areas and commodities as warranting further review. … To address the STB's request, the analysis here uses the same origin-commodity and destination-commodity pairs from Step 1 …").

[396] Bailey Supplemental VS, ¶ 42, fn. 38.

attribute some carloads as being covered by these unfinalized, unproduced Access Commitments.[397]

c. In her deposition, she testified that she did not know if—and had not performed any economic analysis of whether—OGC, CGP, or access commitments would be "effective at preserving horizontal competition."[398]

367. Dr. Bailey also fails to use the most recent 2025 traffic tapes data for the analyses most important to her conclusions (e.g., the three screens in her Revised Application). Dr. Bailey used some of the available 2025 traffic tapes — but only for the customer-access counts requested by The Board in its Decision No. 21.[399]

368. Taken together, all of these gaps mean that Dr. Bailey has not actually tested her conclusion that competitive harm from this merger is limited. She does not properly identify customers and customer facilities that would become sole-served as a result of the proposed merger. She ignores indirect competition and assumes away competitive concerns by stating (without showing) that truck and waterways are competitive substitutes to rail (and similarly assumes that automotive traffic, intermodal traffic,

[397] See, e.g., Bailey Supplemental VS, Exhibits 5–7, column 5.

[398] Bailey Deposition, pp. 241:14–242:11 ("You do not know if these commitments are effective at preserving horizontal competition, correct? … [A.] What I wrote is if these commitments are effective at preserving horizontal competition for these customers. I did not write these commitments are effective at preserving horizontal competition for these customers. … Q. And you did not write: These commitments are effective at preserving horizontal competition because you don't know whether they are or not, correct? You didn't study that, correct? … [A.] That's why I wrote if these commitments are effective at preserving horizontal competition, that's why I wrote that.").

[399] Bailey Supplemental VS, ¶ 5.

traffic covered by proposed commitments, and traffic at the TRRA in Kansas City would not be affected by the proposed merger). Finally, she uses the wrong screen to analyze geographic competition for a merger of this scale—and does not provide justification for why the proposed remedies would assuage competitive concerns identified by her screen. Dr. Bailey has not run the proper analyses to determine if the proposed merger would harm shippers, and any conclusions she makes to this effect are baseless.

12. Appendix: Empirical analyses of railroad pricing and competition

369. Applicants' expert, Dr. Israel, puts forward a regression that purports to show that interline service is up to 29% higher priced than single-line service. This result suggests that single-line service is simultaneously a high-quality service and also offered at a substantially lower price. In this section, I show that Dr. Israel's regression results are the product of a flawed regression design that fails to answer the question at hand in this merger: what will shippers pay for services in corridors where UP and NS currently interline. I also present an improved regression that answers the question at hand. My regression simultaneously accounts for a new single-line service while also accounting for the change in competition over gateways from the merger. My results show that losing a railroad's competitive pressure over gateways will lead to higher prices even when a new single-line is available.

370. Dr. Israel also ignores that the combined UP-NS would have increased bargaining leverage over shippers, which I expand on from analyses I discussed above. I also expand on how his analysis of independent routes does not address the competitive harms of the merger.

12.1. Dr. Israel's regression comparing single-line and interline rates is flawed

371. In Figure 10 of his VS, Dr. Israel reports the results of a regression analysis that compares single-line and interline rates and includes various "control" variables to purportedly predict the benefit of the proposed merger. He claims his analysis shows

that interline service has rates that are 15%–29% higher than "comparable" single-line service.[400] This empirical result that Dr. Israel puts forward comes from a fundamentally flawed regression design, and Dr. Israel's interpretation of it—that it provides a reliable measure of benefits from the proposed merger—is wrong and misleading.

372. In this section, I show that his result comes from a poor regression design that fails to answer what will happen to prices if current UP and NS interline services become single-line services.

373. I first describe Dr. Israel's regression design, data selection, and processing choices, so that I can proceed to identify their flaws (Section 12.1.1).

374. I then describe how his "controls" are flawed and drive his flawed and misleading results (Section 12.1.2). I also explain other flaws in Dr. Israel's regression and data handling (Section 12.1.3). Finally, I explain how Dr. Israel's analysis ignores that the merged firm is likely to apply UP's pricing strategy to NS (Section 12.1.4).

375. Taken together, Dr. Israel's result that single-line service is substantially lower priced than interline service is driven by his flawed regression design, rather than anything substantive about the likely effect of the proposed merger on rates.

[400] Israel Second Errata VS, Figure 10.

12.1.1. Dr. Israel's regression design

376. Dr. Israel uses a regression to "test whether prices on comparable routes are lower for single-line service."[401] Because he cannot observe the rates UP and NS will charge once they can offer single-line services on the corridors affected by the merger, Dr. Israel compares single-line rates to interline rates across different corridors. He claims his regression compares, for example, "UP's single-line rate on a 1,000-mile shipment of plastic pellets to the total interline rate on a 1,000-mile shipment of plastic pellets that originates with UP and is delivered by another Class I carrier."[402] Dr. Israel claims to isolate the price effects of single-lining by relying on a set of control variables that he claims "ensure that the measured price differences are the result of interlining and not due to differences in shipment characteristics or costs."[403]

377. Dr. Israel uses the Six-Railroad Tapes Data to create his regression sample. He then aggregates and restricts to movements originating and terminating in the U.S. and involving UP and NS (either single-line movements or interline movements involving at least one of the two carriers).[404] Thus, he compares rates for only UP or NS single-line movements with rates for interline movements that involve one or both of UP and

[401] Israel Second Errata VS. ¶ 112.

[402] Israel Second Errata VS. ¶ 112.

[403] Israel Second Errata VS. ¶ 112.

[404] Israel Second Errata VS. fn. 32 ("Data are aggregated to the following unit of observation: railroad, route, commodity, shipper, year-month, car type, car owner, pricing document type, and unit train flag."), ¶ 113 ("The regression sample … is limited to UP and NS single-line movements as well as interline movements involving UP or NS, which originate and terminate within the United States."). Dr. Israel also runs an additional sensitivity including using rates data from all railroads. See Israel Second Errata VS, fn. 52.

NS. He further restricts his sample of interline movements to movements in corridors where UP or NS do not offer single-line service.[405]

378. In Figure 10 of his VS, Dr. Israel presents results from three different samples. In his first sample, he compares rates from UP and NS single-line movements against all interlines which involve UP, NS, or both. In his second sample, Dr. Israel compares UP and NS single-lines to interlines involving UP and NS which he determines to be "East ↔ West", requiring an eastern railroad (NS, CSXT) to interchange with a western railroad (UP, BNSF). In his third sample, he compares UP and NS single-lines to UP-NS interlines only.

12.1.2. Dr. Israel's regression design is fundamentally flawed

379. As I discussed in Section 4.3.2, Dr. Israel's own regression data show {{REDACTED }} Dr. Israel's regression, through a flawed design that purports to control for "other factors that affect pricing" but fails to do so, {{REDACTED }}.[406]

[405] Dr. Israel defines these interline moves as "simple interline" traffic meaning "moves involving two line-haul carriers on routes that do not have single-line service by UP or NS." As I discuss below, Dr. Israel's errors lead him to fail to appropriately implement these restrictions. Israel Second Errata VS, ¶ 114 ("The first two columns report the results from estimating the regression on a sample that includes single-line moves, as well as all 'simple interline' traffic, defined as moves involving two line-haul carriers on routes that do not have single-line service by UP or NS.").

[406] Israel Second Errata VS, ¶ 112.

380. In particular, Dr. Israel's regression design {{REDACTED }} fails to account for meaningful factors that affect railroad pricing. As I highlighted in Section 4.3.2, he fails to control for the inherent differences across movements in different parts of the country that affect railroad pricing. Instead of accounting for these factors, Dr. Israel employs a distance control, which is agnostic to factors that affect pricing of movements from one part of the country to the other. Dr. Israel's control for distance is flawed.

381. First, as discussed in Section 4.3.2, Dr. Israel's distance control does not account for where the distance is covered and how the specifics of that geography may differentially affect prices for movements that differ along other dimensions. That is, Dr. Israel's regression model, in his own words, assumes that a 1,000-mile movement of plastic pellets is comparable no matter where that movement occurs in the country.[407] But as I showed in Exhibit 21, this assumption leads to comparisons of movements that differ on more than just single-lining versus interlining and in ways that his control variables do not account for. As a result, his distance control forces apples-to-oranges comparisons.

[407] Israel Second Errata VS ¶ 112 ("To illustrate in simple terms, the regression compares, for example, UP's single-line rate on a 1,000-mile shipment of plastic pellets to the total interline rate on a 1,000-mile shipment of plastic pellets that originates with UP and is delivered by another Class I carrier. As with my regressions testing for foreclosure, above, I include controls for other factors that affect pricing, including: commodity, car owner, car type, unit trains, type of pricing arrangement (contract, private quote, etc.), the year-month of the shipments, the median rail distance between the origin and destination, and the average net weight per car").

382. Dr. Israel "controls for" distance in two different ways.[408] First, he analyzes rates as revenue per carload-mile, which controls for distance within the dependent variable. Second, he controls for distance again by including distance and the square of distance as control variables in his regression. In taking this non-standard approach, Dr. Israel forces the effect of distance on rates to take a specific form that cannot account for the peculiarities of moves of different distances.

383. Finally, Dr. Israel's regression results depend solely on his flawed distance variable, rendering his results unreliable. Specifically, out of all the controls that Dr. Israel includes in his regression, the distance control is the one {{REDACTED }} and finding that single-lines are lower priced than interlines. Exhibit 53 presents the regression results replicating Dr. Israel's Figure 10 regression but excluding distance as a control among the explanatory variables. For the "All simple interline traffic" sample (the first set of bars), a regression excluding his distance controls shows slightly higher interlines rates compared to single-lines (0.4%–0.5%), but the differences are not statistically significant at the 90% confidence level. This finding shows stark contrast with Dr. Israel's own regression results where he includes the distance control (27–29%). The contrast is even stronger for the other two regression samples (the other two sets of bars). For both the "East↔West interline traffic" sample and the "UP↔NS

[408] Israel Second Errata VS, ¶ 112 ("As with my regressions testing for foreclosure, above, I include controls for other factors that affect pricing, including: commodity, car owner, car type, unit trains, type of pricing arrangement (contract, private quote, etc.), the year-month of the shipments, the median rail distance between the origin and destination, and the average net weight per car."), Figure 10, ("Dependent Variable: Ln (Rate per car-mile).").

interline traffic" sample which focus more closely on the set of traffic that will likely be impacted by the proposed merger, removing the distance control from Dr. Israel's regression yields finding that interline rates are 2–5% lower compared to single-lines. The finding in the "East↔West interline traffic" sample (second set of bars) are statistically significant at least at the 95% confidence level.[409]

[409] See Exhibit 53 backup.

Exhibit 53
Dr. Israel's regression without distance controls shows that single-lines are not cheaper than interlines



Source: Israel's Second Errata Backup (Tapes)
Note: This exhibit presents the percentage difference in rates of through rate and Rule 11 movements in relation to single-line movements. The coefficients are obtained from regressions analogous to Israel Second Errata VS Figure 10 excluding the distance and distance squared controls.

384. This exhibit shows that all other controls Dr. Israel includes to account for other factors in railroad pricing do not lead to his ultimate conclusion. Only distance, which misses how shipment characteristics vary across the country, achieves his result.

12.1.3. Dr. Israel's regression design and data handling have other flaws

385. Dr. Israel's regression model and data handling have a number of other flaws that contribute to his flawed results.

(1) Dr. Israel defines competition based on potential access, not on whether shippers actually use that access

386. Dr. Israel's approach to account for the competitive structure in his regression has several flaws. First, he relies exclusively on simple counts of railroads "present" at the origin and destination to account for competition. These basic controls fail to capture the actual routing options available to shippers or the bargaining leverage shippers derived from having viable alternatives on a given corridor. Second, Dr. Israel defines competition based on railroads' theoretical access to a station, rather than evaluating a shipper's economic or technical ability to rely on a given railroad for movements in a specific route.[410] As demonstrated in Exhibit 54, {{REDACTED
}}.

[410] Dr. Israel identifies that a Class I railroad has access to a given station (i.e. SPLC-SCAC-FSAC) if said railroad has direct access or access via a non-Class I railroad according to the Centralized Station Master (CSM) and Serving Carrier/Reciprocal Switch (SCRS); or the given Class I railroad originates, terminates, or interchanges more than 1% of carloads for a given group of commodities and SPLC according to the CCWS (2019-2023). Israel Second Errata VS, fn. 30 ("Access for a given Class I railroad at a particular station is determined using the centralized station master ("CSM") and Serving Carrier/Reciprocal Switch ("SCRS") files such that a particular railroad station, defined as the combination of: SPLC-SCAC-FSAC, is considered to be open to competition from another Class I carrier if the other Class I carrier has open access to one or more customers in common with the railroad/station in question."); Israel Second Errata VS, fn. 31 ("In particular, if a Class I railroad is observed originating, terminating, or interchanging more than 1% of carloads for a given group of commodities at a particular station (SPLC-6) in the STB confidential Carload Waybill Sample from 2019-2023, that railroad is determined to be competitive at that origin or destination for shipments of that commodity group.")

387. Exhibit 54 illustrates the stark disconnect between Dr. Israel's theoretical measure of potential competition and the actual competitive options shippers' choices reveal as practically available according to the Six-Railroad Tapes Data. The first row of the exhibit evaluates observations in Dr. Israel's regression sample that he claims are sole-served on one end and served by two railroads on the other end. The first cell indicates that {{REDACTED }} have those competitive options based on observed movements in the data (see note for details). Of these observations {{REDACTED }} have two options at either end based on observed movements, {{REDACTED }} Dr. Israel's definition. Dr. Israel {{REDACTED }} of these observations based on observed movements. Rows two and three display the analogous statistics for other competitive scenarios claimed by Dr. Israel and show {{REDACTED }}.

Exhibit 54
Measuring competition based on access to a station *{{REDACTED }}* ***shippers' real options***

{{REDACTED

}}

388. The stark disconnect between potential and observed competition confirms that railroad access, at least as Dr. Israel identifies it, does not equate to a viable competitive option. Relying on these theoretical options to measure competition ignores market realities such as restrictive switching agreements and economically unviable circuitous routes that prevent shippers from using these alternative carriers. Additionally, it ignores the possibility that a given route cannot be served with an interline because the railroad that currently offers a single-line has already foreclosed competition by refusing to interline with potential partners.

(2) Dr. Israel's data and regressions have unresolved data misconceptions and inaccuracies across multiple submissions

389. In addition to the conceptual errors in the comparison Dr. Israel seeks to calculate, his regression analysis also suffers from substantial conceptual and implementation errors in his data processing. As explained below, Dr. Israel aggregates the data without any justification and fails to process the data in the way he describes in his Verified Statement or in a coherent way.

390. The unit of observation in Dr. Israel's regression is aggregated in a way that lacks any economic meaning or justification. In the Six-Railroad Tapes Data processed by Dr. Bailey, each observation represents a waybill, i.e., a shipment.[411] Dr. Israel aggregates multiple shipments into a single observation in his regression when the shipments {{REDACTED }}.[412] Dr. Israel does not justify why aggregating the data to this level is the correct approach to evaluate the question at hand. Indeed, at his deposition, he testified that he believed his regression was estimated at the individual waybill level.[413] The arbitrary aggregation makes the

[411] Bailey Second Errata VS, Appendix C ¶ 64 ("For the analysis, the combined waybill data were aggregated to the shipment level by summing up the revenue, car count, and net tons for each waybill number, waybill date, lead equipment initial and number (bill of lading number for car-level data), origin SPLC, destination SPLC, and 7-digit STCC code.").

[412] Israel Second Errata VS, fn. 32 ("Data are aggregated to the following unit of observation: railroad, route, commodity, shipper, year-month, car type, car owner, pricing document type, and unit train flag."). As I discuss below, Dr. Israel {{REDACTED }}

[413] Israel Deposition, pp. 329:24–330:9 ("Q. I know we talked at length about Figure 10 earlier today on Page 54, but what's the unit of measure here? … A. So 54 is a progression where an individual -- so I think an individual observation in this is a waybill. I'd have to go back and check, but I'm pretty sure this is at the waybill level.").

regression results of Figure 10 difficult to interpret because it is unclear what each observation represents.

391. This arbitrary aggregation effectively introduces arbitrary weights in Dr. Israel's regression and impacts his empirical results. To see this, {{REDACTED}} of observations in Dr. Israel's aggregated data sample include more than {{REDACTED}} carloads per observation and likely combine multiple shipments. These observations altogether account for {{REDACTED}} of all carloads reported in Dr. Israel's version of the Six-Railroad Tapes Data ("Israel's Second Errata Backup (Tapes)"). In comparison, {{REDACTED}} of observations in Dr. Israel's regression sample include fewer than {{REDACTED}} carloads per observation and likely represent single shipments. These observations altogether account for only {{REDACTED}} of all carloads reported in Israel's Second Errata Backup (Tapes).[414] When I re-estimate Dr. Israel's regression by weighting each observation by the number of carloads it represents, the coefficients in Figure 10 of VS (Column 5, "UP↔NS Traffic") fall from 0.14 to 0.05 for through rate and from 0.20 to 0.11 for Rule 11 and are not statistically different from 0 at the 90% confidence level.[415] Furthermore, re-estimating his regression directly using the shipment level data in the Six-Railroad Tapes Data similarly reduces his estimates (as shown in Exhibit 55).[416]

[414] See workpaper 12-1.

[415] Israel Second Errata VS, Figure 10; see workpaper 12-2.

[416] Because Dr. Israel's dataset does not contain the number of shipments each observation represents, I cannot directly reweight his regression by the number of shipments.

392. In addition, Dr. Israel's implementation of his data aggregation is erroneous and differs from the level he intends. Dr. Israel claims that {{REDACTED }}[417] {{REDACTED

}}.

393. Dr. Israel also has {{REDACTED }}. Dr. Israel states that his regression sample is "limited to UP and NS single-line movements as well as interline movements involving UP or NS" and he further limits the interline movements to "'simple interline' traffic, defined as moves involving two line-haul carriers on routes that do not have single-line service by UP or NS."[418] However, his actual implementation {{REDACTED }}.

394. Dr. Israel's data processing erroneously {{REDACTED }}.

a. {{REDACTED

[417] Israel Second Errata VS, fn. 32 ("Data are aggregated to the following unit of observation: railroad, route, commodity, shipper, year-month, car type, car owner, pricing document type, and unit train flag.").

[418] Israel Second Errata VS, ¶ 113–114 ("The regression sample is based on Class I railroads' waybill data. It is limited to UP and NS single-line movements as well as interline movements involving UP or NS, which originate and terminate within the United States. … The first two columns report the results from estimating the regression on a sample that includes single-line moves, as well as all 'simple interline' traffic, defined as moves involving two line-haul carriers on routes that do not have single-line service by UP or NS.").

[419]}}

b. {{REDACTED

}}[420]

395. Dr. Israel's data processing also erroneously {{REDACTED

}}

a. {{REDACTED }}[421]

b. {{REDACTED

}}[422]

396. Dr. Israel's results are dependent on the unit of observation, as well as his implementation errors. Exhibit 55 replicates Dr. Israel's Figure 10 using the Six-

[419] See workpaper 12-3.

[420] {{REDACTED

}}

[421] {{REDACTED

}}

[422] {{REDACTED

}}

Railroad Tapes Data, instead of his aggregated data, and corrects Dr. Israel's implementation errors.[423] These corrections reduce the estimated price premium for Rule 11s from 29% to 20% in the "All Simple Interline Traffic" and the "East and West Traffic" samples. Moreover, for the "UP and NS Traffic" sample, which is the comparison of UP and NS single-line rates with UP-NS interline rates, these corrections reduce the estimated price premium to a much lower level—from 15% to 9% for through rates and from 23% to 8% for Rule 11. These estimates are also not statistically significant, even at the 90 percent confidence level.

[423] In the Six-Railroad Tapes Data, each observation is a waybill.

Exhibit 55

Estimating Dr. Israel's regression model in the Six-Railroad Tapes Data and correcting his implementation errors weakens his results

		ln(revenue per carload-mile)		
		All Simple Interline Traffic	East↔West Traffic	UP↔NS Traffic
	Dependent Variable	(1)	(2)	(3)
1.	**Through Rates**	**0.25*** **	**0.26*** **	**0.09**
1.a	Effect (%)	29%	29%	9%
1.b		(0.02)	(0.03)	(0.06)
2.	**Rule 11 Rates**	**0.18*** **	**0.18*** **	**0.08**
2.a	Effect (%)	20%	20%	8%
2.b		(0.02)	(0.02)	(0.06)
3.	**Observations**	38,356,226	36,014,379	28,404,442

Source: Six-Railroad Tapes Data

Note: This exhibit presents the difference in (log) revenue per carload-mile between movement types. I construct a sample analogous to Israel Second Errata VS Figure 10 using the Six-Railroad Tapes Data. The regression sample is restricted to single-line movements by Union Pacific (UP) and Norfolk Southern (NS) and "simple interline" movements defined as traffic involving two line-haul carriers on routes where UP and NS do not offer single-line service. Rule 11 rates are limited to rates for interline traffic involving UP and/or NS, for which it has been possible to merge the individual Rule 11 waybills and construct a combined rate that covers both portions of the move. Columns 2 restricts interline movements to the ones started by UP or BNSF and completed by NS or CSXT or vice versa. Columns 3 restricts interline traffic to interline movements between UP and NS. These regressions include controls for distance, distance squared, weight, and weight squared; and for the following local conditions at origin and destination: number of Class I railroads, (log) GDP per capita, (log) personal income per capita, and (log) population. These regressions further include the following fixed effects: 3-digit STCC, car owner, AAR car initial, type of pricing arrangement (e.g., contract, private quote), unit train, year-month, and reporting railroad dummies. The effect is calculated using the following formula: exp(b)-1. Standard errors are clustered at the 6-digit-SPLC origin-destination pair and shown in parentheses. An estimate followed by one asterisk (*) is statistically significant at the 90 percent confidence level. An estimate followed by two asterisks (**) is statistically significant at the 95 percent confidence level. An estimate followed by three asterisks (***) is statistically significant at the 99 percent confidence level.

12.1.4. Dr. Israel ignores that the merged firm is likely to apply UP's strategy of pursuing high rates and raise rates on NS routes

397. Dr. Israel fails to interpret his regression results holistically. In particular, he fails to consider the implication of his control for UP as the price-setter vs his control for NS as the price-setter. He estimates that UP charges much higher rates than NS.[424] This implies a likely effect of the merger is that rates on NS movements would increase to the level of rates on similar UP movements. Because he ignores this implication of his analysis, he does not recognize that the whole of his regression indicates {{REDACTED }} as the magnitude of his price-setter effect is {{REDACTED }}

398. While Dr. Israel focuses on comparisons between interlines and single-lines, he completely ignores that his regression model also estimates the impact of UP's high-priced regime on existing NS routes.[425] To be more specific, Dr. Israel includes controls for UP and NS's involvement in a movement, which he calls his "reporting railroad" controls.[426] However, in practice, {{REDACTED

[424] See Exhibit 22.

[425] Israel Deposition, p. 37:2–19 ("Q. But, Dr. Israel, your regression indicates that NS's pricing is about 15 percent lower than UP's, after controlling for all the variables that impact pricing as identified in your verified statement. How do you explain that difference, if not the pricing policies and strategies that the two railroads have taken? … [A.] These are important controls among the controls you're talking about. These controls capture things like the cost structure and the set of routes that they're on and the quality and what customers they serve. If I took out -- I mean, they're not supposed to capture pricing strategy. Again, I'm not sure exactly what you mean by that.").

[426] See e.g. Israel Second Errata, Figure 10 ("Control variables include … reporting railroad dummies.").

}}.[427] Because Dr. Israel is effectively controlling {{REDACTED }},[428] {{REDACTED }}[429]

399. Therefore, Dr. Israel's regression directly examines the impact of the merger on shippers currently utilizing NS single-lines and interlines without UP. In Dr. Israel's framework, one direct impact of the merger is that {{REDACTED }} movements. As the higher "UP" coefficient captures something innate to the company after the shipment's characteristics and costs have been accounted for, it estimates how, as NS becomes part of UP, the change in management and approach to pricing will increase rates for shippers.

400. That is, Dr. Israel's coefficient estimates for these variables show that movements involving UP are substantially more expensive than movements involving NS, after controlling for the factors which he claims "ensure that the measured price differences

[427] See workpaper 12-4.

[428] Israel Second Errata VS, ¶ 112 ("These explanatory variables ensure that the measured price differences are the result of interlining and not due to differences in shipment characteristics or costs[.]").

[429] {{REDACTED }}

are…not due to differences in shipment characteristics or costs."[430] As discussed in Section 4.3.3, the merged UP-NS is likely to adopt UP's strategy of pursuing high prices on NS routes. Dr. Israel's regression implies that the merger would substantially increase rates for {{REDACTED

}}

401. Therefore, even if one takes Dr. Israel's results at face value (which I do not), the interpretation of these results would require {{REDACTED }}

402. To evaluate the merger's likely effect on rates for NS service not involving UP, I use Dr. Israel's Figure 10 backup files, which include the coefficient estimates for his controls for whether UP or NS are involved in an individual movement. I calculate the difference between the UP coefficient and NS coefficient as the implied "UP price premium" compared to NS. These results are reported in Exhibit 22, and the UP price premium ranges from {{REDACTED }}

403. Overall, as shown in Exhibit 23, the amount of rate increase on NS routes not involving UP implied from Dr. Israel's regression {{REDACTED }} Had Dr. Israel interpreted his regression results holistically, he would have found that {{REDACTED }}

[430] Israel Second Errata VS, ¶ 112.

404. In addition, when performing my own analyses, I continue to find evidence of {{REDACTED }}[431]

12.2. Evaluating the proposed merger's effect by correcting Dr. Israel's regression

405. In this section, I sequentially correct Dr. Israel's regression and present the estimated merger effects from these corrected regressions.

a. I first correct Dr. Israel's regression by replacing his interline versus single-line comparison with comparisons across corridors with competitive structures resembling the "pre-merger" and "post-merger" settings (Section 12.2.1).

b. I then further correct other flaws in Dr. Israel's regression, such as a failure to control for inherent differences in movements across different parts of the country (Section 12.2.2), along with robustness checks (Section 12.2.3).

406. My findings are consistent across all these regressions. They are also consistent with the data patterns in the raw Six-Railroad Tapes Data as shown in Exhibit 18. They all suggest that the UP-NS merger would likely increase rates and that a follow-on merger would not restore competition to the status quo.

[431] See workpaper 4-6.

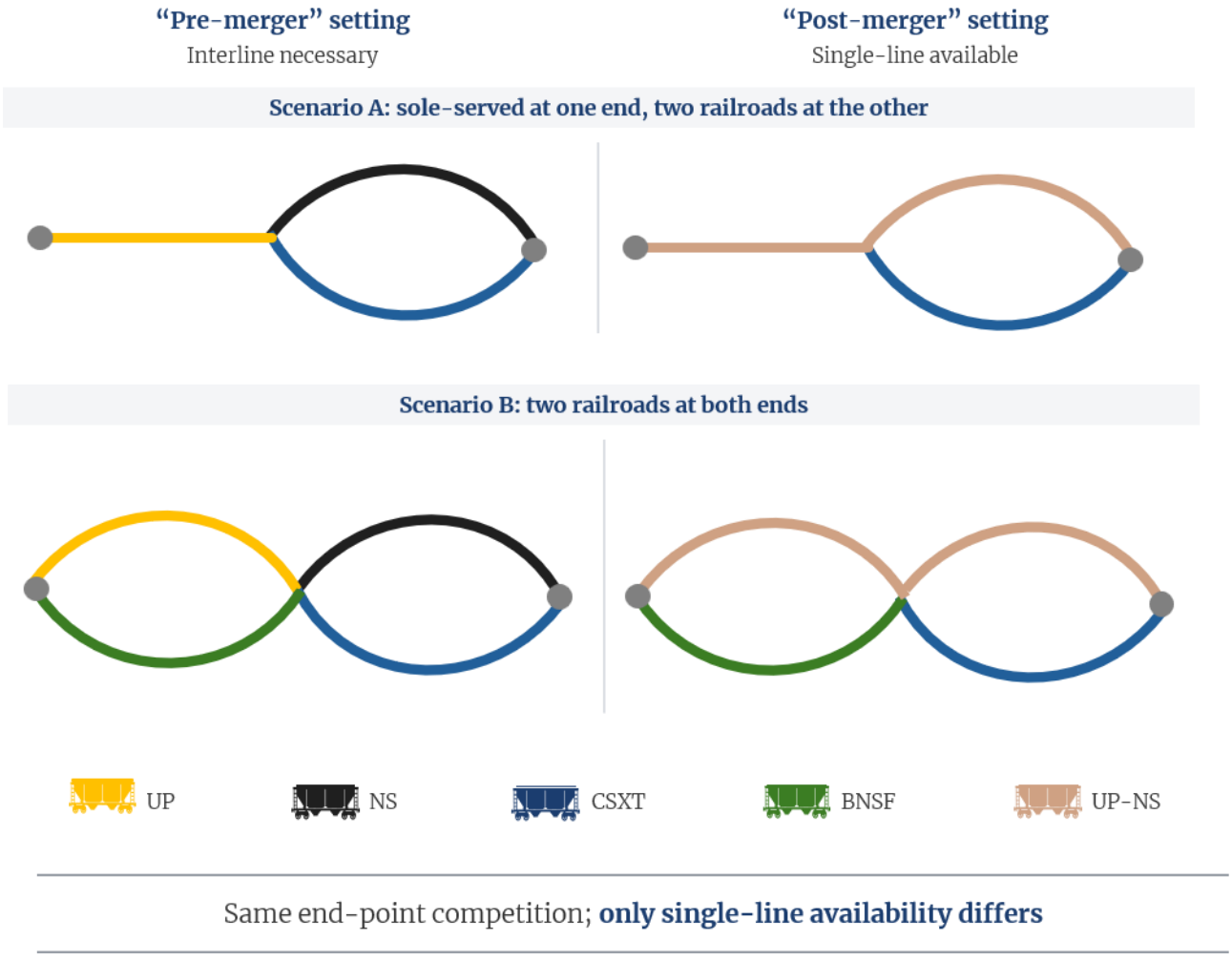
12.2.1. Correcting Dr. Israel's regression comparing single-line and interline rates to account for competitive structure

407. In this section I present the results from a "generalized form" of Dr. Israel's regression where I narrowly correct Dr. Israel's regression model to distinguish the effect on shippers of incentives to favor a single-line rather than simply comparing interline and single-line rates. That is, I replace his interline-vs-single-line explanatory variable with an indication of the competitive structure available to shippers but leave the rest of his flawed regression design and data handling unchanged (which I will further correct in Section 12.2.2 below). If Dr. Israel's implication of shipper benefit were correct, it would be evident in this bottom-line comparison (which is the sense in which I consider this a generalized form of his regression). Instead, these results suggest that the UP-NS merger will increase rates and that a follow-on merger would not restore competition to the status quo.

408. As explained in Section 4.1, an appropriate analysis of the proposed merger's effect should consider the change in competitive structure to examine whether shippers are harmed when they lose options on either side of a gateway. Dr. Israel's regression fails to do so. His regression comparing interline and single-line rates only accounts for the mode of production—how the railroads serve and operate on a route (among other flaws), a comparison that does not make conceptual sense as the rates of both movement types are affected by the competitive condition and would be affected by the merger.

409. To correct this flaw in Dr. Israel's regression, I replace his interline versus single-line comparison with comparisons across corridors with competitive structures resembling the "pre-merger" and "post-merger" settings. Specifically, I adopt Dr. Israel's definition of competition based on railroads' potential access to the end points of a corridor and focus on the two scenarios I discuss in Section 4.2.2: (A) corridors that are sole-served at one end and served by two railroads at the other end and (B) corridors that are served by two railroads at both ends. As illustrated in Exhibit 56 (a reproduction of Exhibit 17), for each scenario, I compare rates on corridors in which one single-line is available (resembling the "post-merger" setting) and corridors in which interlining is necessary (resembling the "pre-merger" setting). For Scenario B, I include an additional comparison to assess the effect of a follow-on merger using corridors in which two single-lines are available.

Exhibit 56
Corridors with competitive structures resembling the pre- and post-merger setting



Source: Illustrative Graphic.
Note: The "pre-merger" setting on the left illustrates competitive structures where interlines are necessary. The "post-merger" setting on the right illustrates competitive structures where a single-line option is available. Scenario A describes the scenario where a corridor is sole served at one end and served by two railroads at the other end. Scenario B describes the scenario where a corridor is served by two railroads at both ends.

410. Exhibit 57 below shows the results of the generalized form of Dr. Israel's regression that include the narrow correction I described above. I focus on movements from UP and NS (i.e., the "UP↔NS Traffic" sample in Dr. Israel's Figure 10), which focuses on traffic most likely to be affected by the proposed merger. These results

suggest that the UP-NS merger would likely increase rates and that a follow-on merger would not restore competition to the status quo. Specifically,

a. In Scenario A (corridors that are sole-served at one end and served by two railroads at the other end), rates are 9% higher when one of the potential interline pairings is replaced by a single-line.

b. In Scenario B (corridors that are served by two railroads at both ends), rates are 8% higher when one of the potential interline pairings is replaced by a single-line and 14% higher when the potential interline pairings are replaced by two single-lines.

Exhibit 57

Correcting Dr. Israel's regression to account for competitive structure suggests that rates are higher when a potential interline pairing is replaced with a single-line

		ln(revenue per carload-mile)
		Generalized form of Dr. Israel's regression (Figure 10)
	Dependent Variable	(1)
	Scenario A – One railroad at one end, two railroads at the other:	
1.	**2 railroads (one has a single-line) vs 3 railroads (must interline)**	**0.09*** **
1.a	Percent price difference for routes with and without single lines	9%
1.b		(0.02)
	Scenario B – Two railroads at each end:	
2.	**3 railroads (one has a single-line) vs 4 railroads (must interline)**	**0.08*** **
2.a	Percent price difference for routes with and without single lines	8%
2.b		(0.03)
	Scenario B – Two railroads at each end:	
3.	**2 railroads (both have a single-line) vs 4 railroads (must interline)**	**0.13*** **
3.a	Percent price difference for routes with and without single lines	14%
3.b		(0.03)
4.	**Observations**	2,811,596

Source: Israel's Second Errata Backup (Tapes)

Note: This exhibit presents the difference in (log) revenue per carload-mile between 6-digit-SPLC origin-destination pairs with different numbers of single-line options based on a generalized form of Dr. Israel's regression. I use the same regression sample as Column 5 ("UP↔NS Traffic") in Israel Second Errata VS Figure 10, which consists of UP and NS single-lines and UP-NS interlines. I replace Dr. Israel's indicators for single-line and interline movements and his controls for the number of Class I railroads at origin and destination with indicators for competitive structures. I otherwise use the same set of control variables as those in Figure 10 of Dr. Israel's VS. Specifically, this regression includes controls for distance, distance squared, weight, weight squared, and local conditions at the origin and the destination: (log) GDP per capita, (log) personal income per capita, and (log) population. It further includes the following fixed effects: 3-digit STCC, car owner, AAR car initial, type of pricing arrangement (e.g., contract, private quote), unit train, year-month, and reporting railroad dummies. The percentage rate difference is calculated using the following formula: exp(b)-1. Standard errors are clustered at the 6-digit-SPLC origin-destination pair and shown in parentheses. An estimate followed by one asterisk (*) is statistically significant at the 90 percent confidence level. An estimate followed by two asterisks (**) is statistically significant at the 95 percent confidence level. An estimate followed by three asterisks (***) is statistically significant at the 99 percent confidence level.

411. Notably, the findings in Exhibit 57 are consistent with similar comparisons in Exhibit 18 and Exhibit 20 which rely on the Six-Railroad Tapes Data and Dr. Israel's Second Errata Backup (Tapes) respectively without controlling for differences in route or commodity characteristics. Dr. Israel could have seen all three sets of results had he analyzed the raw data and set up his regression to account for competitive structure.

12.2.2. Further correcting Dr. Israel's regression framework allows an estimate that confirms the effect of the merger

412. In this section I present the results from another regression that makes a correction to control for changes in competitive structures similar to Section 12.1.2 and additional corrections to flaws in Dr. Israel's regression framework and data handling I discussed in Section 12.1. These results again suggest that the UP-NS merger would likely increase rates and that a follow-on merger would not restore competition to the status quo.

413. The comparison of interest in this regression is similar to the generalized form of Dr. Israel's regression in Section 12.2.1. I again compare the rates in corridors with competitive structures that resemble the pre- and post-merger settings. In addition, I make the following corrections to Dr. Israel's regression framework and data handling:

a. To account for the inherent differences in characteristics or costs across movements in different parts of the country and for different commodities, I use a more granular commodity type and, for each commodity type, introduce fixed

effects for origin Census Division-destination Census Division pairs. This also allows me to control for peculiarities of moves of different distances without the econometric issues of including that as both an explanatory variable and as the denominator for rates.

b. To accurately characterize the competitive structure, I correct Dr. Israel's approach that identifies competitors based solely on railroad presence at an endpoint with a measure based on options that shippers are actually observed to use.

c. I do not rely on Dr. Israel's arbitrary choices in data handling. I start over from the Six-Railroad Tapes Data keeping observations at the movement level and using movements from all six Class I railroads.

d. I refine Dr. Israel's control variables for local economic conditions and drop the car ownership variable as a control due to a significant share of missing values.

414. In the following, I explain the specific choices I make in more detail.

(1) Introducing origin Census Division-destination Census Division fixed effects

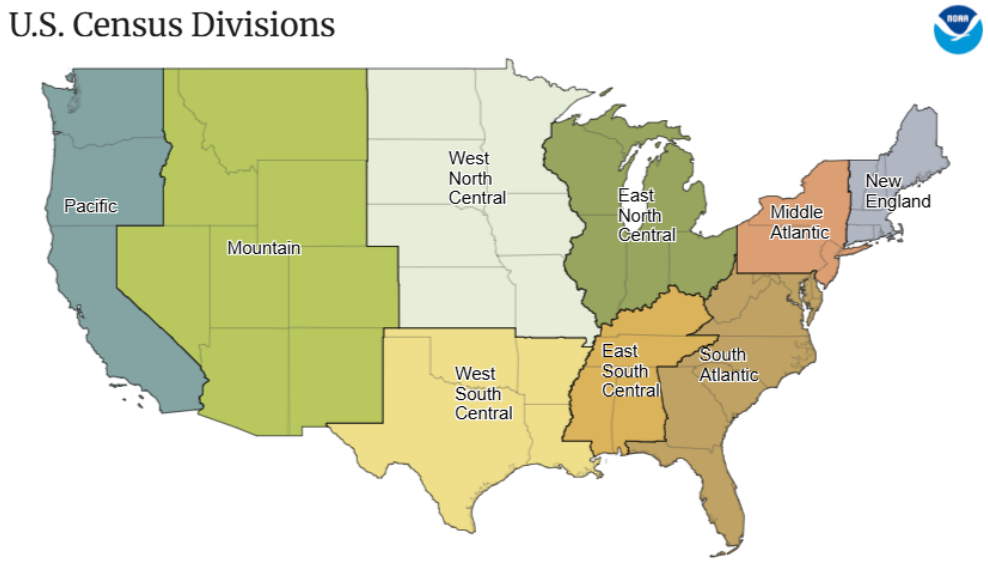
415. As I explained in Section 4.3.2, across movements in different parts of the country, there are inherent differences in characteristics or costs that will impact rates for each commodity. An appropriate regression framework needs to account for these differences in order to single out the comparison of interest. One way to do so is to

focus on comparing movements of similar commodities originating and ending in similar geographic areas using a regression fixed effect.

416. For this origin-destination pair fixed effect, I use Census Division (illustrated in Exhibit 58) as the geographic unit and interact it with commodity type.[432] Census Divisions capture important characteristics of shipments across the country. For example, a shipment from the Pacific to East North Central is longer and faces more congestion at the end of the move compared to a movement that originates and terminates in the Pacific. Census Divisions are large enough to retain rich variation in competitive structures going from a 6-digit SPLC to another 6-digit SPLC, which allows for meaningful comparisons. In addition, I also use a more granular commodity type than Dr. Israel. In his regressions, Dr. Israel uses a 3-digit commodity code combined with an indicator for whether the commodity is hazardous ("STCC3-Hazard"). I extend the 3-digit commodity code to 5-digit, controlling for commodity type at the STCC5-Hazard code level.

[432] The Six-Railroad Tapes Data also include movements originating or ending in Canada or Mexico. For these movements, I use Canadian province as the geographic unit, and I treat the entirety of Mexico as a geographic unit.

Exhibit 58
U.S. Census Divisions map



Source: "U.S. Census Divisions," National Oceanic and Atmospheric Administration, National Centers for Environmental Information, available at https://www.ncei.noaa.gov/access/monitoring/reference-maps/us-census-divisions
Note: This exhibit illustrates the nine Census Divisions in the U.S.

(2) Defining optionality and competitive structure based on observed traffic

417. As I explained in Section 12.1.3(1), it is important to define the competitive structure and the options available to shippers based on observed movements. This is also consistent with The Board's approach. Therefore, I define the competitive structure using observed movements and restrict the analysis to 6-digit-SPLC corridors in which each Class I railroad is involved in at least 1% of the 6-digit-SPLC corridor's

total revenue.[433] I restrict to these cases to ensure that shippers actually use those options.

(3) Relying on Six-Railroad Tapes Data as regression sample

418. As I explained in Section 12.1.3(2), Dr. Israel made an arbitrary choice in data aggregation. I instead use Six-Railroad Tapes Data at the movement level without any aggregation. In addition, I use movements from all six Class I railroads, similar to the analysis in footnote 52 of Dr. Israel's Second Errata VS. A larger regression sample is generally helpful for estimation precision.

(4) Refining additional regression controls

419. I replace Dr. Israel's controls for local economic conditions at the origin and destination locations with separate origin BEA and destination BEA fixed effects. This allows me to control for any additional differences between endpoints that Dr. Israel's controls do not account for. In particular, these fixed effects account for more granular differences across geographic areas within the same origin or destination Census Divisions, capturing systematic differences in shipments to or from a given BEA.[434] For

[433] Dr. Israel applies a similar threshold in defining a railroad's access to a station. He identifies that a Class I railroad has access to a given station (i.e. SCAC-FSAC) if said railroad has direct access or access via a non-Class I railroad according to the Centralized Station Master (CSM) and Serving Carrier/Reciprocal Switch (SCRS); or the given Class I railroad originates, terminates, or interchanges more than 1% of carloads for a given group of commodities and SPLC according to the CCWS (2019–2023). See Israel Second Errata VS, fn. 30–31.

[434] BEAs are not defined outside of the United States. For Mexican origin and destinations, I use Mexican States. For Canadian origins and destinations, a similar concept is embodied in the Economic Region defined by Statistics Canada, the Canadian national statistics office, and created as a "standard geographic unit for analysis of regional activity." See "Economic region (ER),"

example, to the extent that within the Pacific Census division, shipments originating in San Diego, California differ systematically from those originating in Portland, Oregon, this set of controls would account for those differences.

420. I remove the car ownership variable Dr. Israel uses from my regression because its value is missing for {{REDACTED}} of movements in the Six-Railroad Tapes Data.[435] Including car ownership fixed effects, as Dr. Israel does, would drop all these movements with a missing value from the analysis.

(5) Regression results

421. Exhibit 59 below shows the results of my regression that include the corrections I described above. These results again suggest that the UP-NS merger would likely increase rates and that a follow-on merger would not restore competition to the status quo. Specifically,

a. In Scenario A (corridors that are sole-served at one end and served by two railroads at the other end), rates are 7% higher when one of the potential interline pairings is replaced by a single-line.

b. In Scenario B (corridors that are served by two railroads at both ends), rates are 15% higher when one of the potential interline pairings is replaced by a single-line

Government of Canada, November 17, 2021, available at https://www12.statcan.gc.ca/census-recensement/2021/ref/dict/az/definition-eng.cfm?ID=geo022.

[435] See workpaper 12-5.

and 21% higher when the potential interline pairings are replaced by two single-lines.

422. These individual estimates are all statistically significantly different from zero. It is worth noting that this can suggest a false sense of precision and that the statistical significance does not extend to the comparisons across estimates. While the 21% point estimate of the net effect after a follow-on merger is significant and is larger than the 15% point estimate of the proposed merger, the difference between those two estimates is not itself significant enough to conclude that a follow-on merger would necessarily be incrementally worse – just not a solution for shippers to the currently proposed merger.[436]

[436] The two point estimates for Scenario B are not statistically significantly different. See workpaper 7-1. The statistical difference between the estimated effects for Scenario A and Scenario B is not directly testable because these estimates were derived from separate regressions.

Exhibit 59
Further correcting Dr. Israel's regression suggests that rates are higher when a potential interline pairing is replaced with a single-line

		ln(revenue per carload-mile)
	Dependent Variable	(1)
	Scenario A – One railroad at one end, two railroads at the other:	
1.	**2 railroads (one has a single-line) vs 3 railroads (must interline)**	**0.07*** **
1.a	Percent price difference for routes with and without single lines	7%
1.b		(0.02)
1.c	Observations	6,142,068
	Scenario B – Two railroads at each end:	
2.	**3 railroads (one has a single-line) vs 4 railroads (must interline)**	**0.14** **
2.a	Percent price difference for routes with and without single lines	15%
2.b		(0.06)
2.c	Observations	5,612,370
	Scenario B – Two railroads at each end:	
3.	**2 railroads (both have a single-line) vs 4 railroads (must interline)**	**0.19*** **
3.a	Percent price difference for routes with and without single lines	21%
3.b		(0.07)
3.c	Observations	5,612,370

Source: Six-Railroad Tapes Data
Notes: This exhibit presents the difference in (log) revenue per carload-mile between 6-digit-SPLC origin-destination pairs with different numbers of single-line options based on a regression further correcting flaws in Dr. Israel's regression. The regression sample is restricted to 6-digit-SPLC origin-destination pairs in which every railroad that has observed traffic has contributed to at least 1%of the total revenue within the 6-digit-SPLC origin-destination pair. This regression includes controls for weight and weight squared. It further includes the following fixed effects: AAR car initial, type of pricing arrangement (e.g., contract, private quote), unit train dummy, year-month, reporting railroad dummies, Census division origin-destination pair interacted with 5-digit STCC, origin BEA area, and destination BEA area. BEA areas are defined at the economic region level for Canada and at the state level for Mexico. Census divisions are defined at the province level for Canada and at the country level for Mexico. The percentage rates difference is calculated using the following formula: exp(b)-1. Standard errors are clustered at the 6-digit-SPLC origin-destination pair and shown in parentheses. An estimate followed by one asterisk (*) is statistically significant at the 90% confidence level. An estimate followed by two asterisks (**) is statistically significant at the 95% confidence level. An estimate followed by three asterisks (***) is statistically significant at the 99% confidence level.

423. The results in Exhibit 59 are consistent with the findings in Exhibit 57 where I narrowly correct Dr. Israel's regression to account for competitive structure, as well as

the raw data comparisons in Exhibit 18 and Exhibit 20 that do not control for differences in route or commodity characteristics.

12.2.3. The results in the regression fixing Dr. Israel's flaws are robust

424. In this section, I show that the regression results in Section 12.2.2 (Exhibit 59) are robust to a variety of alternative specifications.

425. The regression results in Section 12.2.2 are robust to the revenue-share threshold I use to define competitive options on a 6-digit SPLC corridor. Exhibit 60 shows regression results under alternative revenue-share thresholds, from a 0.5% threshold (Column 1) to a 5% revenue threshold (Column 4). The results are consistent when using different thresholds.

Exhibit 60
The results are robust to various revenue thresholds

		Ln(revenue per carload-mile)			
		0.5% threshold	1% threshold (Benchmark)	3% threshold	5% threshold
	Dependent Variable	(1)	(2)	(3)	(4)
	Scenario A – One railroad at one end, two railroads at the other:				
1.	**2 railroads (one has a single-line) vs 3 railroads (must interline)**	**0.06*** **	**0.07*** **	**0.08*** **	**0.10*** **
1.a.		(0.02)	(0.02)	(0.02)	(0.02)
1.b.	Observations	6,603,168	6,142,068	5,222,046	4,668,722
	Scenario B – Two railroads at each end:				
2.	**3 railroads (one has a single-line) vs 4 railroads (must interline)**	**0.21*** **	**0.14** **	**0.17*** **	**0.20*** **
2.a.		(0.06)	(0.06)	(0.06)	(0.07)
2.b.	Observations	6,151,822	5,612,370	4,644,454	4,278,581
	Scenario B – Two railroads at each end:				
3.	**2 railroads (both have a single-line) vs 4 railroads (must interline)**	**0.20*** **	**0.19*** **	**0.22*** **	**0.22*** **
3.a.		(0.07)	(0.07)	(0.07)	(0.07)
3.b.	Observations	6,151,822	5,612,370	4,644,454	4,278,581

Source: Six-Railroad Tapes Data
Note: This exhibit presents the difference in (log) revenue per carload-mile between 6-digit-SPLC origin-destination pairs with different numbers of single-line options based on a set of regressions further correcting flaws in Dr. Israel's regression. The regression samples are restricted to 6-digit-SPLC origin-destination pairs in which every railroad that has observed traffic has contributed to at least 0.5 percent, 1 percent, 3 percent, and 5 percent of the total revenue within the 6-digit-SPLC origin-destination pair, respectively. These regressions include controls for weight and weight squared. They further include the following fixed effects: AAR car initial, type of pricing arrangement (e.g., contract, private quote), unit train dummy, year-month, reporting railroad dummies, Census division origin-destination pair interacted with 5-digit STCC, origin BEA area, and destination BEA area. BEA areas are defined at the economic region level for Canada and at the state level for Mexico. Census divisions are defined at the province level for Canada and at the country level for Mexico. The percentage rates difference is calculated using the following formula: exp(b)-1. Standard errors are clustered at the 6-digit-SPLC origin-destination pair and shown in parentheses. An estimate followed by one asterisk (*) is statistically significant at the 90 percent confidence level. An estimate followed by two asterisks (**) is statistically significant at the 95 percent confidence level. An estimate followed by three asterisks (***) is statistically significant at the 99 percent confidence level.

426. The regression results in Section 12.2.2 are robust to the geographic unit and geographic scope I use for the origin-destination pair fixed effects. Exhibit 61 shows regression results using a coarser geographic unit – four US Census Regions (Column 1), or a more restrictive geographic scope requiring both ends of the movement to be

within the United States (Column 3). The results are consistent when using an alternative geographic unit or scope.

Exhibit 61
Different geographic levels for the O-D pairs lead to similar results

		Ln(revenue per carload-mile)		
		O-D Census Region FE	O-D Census Division FE (Benchmark)	O-D Census Division FE (U.S. only)
	Dependent Variable	(1)	(2)	(3)
	Scenario A – One railroad at one end, two railroads at the other:			
1.	**2 railroads (one has a single-line) vs 3 railroads (must interline)**	**0.17*** **	**0.07*** **	**0.07*** **
1.a.		(0.02)	(0.02)	(0.02)
1.b.	Observations	6,142,068	6,142,068	5,147,001
	Scenario B – Two railroads at each end:			
2.	**3 railroads (one has a single-line) vs 4 railroads (must interline)**	**0.18*** **	**0.14** **	**0.14** **
2.a.		(0.05)	(0.06)	(0.07)
2.b.	Observations	5,612,370	5,612,370	5,362,651
	Scenario B – Two railroads at each end:			
3.	**2 railroads (both have a single-line) vs 4 railroads (must interline)**	**0.21*** **	**0.19*** **	**0.21** **
3.a.		(0.05)	(0.07)	(0.08)
3.b.	Observations	5,612,370	5,612,370	5,362,651

Source: Six-Railroad Tapes Data
Note: This exhibit presents the difference in (log) revenue per carload-mile between 6-digit-SPLC origin-destination pairs with different numbers of single-line options based on a set of regressions further correcting flaws in Dr. Israel's regression. The regression sample is restricted to 6-digit-SPLC origin-destination pairs in which every railroad that has observed traffic has contributed to at least 1% of the total revenue within the 6-digit-SPLC origin-destination pair. All of these regressions include controls for weight and weight squared. They also include the following fixed effects: AAR car initial, type of pricing arrangement (e.g., contract, private quote), unit train dummy, year-month, reporting railroad dummies, origin BEA area, and destination BEA area. Column 1 includes fixed effects for Census Region origin-destination pair interacted with 5-digit STCC; Columns 2 and 3 include fixed effects for Census Division origin-destination pair interacted with 5-digit STCC; Column 3 also restricts the sample to movements that originate and terminate in the U.S. BEA areas are defined at the economic region level for Canada and at the state level for Mexico. Census divisions and Census regions are defined at the province level for Canada and at the country level for Mexico. The percentage rates difference is calculated using the following formula: exp(b)-1. Standard errors are clustered at the 6-digit-SPLC origin-destination pair and shown in parentheses. An estimate followed by one asterisk (*) is statistically significant at the 90% confidence level. An estimate followed by two asterisks (**) is statistically significant at the 95% confidence level. An estimate followed by three asterisks (***) is statistically significant at the 99% confidence level.

427. The regression results in Section 12.2.2 are robust to the controls I include in my regressions that differ from Dr. Israel's. Exhibit 62 shows regression results replacing the 5-digit commodity code with Dr. Israel's 3-digit one (Column 2), adding Dr. Israel's car owner fixed effects (Column 3), and replacing origin and destination BEA fixed effects with Dr. Israel's control for economic conditions (Column 4). The results are consistent when using alternative controls.

Exhibit 62
Results are robust to a different set of controls

		Ln(revenue per carload-mile)			
		Benchmark	Replacing STCC5 with STCC3	Adding Car Owner FE	Replacing BEA FEs with economic condition controls (US only)
	Dependent Variable	(1)	(2)	(3)	(4)
	Scenario A – One railroad at one end, two railroads at the other:				
1.	**2 railroads (one has single-line) vs 3 railroads (must interline)**	**0.07*** **	**0.05*** **	**0.08*** **	**0.05** **
1.a.		(0.02)	(0.02)	(0.02)	(0.02)
1.b.	Observations	6,142,068	6,142,068	5,995,047	5,146,120
	Scenario B – Two railroads at each end:				
2.	**3 railroads (one has single-line) vs 4 railroads (must interline)**	**0.14** **	**0.12** **	**0.12** **	**0.23*** **
2.a.		(0.06)	(0.05)	(0.06)	(0.07)
2.b.	Observations	5,612,370	5,612,370	5,049,554	5,362,651
	Scenario B – Two railroads at each end:				
3.	**2 railroads (both have single-line) vs 4 railroads (must interline)**	**0.19*** **	**0.17*** **	**0.17** **	**0.24*** **
3.a.		(0.07)	(0.06)	(0.07)	(0.06)
3.b.	Observations	5,612,370	5,612,370	5,049,554	5,362,651
4	**Fixed Effects:**				
4.a.	Origin and Destination BEA	✔	✔	✔	✘
4.b.	Census Division X STCC5 Hazard	✔	✘	✔	✔
4.c.	Census Division X STCC3 Hazard	✘	✔	✘	✘
4.d.	Car owner	✘	✘	✔	✘
5.	**Local Economic Condition Controls**	✘	✘	✘	✔
6.	**US Only**	✘	✘	✘	✔

Source: Six-Railroad Tapes Data

Note: This exhibit presents the difference in (log) revenue per carload-mile between 6-digit-SPLC origin-destination pairs with different numbers of single-line options based on a set of regressions further correcting flaws in Dr. Israel's regression. The regression sample is restricted to 6-digit-SPLC origin-destination pairs in which every railroad that has observed traffic has contributed to at least 1%of the total revenue within the 6-digit-SPLC origin-destination pair. These regressions include controls for weight and weight squared. They further include the following fixed effects: AAR car initial, type of pricing arrangement (e.g., contract, private quote), unit train dummy, year-month, and reporting railroad dummies. Columns 1, 2, and 3 include origin BEA area and destination BEA area fixed effects. Columns 1, 3, and 4 include Census Division origin-destination pair interacted with 5-digit STCC, and Column 2 includes Census Division origin-destination pair interacted with 3-digit STCC. Column 3 includes a car owner fixed effect. Column 4 restricts the sample to movements that originate and terminate in the U.S. and includes controls for local conditions at the origin and the destination: (log) GDP per capita, (log) personal income per capita, and (log) population. BEA areas are defined at the economic region level for Canada and at the state level for Mexico. Census divisions are defined at the province level for Canada and at the country level for Mexico. The percentage price difference is calculated using the following formula: exp(b)-1. Standard errors are clustered at the 6-digit-SPLC origin-destination pair and shown in parentheses. An estimate followed by one asterisk (*) is statistically significant at the 90% confidence level. An estimate followed by two asterisks (**) is statistically significant at the 95% confidence level. An estimate followed by three asterisks (***) is statistically significant at the 99% confidence level.

12.3. *Methodology for estimating effect of increased railroad leverage on shipper rates*

428. In this section, I outline the methodology utilized to create my estimates of the harm to shippers from reduced bargaining leverage, described in Section 5.

12.3.1. Calculation of shipper concentration metric

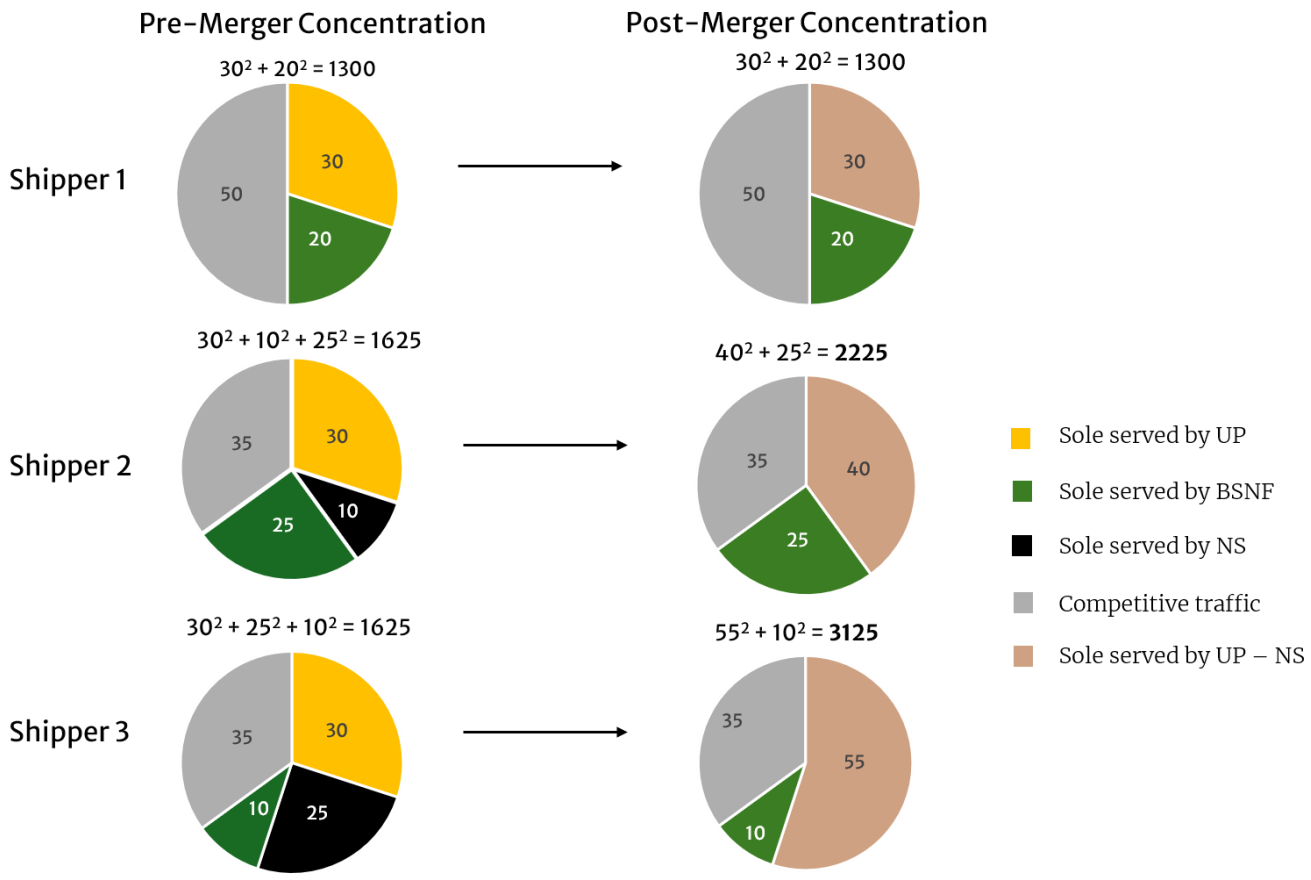
429. For my estimation of the shipper concentration metric, I adapt the commonly-used HHI measure of concentration in an industry and compute the shipper's concentration as if the negotiation with that shipper over their various rail movements was one industry. Specifically, I calculate the share of each shipper's rail revenue captive to each individual Class I. To avoid fractions, the concentration formula multiplies each share percentage by 100. The concentration for the shipper's business as a whole is the sum of squared shares for each railroad.[437]

430. To demonstrate how the shipper concentration measure corresponds to shippers' dependence on individual railroads and captures the implication of post-merger changes, in Exhibit 63, I provide a hypothetical example of three different shippers with different geographies of movements. For Shipper 1, who is highly dependent on UP and BNSF but not-at-all dependent on NS, its concentration will not change post-

[437] For example, a shipper whose movements are entirely captive to UP will have a concentration of 10,000 (which is 100 squared), while a shipper who is captive to UP for 50% of its movements, and captive to NS for 50% will have a concentration of 5,000 ($(50^2 + 50^2)$) and a shipper that divides its business equally among all six Class Is would have a concentration of about 1,667. As those examples may suggest, what competition economists like about the HHI is that each share contributes to the value, but the index puts particular emphasis on any outsized share.

merger (stays at 1,300). For Shipper 2, who is moderately dependent on both UP and NS, its concentration will increase slightly post-merger (from 1,625 to 2,225). For Shipper 3, who is almost entirely reliant on both UP and NS, its concentration will increase significantly post-merger (from 1,625 to 3,125). As illustrated in this example, this concentration measure summarizes a shipper's overall dependence on railroads across its geographic footprint, and the increase implied by the proposed UP-NS merger will be larger for a shipper that is currently heavily dependent on both UP and NS.

Exhibit 63
The shipper concentration measure I use corresponds to shippers' dependence on individual railroads



Source: Hypothetical example
Note: I present three hypothetical shippers and their varying dependence on individual railroads before and after the proposed merger between UP and NS.

12.3.2. Regression methodology for estimating impact of shipper-level reliance on a single railroad on rates paid

431. Using this metric of a shipper's geographic spread and its concentration on specific railroads, I utilize regression analysis to examine the relationship between that concentration and rates paid. Again, I use the same set of chemical shippers. Here,

regression analysis allows me to account for the factors in a given movement which are most likely to impact rates, such as the route traveled, the type of chemical shipped, and macroeconomic effects. The measure of price in the regression is the natural logarithm of the revenue per carload.[438]

432. The results of the regression analysis are shown in Exhibit 64. Using the estimate in Column 4, which accounts for types of chemicals shipped, whether or not the chemical was hazardous, directional corridor, tonnage, rate premium associated with UP or NS involvement, pricing arrangement type, car type, whether the shipment is a unit train, and the year and month when the good was shipped, I find that an increase in the shipper's concentration results in higher rates paid.[439]

[438] For this analysis, using revenue per carload is equivalent to the approach used by Dr. Israel in his Figure 7, where when controlling for the origin and destination Dr. Israel utilizes revenue per carload as his outcome of interest. See Israel Second Errata VS, ¶ 58. In this analysis, I am controlling specific origin and destination BEA pairs. This also aligns with shippers deciding based on the overall rate per carload, rather than the specific routing.

[439] In the specification I use to estimate {{REDACTED }} from geographic bargaining, I do not include the variable "car owner" which Dr. Israel utilizes in his regression analysis, because its value is missing for {{REDACTED}} of movements in the Six-Railroad Tapes Data. {{{REDACTED }}} See workpaper 12-5.

Exhibit 64

Higher concentration among a shipper's movements is associated with higher rates paid across all movements

	Ln(revenue per carload)				
	STCC + Year-Month	(1) + Car Type	(2) + UP and NS Participation	(3) + Unit Train and Doc Type Controls	(4) + Car Owner
Dependent Variable	(1)	(2)	(3)	(4)	(5)
Concentration	**0.25*** **	**0.14*** **	**0.12*** **	**0.12*** **	**0.10*** **
	(0.05)	(0.04)	(0.04)	(0.04)	(0.04)
Observations	6,811,719	6,746,826	6,746,826	6,650,688	6,196,952
Controls:					
Net tons	✓	✓	✓	✓	✓
Net tons squared	✓	✓	✓	✓	✓
UP Reports	×	×	✓	✓	✓
NS Reports	×	×	✓	✓	✓
Contract	×	×	×	✓	✓
Private Quote	×	×	×	✓	✓
Tariff	×	×	×	✓	✓
Other Non-Tariff	×	×	×	✓	✓
Fixed Effects:					
BEA-Corridor (Directional)	✓	✓	✓	✓	✓
STCC5 Hazard	✓	✓	✓	✓	✓
Year Month	✓	✓	✓	✓	✓
Car Type	×	✓	✓	✓	✓
Unit Train	×	×	×	✓	✓
Car Owner	×	×	×	×	✓

Source: Six-Railroad Tapes Data

Note: This table displays the (log) revenue per carload regressed on shipper-level concentration ranging from 0 to 1, with different fixed effects and controls. Data is filtered to chemical shipments, defined as commodity codes that start with 28, excluding 28211 (Plastics). Captivity concentration is calculated by computing the share of shipment revenue that is captive to each Class I railroad for a specific shipper. The shares of shipment revenues are then individually squared and summed to generate a concentration metric. A shipper-route pair is considered captive to a Class I railroad if all of the shipper's chemical shipments with the exact origin and destination station, or within a one-mile radius of either, for the period of 2019–2024, have involved the given railroad. Non-hazardous intermodal movements are considered non-captive. A movement is considered to be intermodal if the associated AAR car initial is P, Q, S, U, or Z. Share of captive revenue is calculated by taking railroad-specific revenue from captive movements, and dividing it by the total shipment revenue across all railroads. Movements where the shipper name is not populated or where total shipment revenue is non-positive are removed from this analysis. This analysis is limited to shippers whose names were standardized, representing approximately {{REDACTED}} of chemical revenue for the period of 2019–2024. See workpaper 5-3. Following Dr. Israel's methodology, STCC5 Hazard is the non-hazardous STCC code truncated to 5 digits followed by "-1" if the commodity was hazardous and "-0" if the commodity is non-hazardous. All observations which could not be joined onto the crosswalk Dr. Bailey relies on for geographic coordinates are excluded from the calculation of the shipper-level concentration metric. Observations with missing geographic coordinates are included in the regression sample. All observations which Dr. Bailey excludes from her within-corridors analysis are excluded from this analysis. Standard errors are clustered at the matched shipper level and are shown in parentheses. An estimate followed by one asterisk (*) is statistically significant at the 90 percent confidence level. An estimate followed by two asterisks (**) is statistically significant at the 95 percent confidence level. An estimate followed by three asterisks (***) is statistically significant at the 99 percent confidence level.

433. Using the regression results, I then calculate the change in concentration among shippers who are plausibly harmed due to geographic bargaining effects (i.e., will see an increase in concentration post-merger) and estimate each shipper's individual predicted rate increase due to UP-NS's combined bargaining leverage. In Exhibit 65, I provide the shipper-level distribution of predicted rate increases among the plausibly harmed shippers.

Exhibit 65
Distribution of predicted rate increases among plausibly harmed matched chemical shippers

{{REDACTED

}}

434. While many individual shippers have predicted rates that are {{REDACTED }}, some shippers see a {{REDACTED }} increase in rates due to geographic bargaining effects. For the chemical shippers that I examine, there is significant heterogeneity in how exposed they are to this particular effect. Nevertheless, the

average change in concentration among shippers who are harmed (i.e., see an increase in concentration) is approximately {{REDACTED}} points. This would correspond to an increase in rates paid, across all of their traffic, of approximately {{REDACTED}} due to the combined UP-NS's increased bargaining leverage.[440]

12.3.3. Calculation of harm to non-chemical shippers based on regression results

435. In Section 5.2(2), I outline the estimated effect of railroads' leverage on chemical shippers based on the regression results reported in Exhibit 64. To do so, I calculated the pre-merger and post-merger concentration metrics and estimated the predicted change in chemical shippers' rates paid following that regression methodology.

436. Extending this analysis to evaluate the potential harm for non-chemical shippers affected by the proposed merger would require linking movements for each individual shipper across all types and individual shippers in the data and accounting for shippers' different degrees of dependence on railroads across different commodities. Instead, to illustrate the potential magnitude of harm across all shippers, in Exhibit 37 I perform a back-of-the-envelope exercise to extend these results to other commodities. To do this, I use two approaches. In the first approach, I use the average effect on harmed chemical shippers {{REDACTED}} and apply that effect to the shippers identified by {{REDACTED }}. In the second approach, I apply the estimated

[440] See workpaper 12-6.

spending increase for chemicals proportionally to other commodities' non-intermodal movements.[441] Based on the estimated increase in chemical spending of {{REDACTED }}, and the fact that chemical spending accounts for approximately {{REDACTED}} of the spending of all non-intermodal movements,[442] a proportional extrapolation estimates that shippers' increased dependence on a combined UP-NS post-merger would increase total spending by {{REDACTED }} ({{REDACTED }}) per year.

437. Approach 2's extrapolation is conservative, in that it assumes that, by default, there will be no effect of UP-NS's combined leveraging impacting intermodal shipment rates. Based on the analysis of chemical shippers, I believe that this is unlikely—a combined UP-NS would likely be able to use a shipper's captivity on non-intermodal movements to leverage higher rates on intermodal movements as well. If we were to apply the effect to intermodal movements, the anticipated harm to shippers would be even higher.

12.4. Dr. Israel's analysis of independent routes does not address foreclosure and is inconsistent with his other claims about the inability of railroads to interline

438. In Dr. Israel's analysis of independent routes, he claims to follow an algorithm that I utilized for the CP-KCS merger and identifies 74 corridors where the merger will

[441] Because intermodal movements likely have a lower degree of dependence on railroads, I conservatively exclude them in my extrapolation analysis.

[442] See workpaper 12-7.

result in shippers having a reduction from three independent routes to two, or two independent routes to one. Applicants' expert, Dr. Israel, relies on new (and never observed in the data) interline cooperation among other railroads to constrain UP-NS which is inconsistent with his claim that UP and NS need to merge to be effective competitors. This leads him to incorrectly dismiss the harm from the merger eliminating competition between the independent routes he does identify that shippers have demonstrated are credible. Before turning to that analysis, however, I address a misrepresentation about what sort of competitive harms Dr. Israel's exercise can and cannot identify.

12.4.1. Dr. Israel's analysis of independent routes does not, as Applicants claim, examine vertical foreclosure

439. Applicants incorrectly claim that Dr. Israel analyzed the potential harm to shippers from a combined UP-NS acting on its incentives to foreclose competitors. They assert that "Dr. Israel directly addressed potential harms flowing from vertical foreclosure…us[ing] a counting algorithm deployed in the *CP/KCS* proceeding to identify all independent routings that create competition that could be diminished by the UP/NS merger."[443] That is not what the counting algorithm does. The algorithm asks a much narrower question: whether the merger could eliminate a fully independent

[443] Applicants' Prima Facie Response, p. 16.

alternative routing in a market where only one or two such alternatives would remain.[444]

440. The counting algorithm deliberately excludes partially independent routings—routes on which a shipper depends on a single railroad at one end of the move but benefits from competition among railroads that can serve as that railroad's interchange partner for the remainder of the move.[445] Yet those are precisely the routings for which foreclosure is a concern here. A combined UP-NS could use its control over the captive end of the movement to steer traffic toward its own network and away from a competing interchange partner, thereby reducing competition even though the shipper never had a fully independent end-to-end routing. The counting algorithm is not designed to examine these routings, and it does not test for—and cannot rule out—the foreclosure harms I identify above. It therefore provides no basis for Applicants' claim that they have adequately addressed the potential vertical harms from a UP-NS combination.[446]

441. The counting algorithm that Dr. Israel uses, and that I utilized in my evaluation of the CP/KCS merger, is specifically designed to evaluate potential losses of completely

[444] Majure CP-KCS VS (Public), ¶¶ 50–51.

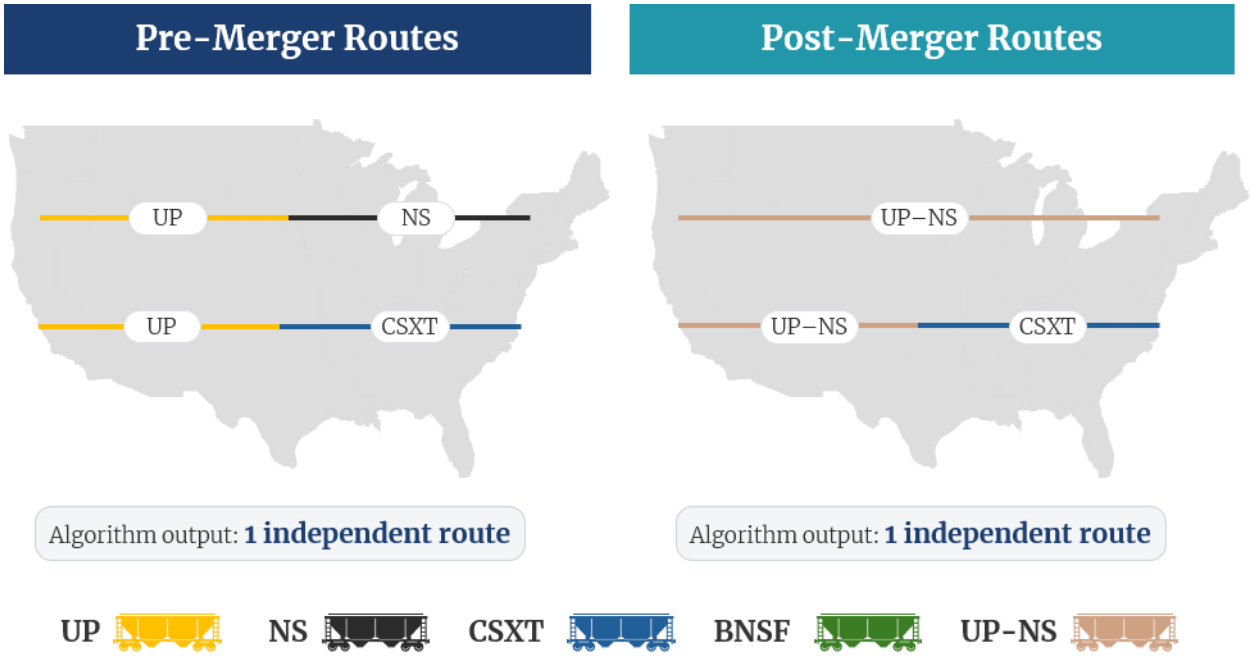
[445] For a route with UP in the West and NS and CSXT in the East the algorithm will identify one independent route pre-merger and post-merger, because the shipper is already sole-served by UP. As discussed in Section 4.2, on these routes, a combined UP-NS will have an incentive and ability to foreclose on the UP-CSXT routing. See Majure CP-KCS VS (Public), ¶ 50 ("For each corridor where CP and KCS participated in at least one observed movement in the Waybill Sample, I identify and count the number of independent routings observed in the data. I consider two routings independent of one another if they do not have any carriers in common.").

[446] Applicants' Prima Facie Response, p. 15.

independent competition. Simple examples demonstrate why this approach cannot address potential vertical foreclosure. In Exhibit 66 and Exhibit 67, I provide two such examples and demonstrate how Dr. Israel would have failed to identify the foreclosure issue in these routes using the change in the number of purely independent routes, since there is no change in the number of independent routes.

442. Reflecting the Scenario A that I analyzed in Exhibit 18, Exhibit 66 presents a corridor that is sole-served by UP on one end, and dual-served by NS and CSXT on the other. The counting algorithm would find that this corridor has only one completely independent route before and after the merger. The algorithm, consequently, cannot identify any loss of independent routes in this example. This reflects the design of the algorithm as a way to isolate situations where an independent route is lost, not an assurance that there can never be any competitively significant interaction between NS and CSXT for their side of this move. As I demonstrated in Section 4, there is a competitive loss from the merger in this scenario—it just is not what that particular screening algorithm is designed to identify.

Exhibit 66
A hypothetical example of one independent route



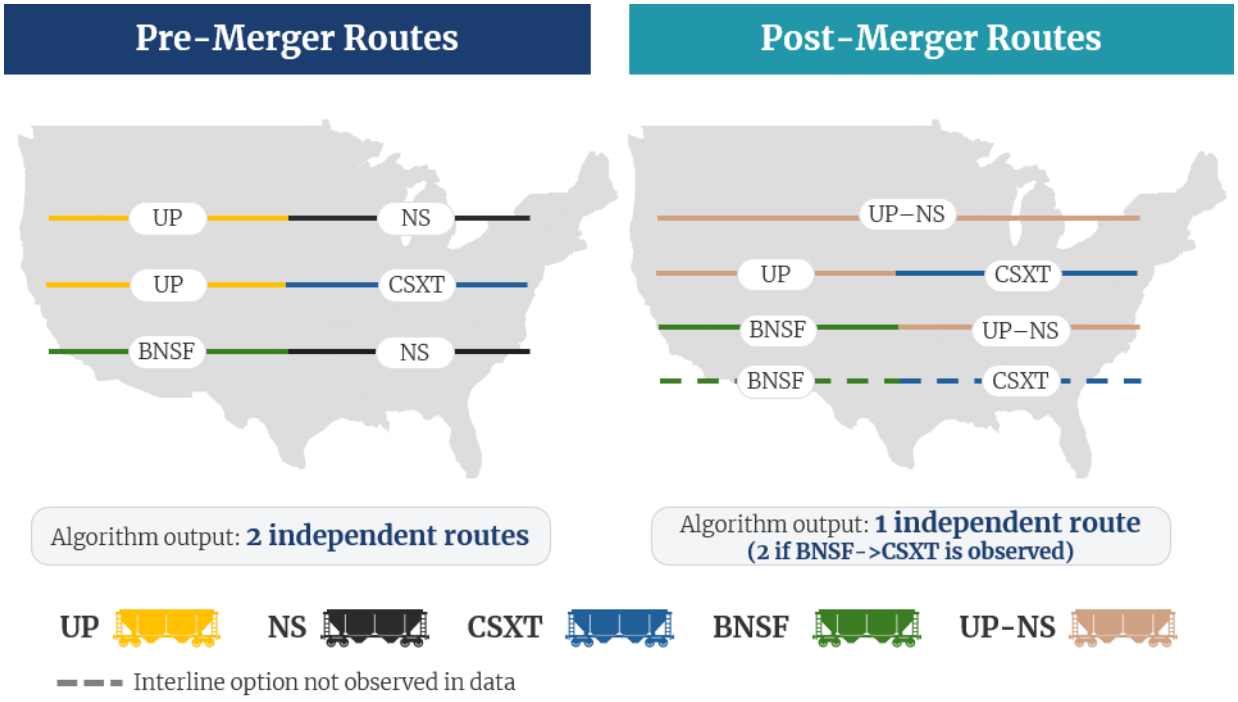
Source: Hypothetical example.
Note: This example illustrates an example of pre-merger and post-merger independent routings for a corridor where UP operates on one side of the gateway and NS and CSXT operate on the other side of the gateway. In both instances, there is one independent route, because it is not possible to move along this corridor without utilizing UP.

443. Exhibit 67 reflects the Scenario B that I analyzed in Exhibit 18. It shows a corridor that is dual-served by UP and BNSF on one side, and dual-served by NS and CSXT on the other. In this particular corridor, I want to consider a phenomenon that occurs in a number of the routes Dr. Israel identified and dismissed in his implementation of the algorithm. I will come back to the question of whether he was correct to dismiss them, but for now I want to illustrate how the algorithm does and does not work.

444. In this particular corridor, suppose we observe in the data that shippers never choose a routing that utilizes both BNSF and CSXT. In that case, the algorithm identifies two completely independent routes prior to the merger, but only one after.

That is because the merger makes a BNSF-NS routing dependent on the same merged UP-NS that a shipper would need a rate from on any of the other observed routings. In that sense, the algorithm correctly screens this corridor as one where a shipper's competitive options will be affected by the loss of completely independent competitive options – the type of competitive effect economists typically identify as a loss of horizontal competition.

Exhibit 67
A hypothetical example of two independent routes



Source: Hypothetical example.
Note: This example illustrates an example of pre-merger and post-merger independent routings for a corridor where UP and BNSF operate on one side of the gateway and NS and CSXT operate on the other side of the gateway. Pre-merger, there are two independent routes. Post-merger, there is one independent route.

445. Suppose, however, a BNSF-CSXT routing is a credible option for shippers in this example. The algorithm methodology allows a researcher to identify that fact from

either observed choices of shippers that were not in the original screening data or by examining other facts specific to this movement. In any event, it again does not identify the competition between NS and CSXT to carry their side of the move. Nor does it identify the similar competition between UP and BNSF for their side. It counts, at most, two completely independent routes. The algorithm also finds the same number of completely independent routes after a UP-NS merger, even if the merger allows UP-NS to completely foreclose shippers from ever again choosing a UPNS-CSXT route or a BNSF-UPNS route. As in the previous example, this is a product of the algorithm focusing on a different type of problem; it is not proof that the problem I demonstrated with Scenario B above is addressed. In summary, the counting algorithm is not capable of addressing potential vertical harms like Applicants claim.

12.4.2. Dr. Israel's methodology for analysis of independent routes incorrectly dismisses losses of head-to-head competition in 74 routes

446. In Dr. Israel's analysis of independent routes, he identifies 74 corridors, combining for a total of {{REDACTED }} annual carloads,[447] where shippers would see a reduction of independent routes from 3-to-2 or 2-to-1. The shippers using these corridors are directly harmed by the merger, yet Dr. Israel dismissed the problem identified in the algorithm in every case with no more investigation of the facts in these particular corridors.

[447] Israel Second Errata VS, Appendix D, ¶ 5. See also Exhibit 26. {{REDACTED }}.

447. Dr. Israel dismisses the algorithm's identification of these 74 corridors where shippers will lose horizontal competition among completely independent routes based on an assumption that a suitably competitive interconnect service can be readily established between the rail carriers that are not observed among the pairings that shippers choose in the data.[448] In the example of Exhibit 67, that is the missing BNSF-CSXT pairing. The data offer no explanation for why shippers seem to avoid this route pair. Likewise, the data offer no basis to assume a BNSF-CSXT pair would be (or would become) credible in bargaining after the UP-NS merger. Yet, Dr. Israel routinely assumes that will be the case whenever he observes that both railroads interchange any traffic at a common point which he describes as testing whether each route has a "viable alternative independent route [which] can be created through the connection of segments currently carrying traffic at the indicated interchange[.]"[449]

448. Dr. Israel suggests that his methodology is similar to analyses that I performed in the CP-KCS merger.[450] For that merger, I utilized CCWS data from one year, 2019, for screening and identified just seven corridors that the algorithm flagged as seeing a reduction in competition.[451] I then supported the credibility of alternative viable routes with evidence from the record specific to each of those corridors.[452] For six of those

[448] Israel Second Errata VS, Appendix D, ¶¶ 5–6.

[449] Israel Second Errata VS, Appendix D, ¶ 5.

[450] Israel Second Errata VS, fn. 38 ("This is consistent with the approach taken in the CP-KCS proceeding").

[451] Majure CP-KCS VS (Public), ¶ 56 ("In all seven corridors flagged in the initial screen, further examination shows that shippers in these corridors would not face a meaningful reduction in the competition available within the corridor.")

[452] Majure CP-KCS VS (Public), Section 4.2.2.

seven corridors, "additional viable routes exist[ed] that were not captured by the 2019 Waybill sample; the seventh…KCS being independent of CP [did] not appear to add significantly to competition."[453]

449. The 74 routes Dr. Israel dismisses have very different market realities than those in CP-KCS. He utilized the full Six-Railroad Tapes Data (representing 100% of Class I rail movements from 2019–2024) so a route would have to never be observed as the choice of any shipper since 2019 (the earliest year in his data) to trigger his screening, yet, he assumes these unobserved routes are "viable."[454]

[453] Majure CP-KCS VS (Public), ¶ 56.

[454] Israel Supplemental VS, fn. 38 ("However, I use six years of waybill data, rather than a single test year for identifying relevant routes[.]").

VERIFICATION

I, W. Robert Majure declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further I certify that I am qualified and authorized to file this statement.



Executed this 18th day of November, 2026

W. Robert Majure

APPENDIX A

W. Robert Majure, Ph.D.
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ACADEMIC BACKGROUND

1990 – 1994 **Massachusetts Institute of Technology** Cambridge, MA
Ph.D., Economics
Specialization: Industrial Organization, Microeconomics, Econometrics
Thesis: Disequilibrium Game Theory

1986 – 1990 **University of Virginia** Charlottesville, VA
B.A., Economics and Mathematics

PROFESSIONAL EXPERIENCE

2019 – Present **Cornerstone Research, Inc.** Washington, DC
Vice President
Provide financial and economic analysis for commercial litigation matters. Support experts in preparing for deposition and trial testimony.

2010 – 2018 **Antitrust Division – U.S. Department of Justice** Washington, DC
Director of Economics
Senior career executive supervising the Antitrust Division's Economic Analysis Group. Helped formulate economic evidence and testimony for cases in industries such as software (*U.S. v. H&R Block, Inc., et al.*), telecommunications (*U.S. and Plaintiff States v. AT&T Inc., et al.*), video (*U.S. v. AT&T Inc., DirecTV Group Holdings, LLC, and Time Warner Inc.*), publishing (*U.S. v. Apple, Inc., et al.*), airlines (*U.S., et al. v. US Airways Group, Inc. and AMR Corp.*), oilfield services (*U.S. v. Halliburton Co. and Baker Hughes Inc.*), and health insurance (*U.S. and Plaintiff States v. Aetna Inc., and Humana Inc.* and *U.S. and Plaintiff States v. Anthem, Inc. and Cigna Corp.*).

2003 – 2010 **Antitrust Division – U.S. Department of Justice** Washington, DC
Chief of Competition Policy Section
Managed a section of about 18 economists and other staff. Supervised economic analysis of antitrust investigations in various industries including computer software (*U.S. v Oracle Corp.*), real estate (*U.S. v Kentucky Real Estate Commission*), and telecommunications (*U.S. v Cingular Wireless et al*). Testified in *U.S. v SBC Communications Inc. and AT&T Corp.* and *U.S. v. Verizon Communications Inc. and MCI, Inc.* Consulted on appellate arguments of the United States in Circuit Court (including *FCC v Prometheus Radio Project*).

1997 – 2003 **Antitrust Division – U.S. Department of Justice** Washington, DC
Assistant Chief of Economic Regulatory Section

Assisted with the management of a section of about 18 economists and other staff. Supervised economic analysis of antitrust investigations in various industries including telecommunications (*U.S. v WorldCom and Sprint*), computer software (*U.S. v Mathworks and Wind River*), publishing, radio and television advertising (*U.S. v Univision and Hispanic Broadcasting Corp*), electricity, and airlines. Consulted on appellate arguments of the United States in Circuit Court and the U.S. Supreme Court (including *Iowa Utilities Board v FCC and U.S.*).

1994 – 1997 **Antitrust Division – U.S. Department of Justice** Washington, DC
Economist
Performed economic analysis in antitrust investigations. Applied developments in the fields of industrial organization, microeconomics, and econometrics to practical questions raised in antirust analysis. Examined mergers or practices in telecommunications (including *U.S. v Sprint and Joint Venture Co.*), computer software, and banking. Testified in the merger of Union Pacific Railroad and Southern Pacific Railroad (before the Surface Transportation Board).

TESTIMONY

Library of Congress Copyright Royalty Judges Case No. 19-CRB-0010 CD (2018-21) – Submitted testimony in re: Distribution of Cable Royalty Funds on behalf of joint sports claimants.

STB Finance Docket No. 36744 – Submitted testimony on behalf of Canadian Pacific Kansas City on competitive effects and remedy in Canadian National Railway's proposed acquisition of Iowa Northern Railway

State of Ohio ex rel. Dave Yost, Ohio Attorney General vs. Google LLC – Testified in deposition on behalf of Google.

Library of Congress Copyright Royalty Judges Case No. 16-CRB-0009 CD (2014-17) – Submitted testimony in re: Distribution of Cable Royalty Funds on behalf of joint sports claimants. Testified at hearing.

STB Finance Docket No. 36500 – Submitted testimony in support of the application by Canadian Pacific Railway Limited, *et al*. to combine with Kansas City Southern, *et al*. Testified in deposition and at hearing.

STB Finance Docket No. 36514 – Submitted testimony on behalf of Canadian Pacific Railway Limited analyzing prospective combination of Canadian National Railway Company, *et al.* with Kansas City Southern, *et al*.

Real Estate Exchange, Inc. v Zillow, Inc. et al. – Filed declaration in support of motion for preliminary injunction.

U.S. v SBC Communications Inc. and AT&T Corp. and *U.S. v. Verizon Communications Inc. and MCI, Inc.* – Filed declarations in Tunney Act proceeding to explain the economic analysis of the United States for the proposed mergers and of the proposed consent decrees.

ICC Finance Docket No. 32760 – Submitted testimony on behalf of the U.S. Dept. of Justice analyzing prospective merger of Union Pacific Railroad and Southern Pacific Railroad. Testified in deposition.

PUBLICATIONS

"Is There a Better Approach to Vertical Merger Analysis," with Andrew Sfekas in *Antitrust Chronicle* June 2025.

"Evaluating Innovation Theories of Harm in Merger Review: Economic Frameworks and Difficulties" with Nathaniel Hipsman and Jessica Liu in *Getting the Deal Through—Merger Control 2022* September 2021

"Comparing Vertical Merger Guidelines Across Jurisdictions" with Peter Davis and Kostis Hatzitaskos in *Law360* February 2020.

"Revisiting Guidance on MFN Terms" with Andrew Sfekas in *Antitrust Chronicle* September 2019.

"Economics at the Antitrust Division 2016-2017: Healthcare, Nuclear Waste, and Agriculture," with A. Gerstle, H. Knudsen, D. Williamson, and J. Lee, *Review of Industrial Organization,* Vol 51, Issue 4, 2017, pp. 515-528

"The Year in Review: economics at the Antitrust Division: 2011," with F. Scott Morton, *Review of Industrial Organization*, Vol. 41, Issue 4, 2012, pp. 321-331

"The Antitrust Division: Economic Issues Presented in 2010-2011," *Review of Industrial Organization*, Vol 39, Issue 4, 2011, pp. 327-334

"The Year in Review: Economics at the Antitrust Division, 2004–2005," with E. Emch and K. Heyer, *Review of Industrial Organization*, Vol 27, Issue 3, 2005, pp. 197-221

"Ensuring Fair and Efficient Access to the Telecommunications 'Bottleneck'" with D. Rubinfeld, in C.D. Ehlermann and L. Gosling (eds.), Third Competition Law Annual 1998: Regulating Telecommunications (Hart Publishing: Oxford)

"An Empirical Analysis of Bank Branching: Portugal 1989-1991" with L. Cabral, in The Empirical Analysis of Industrial Organization Conference Report of the Centre for Economic Policy Research

WHITE PAPERS

"Comment on the January 2022 DOJ and FTC RFI on Merger Enforcement," with John Asker, Kostis Hatzitaskos, Nathan Miller, Aviv Nevo, and Ana McDowall, April 2022, available at https://downloads.regulations.gov/FTC-2022-0003-1847/attachment_1.pdf.

"Comments on the January 2020 Draft Vertical Merger Guidelines," with Kostis Hatzitaskos, Aviv Nevo, and Ana McDowall, February 2020, available at https://media.justice.gov/vod/atr/comments-draft-vmg/dvmg-0012.pdf.

"Comparison with the EU Non-Horizontal and the UK Merger Assessment Guidelines," with Peter Davis and Kostis Hatzitaskos, February 2020, available at https://media.justice.gov/vod/atr/comments-draft-vmg/dvmg-0011.pdf.

"Review: Selected Research of Andrew Sweeting, New Bureau of Economics Director" with Andrew Sfekas, Ross Askenazi, and Laurien Gilbert, January 2020, available at https://www.cornerstone.com/Publications/Articles/Selected-Research-of-Andrew-Sweeting.pdf

HONORS AND AWARDS

President's Award for Meritorious Executive	2017
Assistant Attorney General's Award for Excellence	2015
Attorney General's John Marshall Award for Legal Advice (Nominated)	2004
Assistant Attorney General's Award for Excellence	2001
Distinguished Service Award	1997
National Science Foundation Fellowship	1990 – 1993
Phi Beta Kappa	1989

CONFERENCE PARTICIPATION

8th Annual Bill Kovacic Antitrust Salon 2020
Discussed vertical merger guidelines and enforcement issues in a panel hosted by George Washington University School of Law and *Concurrences Review*.

"New Debates and Tensions in Antitrust: The 2020 Vertical Merger Guidelines" 2020
Discussed newly issued vertical merger guidelines with attorneys and economists in government and private practice.

ABA panel "Sequences & Sparks: Life Sciences Innovation Mergers." (podcast) 2020
Discussed issues of innovation competition, potential competition, and merger enforcement.

DOJ Workshop on Proposed Vertical Merger Guidelines 2020
Discussed issues of vertical merger analysis and suggested modifications to draft guidelines.

ICN Chief/Senior Economist Workshop 2016
Discussed tools and techniques of current interest with senior economists representing competition authorities around the world.

FCC Roundtable on Media Ownership Policies 2001
Discussed economic issues related to prospective changes in the FCC's rules governing media ownership.

PERSONAL

U.S. Citizen. Married with two daughters and one son.

APPENDIX B

Majure V.S., Vol. I, Materials Relied Upon

Academic Articles

- Daniel Greenfield, Nicholas Kreisle, and Mark Williams, "Simulating a Homogenous Product Merger: A Case Study on Model Fit and Performance," Federal Trade Commission Bureau of Economics Working Paper No. 327, October 2015
- John D. Bitzan and Fecri Karanki, "Costs, Density Economies, and Differential Pricing in the U.S. Railroad Industry," *Transport Policy*, 119, 2022, pp. 67–77
- Jonas Bjornerstedt and Frank Verboven, "Does Merger Simulation Work? Evidence from the Swedish Analgesics Market," *American Economic Journal: Applied Economics*, 8(3), 2016, pp. 125–164
- Vivek Bhattacharya, et al., "A Large-Scale Evaluation of Merger Simulations," NBER Working Paper 35473, 2026

Bates Stamped Documents

- NS_00038359–66
- NS_00041822–34
- NS_00103605–56
- NS_00126707–37
- NS_00130381–85
- NS_00134944–61
- NS_00136603–9
- NS_00148838–47
- NS_00148874–80
- NS_00152716–34
- NS_00155457–9
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CORNERSTONE RESEARCH
ECONOMIC AND FINANCIAL CONSULTING AND EXPERT TESTIMONY

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873
UNION PACIFIC CORPORATION AND UNION PACIFIC RAILWAY COMPANY—CONTROL—NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

EXPERT STATEMENT OF W. ROBERT MAJURE, PH.D. VOLUME II OF II

November 18, 2026

HIGHLY CONFIDENTIAL MATERIAL: CONTAINS WAYBILL DATA

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1. Qualifications and assignment

1.1. Qualifications

1. My name is W. Robert Majure. I am a Senior Vice President at Cornerstone Research. Prior to joining Cornerstone Research, I worked for approximately 25 years in the Antitrust Division of the U.S. Department of Justice ("DOJ") as an economist, Assistant Section Chief, Section Chief, and ultimately as the Director of Economics.

2. I earned my Ph.D. in Economics from Massachusetts Institute of Technology in 1994 and a B.A. from the University of Virginia in 1990. My main area of expertise is the economics of industrial organization – particularly issues of competition.

3. While at the DOJ, I performed and supervised economic analyses of competition issues in various industries, including transportation, telecommunications, banking, computer software and hardware, heavy industry, mining and drilling, healthcare, entertainment, and railroads. I submitted testimony on competitive effects in the merger of the Union Pacific and Southern Pacific Railroads and on the suitability of remedy in *U.S. v. SBC Communications Inc. and AT&T Corp.* and *U.S. v. Verizon Communications Inc. and MCI, Inc.* I also served on the committee that drafted the 2010 Horizontal Merger Guidelines. I received awards for my work at the DOJ, including presidential recognition for my contributions as a senior executive of the civil service.

4. In my role at Cornerstone Research, I have worked with government agencies and private clients to examine competitive effects of contractual arrangements and mergers across many industries including support of the U.S. Department of Justice's challenges to a proposed merger of JetBlue and Spirit airlines and to a joint venture with the effect of a merger between American Airlines and JetBlue. I have testified for Canadian Pacific regarding the competitive effects of combining Canadian Pacific and Kansas City Southern ("CP-KCS") and on the effects of Canadian National acquiring Iowa Northern. I have also provided testimony in other proceedings which are described in my curriculum vitae which is attached as Appendix A.

1.2. Assignment

5. I have been asked by counsel for Canadian Pacific Kansas City ("CPKC") to evaluate whether the conditions it proposes in its Comment Vol. II and Responsive Applications would harm competition or would remedy competitive harm due to the proposed acquisition of Norfolk Southern ("NS") by Union Pacific ("UP").

6. Cornerstone Research is being compensated at my standard billing rate of $1,400 per hour. I have been assisted by staff at Cornerstone Research, who worked under my direction. Cornerstone Research's compensation in this matter is not in any way contingent or based on the content of my opinion or the outcome of this or any other matter, nor is my compensation.

7. Appendix B contains a list of materials I have relied upon in preparing this statement. My work is ongoing, and I reserve the right to supplement this analysis as proceedings continue.

2. The provisions requested by CPKC would partially mitigate harm from the merger, without harming competition

8. The proposed merger between UP and NS would give a combined UP-NS an increased incentive and ability to foreclose competition (including competition provided by CPKC), as discussed in Majure VS Vol. I, Section 4.[1] A combined UP-NS would also deprive shippers of the ability to generate competition between UP and NS with bargaining strategies such as using locations the shipper has on UP to discipline pricing at locations on NS (and vice versa) or using alternate interconnection points to induce competition between UP and NS for the "longer haul" (the middle of an interline move) as discussed in Majure VS Vol. I, Sections 5–6.

9. Applicants have offered inadequate remedies for shippers that would suffer from this loss of competition, as discussed in Majure VS Vol. I, Sections 4.5, 5.4, and 6.4. Regulation is generally inferior to competition, but Applicants' proposed remedies are particularly ineffective and unlikely to remedy merger-induced harm, as discussed in Majure VS Vol. I, Section 10.

10. CPKC has identified and requested a set of conditions aimed at better curbing UP-NS's ability to use its increased incentive to foreclose competition and preserving or, in some cases, replacing the competition that will be lost by the merger. These conditions are in two sets.

[1] Expert Statement of W. Robert Majure, Ph.D. Volume I of II, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, November 18, 2026 ("Majure VS Vol. I").

a. The first is a set of more general conditions that would apply nationwide and involve requests that, among other things: expand or modify Committed Gateway Pricing ("CGP") (Section 2.1); introduce caps that would prevent UP-NS from holding shippers captive beyond pre-merger levels (Section 2.2); and propose enforceable service assurances, remove contractual barriers to allow structural relief for some shipments, and propose governance conditions (Sections 2.3–2.5).[2]

b. The second is a set of structural remedies aimed at preserving and promoting competition in areas subject to specific harms from the proposed merger or where CPKC would be able to provide shippers with an additional competitive Class I option: the Gulf Coast, New Orleans, Meridian Speedway, Dallas-Fort Worth, Kansas City gateway, St. Louis gateway, Kansas City-St. Louis, Chicago gateway, Chicago-Detroit, and Rosemount and Fairmont, Minnesota (Section 2.6).[3]

11. While these conditions are not a full replacement for the competition that today protects shippers and would be lost following the merger, they are more effective and partially address more of the harms the merger would cause than those offered by

[2] CPKC's Comments on Application and Request for Conditions, Volume II, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, November 18, 2026 ("CPKC Comment Vol. II"), Sections III–VII.

[3] CPKC Comment Vol. II, Section VIII; Docket No. FD 36873 (Sub-No. 42) ("CPKC Gulf Coast Responsive Application"); Docket No. FD 36873 (Sub-No. 43) ("CPKC Baton Rouge Responsive Application"); Docket No. FD 36873 (Sub-No. 44) ("CPKC Lufkin Subdivision Trackage Rights Responsive Application"); Docket No. FD 36873 (Sub-No. 45) ("CPKC Wylie Responsive Application"); Docket No. FD 36873 (Sub-No. 46) ("CPKC KCT/Polo Line Responsive Application"); Docket No. FD 36873 (Sub-No. 47) ("CPKC Missouri Responsive Application"); Docket No. FD 36873 (Sub-No. 48) ("CPKC TRRA Responsive Application"); Docket No. FD 36873 (Sub-No. 49) ("CPKC Chicago-Detroit Responsive Application"); Docket No. FD 36873 (Sub-No. 50) ("CPKC Techny Responsive Application"). Docket No. FD 36873 (Sub-Nos. 42–50) are collectively referred to as "CPKC Responsive Applications."

Applicants, as discussed in Majure VS Vol. I. These conditions will not harm competition and will partially mitigate the harm from the merger.

2.1. Enforceable gateway conditions

12. In Majure VS Vol. I, I discuss the limitations of Applicants' proposed commitments that purport to preserve competition post-merger:

a. Applicants' open gateway commitments ("OGCs") lack specificity. Simply keeping gateways "open on commercially reasonable terms"[4] will not ensure the viability of a competitive interline option, particularly given a combined UP-NS would have the incentive and ability to foreclose these options (Majure VS Vol. I, Section 4.5).

b. Applicants' plan for CGP, TAP, and the Rate ADR program to terminate after a certain period will not protect shippers against the permanent effects of the merger in the long term; and shippers and other railroads will bear much of the cost of disputing merger-induced competitive harm, which may lead to underenforcement (Majure VS Vol. I, Sections 4.5, 5.4, and 6.4).

[4] See Second Errata Joint Verified Statement of Kenny Rocker.
and Claude E. Elkins, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, September 4, 2026 ("Rocker and Elkins Second Errata VS"), ¶ 164.

c. CGP's benefits will be small and concentrated among few shippers while the CGP program will affirmatively harm others. CGP also incentivizes a merged UP-NS to raise rates on routes that determine CGP rates (Majure VS Vol. I, Section 9).

13. CPKC has proposed conditions (e.g., expanding CGP, as well as implementing pricing, service, and enforcement protections) that would more effectively mitigate the competitive harms from the merger than what Applicants have committed to so far.

2.1.1. Expanded CGP coverage

14. As proposed by Applicants, CGP covers only a small subset of all traffic.[5] Where CGP does not apply, Applicants promise only to keep gateways open "on commercially reasonable terms," and that they will "not make it impossible to construct viable interline options for customers by refusing to quote commercially reasonable rates."[6] However, as I explain in Section 4.5 of Majure VS Vol. I, simply keeping gateways open—on commercially reasonable terms or otherwise—will not ensure robust competition when UP-NS retains both the incentive and ability to foreclose interline options through those gateways. Additionally, Applicants propose that CGP will remain

[5] Verified Statement of Katherine N. Novak, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, April 30, 2026 ("Novak VS"), ¶ 20 ("Committed Gateway Pricing will apply to manifest carload shipments between UP/NS sole-served facilities and facilities on short lines interchanging traffic solely with UP/NS, on the one hand, and BNSF and CSX sole-served facilities and facilities on short lines interchanging traffic solely with BNSF or CSX, on the other hand, that are interchanged between UP/NS and CSX or BNSF in Chicago, St. Louis, Memphis, or New Orleans."), ¶ 25 ("Committed Gateway Pricing will not apply to intermodal or unit train shipments, shipments of finished vehicles, or shipments to and from storage-in-transit facilities, which often have distinct pricing structures and service requirements.").

[6] Rocker and Elkins Second Errata VS, ¶¶ 164, 166.

in place "until the end of the oversight period in this proceeding, unless extended by the Board."[7] This would enable a combined UP-NS to simply wait until the end of the oversight period before removing CGP's price ceilings to reprice however they see fit, including to foreclose interline competition on certain routes. To address these flaws with Applicants' current proposal, CPKC proposes expanding CGP in several ways, including to make it permanent, and to expand it to apply to more railroads, interchanges, and facilities.[8]

15. CPKC's proposed conditions would limit opportunities for Applicants to circumvent CGP and act on their incentive to foreclose competing interline options. To the extent that another railroad uses a CGP rate under the program as proposed by Applicants, it would only do so if the rate that would otherwise be available would make that railroad even less competitive. Removing exclusions would thus broaden the availability of potentially more competitive interline options. The pricing, service, and enforcement protections discussed below remain necessary to address CGP's creation of perverse incentives identified in Majure VS Vol. I, Section 9.2.

2.1.2. Effective CGP rate formula

16. CPKC's proposed modifications to the CGP rate formula will help mitigate harm to competition and to shippers caused by Applicants' potential manipulation of their non-

[7] Novak VS, ¶ 45. See also Second Errata Verified Statement of Mark A. Israel, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, September 4, 2026, ¶ 166.

[8] CPKC Comment Vol. II, Section III.B.2.

CGP rates to raise the CGP rate ceiling. I explain in Sections 9.1–9.2 of Majure VS Vol. I that CGP can harm some shippers and will give UP-NS incentives to inflate the rates or manipulate the movements used to determine the CGP ceiling. Accordingly, CPKC proposes various modifications to the CGP rate formula.[9] Some of these modifications change the way CGP rate ceilings are calculated. For example, CPKC proposes setting CGP rate ceilings "no higher than the 50th percentile of comparable rates."[10] Holding the comparison set fixed, a ceiling no higher than the 50th percentile would be more protective than Applicants' 70th-percentile approach and would avoid setting the benchmark above the middle of that distribution. CPKC also proposes that the Board require "finer commodity segmentation," "narrower mileage bands," and more frequent rate recalculations than Applicants propose.[11] Further, CPKC proposes that the Board should retain the authority to set a rate below the 50th percentile ceiling if warranted by the circumstances.[12] These changes would help ensure that CGP rates are calculated using appropriate benchmarks that yield competitive rates, given that the current CGP segmentation and update frequency may lead to rates that do not track market conditions.[13] Other modifications CPKC proposes would narrow the scope for

[9] CPKC Comment Vol. II, Section III.B.3.

[10] CPKC Comment Vol. II, p. 26 ("The Board should require a ceiling no higher than the 50th percentile of comparable rates and should consider a lower ceiling in light of the substantially greater market power UP will hold after acquiring NS.").

[11] CPKC Comment Vol. II, p. 27 ("The Board should require finer commodity segmentation, narrower mileage bands, and a mechanism for timely adjustment of CGP rates when changing market conditions would otherwise render an interline offer commercially unusable.").

[12] CPKC Comment Vol. II, p. 26 ("The initial ceiling selected by the Board should be a maximum, not a safe harbor. Where evidence supports the conclusion that the rate-setting percentile would not produce a commercially usable offer for a particular category of traffic, the Board should retain authority to prescribe a lower level.").

[13] Verified Statement of John Brooks, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company,"

manipulation and limit opportunities for UP-NS to act on its incentive to raise CGP rate ceilings by manipulating non-CGP rates. For example, CPKC requests that the Board "prohibit manipulation of contract terms or the comparison set to inflate the [rate] ceiling," and that Applicants should disclose their rate calculation methodology in sufficient detail to detect circumvention.[14] Similarly, CPKC proposes that the Board should account for effective compensation that includes "rebates, discounts, and linked commercial terms" to "prohibit manipulation of contract terms or the comparison set" to inflate CGP rate ceilings.[15] This proposal could mitigate the concern that Applicants could use targeted rebates and discounts to manipulate CGP pricing, which I outline in Section 9.2 of Majure VS Vol. I. Taken together, CPKC's proposed conditions would help partially address the limitations of CGP that I identify in Majure VS Vol. I, Sections 9.1–9.2, without harming competition.

Docket No. FD 36873, November 18, 2026 ("Brooks VS"), ¶¶ 184–186 ("Applicants' proposed CGP framework is too coarse to track market conditions and is not nimble enough to allow rates to adjust rapidly to changing conditions[.] … The buckets used to calculate CGP rates are far too coarse. For example, 'Industrial Chemicals' and 'Metals & Ores I' span movements with materially different cost and demand characteristics. Mileage bands encompassing 500 miles (e.g., between 500 and 999 miles) ignore pricing differences between shorter and longer moves. … In today's marketplace, interline carriers adjust their rates and divisions continually in response to fuel and truck-market swings, seasonal demand, new competitive offerings, and individual bids. Under CGP, the legacy-UP or legacy-NS portion of the move would be fixed in advance, while UP-NS could price its own single-line alternative freely from bid to bid. By the time the annual reset caught up, the RFP would be over and the traffic would be gone.").

[14] CPKC Comment Vol. II, pp. 27–28 ("The approved methodology should account for effective compensation, including rebates, discounts, and linked commercial terms, and prohibit manipulation of contract terms or the comparison set to inflate the ceiling. Applicants should disclose to the Board the methodology, inputs, calculations, and changes in comparison-set composition needed to detect circumvention. The Board should retain authority to require corrected offers.").

[15] CPKC Comment Vol. II, p. 27 ("The approved methodology should account for effective compensation, including rebates, discounts, and linked commercial terms, and prohibit manipulation of contract terms or the comparison set to inflate the ceiling.").

2.1.3. Gateway choice and protection against route impairment

17. Shippers benefit from competition when railroads bargain over routing decisions. For example, as I explained in Section 6 of Majure VS Vol. I, railroads compete over who will ship the longer portion of movements, benefiting shippers by generating competitive rates for the entire movement. Therefore, even if the Board enacts CPKC's requested conditions in Sections 2.1.1 and 2.1.2 above, CPKC proposes that CGP should enable shippers and carriers to obtain a rate "covering Applicants' movement between a covered facility and the nearest efficient eligible interchange."[16] CPKC's proposal would preserve competitive options for shippers by requiring UP-NS to interchange with other railroads where it is most efficient to do so (preventing UP-NS from foreclosing interline competition).[17]

[16] CPKC Comment Vol. II, p. 29 ("To protect against those anticompetitive incentives, the Board should modify the proposed CGP framework to permit a shipper or eligible connecting carrier to obtain a rate covering Applicants' movement between a covered facility and the nearest efficient eligible interchange with a carrier independent of Applicants."), pp. 29-30 ("Efficiency should be assessed in light of the complete interline movement, including rail-route distance, available connections, operational feasibility, transit time, capacity, reliability, transportation cost, and competitive usefulness. Geographic proximity alone should not control, and Applicants' interest in retaining a longer haul should not determine the interchange.").

[17] CPKC makes additional requests pertaining to shippers' gateway choice under CGP that close loopholes through which a combined UP-NS could otherwise find ways to foreclose interline competition. These include that affected shippers and eligible carriers "should be entitled to request and obtain a CGP offer through any otherwise eligible gateway or interchange point, including the nearest efficient interchange to the relevant origin or destination," that access to a CGP rate "should not depend on proof that Applicants have impaired an existing route, that the traffic previously used the requested interchange, or that the requested routing preserves Applicants' historical length of haul," that efficiency should be assessed given a wide and detailed set of route information, and that when "Applicants' post-merger routing or operating changes impair an existing interline route, the Board should be able to require an effective alternative gateway and the associated pricing and operating arrangements necessary to preserve commercially usable interline service[.]" See CPKC Comment Vol. II, pp. 23, 30.

2.1.4. Independent service floor

18. If the Board imposes a condition requiring the expansions to CGP that CPKC proposes, more of the rates UP-NS offers will be capped by the CGP rate ceiling, though UP-NS could still price below this ceiling. Therefore, UP-NS will gain more incentive to manipulate the service quality it provides to steer traffic away from routes with low CGP rates and from competing interline options. Applicants currently propose to address this through non-discrimination, that is, that they will handle CGP traffic "without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic moving in UP/NS service."[18] However, non-discrimination is not sufficient because it would mean that Applicants set the standard against which they evaluate their own service quality commitments, which would incentivize them to manipulate those standards by diverting, eliminating, or otherwise degrading their measure of service quality for comparable traffic.[19] Accordingly, CPKC proposes that "[t]he Board should specify the service standards, reporting, and enforcement obligations" required to render UP-NS's service quality commitments effective.[20]

[18] Novak VS, ¶ 43 ("Specifically, traffic UP/NS handles under Committed Gateway Pricing will be handled without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic moving in UP/NS service."); Applicants' Second Response to Decision No. 21, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, July 27, 2026 ("Applicants' Second Response to Decision No. 21"), Supp. p. 44 ("Rather than propose specific service benchmarks for measuring Committed Gateway Pricing service performance, Applicants have expressly committed to nondiscriminatory treatment of traffic moving under CGP.").

[19] Mr. Redd outlines the many factors one would need to consider to fully determine all relevant dimensions of service quality. See Verified Statement of Mark Redd, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, November 18, 2026 ("Redd VS"), ¶¶ 101–102.

[20] CPKC Comment Vol. II, p. 32 ("The Board should specify the service standards, reporting, and enforcement obligations needed to make the commitment effective."). I discuss CPKC's proposed enforceable service assurance framework in Section 2.3 below.

CPKC's proposed condition would protect shippers and preserve competitive interline options by transferring authority over Applicants' service standards away from the Applicants themselves (without harming competition).

2.1.5. Expedited enforcement

19. Regulatory standards may fail to bind Applicants' behavior if the procedure for seeking relief is more costly or time-consuming for shippers or competing railroads than simply taking their business elsewhere.[21] Accordingly, CPKC proposes that any affected shipper or connecting carrier should be able to submit written notice of an alleged violation and seek interim relief along with an expedited Board resolution.[22] CPKC's proposed condition would increase shippers' and competitors' willingness to hold Applicants accountable for merger-related harms they experience (without harming competition).

[21] As Mr. Brooks outlines, timely enforcement matters. A later favorable decision may not restore an interline opportunity lost during a bid cycle, as the customer may have committed its traffic elsewhere (in a long-term contract), or the competing service may have "lost the density needed to support it." See Brooks VS, ¶ 176.

[22] CPKC Comment Vol. II, p. 34 ("To ensure effective enforcement, an affected shipper or connecting carrier, including CPKC and any participating Class II or Class III carrier, should be entitled to give written notice identifying an alleged violation and requested relief and to seek expedited Board resolution of eligibility or compliance under Section V.B, including interim relief preserving threatened routing options and service.").

2.2. Limitations on shipper captivity

20. As I explain in Section 3.2 of Majure VS Vol. I, a combined UP-NS would touch an unprecedented share of traffic shipped by rail across the country. Its size and scale would weaken geographic competition and deprive shippers of bargaining strategies that support more competitive rates and service offerings.[23] As I explain in Majure VS Vol. I, Section 5.2, shippers whose facility options are more concentrated on one railroad tend to pay more for their movements as a whole, consistent with shippers benefiting from competition across their locations even if particular locations are sole-served by UP and others are sole-served by NS. Accordingly, CPKC proposes conditions that would prevent this harm to shippers who would otherwise become more captive to a combined UP-NS than they currently are to either independent UP or independent NS.[24]

21. One of CPKC's conditions would require commercially and operationally effective independent-carrier access at enough customer-designated facilities that, for each customer or commonly controlled customer group, the number of remaining facilities sole-served by UP-NS would not exceed the larger of UP's or NS's pre-merger counts.[25] This condition would help to constrain the merger-created increase in sole-service exposure. Placing the selection of facilities to be opened in the hands of the

[23] Majure VS Vol. I, Section 5.

[24] CPKC Comment Vol. II, Section IV.

[25] CPKC Comment Vol. II, p. 50 ("To preserve and promote competition, the Board should impose a permanent structural condition ensuring that for each customer or commonly controlled customer group, the number of facilities that may remain sole-served by the combined UP–NS after consummation does not exceed the greater of: 1. the number of that customer's facilities sole-served by legacy UP immediately before consummation; or 2. the number of that customer's facilities sole-served by legacy NS immediately before consummation.").

customer matters because access at a facility lacking commercially useful routes or services would provide little bargaining value. CPKC also proposes a complementary condition prohibiting Applicants from using commercial terms on one legacy network to penalize a customer's choice of an independent carrier on the other or to foreclose effective competition for that business.[26] As I explain in Majure VS Vol. I, Section 5, bundling can benefit shippers, but captive business can also be used to impair competition for other traffic. The condition would preserve legitimate discounts reflecting volume, costs, or operating efficiencies. The relevant inquiry would examine whether adverse terms on business retained with Applicants reflect objective commercial consequences or a penalty that impairs competitive choice. Combining traffic across facilities would not alone establish a violation.[27]

2.3. Enforceable service assurance framework

22. As I describe above, service quality is one lever that UP-NS could use to foreclose competition. Accordingly, CPKC has proposed an enforceable service-assurance

[26] CPKC Comment Vol. II, p. 54 ("The Board should prohibit Applicants from using rates, discounts, rebates, service commitments, or other commercial terms at facilities or on lanes served by legacy UP to penalize a customer's use of an independent carrier at facilities or on lanes served by legacy NS, or to foreclose effective competition for that business, and vice versa.").

[27] In Section 5.2 of Majure VS Vol. I, I show that shippers' rates tend to increase as the share of their total revenue that is captive to a single railroad increases. Capping sole-served facilities is a more practical approach than capping sole-served revenues, and the same notion of bargaining leverage applies to sole-served facilities and sole-served revenue. Therefore, I would expect this remedy to at least partially mitigate the rate increases I predict there. This cap should apply to all customers without them having to demonstrate that they cannot shift production away to new locations, because as I point out in Section 5.1 of Majure VS Vol. I, the threat of shifting production between facilities is what gives shippers bargaining leverage. Competition between UP and NS over where shippers choose to produce is a type of competition the merger would eliminate.

framework to help "make the competitive rights and operating protections imposed as conditions effective in practice."[28] I understand that this framework includes features like preauthorization, activation by notice, and continuing effectiveness until affirmative Board action.[29] It also includes Applicant-funded, independent, ongoing monitoring that Mr. Redd finds necessary to monitor service quality across a combined UP-NS network.[30] These features address loopholes that, if left open, might be used to undermine the effectiveness of regulation. This framework would mitigate merger-induced harm to competition by limiting UP-NS's ability to foreclose competition by degrading the quality of interline routes, while lowering the cost for shippers and competitors to engage with the enforcement process. This framework also calls for an independent, Board-appointed monitor funded by Applicants, continuing access to operating records, prompt reporting, and expedited Board review.[31] Mr. Redd explains

[28] CPKC Comment Vol. II, Section V.

[29] CPKC Comment Vol. II, p. 81 ("The Board should preauthorize the springing rights and remedies specified in Section VIII within their stated geographic and functional limits. Once the applicable activation requirements—including any performance trigger adopted through Section V.C and any expressly required cure opportunity—have been satisfied, CPKC should be entitled to activate the corresponding remedy by filing notice with the Board and serving Applicants and other directly affected parties. The notice should identify the ground, reasonably available supporting evidence, authorized operations, and permitted commencement date. Activation should take effect upon filing and service without a further Board merits determination, additional cure period, or new application[.] … Exercise should comply with the condition's commencement, safety, and qualification requirements. An objection or request for review should not suspend activation or continued exercise unless the Board grants a stay.").

[30] Redd VS, ¶ 98 ("CPKC has proposed a service assurance framework (the 'SAF') in its Comments. If the Board approves the merger, I support requiring this framework to give conditions imposed by the Board to safeguard service assurance and competitive access a realistic chance of working in practice. The SAF appropriately calls for the appointment of an independent, Board-appointed monitor funded by UP-NS, who would be responsible for monitoring compliance and proactively addressing operating problems and disputes.").

[31] CPKC Comment Vol. II, p. 65 ("To ensure effective monitoring and enforcement, the Board should appoint an independent monitor with substantial railroad operating expertise to serve for the duration of the permanent protections. … The monitor's role should include prompt initial findings or determinations within the authority lawfully assigned by the Board, subject to expedited Board

the need for a standing resource with operating expertise and the limitations of repeated negotiations or joint committees.[32] Ongoing monitoring enhances the likelihood that any impairment is identified before it defeats a competing service, while Applicants' funding of administration and reasonable good-faith enforcement costs would reduce barriers to securing compliance. The Board's technical process would calibrate customer-focused measures within the substantive rights and remedies established at approval, with initial standards and monitoring arrangements operative before consummation.[33] Location-specific numerical benchmarks are illustrative candidates for that process. Pre-merger levels are a good initial comparison point but will lose relevance over time. Continued adaptation would remain necessary as traffic and customer needs change. As I explain in Majure VS Vol. I, Section 10, even strict regulation cannot recreate independent competition; neither funding nor a monitor

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review, and recommendations for action reserved to the Board."), p. 66 ("Applicants should provide the monitor with regular service-performance and compliance reports, prompt notice of material service failures, and advance notice of planned operational changes capable of impairing protected service. They should also promptly furnish records, data, and explanations reasonably requested for the monitor's oversight duties, including information from elsewhere on the combined network needed to assess effects on protected service. These obligations should apply regardless of whether a complaint has been filed, a performance trigger has been met, or a dispute is pending. … Applicants should be required to fund the monitor and necessary staff and expertise without controlling its selection, conclusions, or reporting."), p. 68 ("Applicants should preserve and promptly provide the Board, the monitor, and affected beneficiaries the records needed to evaluate compliance, subject to standing confidentiality protections.").

[32] Redd VS, ¶¶ 98–100.

[33] CPKC Comment Vol. II, pp. 71–72 ("The Board should determine the measures used to administer those duties through an expedited technical conference or comparable process involving affected customers and carriers, Applicants, and, if appointed in time, the monitor and its staff. … Applicants should not consummate the Proposed Transaction or implement merger-related operating changes until the Board determines that the initial service standards and monitoring, reporting, and enforcement arrangements are in place and operative. … The Board should establish up front the substantive rights, governing duties, scope of conditional operating authority, and available remedies. The subsequent process would select and calibrate performance measures, thresholds, measurement conventions, reporting, and the conditions for applying those remedies within the authority granted[.]").

eliminates the shortcomings of regulation, and the Board will need to continue to exercise responsibility for those judgments.

2.4. Contractual barriers

23. Remedies to address merger-related harms can only protect affected parties if contractual restrictions or penalties do not make the authorized competing service commercially unusable. Shipper contracts that penalize or outright prohibit the shipper from using an option, say a CGP rate, or that disincentivize the use of competitors where they can meet a portion of the shipper's needs would undermine the effort of creating these options.[34] Similarly, restrictions on what a carrier can do with any granted access would limit the benefit to shippers of trying to create competitive options.[35] Accordingly, CPKC has proposed a series of conditions that would ensure affected shippers and carriers can actually use the Board-ordered remedies I discussed

[34] Brooks VS, ¶ 177 ("Many customers are also bound to their carrier by contract terms that make shifting traffic difficult, including minimum-volume commitments, exclusivity or percentage-of-traffic requirements, routing requirements, volume rebates, and shortfall penalties. A combined UP-NS could use those terms across a much larger network to limit how much traffic a customer can move to a competing interline route, even where a gateway remains open. Customers have also told us that they are reluctant to move traffic away from UP for fear that UP will respond on other lanes where the customer has no alternative.").

[35] Brooks VS, ¶ 206 ("{{REDACTED

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in Sections 2.1–2.3.[36] These conditions protect against merger-related harms by lowering barriers for affected shippers and carriers to access Board-ordered remedies.

2.5. Governance conditions

24. I understand that the proposed merger would increase Applicants' influence over multi-railroad equipment pools, including TTX, the Multilevel Pool, and the NABP.[37] Further, I understand that Applicants' proposal to reduce their stake in TTX will not

[36] CPKC Comment Vol. II, Section VI. It is important that both customers and carriers be granted these conditions because a potential competing option will falter if either the shipper or the railroad is constrained by contractual obligations to UP-NS. Moreover, customer-contract release and amendment of restrictive carrier agreements address distinct barriers: freeing the customer to choose a competing carrier does not enable a movement that the carrier's operating rights still prohibit. I discussed in Majure VS Vol. I, Section 5 that nominal carrier access does not necessarily provide an option for particular traffic. Protection against retaliation is also necessary because the threat of adverse treatment elsewhere can deter use of an otherwise valuable remedy or participation in enforcement. See also Brooks VS, ¶ 177.

[37] Verified Statement of Michael Walczak, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, November 18, 2026 ("Walczak VS"), ¶ 40 ("The proposed Transaction raises profound concerns for the governance and equitable operation of TTX's flatcar and boxcar pools. If UP acquires control of NS, it will gain not only NS's rail network and traffic, but also NS's equity stake in TTX Company. That increase in UP's ownership share would give UP disproportionate influence over TTX's decision-making, which is influence that could be used—intentionally or not—to tilt the playing field in UP's favor at the expense of the other pool participants."), ¶ 71 ("[T]wo independent voices on the Executive Committee and on each steering committee on which both railroads now sit would come under the control of a single railroad. At the same time, the merged railroad would come to account for a substantial share of the automotive-related traffic and pool contributions on which the pool's fleet-size, distribution, and contribution recommendations are based. The result would be a meaningful concentration of both formal voting power and practical influence over key Multilevel Pool decisions, including decisions about optimum fleet size, distribution rules, and pool administration, in the hands of a single participant, on a scale that no other member of the pool would come close to matching."), ¶ 74 ("Combining UP's and NS's contributions would give the merged railroad approximately {{REDACTED}}% of the pooled fleet, and a corresponding share of the vote. Further, because UP holds an ownership interest in, and exercises meaningful influence over, FXE, a combined UP/NS acting together with FXE would account for more than {{REDACTED}}% of the pooled fleet. {{REDACTED }} No other participant would come close[.]").

remove Applicants' post-merger influence over TTX.[38] To the extent that the administration of these shared processes has an important bearing on carriers' ability to provide competitive service at competitive prices, Applicants' increased influence over these processes may present another opportunity for them to foreclose competition. For example, if UP-NS achieves Mr. Hunt's projected intermodal diversions, it may have an incentive to source intermodal railcars from TTX, while at the same time resisting expansion of TTX's fleet, which could constrain other railroads' access to these railcars and restrict their ability to compete for intermodal traffic.[39] Even without considering increased traffic, a combined UP-NS could use its influence to foreclose competition by degrading fleet integrity (i.e., dissolving, unwinding, or materially dismantling the TTX Flatcar and Railbox Pools) and reducing contributions to the Multilevel Pool and NABP.[40]

25. To prevent UP-NS from using its combined influence over these shared resources to harm competition, CPKC proposes to limit UP-NS's combined influence over TTX,

[38] Walczak VS, ¶ 43 ("Applicants assert that, at 49%, UP would not have the ability to 'unilaterally approve, or even block' a matter submitted to the TTX board or shareholders. That is cold comfort. As I explain below, at 49% UP would need the support of only one of TTX's smaller owners not named FXE to carry or block any matter decided by majority vote.").

[39] Walczak VS, ¶ 13 ("The TTX flatcar pool invests in, maintains, and manages the distribution of intermodal and other flatcars that are indispensable to a wide range of freight movements.").

[40] Walczak VS, ¶¶ 78–79 ("It is not at all clear how a UP-NS withdrawal from the TTX pools would work…What is clear is that any such step would be massively disruptive and significantly undermine the ability of these pools to function, especially if the fleets were pared back significantly and the geographic boundaries of pooled fleet usage were shrunk to remove the UP-NS network. The Board should condition any approval on Applicants not causing or procuring the dissolution, unwinding, or material dismantling of those fleets[.]"), ¶ 80 ("The Multilevel Pool and NABP are contributory pools, meaning that unlike in the TTX pools, railroad participants contribute their own equipment to the pools, and as a result they can also choose to remove that equipment from the pools. … That degree of flexibility makes good sense today, when all pool participants are motivated to support the overall efficiency of these pools. Were that no longer the case—as will be true in the event UP and NS are allowed to merge.").

the Multilevel Pool, and the NABP.[41] CPKC also proposes conditions that would prevent UP-NS from using its increased influence to degrade these shared resources, either by de-funding the shared resources or by failing to abide by neutral allocation decisions. This includes the following:

a. "To address these governance harms, the Board should prohibit the combined UP-NS and all entities under their control from acquiring or exercising greater governance rights at TTX than UP possesses at its current, pre-transaction level."[42]

b. "For TTX's flatcar and Railbox pools, the Board should prohibit Applicants and their controlled affiliates and successors from causing or procuring dissolution, unwinding, or material dismantling of the pooled fleets. … They would not require additional TTX share purchases or equipment contributions beyond Applicants' obligations under the governing arrangements and these conditions."[43]

c. "To maintain that structure and ensure that the merged carrier does not increase its control of the Multilevel Pool, the Board should condition approval of the Proposed Transaction on UP, NS, and all entities under their common control collectively exercising no more than one membership, one representative, and one

[41] CPKC Comment Vol. II, p. 96 ("The conditions requested in this Section address the distinct governance, participation, and equipment-access arrangements of TTX, the Multilevel Pool, and the North American Boxcar Pool ('NABP'). Their purpose is to preserve effective access to shared railcar equipment on which competing service depends.").

[42] CPKC Comment Vol. II, p. 104.

[43] CPKC Comment Vol. II, pp. 111, 114.

vote on the Multilevel Pool Executive Committee and each applicable steering committee, including the Reload Carrier Steering Committee."[44]

d. "The Board should therefore require that UP, NS, and all entities under their common control collectively exercise no greater voting power in the NABP than UP's pre-merger contribution-based share of {{REDACTED}}%. Neither NS's contributions nor subsequent additions to Applicants' contributed fleet should increase their aggregate voting power above that cap."[45]

e. "For the Multilevel Pool and NABP, Applicants and their controlled affiliates and successors should give at least 18 months' advance notice before reducing the number of railcars in their combined contributions to either pool by five percent or more, whether through a single action or a series of related reductions."[46]

f. "Applicants should perform their contribution, return, interchange, car-movement, payment, information, and other obligations under the governing arrangements, subject to these conditions and any Board order."[47]

g. "Applicants should provide pooled equipment and associated services within their possession, control, or contractual responsibility without discrimination against CPKC or another participant."[48]

[44] CPKC Comment Vol. II, pp. 106–107.
[45] CPKC Comment Vol. II, p. 108.
[46] CPKC Comment Vol. II, pp. 111–112.
[47] CPKC Comment Vol. II, p. 112.
[48] CPKC Comment Vol. II, p. 113.

26. These conditions would not harm competition and would mitigate UP-NS's ability to abuse its undue influence to govern shared processes, limiting its ability to foreclose competition.[49]

27. UP-NS may also gain more influence over the governance of important terminal railroads at major gateways, including the Belt Railway of Chicago ("BRC"), Indiana Harbor Belt Railroad ("IHB"), the Kansas City Terminal Railway ("KCT"), and the Terminal Railroad Association of St. Louis ("TRRA").[50] I discuss each of these terminal railroads in Section 2.6, along with CPKC's proposed conditions pertaining to them.[51] More broadly, Mr. Gameiro explains that UP could use any additional power to "drive the investment agenda, disinvest in facilities important to competition with UP single-line routes, and ultimately ensure that these entities did not support operations that were contrary to UP's own competitive interests."[52] As I explain in Majure VS Vol. I, Section 4, a combined UP-NS will become incentivized to avoid investment in

[49] As I explain both in Majure VS Vol. I, Section 10 and above, CPKC's conditions would only partially mitigate merger-induced harm. As one example of this, anticompetitive concerns can persist where CPKC's conditions preserve an existing voting share, because a combined UP-NS would have increased incentive to use that power to degrade competing routes. Mr. Gameiro describes the particular blocking and approval mechanisms for KCT, TRRA, BRC, and IHB, which should be addressed under the arrangements. See Verified Statement of Adolph Gameiro, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, November 18, 2026 ("Gameiro VS"), ¶¶ 122–128 (KCT), ¶¶ 100–105 (BRC), ¶¶ 106–121 (IHB), ¶¶ 129–134 (TRRA).

[50] Gameiro VS, ¶ 92 ("A combined UP-NS would also gain the ability to undermine the effectiveness of key terminal railroads at the major Mid-Continent gateways upon which the efficiency of the U.S. rail network would continue to depend, but on which UP-NS would be less reliant. … Through their combined ownership interests and other levers of influence, UP-NS would have the ability to thwart investments and other initiatives—and even hold up routine annual budgeting—at the Belt Railway of Chicago ('BRC'), the Indiana Harbor Belt Railroad ('IHB'), KCT, and the Terminal Railroad Association of St. Louis ('TRRA').").

[51] See Sections 2.6.5, 2.6.7, 2.6.8.

[52] Gameiro VS, ¶ 93.

(or degrade) the infrastructure of interconnection at gateways between the East and West. To the extent that a combined UP-NS's influence over these terminal railroads would enable it to advantage itself at the expense of competitors, this represents another way that the merged firm could foreclose competition.

2.6. Structural remedies proposed by CPKC preserve (at least) some competition

28. In addition to the regulations discussed above, I understand that CPKC has proposed region-specific structural remedies centered around regions where a merged UP-NS might be able to inflict particular or specific competitive harms and/or regions where CPKC may be positioned to help specific shippers and mitigate the merger's more general harms. These regions are: Gulf Coast, New Orleans, Meridian Speedway, Dallas-Fort Worth, Kansas City gateway, St. Louis gateway, Kansas City-St. Louis, Chicago gateway, Chicago-Detroit, and Rosemount and Fairmont, Minnesota.[53]

29. CPKC's requested conditions aim to mitigate as much competitive harm in these regions as can be accomplished through regulation and the intrinsic limits of CPKC's network reach. These localized proposals rely on structural remedies to address specific areas where CPKC can step in to preserve some of the competition most acutely affected by the proposed merger, by maintaining or creating as independent a competitor as possible for shippers. Specific structural remedies are preferable to

[53] CPKC Comment Vol. II, Section VIII; CPKC Responsive Applications.

sweeping regulations even to the extent that there need to be behavioral restrictions to make an otherwise structural remedy practical.

30. I discuss the details of these structural remedies in this section. For each region, I explain the particular loss of competition (or the opportunity to mitigate harm for specific shippers) that each remedy addresses, and why that particular structural remedy will preserve and promote—rather than harm—competition.

31. Several of CPKC's proposed remedies simply preserve a competitive structure that already exists today, and as such would not necessarily entail operational or traffic changes relative to the pre-merger period. To the extent that some of the structural remedies would entail new operations, they would improve operational efficiency and/or create a new Class I option for shippers, to the benefit of shippers. Moreover, I find that CPKC's estimates of the traffic it would carry are consistent with a reasonably competitive share of existing traffic. Altogether, these structural remedies would help preserve competition and benefit shippers in the areas where they apply, without harming competition, although they would not replace all of the competition lost through the merger.

2.6.1. Gulf Coast

32. The Gulf Coast is an area where a combined UP-NS would be especially likely to impair competition, particularly competition CPKC provides. The Gulf Coast has "a large concentration of shippers of many commodities for which rail plays an important

transportation role—including chemicals, plastics, and refined products."[54] UP is already the dominant rail carrier in the Gulf Coast "serv[ing] more receivers and packaging facilities than any other carrier."[55] If UP were to merge with NS, its influence over this traffic in the Gulf Coast would expand. A combined UP-NS could foreclose previous competition between CPKC and UP for interline traffic in the Gulf Coast with NS by diverting this traffic to its own routes. A combined UP-NS could also degrade CPKC's service quality in many ways—for example, by reducing train frequency or connection priority at an interchange—and could do this without formally closing a gateway, making it hard to identify this foreclosure.[56] Finally, a combined UP-NS would have increased leverage over shippers' facilities for its sole-served customers.

33. Indeed, UP has already degraded CPKC's service quality, foreshadowing how a combined UP-NS could further harm competition with its increased influence. CPKC

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[54] Brooks VS, ¶ 203 ("The region between Houston and Corpus Christi contains a large concentration of shippers of many commodities for which rail plays an important transportation role—including chemicals, plastics, and refined products.").

[55] Rocker and Elkins Second Errata VS, ¶ 98.

[56] Brooks VS, ¶ 169 ("Based on my experience, a merged UP-NS would have an endless variety of ways to make a competing interline route less attractive without ever outright refusing to connect at a gateway, meaning that, at best, there might be an argument about what economic or service terms are 'commercially reasonable.'"), ¶ 173 ("Among the countless tools UP would have to make a choice of an interline route comparatively unattractive, even if that route could (if supported) meet the customer's needs, include: … Reducing blocking, train frequency, or connection priority at the interchange."), ¶ 174 ("Many of the above actions would be difficult for a customer (or the Board) to recognize for what they are: reduced competition."); Gameiro VS, ¶ 19 ("As CPKC leadership has elsewhere explained, '[a]cross the parts of CPKC's network where it shares facilities with Union Pacific, UP has used its control of capacity investments to hold up work needed to support CPKC's traffic growth, while UP took advantage of other routes bypassing the track used by CPKC.'"); Redd VS, ¶ 164 ("Nor could CPKC independently remedy the line's capacity constraints: UP controls dispatching and capital work, leaving CPKC dependent on UP both to accommodate opposing movements and to undertake the infrastructure improvements needed to relieve the bottlenecks.").

notes that UP has restricted CPKC's operations on the Robstown-Beaumont corridor in Texas.[57] As a result, CPKC had to remove cars from affected trains to or from Mexico.[58]

34. CPKC's proposed conditions around the Gulf Coast area would curb UP-NS's incentive and ability to foreclose competition in the area. These conditions include a preservation of CPKC's track access, reciprocal switching, neutral terminal access, and access to sole-served (and future sole-served) customers in the Texas Gulf Coast (Robstown-Beaumont Corridor, Houston Terminal, Houston subdivision, Victoria-Bloomington, Corpus Christi), over the Texas-Louisiana border (Houston, TX to DeQuincy, LA), and in West Baton Rouge.[59] None of these conditions would result in

[57] Gameiro VS, ¶ 19 ("CPKC's rights over the UP Brownsville Subdivision between Robstown and Bloomington are an essential component of CPKC's main-line service route to the U.S.-Mexico border."), ¶ 29 ("UP has also used its control over operating rules on the Brownsville Subdivision to restrict CPKC's operations in pursuit of concessions elsewhere. In 2023, UP arbitrarily imposed an 8,000-foot maximum train length limit on CPKC's use of UP's Brownsville Subdivision. This limitation was not necessitated by infrastructure conditions because, as a result of KCS investments on the line, most sidings on the subdivision exceeded 10,000 feet.").

[58] Gameiro VS, ¶¶ 33–34 ("The events that culminated in UP's retaliatory action began in May 2023 … In October 2023, UP informed CPKC that it was imposing an 8,000-foot maximum train length limit on CPKC's use of UP's Brownsville Subdivision despite the fact that, as explained above, the Brownsville Subdivision is designed for trains above 10,000 feet. The restriction on the Brownsville Subdivision had an immediate operational and competitive impact on CPKC and its customers by forcing CPKC to remove cars from many of its trains going to and from Mexico.").

[59] CPKC Comment Vol. II, p. 121 ("1. Preserving and reforming CPKC's existing rights over UP between Robstown and Beaumont and its HBT and related Houston Terminal rights, including by removing specified traffic-scope and local-service restrictions while preserving existing exceptions and access rights; permanently preserving CPKC's Houston Subdivision rights regardless of directional-running practices; and providing permanent bidirectional Houston Subdivision rights if directional running ends or changes so that equivalent efficient and commercially effective CPKC access is no longer preserved; 2. Providing reciprocal-switching access to eligible existing and future UP sole-served facilities within the Bloomington and Corpus Christi switching zones defined in Section VIII.B.3(b); 3. Applying the traffic-scope reforms described above to Houston Port Terminal Railway Association ("PTRA")- and HBT-related traffic and protecting neutral, nondiscriminatory, and commercially effective access through the Houston Terminal; 4. Providing competitive access to eligible existing and future UP sole-served facilities within the West Baton Rouge route and

shippers losing a competitive option they enjoy today—instead they ensure that shippers will continue to benefit from high-quality service, competitive rates, and smooth operations generated by competition (including from CPKC) in the Gulf Coast.

(1) Texas

35. The UP-NS merger would change UP's incentives in Texas. Presently, sole-served shippers on UP track in Texas remain dependent on UP for local service, but can benefit from competition between NS and CSXT where commercially viable eastern connections are available.[60] The merger would give a combined UP-NS an additional incentive to favor its own routes (using the legacy-NS route) over a competing CSXT (or CPKC) connection. CPKC operates in the area and could offer competing line-haul service, including with CSXT where the destination and routing permit, but this would require the traffic reforms and customer access CPKC requests (described below).[61] A combined UP-NS would have the ability (and incentive) to foreclose competition, by

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connected customer trackage identified in Section VIII.B.5(b); and 5. Protecting CPKC service between Houston and DeQuincy through an integrated sequence of capacity and alternative-route remedies."). I understand that CPKC is submitting responsive applications for Texas, the Lufkin subdivision, and West Baton Rouge, which I discuss in more detail below.

[60] Brooks VS, ¶ 169 ("This environment would be a far cry from today's world, where UP is eager to work with CSXT (as well as NS), and NS is eager to work with BNSF and CPKC (as well as UP)."), ¶ 171 ("That independence disciplines the terms UP can offer at every gateway where it interchanges with CPKC. When UP prices its portion of an interline movement or sets its service at an interchange, it knows that shippers can often turn to a CPKC-NS routing if UP's terms are not competitive. After the merger, that alternative would no longer exist at any of those gateways.").

[61] Redd VS, ¶ 167 ("The removal of existing traffic restrictions on CPKC's use of its Robstown-Beaumont rights, coupled with access to certain solely-served UP customers, would open up competition for shippers by allowing CPKC the opportunity to serve (a) traffic to/from shippers along the Victoria-Robstown lines over which CPKC operates; (b) traffic served by transloads on, or build-ins/build-outs connecting to, CPKC's Rosenberg Subdivision; and (c) traffic to/from shippers already accessed by CPKC but currently restricted to movements that touch CPKC's line between Corpus Christi and Laredo (*i.e.*, preventing movements between South Texas and CPKC's U.S. network north of Beaumont).").

preferencing its own routes and degrading service quality of other railroads in these corridors.

36. In its responsive application regarding operations in Texas, CPKC (on behalf of its subsidiary KCSR) has proposed rights and access protections that would mitigate this foreclosure risk. These rights would remove specified traffic and local-service restrictions that operate as paper barriers for CPKC's existing authorized trackage between Robstown and Beaumont, and in the area of the Houston Terminal, while preserving its Houston Subdivision access.[62] Separately, reciprocal switching would provide access to eligible existing and future UP sole-served facilities within the defined Bloomington and Corpus Christi switching zones.[63] CPKC also requests reciprocal switching for facilities on or near the Victoria Industrial Lead rights that would allow CPKC to compete for line-haul traffic (with UP continuing to perform local customer movements).[64] Removing paper barriers would allow local shippers

[62] CPKC Gulf Coast Responsive Application, p. 8 ("First, CPKC seeks adjustments to its existing Robstown–Beaumont, HBT, and Houston Subdivision rights that remove the identified paper barriers, authorize local service, preserve access to PTRA and HBT-related traffic, and impose enforceable service, dispatching, capacity, information, and enforcement protections, including, for the UP-dispatched Victoria–Robstown segment, a springing transfer of dispatching if the adopted target remains unmet over a {REDACTED}-day cure period after notice."), p. 11 ("The requested terms remove the traffic-scope and local-service barriers, authorize operationally effective access, and protect service, dispatching, capacity, and enforcement.").

[63] CPKC Comment Vol. II, p. 158 ("The Board should require Applicants to provide reciprocal switching between CPKC and all eligible existing and future UP sole-served facilities within the following defined switching zones: (1) the Bloomington switching zone, comprising the territory within a 35-mile radius centered on Bloomington Yard on the Brownsville Subdivision; and (2) the Corpus Christi switching zone, comprising the territory within a 35-mile radius centered on the Common Interchange Yard (Nueces River Yard) on the Corpus Christi Subdivision.").

[64] CPKC Comment Vol. II, p. 155 ("For covered facilities on or directly accessible from the Victoria Industrial Lead, CPKC also seeks reciprocal-switching access under Section VIII.B.3(c), with UP performing the local customer movements and CPKC transporting the traffic under its protected trackage rights."); CPKC Gulf Coast Responsive Application, p. 9 ("CPKC seeks to formalize

(including sole-served shippers) to gain a new Class I option in the region.[65] In addition, consistent access to the Victoria Industrial Lead, in combination with service quality monitoring (and springing conditions related to decreases in service quality) on UP track {REDACTED },[66] would allow CPKC to be a more effective competitor to a combined UP-NS in the region.

37. CPKC estimates this transaction would enable it to carry {{REDACTED}} incremental carloads per year by the third year after implementation of this condition (referred to as "Year 3" by Mr. Brooks) in the Victoria-Bloomington, TX and Corpus Christi, TX areas via reciprocal switching to current sole-served UP customers.[67] Based on Dr. Bailey's Six-Railroad Tapes Data from 2019 to 2024,[68] CPKC's estimate of

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Victoria Industrial Lead rights between Bloomington and Victoria for through operations and customer service made possible by the Board's conditions.").

[65] Redd VS, ¶ 167 ("The removal of existing traffic restrictions on CPKC's use of its Robstown-Beaumont rights, coupled with access to certain solely-served UP customers, would open up competition for shippers by allowing CPKC the opportunity to serve (a) traffic to/from shippers along the Victoria-Robstown lines over which CPKC operates; (b) traffic served by transloads on, or build-ins/build-outs connecting to, CPKC's Rosenberg Subdivision; and (c) traffic to/from shippers already accessed by CPKC but currently restricted to movements that touch CPKC's line between Corpus Christi and Laredo[.]").

[66] CPKC Gulf Coast Responsive Application, p. 16 ("The requested operating protections and springing dispatching remedy are designed to make that access commercially effective if ordinary protections should fail."); Redd VS, ¶ 159 ("UP's dispatchers {REDACTED } the Victoria Industrial Lead, which provides a route between Victoria and Bloomington[.]").

[67] These carloads come from both extended-haul and new traffic, in both the Victoria-Bloomington and Corpus Christi areas. See Brooks VS, ¶ 205 ("First, I anticipate that CPKC would attract approximately {{REDACTED}} loads: {{REDACTED}} in the Corpus Christi area and {{REDACTED}} in the Victoria-Bloomington area via reciprocal switching access to facilities near our lines in South Texas that UP alone serves today."), fn. 64 ("Unless I state otherwise, each estimate reflects annual traffic in Year 3, the steady-state year after the applicable condition becomes effective.").

[68] References herein to Dr. Bailey's Six-Railroad Tapes Data refer to July 27, 2026, Six-Railroad Merged Tapes Data (Loaded) (2019–2024). I modify these data in the following ways: I use Dr. Bailey's BEA-SPLC Crosswalk ("191-A-FSAC_SPLC_FIPS_BEA.xlsx") for county information; I use Dr. Israel's stationmaster ("stationmaster_OW.dta") for station and latitude and longitude

incremental traffic amounts to {{{REDACTED}}} of all traffic originating or terminating from the relevant stations.[69] Of traffic originating or terminating from these stations, {{{REDACTED}}} of it originates or terminates in BEAs that CPKC serves, suggesting the estimated carloads may be up to {{{REDACTED}}} of traffic that CPKC could single-line to its destination if this transaction took place.[70] CPKC similarly estimates that it would carry {{REDACTED}} incremental carloads from access at PTRA. CPKC's estimate of incremental traffic amounts to {{{REDACTED}}} of all traffic originating or terminating from the relevant stations, regardless of the other endpoint of the movement. Of traffic originating or terminating from these stations, {{{REDACTED}}} of it originates or terminates in BEAs that CPKC serves, suggesting the estimated carloads may be up to {{{REDACTED}}} of traffic that CPKC could single-line to its destination if this transaction took place.[71]

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information; I filter to observations used by Dr. Bailey in her corridors analysis. I identify shipper names for stations based on Dr. Bailey's SCRS file ("UPRR_SCRS_Full_Desc_20250815.txt").

[69] See workpaper 1. I calculate this percentage as a share of total originating or terminating traffic at relevant stations in Dr. Bailey's Six-Railroad Tapes Data. I identify relevant stations in Corpus Christi and Victoria-Bloomington, TX as stations in the following Texas counties: Jackson, Calhoun, Victoria, San Patricio, Nueces, and Refugio, where the carrier is UP and the station is associated with at least one shipper from which Mr. Brooks estimates incremental traffic, according to the Brooks VS (Brooks Traffic Volume Projection Workpaper (HC).xlsx) {{REDACTED }}. When performing this calculation, I exclude CPKC's estimated incremental carloads {{REDACTED }} See Brooks VS ¶ 206 ({{REDACTED }} Based on our experience, I anticipate CPKC would attract {{REDACTED}} net new carloads if these barriers are removed.").

[70] See workpaper 1. For analyses of this type, I define BEAs CPKC serves as BEAs in Dr. Bailey's Six-Railroad Tapes Data with at least one observed originating or terminating movement by CPKC. I understand Dr. Bailey's BEA variable to reflect U.S. BEAs, Canadian Provinces, and Mexican States.

[71] See workpaper 1. I calculate this percentage as a share of total originating or terminating traffic at relevant stations in Dr. Bailey's Six-Railroad Tapes Data. I identify relevant stations as those within a 5-mile radius of PTRA (defined as within five miles of any SCAC equal to "PTRA") which are associated with at least one shipper from which Mr. Brooks estimates incremental traffic, according

These estimates suggest a reasonable estimate of credible competition for the business of these shippers.

38. Based on CPKC's estimates and my own analysis, this transaction is not anticompetitive. The shippers currently sole-served by UP along the affected track would gain access to a second Class I carrier via new reciprocal switching access and the associated removal of paper barriers prohibit CPKC from handling traffic to/from these customers. This additional option would serve as a credible constraint on any attempts to use those shippers' reliance on UP-NS at these facilities to foreclose competition on moves to the east from the Texas Gulf Coast or to force any of these shippers to accept less competitive options for their traffic more broadly. UP would retain the local switching role for facilities covered by CPKC's Robstown-Beaumont and Victoria Industrial Lead conditions, making enforceable switching and interchange protections essential to that competitive option. Those protections, service monitoring, and trackage rights on the Victoria Industrial Lead would ensure CPKC's continued ability to compete in the region.

(2) Lufkin subdivision

39. In its responsive application regarding operations in the Lufkin subdivision, CPKC requests (on behalf of its subsidiary KCSR) trackage rights over UP's Lufkin Subdivision (between Houston, TX and Shreveport, LA), subject to a springing condition. CPKC requests rights over UP track which are sufficient to connect the

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to the Brooks VS (Brooks Traffic Volume Projection Workpaper (HC).xlsx) {{REDACTED }}.

Lufkin subdivision with CPKC and MSLLC lines in Shreveport, and CPKC's existing rights on UP track in the Houston Terminal.[72]

40. CPKC does not request rights to new customer access on the Lufkin track, but instead seeks an alternative routing around anticipated merger-related congestion on UP track where it already operates.[73] These trackage rights (which are exercisable by notice establishing evidence of merger-related service issues on track between Houston, TX and DeQuincy, LA)[74] would preserve CPKC's ability to provide competitive and timely service in the Gulf Coast region. Without these conditions (and the incentive that the springing condition provides for a combined UP-NS to maintain service quality on CPKC's existing route), UP-NS would have incentives to favor its own operations on an increasingly congested line over CPKC's traffic while also having little incentive to

[72] CPKC Lufkin Subdivision Trackage Rights Responsive Application, p. 3 ("KCSR seeks a springing condition establishing nonexclusive trackage rights over UP's Lufkin Subdivision between Houston, Texas and Shreveport, Louisiana, plus additional UP trackage needed to connect that route to KCSR and MSLLC lines at Shreveport and to KCSR's existing trackage rights in the Houston Terminal.").

[73] CPKC Lufkin Subdivision Trackage Rights Responsive Application, p. 6 ("CPKC is concerned that UP-NS's forecast of substantial merger-related increases in traffic in the Houston Terminal and between Houston and Livonia, LA will cause serious congestion on lines that CPKC and UP share east of Houston, especially at the single-track Neches River Bridge in Beaumont and on CPKC's trackage (over which UP has trackage rights) between Beaumont, TX and DeQuincy, LA."). See also Redd VS, ¶¶ 229, 231 ("CPKC's trackage rights on the Lufkin Sub could be triggered by evidence of merger-related service degradation on trackage CPKC shares with UP and where UP's volumes are anticipated to increase as a result of the merger, specifically between Houston (where the Lufkin Sub begins) and DeQuincy, LA. … The Lufkin Sub route would bypass the Houston-DeQuincy route that UP's merger-related traffic would use, allowing CPKC trains to move between Houston and Shreveport without needing to use the segments most vulnerable to merger-caused congestion.").

[74] CPKC Lufkin Subdivision Trackage Rights Responsive Application, p. 5 ("The requested rights would become effective upon consummation of the UP-NS merger, if approved by the Board, but would be exercisable as a springing condition only upon evidence of merger-related service degradation on the shared trackage between Houston and DeQuincy, Louisiana. If the requisite conditions occurred to activate the springing condition, KCSR would file supported notice with the Board establishing the qualifying degradation and UP-NS material contribution and activating the condition.").

avoid impacts of its expanded operations between Houston and DeQuincy, LA. These conditions aim to provide incentive for UP-NS to maintain reasonable service quality in the region and would not harm competition.

(3) West Baton Rouge

41. A combined UP-NS will have an incentive to foreclose competition in West Baton Rouge by limiting other Class I railroads' access to shippers—including through degrading other railroads' service quality over UP-owned track. To combat this, CPKC has requested reciprocal switching in West Baton Rouge,[75] which would allow it to compete for service to UP sole-served shippers in the area. According to Mr. Redd, the "reciprocal switching access CPKC seeks to UP-served customers in the vicinity of Baton Rouge would be feasible and would not disrupt UP's operations in the area."[76] Moreover, "[t]he traffic generated by CPKC's new customer access could readily be handled within its current manifest train design."[77] Under CPKC's planned request for reciprocal switching (and this transaction, if it were to take place), shippers would receive another Class I option in Baton Rouge, without losing any existing options. Given this condition would not negatively impact traffic in the area, while providing

[75] CPKC Comment Vol. II, pp. 178 – 179 ("The Board should require UP to provide reciprocal switching between CPKC and all eligible existing and future UP sole-served facilities within a reciprocal switching zone that encompasses all shipper facilities on or reached through the West Baton Rouge route extending from Lobdell to Addis over the Avoyelles Subdivision alignment and necessary connecting trackage at Addis, and continuing south over the Livonia Subdivision to MP 79.7, including the siding and industrial trackage along that route and the customer leads and connections necessary to reach the covered facilities.").

[76] Redd VS, ¶ 195.

[77] Redd VS, ¶ 203.

shippers with a second competitive Class I option, it would promote competition (without harming it).

42. To incentivize effective implementation and to provide a practical backstop if implementation or reciprocal switching falls short, CPKC also requests preauthorized direct-access rights exercisable by supported notice upon satisfaction of the adopted performance-based activation requirements or the separate material-switching-failure and applicable cure requirements.[78] CPKC has submitted a responsive application to support this backstop: it seeks to acquire springing, nonexclusive trackage rights that would grant KCSR direct access to eligible existing and future UP sole-served customer facilities within the defined West Baton Rouge route, comprising the shipper facilities from Lobdell to Addis (over the Avoyelles Subdivision) and adjacent to UP trackage in and around West Baton Rouge (including Plaquemine and Allemania, LA and points between).[79] The rights would become exercisable upon satisfaction of those service-failure and activation requirements.[80] The transaction CPKC requests in its

[78] CPKC Comment Vol. II, p. 183 ("The Board should therefore preauthorize nonexclusive direct operating rights over additional UP track necessary to connect the facility with CPKC's network, exercisable at CPKC's election upon satisfaction of the performance-based activation requirements adopted through the process described in Section VIII.B.5(c) or, under the separate substantive requirements below, a qualifying failure of UP-provided reciprocal switching to support effective competition. The preauthorized routes should also include UP's Livonia Subdivision trackage beyond Allemania to the extent reasonably necessary for headroom, runaround movements, and other incidental operations needed to serve the covered facilities. Exercise under either ground should begin upon supported notice under Section V.D, without a further Board merits determination.").

[79] CPKC Comment Vol. II, p. 191; CPKC Baton Rouge Responsive Application, p. 9 ("The relevant market is the market for freight rail transportation to and from customers at UP-only facilities in and around West Baton Rouge, LA, including customers in Plaquemine, Allemania and points in between.").

[80] CPKC Baton Rouge Responsive Application, p. 6 ("Because the trackage rights are contingent on the failure of the Reciprocal Switching Condition, there is not a fixed date at which KCSR would acquire the actual trackage rights (if it does at all).").

responsive application would ensure the protections it intends to secure from reciprocal switching.

43. If UP and NS were to merge, sole-served shippers such as these would be exposed to increased leverage from UP-NS in their negotiations across the shipper's movements. A combined UP-NS would have increased leverage over these shippers' facilities than UP or NS alone, allowing it to raise rates on captive shippers across their facilities, as I discuss in Majure VS Vol. I, Section 5. CPKC's responsive application condition (exercisable upon satisfaction of the prescribed service-failure and activation requirements)[81] would prevent that harm and promote competition—the responsive application would insulate these shippers' dependence on UP-NS for the covered movements by strengthening their negotiating alternatives. It would not eliminate a combined UP-NS's leverage over other facilities or movements in their bundle of locations.

44. CPKC estimates it would move {{REDACTED}} incremental carloads per year by Year 3.[82] Based on Dr. Bailey's Six-Railroad Tapes Data from 2019 to 2024, CPKC's estimate of incremental traffic amounts to {{{REDACTED}}} of all traffic originating from these stations. Of traffic originating from this station, {{{REDACTED}}} of it

[81] CPKC Comment Vol. II, p. 184 ("Upon satisfaction of the triggering conditions adopted through Section V.C, CPKC should be entitled to activate the preauthorized direct-access rights by written notice identifying the qualifying failures and supporting records, covered facility or facilities, authorized route, and commencement date. Satisfaction of the adopted requirements should establish the service-failure predicate without a further Board merits determination or requirements beyond those adopted for that trigger.").

[82] Brooks VS, ¶ 210 ("I anticipate that, with reciprocal switching or direct access to facilities between West Baton Rouge and Allemania, LA, as described in Mr. Redd's Verified Statement, CPKC would attract approximately {{REDACTED}} incremental annual loads ({{REDACTED}} newly handled and {{REDACTED}} extended-haul loads).").

terminates in BEAs that CPKC serves, meaning it expects to win {{{REDACTED}}} of eligible traffic, a reasonable estimate in line with enhanced competition.[83]

45. Based on CPKC's estimates and my own analysis, this transaction is likely to increase competition at the stations where CPKC would gain access (if it were to go into effect via the springing condition). Shippers currently sole-served by UP at these facilities will gain access to a second Class I carrier who can compete for traffic, limiting a combined UP-NS's ability to abuse its increased leverage over these shippers. Competition between UP-NS and CPKC will put downward pressure on rates and upward pressure on service quality, leaving shippers better off. Therefore, the proposed transaction protects (rather than impairs) competition for these shippers.

2.6.2. New Orleans

46. A combined UP-NS could harm competition in New Orleans by preferencing its own routes and foreclosing competition from interlines. Applicants' proposal to reconfigure the New Orleans interchange and increase traffic volume in the area would have the potential to harm other interline service offerings. For example, Applicants plan to modify their operations along the "Back Belt," a span of track upon which

[83] See workpaper 1. I calculate this percentage as a share of total originating or terminating traffic at relevant stations in Dr. Bailey's Six-Railroad Tapes Data. I identify relevant stations in Baton Rouge as stations in West Baton Rouge Parish or Iberville Parish where the carrier is UP and the station is associated with at least one shipper from which CPKC expects to win traffic, according to the Brooks VS (Brooks Traffic Volume Projection Workpaper (HC).xlsx) {{REDACTED
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CPKC depends to access its West Yard.[84] Therefore, CPKC requests conditions in the New Orleans gateway to preserve its ability to provide competitive interline options.[85]

47. For example, a CPKC-CSXT interline could provide shippers with a competitive alternative to UP-NS, but current limitations force them to interchange via an inefficient connection.[86] CPKC's requested access would allow CPKC-CSXT to provide a more competitive Class I interline option via New Orleans to put competitive pressure on a combined UP-NS, and would enhance (not remove) any existing options. Further, the requested service-assurance framework would combine measures tailored to CPKC's access and interchange movements with continued monitoring and expedited enforcement (as I discuss in Section 2.3 above).[87] These measures would

[84] Redd VS, ¶¶ 150–151 ("Applicants plan significant but somewhat opaque changes to operations in the New Orleans gateway, including a partial shutdown of NS's Oliver Yard. Applicants claim that they will improve fluidity on the Back Belt ('Back Belt') route connecting the Huey P. Long Bridge with NS's New Orleans-Birmingham line by downgrading UP-NS interchange that occurs on the Back Belt (with trains stopping on the mainline for crew changes there) and by shifting BNSF-NS interchange to Avondale Yard on the west side of the Mississippi River. Although CPKC does not have operating rights on most of the Back Belt, it uses a short segment of that line to access West Yard, CPKC's yard in New Orleans. … CPKC serves the Port of New Orleans and interchanges with NS and CSXT via the New Orleans Public Belt Railway ('NOPB'), which operates into and out of West Yard.").

[85] CPKC Comment Vol. II, p. 211 ("The Board should require Applicants to grant or confirm nonexclusive operating rights over their tracks solely to effect direct interchange between CPKC and CSXT through West Yard.").

[86] Redd VS, ¶ 152 ("Applicants' planned reconfiguration of New Orleans area operations, if successful, would highlight and magnify the disparity between the UP-NS connection via the Back Belt and the relatively inefficient connection between CPKC and CSXT via NOPB. As a result of CPKC's own line having been removed as a result of the 1977 public works project, and despite an understanding at the time of the project that CPKC would retain its pre-existing rights, a Catch-22 has emerged so that CSXT and CPKC lack the rights necessary to interchange directly with one another").

[87] CPKC Comment Vol. II, p. 210 ("The common service-assurance framework … should apply to the New Orleans Gateway.").

help preserve the operational effectiveness of those competitive options to serve Port traffic and connect with eastern carriers, in the event of the merger.[88]

2.6.3. Meridian Speedway and Meridian Terminal

48. A combined UP-NS could impair competition (particularly competition CPKC provides) on the Meridian Speedway by preferencing its own routes and foreclosing interline competition. NS {{REDACTED }}.[89] Today, for traffic within the scope of NS's exclusivity, NS primarily partners with UP to connect California and other western points with the U.S. Southeast using the Speedway, but it also has the option to partner with BNSF.[90] NS's ability to develop a competing western connection with BNSF gives customers an alternative to exclusive reliance on UP along this important corridor. If UP and NS were to merge, however, this constraint would diminish. The combined carrier would have an incentive to favor its own routes between the West and Southeast and less incentive to support a competing BNSF connection.

[88] Redd VS, ¶ 153 ("If it does approve the merger, the Board should impose conditions aimed at ensuring that Applicants' merger does not disrupt the efficient function of the New Orleans gateway and enabling direct interchange among all carriers at New Orleans via the Back Belt.").

[89] Gameiro VS, ¶ 181 ("The MSLLC agreements granted NS {{REDACTED }} to so-called 'NS Traffic,' a defined category of specified intermodal traffic moving via the Speedway between points in the United States west of Dallas-Ft. Worth and points in the United States at or east of Meridian, including qualifying through traffic that does not require a Wylie lift or drop, subject to the governing agreements' definitions and exclusions.").

[90] Brooks VS, ¶¶ 224–225 ("Today, NS's primary interline partner for this exclusive traffic is UP. … NS is not limited to working with UP, however. Just as CPKC has developed good working relationships with both NS and CSXT … NS has the right to work with BNSF as well as UP for the so-called 'NS Traffic' between California and the Southeast.").

49. To avoid this, CPKC requests modifications to existing contractual restrictions, which would allow it to support these interline options via the Speedway involving BNSF that UP-NS would have reduced incentives to support. Specifically, CPKC would be freed to participate in interline traffic handed off between BNSF and CPKC in the vicinity of Dallas and handed off between CPKC and CSXT at Myrtlewood, Alabama (east of Meridian).[91] CPKC additionally requests a release from "obligations to NS under the DTMA … to give NS a two-week {{REDACTED }} on the movement of 'Dallas Intermodal Terminal Traffic.'"[92] If UP acquired NS, a combined UP-NS would have an increased incentive to foreclose competition for this intermodal traffic to or from Wylie Intermodal Terminal (including competition which CPKC provides), relative to a standalone NS.[93] Under CPKC's proposed conditions, Applicants would retain their underlying transportation rights and remain free to compete for traffic, but the availability of interline options involving CPKC, BNSF, and CSXT would be protected, mitigating UP-NS's increased incentive to foreclose use of the Speedway.

50. Beyond this, I understand that Applicants anticipate using the Meridian Speedway and the Meridian Terminal for additional traffic in the event that the merger is

[91] CPKC Comment Vol. II, p. 222 ("NS's exclusive commercial rights over certain transcontinental intermodal traffic limit CPKC's ability to develop competing service with other connecting carriers. Removing that exclusivity would preserve the potential for competing transcontinental service involving BNSF, CPKC, and CSX after the merger."), p. 223 ("To maintain that pro-competitive purpose if UP takes over NS, the Board should authorize CPKC to solicit, price, interchange, transport, or arrange competing intermodal service over the Speedway with BNSF, CSX, or another lawful connecting carrier.").

[92] Gameiro VS, ¶ 224.

[93] Gameiro VS, ¶ 224 ("When this arrangement was implemented, NS did not reach Dallas and so was willing to cooperate with KCSR in trying to market domestic intermodal traffic from Dallas to the east.").

approved.[94] Therefore, CPKC also requests that the Board require UP-NS to provide the capacity and operational infrastructure required before its additional traffic or changed operations would materially impair other authorized service, including that of CPKC.[95] I understand that this request, in combination with service-assurance requirements and targeted dispatching protections,[96] will help preserve commercially reliable interline options.[97] Requiring Applicants to address the delay and capacity costs their plans impose on others would constrain the foreclosure mechanism described in Majure VS Vol. I, Section 4.

51. In combination, these requests will help maintain competitive options on the Meridian Speedway and operational functionality of the Meridian Terminal. These

[94] Redd VS, ¶ 33 ("Applicants themselves say they will save 70-95 hours by routing other intermodal traffic onto the same Meridian Speedway routing: '[B]y routing traffic via Shreveport and Meridian rather than via Memphis, UP-NS will save approximately 70 hours of transit time on traffic moving from Southern and Northern California to the Southeast, including Georgia, Florida, and North Carolina, and approximately 95 hours on traffic moving in the opposite direction.'").

[95] CPKC Comment Vol. II, p. 227 ("The Board should require Applicants to provide, fund, and maintain the capacity and operating adjustments necessary to prevent material impairment of CPKC, Amtrak, short-line, and other authorized operations, with the work phased and completed before the adverse impacts it is intended to prevent occur, as specified in Section VIII.D.3(a). Monitoring, expedited enforcement, and preventive and corrective measures should secure compliance with those affirmative obligations, with the proposed additional dispatching remedy addressed in Section VIII.D.3(c).").

[96] CPKC Comment Vol. II, p. 231 ("Under Section VI.B, Applicants should amend or supplement relevant instruments, including the applicable MSLLC Joint Use, Operating, and LLC Agreements and the Meridian interchange, terminal, and dispatching instruments and protocols, and procure all necessary assents, to implement the capacity, operating, monitoring, and contingent dispatching obligations imposed here while preserving existing CPKC authority and MSLLC service standards except as expressly modified.").

[97] Mr. Redd describes how increased NS traffic from New Orleans to Birmingham will "bottle up" the Speedway. Redd VS, ¶ 133 ("By delaying those movements, NS's added New Orleans-Birmingham trains would also bottle up the Speedway and CPKC's own operations in both directions there.").

conditions do not remove options for any existing traffic and would not be anticompetitive.

2.6.4. Dallas-Fort Worth (Wylie Intermodal Terminal)

52. In its responsive application, I understand that CPKC has proposed for the Board to prevent UP-NS from acquiring or controlling the Wylie Intermodal Terminal {{REDACTED }}, and in the event NS has acquired CPKC property prior to the consummation of UP-NS control, a condition to require the restoration of CPKC's ownership, operation, and independent control of the Terminal {{REDACTED }}.[98] CPKC currently moves traffic through the Wylie Intermodal Terminal and uses it to compete with UP for intermodal traffic to and from the Dallas area.[99] NS holds a contractual option to acquire the Wylie Intermodal Terminal, and it notified CPKC in February 2025 that {{REDACTED }}.[100] {{REDACTED }}, and today the Wylie Intermodal Terminal and surrounding property remain owned

[98] CPKC Wylie Responsive Application, pp. 4–5 ("The Board should therefore preserve or restore CPKC's ownership, operation, and independent control of the WIT by terminating the option if not yet consummated or, if UP/NS has acquired the WIT, require UP/NS to reconvey covered interests acquired and preserve or restore lawful pre-exercise commercial and operating arrangements, subject to the traffic reforms ordered here, while unwinding acquisition-dependent conversions inconsistent with restoration.").

[99] Brooks VS, ¶ 108 ("CPKC originates and terminates intermodal trains at its Wylie Intermodal Terminal ('Wylie') near Dallas[.]"), ¶ 231 ("CPKC supports CPKC-NS intermodal traffic but also is unfettered in its ability to compete with UP for intermodal traffic using the Wylie Terminal[.]").

[100] Gameiro VS, ¶ 214 ("One of the MSLLC agreements—the Dallas Terminal Marketing Agreement ('DTMA')—granted NS {{REDACTED }} to acquire KCSR's Dallas area intermodal terminal."), ¶ 216 ("In late February 2025, after UP and NS preliminarily discussed the possibility of merging, NS notified CPKC that {{REDACTED }}.").

and operated by CPKC.[101] Mr. Brooks states that "UP already controls two of the intermodal facilities serving the Dallas/Ft. Worth region, and if it is allowed to acquire NS, and if {{REDACTED }}, UP would own three of four Dallas-area terminals, and CPKC would own none."[102] This would give UP-NS the ability to foreclose competition, including CPKC's ability to move intermodal traffic through Dallas. Therefore, CPKC proposes to prevent such ownership of Wylie Intermodal Terminal to ensure that it remains an independent competitor in the Dallas-Fort Worth area for intermodal traffic.[103] In my opinion, this transaction would not be anticompetitive.

53. Today, the Wylie Intermodal Terminal supports CPKC's intermodal service to and from the Dallas-Fort Worth area, including competition with UP in the Mexico–Dallas and Dallas–Chicago lanes.[104] It also supports CPKC's run-through interline services to the Southeast via Meridian and with CSXT via Myrtlewood, both using the Meridian Speedway.[105]

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[101] Gameiro VS, ¶ 218 ("{{REDACTED }} Both Wylie Intermodal Terminal and the property surrounding the Terminal remain owned and controlled by CPKC. CPKC's request for merger conditions addressing the additional property—in the event that {{REDACTED }} and that UP acquires NS—does not concede {{REDACTED }}.").

[102] Brooks VS, ¶ 228.

[103] CPKC Wylie Responsive Application, pp. 4–5.

[104] Brooks VS, ¶ 108 ("CPKC originates and terminates intermodal trains at its Wylie Intermodal Terminal ("Wylie") near Dallas and runs between there and Meridian, MS, where they are interchanged with NS."), ¶ 229 ("Were UP to acquire NS, however, 100 percent of CPKC's intermodal traffic would be directly competitive with UP's Mexico-Dallas, Dallas-Chicago, and Dallas-Atlanta (legacy-NS) services.").

[105] Redd VS, ¶ 36 ("Another example of efficient run-through train services where traffic density supports handing off a complete train from one railroad to another involves the 'SMX Express' service that CPKC and CSXT interchange at Myrtlewood, Alabama … CPKC originates the train at

54. The Dallas Terminal Marketing Agreement granted NS the option to exercise an acquiring interest in Wylie Intermodal Terminal.[106] {{REDACTED

}}, UP and NS had preliminarily discussed merging, but had not yet announced it.[107] An independent NS would have less incentive than a combined UP-NS to degrade CPKC's Mexico–Dallas and Dallas–Chicago services, because NS does not provide those services.[108]

55. However, the proposed UP-NS merger would materially change the competitive incentives associated with ownership of the Wylie Intermodal Terminal. If UP-NS controlled Wylie Intermodal Terminal, it would gain an increased ability to foreclose competition for intermodal traffic in Dallas, as it would control three of the four Dallas-Fort Worth intermodal terminals. Moreover, a combined UP-NS would have an

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its Wylie Intermodal Terminal near Dallas, TX … before operating via the Speedway and Meridian to the interchange with CSXT at Myrtlewood, Alabama, where CPKC hands the train off to CSXT for movement to Atlanta and other points in the Southeast. … [T]he interchange is conducted in minutes by a step-on/step-off crew change.").

[106] Gameiro VS, ¶ 214 ("One of the MSLLC agreements—the Dallas Terminal Marketing Agreement ('DTMA')—granted NS {{REDACTED }} to acquire KCSR's Dallas area intermodal terminal.").

[107] Gameiro VS, ¶ 216 ("In late February 2025, after UP and NS preliminarily discussed the possibility of merging, NS notified CPKC that {{REDACTED }} But instead of notifying CPKC that {{REDACTED }} NS expanded its claim to include: {{REDACTED

}}"). UP and NS announced their intent to merge in July 2025. See "Union Pacific and Norfolk Southern to Create America's First Transcontinental Railroad," *Union Pacific Newsroom*, July 29, 2025, available at https://www.up.com/press-releases/growth/norfolk-southern-transcontinental-nr-250729.

[108] Brooks VS, ¶ 229 ("Thus far in 2026, {{REDACTED }} of CPKC's Wylie traffic volume moved to or from points for which NS does not currently compete, but UP does (e.g., Mexico and Minneapolis).").

increased incentive to foreclose competition, including competition CPKC provides, relative to standalone NS, since NS {{REDACTED }}, but UP does.[109] With the merger, acquiring the terminal would therefore place facilities needed to support those CPKC services under the control of a competitor with significant incentives to divert the traffic to its own network.

56. Moreover, NS's continuing {{REDACTED }} would not eliminate that concern.[110] The obligation would preserve specified handling rights but would not preserve CPKC's ability to compete independent of control by its competitor over the facilities, operating resources, and development opportunities needed to compete and respond to customers' changing needs. Terminal-service priorities can themselves affect competition: in discussing {{REDACTED }}, NS's Chief Strategy Officer, Michael McClellan, {{REDACTED }}.[111]

[109] Mr. McClellan, the Chief Strategy Officer at NS, {{REDACTED }}. See Deposition of Michael R. McClellan (Chief Strategy Officer, Norfolk Southern Corporation), October 9, 2026 ("McClellan Deposition"), pp. 356:3–11 {{REDACTED }}. And as Mr. Brooks explains, a combined UP/NS would compete directly with CPKC's intermodal services in those lanes and in the Mexico–Dallas, Dallas–Chicago, and Dallas–Atlanta lanes. See Brooks VS, ¶ 229 ("Thus far in 2026, {{REDACTED }} of CPKC's Wylie traffic volume moved to or from points for which NS does not currently compete, but UP does (e.g., Mexico and Minneapolis). Were UP to acquire NS, however, 100 percent of CPKC's intermodal traffic would be directly competitive with UP's Mexico-Dallas, Dallas-Chicago, and Dallas-Atlanta (legacy-NS) services.").

[110] Gameiro VS, ¶¶ 220–221.

[111] McClellan Deposition, p. 355:7–11 {{REDACTED }}, pp. 357:20–358:15 {{REDACTED

57. {{REDACTED

}}. {{REDACTED

}}[112] In June 2025, NS told UP that it was {{REDACTED }}[113] Mr. Lehlbach, AVP of Strategic Planning at NS, explained that the {{REDACTED

}}[114] And Mr. McClellan, Chief Strategy Officer at NS, explained that {{REDACTED

}}[115] Taken together, this evidence

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[112] {{REDACTED }} NS_00181115–9, at NS_00181118 {{REDACTED }}

[113] {{REDACTED }} NS_STB_00001394–6 at NS_STB_00001394 {{REDACTED }}.

[114] Deposition of David Lehlbach (Assistant Vice President, Strategic Planning, Norfolk Southern Corporation), September 10, 2026, pp. 340:20–341:3 {{REDACTED

}}, p. 342:6–13 {{REDACTED

}}.

[115] McClellan Deposition, pp. 365:18–366:7 {{REDACTED

{{REDACTED

}} UP would acquire that leverage along with broader incentives to divert CPKC's traffic to its own network.

58. {{REDACTED

}}.[116]

59. Preserving or restoring CPKC's independent control would address both the broader post-merger incentives to impair intermodal competition {{REDACTED }} allowing CPKC to compete with a combined UP-NS. Additionally, preservation or restoration of CPKC's control would not itself require changes in existing traffic or

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[116] Gameiro VS, ¶ 221 ("{{REDACTED

}}, NS would be obligated to handle only CPKC intermodal traffic on any of the property NS acquired. CPKC's ability to continue those services could depend on obtaining additional rights or operating arrangements from NS or, after the merger, UP. The existing intermodal handling obligation therefore does not resolve the competitive harm threatened by NS's claims to the additional property."); Brooks VS, ¶ 230 ("In addition, CPKC's non-intermodal facilities at Wylie support substantial business that is also directly competitive with UP. CPKC moves a substantial amount of carloads through Wylie across a range of industries, including pulpboard and fiberboard, finished automobiles, trucks, Portland cement, kiln-dried lumber, and carbon dioxide. … If NS prevailed, it would threaten CPKC's ability to provide this non-intermodal service at Wylie.").

routings.[117] Shippers would benefit from retaining an independent Class I option, and Applicants would remain free to compete using their own facilities. By preserving competition that intermodal shippers in the Dallas-Ft. Worth area currently enjoy, the proposed transaction would not harm competition.

2.6.5. Kansas City gateway

60. A combined UP-NS would have an increased ability and incentive to preference its own service through the Kansas City gateway and foreclose interline options with other Class I railroads by degrading investment in this gateway, as well as by degrading its efficiency and operations.[118]

61. I understand that CPKC has requested several conditions aimed at preserving efficient operations in the area of the Kansas City Gateway,[119] including a responsive application for operating rights in the Kansas City Terminal via the Incline Track Route

[117] Brooks VS, ¶ 231 ("A condition requiring that UP relinquish to CPKC any rights NS might ultimately acquire in the Wylie Terminal would restore the current competitive environment, in which CPKC supports CPKC-NS intermodal traffic but also is unfettered in its ability to compete with UP for intermodal traffic using the Wylie Terminal, without simultaneously relying on UP to help CPKC compete with it.").

[118] This could come in the form of disinvestment or in the favoring of investments which preference UP-NS's single-line service. Mr. Gameiro notes, "[f]or example, UP could withhold approval for a critical infrastructure project until KCT agreed to revise its dispatching protocols or operating rules in a manner that UP believed would better support its planned operations, regardless of the impacts on other railroads serving the Kansas City Terminal." See Gameiro VS, ¶ 122.

[119] CPKC Comment Vol. II, p. 259 ("The Board should require Applicants to reduce or restrict the exercise of UP's voting power sufficiently that UP cannot alone force or block KCT action. If Applicants divest KCT shares to an independent railroad group outside KCT's pre-merger ownership group, the condition should also prevent UP together with any single other railroad-owner group from forcing or blocking action. A transfer to an existing independent owner, CPKC or BNSF, would remain subject to the first requirement.").

and preservation of CPKC's rights on the Polo Line (which I discuss in more detail below). These conditions aim to retain the current competitive state of the gateway by limiting the risk that UP-NS could foreclose competition. CPKC also requests monitoring and remediation conditions which would be triggered if performance degraded at KCT.[120] These governance protections would limit a combined UP-NS's ability to foreclose competition by, e.g., blocking investments or conditioning its support on operating concessions that disadvantage competing routes. Permanent monitoring and prompt corrective measures (backed by springing dispatch and Applicants-funded capacity relief) would mitigate a separate risk: additional UP-NS movements consuming capacity needed for competing services. Requiring Applicants to bear the costs of remedying their merger-related impacts would reduce their ability to shift those costs to competing railroads and their customers. In my opinion, these conditions would preserve (rather than impair) competition.

[120] CPKC Comment Vol. II, p. 259 ("The Board should require permanent gateway-specific monitoring, including measurement of track occupancy and delay associated with UP–NS movements between KCS Junction and Birmingham; prompt corrective operating measures when Applicants' operations impair terminal fluidity; and a binding Applicants-funded obligation to provide sufficient capacity to offset merger-related impacts when the applicable trigger under Section VIII.F.5 is satisfied. The existing Truman Bridge truss cannot accommodate an additional track; adding a main track at that crossing would require a new parallel span. Required relief should include double tracking the route between KCS Junction and Birmingham, including a new bridge parallel to the Truman Bridge; coordinated dispatching and signal-control arrangements; rerouting sufficient UP–NS trains via an alternative route between legacy-UP's 18th Street Yard and Birmingham, including via the Hannibal Bridge, to restore pre-merger levels of fluidity; and the Gateway connection and other remedial measures specified in Section VIII.F.5.").

(1) The Kansas City Incline Track Route and Polo Line

62. In its responsive application, I understand that CPKC has proposed for the Board to impose two conditions pertaining to CPKC's and UP's operations in the Kansas City area:

a. "Require [UP] to confirm, or grant outright, rights to traverse certain trackage in the Kansas City Terminal, including the so-called 'Incline Track,' to connect CPKC's Knoche Yard with KCT trackage on the west side of the Terminal; and"[121]

b. "Prohibit UP from terminating the Polo Line agreement and require other adjustments to CPKC's rights over that trackage."[122]

63. If UP and NS were to merge, a combined UP-NS would have an incentive to preference its own service through Kansas City, rather than interchanging other carriers. I describe below how CPKC's requested conditions would prevent UP-NS from acting on those incentives, preserving CPKC's (and other railroads') ability to offer competitive options for shippers.

64. CPKC's first requested condition would provide CPKC with confirmed access to a more direct UP-owned route that connects CPKC's Knoche Yard to BNSF's facilities on the western side of the Kansas City Terminal and local customers served by KCT.[123]

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[121] CPKC KCT/Polo Line Responsive Application, p. 1.

[122] CPKC KCT/Polo Line Responsive Application, p. 1.

[123] CPKC KCT/Polo Line Responsive Application, p. 1; Redd VS, ¶ 242 ("A condition confirming (or granting) CPKC's right to operate on UP trackage between Troost Avenue and a connection with Kansas City Terminal Railway ('KCT') trackage at Broadway … would enable the restoration of an efficient route that CPKC historically used to operate between Knoche Yard on the east side of the

CPKC had access to this connection until 2024, when UP cut off its use (a change CPKC disputes).[124] Without access to this more direct connection, CPKC must take a more circuitous route that lowers its service quality and increases its cost of service, which makes it harder for CPKC to offer competitive interlines with BNSF and compete for the traffic of local customers served by KCT.[125]

65. CPKC's second requested condition would preserve the Airline Junction–Polo paired-track arrangement for a 999-year term, including protection against material impairment and UP's corresponding access to CPKC-owned track.[126] If UP were to revoke, alter, or otherwise worsen this arrangement for CPKC by lowering CPKC's service quality and increasing the cost of its service, it would be harder for CPKC to offer competitive service north of Kansas City.[127] UP's existing maintenance

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Kansas City Terminal and points on the west side of the Terminal, including customer facilities served by KCT and interchange with BNSF at its Argentine Yard.").

[124] Gameiro VS, ¶ 51 ("In February 2024, UP announced its refusal to allow CPKC and BNSF to operate via the Incline Track, effective as of March 5, 2024. In February 2026, CPKC requested that UP allow CPKC to resume use of its rights to the Incline Track. While UP acknowledged CPKC's right to use the tracks and facilities covered by the 1984 Lease, UP disputed that the leased premises included the Incline Track.").

[125] Redd VS, ¶ 248 ("In summary, UP's blocking CPKC and BNSF from interchanging via the KCT Incline Track/North End Freight Line route would make CPKC-BNSF interchange less safe, less reliable and much less efficient, leading to additional yard congestion and congestion on the busy KCT Transcon line.").

[126] CPKC KCT/Polo Line Responsive Application, pp. 4–5; Gameiro VS, ¶ 155 ("As described above, under the Airline Junction-Polo paired-track arrangement, UP and CPKC use parallel tracks between Airline Junction and Polo as an integrated operating corridor. CPKC operates today over the UP-owned portion of the paired trackage.").

[127] Gameiro VS, ¶ 68 ("This trackage is vital to CPKC's main-line operations going north from Kansas City to Chicago and the remainder of the northern portion of CPKC's network. It is likewise critical to CPKC traffic from points north of Kansas City to points south of Kansas City.").

deficiencies and slow orders illustrate how reduced service quality can weaken CPKC's competitive offering, even while the agreement remains formally in place.[128]

66. By preserving CPKC's and other Class I railroads' ability to offer competing interline options for local traffic and traffic interchanging at Kansas City, these conditions will preserve (rather than impair) competition.

2.6.6. St. Louis gateway

67. A combined UP-NS would have an increased ability and incentive to preference its own service through the St. Louis gateway and foreclose interline options with other Class I railroads, by decreasing its investment in terminals and degrading their efficiency and operations. In particular, the merger would make "TRRA even more important to parties other than the Applicants,"[129] giving a combined UP-NS an increased ability (and incentive) to use its influence over TRRA to foreclose competition. To address this risk, CPKC has requested governance protections, commercially effective access through TRRA and surrounding UP-controlled facilities,

[128] Gameiro VS, ¶ 70 ("CPKC also noted that UP has had as many as nine to 15 slow orders in effect over this territory, resulting in ongoing operational delays and concerns.").

[129] Gameiro VS, ¶ 132 ("The merger would also shift St. Louis switching away from TRRA and onto UP-controlled facilities. Under Applicants' Operating Plan, eastbound UP-NS manifest traffic that the UP-owned Alton & Southern ('A&S') now hands to TRRA for blocking would instead be blocked at A&S's Gateway Yard, and intermediate manifest switching now performed at NS's Luther Yard would also move to Gateway Yard. Simultaneously, Applicants plan to run longer trains, including by increasing train lengths of legacy NS trains. Already, CPKC experiences delays due to over-length trains moving between the A&S and UP at Valley Junction and over TRRA track. Since June 2025, those delays have caused approximately 16 recrews on CPKC trains. This will only increase when UP folds NS traffic into its own. This makes TRRA even more important to parties other than the Applicants.").

and permanent monitoring backed by corrective measures and Applicants-funded remediation.[130] These conditions aim to retain the current neutrality of these terminals, limiting the risk that UP-NS could foreclose competition. CPKC also requests monitoring and remediation conditions which would be triggered by degradations in performance.[131] Together, these access and operating protections would help ensure that competing carriers' formal rights remain usable competitive options.

2.6.7. Kansas City – St. Louis Corridor: Missouri and TRRA

68. I understand that CPKC has submitted two responsive applications in which it proposes to acquire trackage rights, which would grant its subsidiary KCSR trackage rights and direct access to customer facilities:

[130] CPKC Comment Vol. II, p. 291 ("Accordingly, the Board should impose an integrated package of St. Louis Gateway conditions that: 1. requires Applicants before consummation to implement arrangements preventing any matter put to a TRRA vote from being voted up or down solely by UP or by UP together with any single other independent owner group, whether or not Applicants divest NS's interest; 2. preserves neutral, reasonable, nondiscriminatory, and commercially effective access through TRRA and the broader St. Louis Gateway; and 3. requires corridor-specific monitoring, prompt corrective operating measures, and Applicants-funded remediation if merger-related traffic or resource decisions materially impair service or capacity over shared gateway infrastructure.").

[131] CPKC Comment Vol. II, p. 298 ("The Board should therefore require gateway-specific monitoring, reporting, and enforceable corrective-action requirements to be in place before consummation and effective from consummation, with remedies administered under Section V. Existing services should be measured against a transparent and representative pre-merger baseline; new services should be measured against benchmarks reflecting the authorized operating plan, customer requirements, and comparable operations. The covered infrastructure should include, at a minimum, the MacArthur and Merchants Bridges and the terminal routes, approaches, interlockings, connections, yards, and interchange facilities on which competing services depend[.]"), pp. 298–299 ("When a warning or breach threshold is crossed, Applicants should promptly disclose the supporting data and cause assessment, consult with TRRA and affected carriers, and carry out the response prescribed by the Board-adopted procedures, including investigation, prevention, or corrective action as appropriate.").

a. CPKC requests access to NS's line from the CPKC–NS connection at Mexico, MO to NS–TRRA connection in St. Louis, along with access to shipper facilities along the line (via reciprocal switching or direct access).[132]

b. CPKC requests "close-the-gap" rights from the NS-TRRA connection in St. Louis to beyond CP Junction in East St. Louis, where it can connect with its own trackage and interchange with other carriers.[133]

69. Combined, the trackage rights granted by these transactions would allow CPKC to offer a new, shorter routing between the St. Louis area and Kansas City (through connections with its existing track between Mexico, MO and Kansas City).[134] This routing would enable CPKC to compete more effectively with a combined UP-NS, who

[132] CPKC Comment Vol. II, p. 311 ("To address the competitive harms identified above, the Board should require Applicants to grant CPKC overhead trackage rights over NS's line between CPKC's connection with NS at Mexico, Missouri, and NS's connection with the TRRA in St. Louis, Missouri, together with authority to serve shippers accessible from that route through reciprocal switching or direct local service, at CPKC's election."); CPKC Missouri Responsive Application, p. 5 ("CPKC seeks overhead and local/full-service rights over NS's line from the CPKC-NS connection at Mexico, Missouri (approximately NS Milepost S 110.2), to NS's connection with TRRA at or near May Street in St. Louis. Those rights would include authority to serve the General Motors facility at Wentzville, MO, and other shipper facilities adjacent to or served via the NS line over which KCSR would obtain trackage rights, together with access to other NS trackage (*e.g.*, yard, switching, staging, interchange, and other incidental rights) as may be necessary to serve local customers and interchange traffic with TRRA at St. Louis.").

[133] CPKC TRRA Responsive Application, pp. 4–5 ("CPKC seeks close-the-gap rights over TRRA from the NS-TRRA connection in St. Louis, which CPKC believes is referred to as 'May Street,' across the Merchants Bridge to CP Junction in East St. Louis. CPKC also seeks expanded rights on TRRA segments in East St. Louis beyond CP Junction so that it can connect with its own trackage and interchange with other carriers, including the additional terminal access needed to reach KCSR's East St. Louis Yard and CSXT's Rose Lake Yard.").

[134] Redd VS, ¶¶ 210–211 ("New trackage rights between Mexico, MO and East St. Louis would provide CPKC the ability to enhance competition with a more direct route that is faster and about 45 miles shorter than its existing route via Roodhouse, IL. … CPKC's use of the new route for its Kansas City-St. Louis trains would be carried out without downgrading the quality of service CPKC offers to customers served by its lines east of Mexico, MO (*i.e.,* Mexico-to-Springfield and Roodhouse-to-East St. Louis.)").

would otherwise control both premier routes between these cities.[135] Further, sole-served shippers on the track between St. Louis and Mexico, MO would benefit from a new Class I option (without removing any existing options).[136] In my opinion, this transaction would not have any anticompetitive effects and would preserve or enhance competition on multiple fronts.

70. First, UP and NS operate the two best routes between Kansas City and St. Louis, while CPKC's current alternative is less direct.[137] Competition on this route currently

[135] Brooks VS, ¶ 216 ("Kansas City and St. Louis are two of the most important Mid-Continent gateways and major industrial hubs. Today, UP and NS each operate direct routes between those cities and compete for traffic in that corridor. CPKC's former Gateway Western route connects these cities via Roodhouse, IL, a materially less direct route. The merger would place the two best routes under common control."). This differs from the rights described in Applicants' settlement with CN. I understand that the agreement gives CN limited rights over UP's track—but UP would maintain control of the track and therefore would still have the ability to act on its incentive to foreclose other Class I railroads in the corridor. See Applicants' Second Response to Decision No. 21, Attachment 1, Binding Settlement Memorandum of Understanding Regarding Proposed UP/NS Transaction, July 22, 2026. I also understand that CN would not have rights to local customers of NS in the St. Louis–Kansas City corridor. Applicants' Second Response to Decision No. 21, Appendix B, Commercial Terms for Haulage Arrangements for the Kansas City Line at Supp. p. 215 ("Kansas City Line: St. Louis to Kansas City. … To implement the local haulage, Local customer access shall be limited to the specified UP route and shall not extend to customers located on the NS line."). In comparison, CPKC would offer an alternative that is largely based on its own track and would be able to independently offer another Class I option to customers on the NS track where it is requesting rights. As such, I focus my discussion of CPKC's request on the loss of competition from a combined UP-NS's control of premier routes in this corridor.

[136] Brooks VS, ¶ 221 ("CPKC's access to GM's assembly plant at Wentzville (which is currently solely-served by NS) would make a particularly meaningful contribution to improving the post-merger competitive environment. … By providing GM with a rail transportation option other than UP, CPKC's access to this facility would help counteract the increased stranglehold that UP would have over this important shipper."); Redd VS, ¶ 218 ("CPKC has proposed to gain access to shipper facilities located between Mexico, MO and St. Louis. CPKC anticipates that this access would be via reciprocal switching service provided by NS via NS's local serving yards at St. Louis (Luther Yard) and Wentzville, MO.").

[137] Brooks VS, ¶ 216 ("Kansas City and St. Louis are two of the most important Mid-Continent gateways and major industrial hubs. Today, UP and NS each operate direct routes between those cities and compete for traffic in that corridor. CPKC's former Gateway Western route connects these cities via Roodhouse, IL, a materially less direct route. The merger would place the two best routes under common control.").

pits UP and NS against one another for this corridor, but this competition would vanish in the event of a merger. By shortening CPKC's route and improving its transit performance, the proposed trackage rights would strengthen an independent Class I alternative to offset some of the competition lost when UP and NS cease competing in this corridor.[138]

71. Second, if UP and NS merge, a combined UP-NS would have the incentive and ability to foreclose interline competition for movements west from sole-served facilities along NS's St. Louis-Kansas City line, where customers have access to UP, BNSF, and CPKC via interchange at Kansas City. By granting these shippers access to CPKC—an independent Class I carrier with an incentive to compete—CPKC's requests would give eligible current and future customers on, adjacent to, or served via the NS line between Mexico, MO and St. Louis, MO another Class I option, supported by the requested connections between St. Louis, MO and East St. Louis, IL.[139]

72. CPKC estimates this transaction would enable it to carry approximately {{REDACTED}} incremental carloads per year by Year 3 from new shipper access.[140]

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[138] Redd VS, ¶ 210 ("New trackage rights between Mexico, MO and East St. Louis would provide CPKC the ability to enhance competition with a more direct route that is faster and about 45 miles shorter than its existing route via Roodhouse, IL.").

[139] Although the requested grant would authorize direct service, CPKC anticipates using Applicants' switching services to assemble and interchange traffic. Enforceable switching standards would therefore be necessary to make that additional commercial option effective. Redd VS, ¶ 218 ("CPKC anticipates that this access would be via reciprocal switching service provided by NS via NS's local serving yards at St. Louis (Luther Yard) and Wentzville, MO."). See also CPKC Comment Vol. II, p. 314 ("When CPKC elects reciprocal switching, eligible online traffic should receive switching at Luther Yard and/or Wentzville, where operationally appropriate, on reasonable, nondiscriminatory terms and under Section V's service standards.").

[140] Brooks VS, ¶ 222 ("With local shipper access to customers on NS's St. Louis-Mexico line, I anticipate that CPKC would attract approximately {{REDACTED}} incremental annual loads:

Based on Dr. Bailey's Six-Railroad Tapes Data from 2019 to 2024, CPKC's estimate of incremental traffic amounts to {{{REDACTED}}} of all traffic originating or terminating from the relevant stations, regardless of the other endpoint of the movement. Of traffic originating or terminating from these stations, {{{REDACTED}}} of it originates or terminates in BEAs that CPKC serves, suggesting the estimated carloads may be up to {{{REDACTED}}} of traffic that CPKC could single-line to its destination if this transaction took place.[141] These estimates suggest a reasonable estimate of credible competition for the business of these shippers. Based on CPKC's estimates and my own analysis, this transaction is likely to preserve competition.

2.6.8. Chicago gateway

73. The Chicago gateway is one where UP-NS is especially likely to impair competition, particularly competition CPKC provides. It is an important area of interconnections between eastern, western, and Canadian railroads, handling nearly a third of U.S. rail freight.[142] Delays and congestion around Chicago have far-reaching

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approximately {{REDACTED}} newly handled loads at Wentzville, MO and approximately {{REDACTED}} loads to/from shipper facilities west of Wentzville (comprised of {{REDACTED}} newly handled and {{REDACTED}} extended-haul loads).").

[141] See workpaper 1. I calculate this percentage as a share of total originating or terminating traffic at relevant stations in Dr. Bailey's Six-Railroad Tapes Data. I identify relevant stations between Wentzville, MO and Mexico, MO as stations in the following Missouri counties: Audrain, Montgomery, Warren, and St. Charles, where the carrier is NS and the station is associated with at least one shipper from which Mr. Brooks estimates incremental traffic, according to the Brooks VS (Brooks Traffic Volume Projection Workpaper (HC).xlsx) {{REDACTED
}}.

[142] Redd VS, ¶ 138 ("Chicago is the principal interchange point connecting the major eastern, western, and Canadian railroads—and handles roughly one-third of U.S. rail freight[.]").

effects and can lead to disruptions across interconnected rail networks.[143] A combined UP-NS would have increased influence over Chicago operations including the IHB, BRC, and the Clearing Yard.[144] These particular assets—that today support efficient interconnections between various railroads—could be degraded or denied to competitors if UP-NS can influence or control them.[145] Further, CPKC does not outright own all of the tracks and yards it uses to move through Chicago; rather, it depends on UP-owned, NS-owned, and jointly-owned tracks and yards.[146] This makes

[143] Redd VS, ¶ 138 ("History shows that operational disruption affecting the Chicago gateway poses a serious threat to the health of rail operations across the entire continent. … Because Chicago is the principal interchange point connecting the major eastern, western, and Canadian railroads—and handles roughly one-third of U.S. rail freight—delays there do not remain local: trains back up on lines approaching Chicago, equipment and crews fall out of cycle, and congestion propagates outward across interconnected railroad networks.").

[144] Gameiro VS, ¶ 101 ("By consolidating UP's and NS's ownership interests in BRC, Applicants would control outright four of the 12 votes on the BRC Board … Four of twelve votes would not, by themselves, allow UP to block a decision requiring {{REDACTED }}. But UP would need only {{REDACTED }} to withhold support to prevent approval. UP's expanded commercial relationship with CN, including their shared interest in the EJ&E bypass route, creates a material risk that their interests would align on decisions affecting investment in BRC."), ¶ 111 ("As can be seen in Table 3 above, the only way for IHB to promptly and reliably obtain shareholder or board of directors approval to act on matters requiring that approval is *for NS to agree* to that course of action. Even if CSXT and CPKC agree, the matter would not go forward because NS's disapproval would effectively mean a negative vote of the Conrail shares.").

[145] Redd VS, ¶ 60 ("Clearing Yard is a vital and efficient facility that saves time and resources that would have to be devoted to the processing of railcars elsewhere … Because Clearing Yard sits in the center of the Chicago Terminal and serves as a 'clearinghouse' … for traffic moving through the terminal, it very efficiently consolidates traffic flows from multiple sources and distributes them optimally to multiple recipients without unnecessary fragmentation or duplication of effort."); Gameiro VS, ¶ 100 ("CPKC and other carriers depend on BRC for efficient interchange across the terminal to connect with the smaller carriers that serve the Chicago area."), ¶ 113 ("[B]oth CSXT and NS are motivated to support IHB providing efficient and neutral connections with western carriers at Chicago. The proposed UP-NS transaction, however, would transfer NS's interest in Conrail's IHB shares to UP[.]").

[146] Redd VS, ¶ 142 ("CPKC depends on Clearing for its interchange of manifest traffic with CSXT, BNSF, CN, and many other smaller carriers at Chicago."), ¶ 147 ("CPKC also depends on efficient access to UP's 'Techny Line' to connect Bensenville Yard with CPKC's route between Chicago and the Twin Cities."), ¶ 253 ("CPKC's rights over those NS lines connect with the Belt Railway of Chicago at CP 509 and with the Indiana Harbor Belt via rights over NS between CP 502 and IHB's Gibson Yard[.]").

it particularly vulnerable to a combined UP-NS's ability to foreclose it from efficiently moving traffic through this important gateway.

74. CPKC's requests conditions in and around Chicago would discourage UP-NS from abusing its position in this area to impair competition. The first set of conditions would restrict UP-NS from combining existing voting rights of standalone UP and standalone NS and potentially gaining and exercising control of IHB, BRC, and Clearing Yard.[147] These conditions would help ensure proper governance of the IHB and BRC, and would help prevent a combined UP-NS from using its increased influence at IHB and BRC to foreclose competition or from using facilities like the Clearing Yard to degrade interline interchanges.[148] Based on the operating plan submitted by Applicants, the

[147] CPKC Comment Vol. II, p. 325 ("The Board should address the IHB governance risk through either separately exercisable CSX and NS voting interests or mandatory affirmative or negative voting direction based on the positions of a majority in number of the other independent owner groups. It should separately reduce Applicants' BRC voting power sufficiently that neither Applicants alone nor Applicants together with any single other independent owner group can defeat a matter requiring a {{REDACTED }}[.]"), p. 349 ("The Board should prohibit Applicants from using Clearing or another shared Chicago facility in a manner that materially impairs neutral interchange, classification, block-building, or capacity functions for other carriers. The prohibition should encompass unnecessary storage, re-humping, repeated processing, or overflow handling of traffic that returns to the UP–NS system[.]").

[148] Gameiro VS, ¶ 113 ("The proposed UP-NS transaction, however, would transfer NS's interest in Conrail's IHB shares to UP, and UP would not have the same interest in IHB providing effective and neutral connection between eastern carriers like CSXT and western carriers like BNSF and CPKC."); ¶ 118 ("The only way I see to overcome this problem would be to prevent UP from obtaining NS's effective veto position with respect to IHB or to constrain UP's exercise of the governance rights acquired through NS."), ¶ 101 ("By consolidating UP's and NS's ownership interests in BRC, Applicants would control outright four of the 12 votes on the BRC Board … Four of twelve votes would not, by themselves, allow UP to block a decision requiring {{REDACTED }}. But UP would need only {{REDACTED }} to withhold support to prevent approval. UP's expanded commercial relationship with CN, including their shared interest in the EJ&E bypass route, creates a material risk that their interests would align on decisions affecting investment in BRC."), ¶ 104 ("If the Board does approve the merger, it should condition its approval on UP reducing its voting power on the BRC board of directors sufficiently so that no vote {{REDACTED }} can be voted down solely through the votes of UP directors, acting alone or together with those of any single other independent owner group. … with the proposed change UP would no longer have the ability—by itself or working with a single ally like CN—to hold up formal actions of the BRC board

changes they propose could alter and disrupt the distribution of trains, blocks, yard work, and other operations, affecting CPKC and other rail carriers (including at BRC and Clearing Yard).[149] UP-NS would have an incentive to redesign its Chicago operations in a way that degrades competitors' service, which would impair competition.

75. CPKC's second and third proposed conditions seek to protect effective access between CP 502 and IHB, including Gibson Yard, and its continued use of the Techny Line to allow for its continued ability to provide efficient service in and around Chicago.[150] According to Mr. Gameiro, "CPKC's ability to carry finished automotive traffic (currently, from Canada) between Detroit and Gibson Yard is indispensable to its ability to provide efficient transportation of that commodity. If CPKC cannot operate between Gibson Yard and points east (i.e., Detroit) because it lacks a connection via CP 502, CPKC's ability to compete would be radically diminished."[151] Moreover, CPKC's access is at heightened risk because Applicants have proposed (but

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{{REDACTED }}"); Redd VS, ¶ 143 ("UP-NS is likely to rely less on Clearing to support efficient day-to-day flows of traffic to others, but to make *greater use of Clearing* as a backstop to protect the fluidity of the UP-NS network at the expense of others.") (emphasis in original).

[149] Redd VS, ¶ 139 ("Applicants plan massive changes to rail operations in Chicago, only some of which are detailed in the Application's Operating Plan. … Applicants plan to increase traffic substantially on a route through the heart of Chicago connecting the UP and NS networks via UP's Proviso Yard, the BRC, and NS's Ashland Avenue Yard."), ¶ 143 ("UP-NS is likely to rely less on Clearing to support efficient day-to-day flows of traffic to others, but to make *greater use of Clearing* as a backstop to protect the fluidity of the UP-NS network at the expense of others. In other words, to overcome challenges faced by UP-NS in their manifest network, where new blocking patterns may stress the capacity of other facilities, UP-NS is likely to treat Clearing as a form of 'bladder' into which it would dump overflow traffic during high traffic periods."). (emphasis in original).

[150] CPKC Comment Vol. II, p. 327 ("The Board should grant and protect the operating, interchange, yard, connection, and incidental rights necessary for CPKC to enter and exit the Chicago–Detroit route at CP 502, reach Gibson Yard and other necessary IHB points[.]").

[151] Gameiro VS, ¶ 146.

not specified) a redesign of their Chicago operations in the event of a merger.[152] As a result, CPKC's requested access will allow it to remain competitive in Chicago. I understand that CPKC is submitting a responsive application for its requested conditions regarding the Techny Line, which I discuss in more detail below.

(1) Techny Line

76. In its responsive application regarding the Techny Line, I understand CPKC requests a condition preventing UP from "terminating, suspending, declining to renew, restricting, narrowing, or materially impairing" CPKC's trackage and operating rights over its Techny Line, between Bryn Mawr, Illinois and CPKC's Tower A20.[153] CPKC has also proposed adjusted trackage rights terms that preserve its pre-merger access and capacity on the Techny Line, accompanied by service protections and springing dispatch rights if UP does not dispatch effectively.[154] This transaction seeks to maintain pre-merger conditions on the Techny Line and thus allow CPKC to continue to act as

[152] Redd VS, ¶ 139 ("Applicants plan massive changes to rail operations in Chicago, only some of which are detailed in the Application's Operating Plan.").

[153] CPKC Techny Responsive Application, p. 1 ("Specifically, this Responsive Application seeks: (1) a condition prohibiting Union Pacific Corporation and Union Pacific Railroad Company ('UP') and their successors from terminating, suspending, declining to renew, restricting, narrowing, or materially impairing CPKC's existing trackage and operating rights over UP's 'Techny Line' between Bryn Mawr, Illinois (near CPKC's Bensenville Yard) and CPKC's Chicago & Milwaukee Subdivision near Tower A20, including by requiring amendment of the Techny Line Agreement to conform its term and termination provisions to that protection[.]").

[154] CPKC Techny Responsive Application, p. 1 ("Specifically, this Responsive Application seeks: … (2) adjusted trackage rights terms preserving CPKC's practical access to and capacity on the Techny Line at no less than a representative pre-merger baseline, backed by enforceable service protections and a springing transfer of dispatching responsibility to CPKC upon failure to attain the adopted target over a {REDACTED} cure period after notice of initial violation.").

an effective and efficient competitor in this area.[155] As such, it would preserve rather than impair competition.

77. According to Mr. Redd, "CPKC is a major user of UP's Techny Line" today.[156] The Techny Line allows CPKC to route freight traffic efficiently through and around Chicago by avoiding commuter lines.[157] CPKC has been using the Techny Line to efficiently route freight traffic {{REDACTED }}, but the {{REDACTED }}.[158] This transaction would make the protected rights permanent (subject to modification by the Board) and would prohibit termination or material impairment of this efficient competing route; i.e., the transaction would prevent UP-NS from foreclosing competition.

78. Additionally, Mr. Redd explains that CPKC could readily dispatch the Techny Line,[159] in coordination with its adjoining lines. According to Mr. Redd, "doing so would be more efficient" and would "avoid delays to CPKC, Metra, and Amtrak

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[155] Redd VS, ¶ 268 ("From an operational perspective, granting the condition CPKC seeks would not change anything relative to pre-merger conditions relating to CPKC's operations between Bryn Mawr and Tower A-20.").

[156] Redd VS, ¶ 270.

[157] Redd VS, ¶ 268 ("CPKC's operations on this line connect the west end of Bensenville Yard with CPKC's Chicago & Milwaukee Division at Tower A-20. This route is important because it allows CPKC trains a route that avoids operating via Tower A-5, which requires traversing Metra's MD-W commuter line between Bensenville and Tower A-5 and Metra's MD-N commuter line between Tower A-5 and Tower A-20 (a route between Towers A-5 and A-20 that Amtrak also uses). The Techny Line is thus an important freight bypass that minimizes interference with passenger operations.").

[158] Gameiro VS, ¶ 149 ("{{REDACTED }} As a result, UP could terminate CPKC's use of the Techny Line on one year's notice any time {{REDACTED }}").

[159] Redd VS, ¶ 270 ("CPKC is a major user of UP's Techny Line. CPKC could readily support dispatching of operations over this trackage[.]").

operations at Tower A-20 that are occasioned by delays in UP dispatchers[.]"[160] CPKC requests a preauthorized transfer of dispatching responsibility in the event of a material Techny service failure based on objective criteria.[161] This condition would help prevent UP-NS from foreclosing competitive options through service degradation.

79. Preserving CPKC's existing Techny Line rights would not itself add trains or transfer ownership of the line, and the conditional dispatching remedy would address qualifying service failures while preserving neutral treatment of all authorized traffic.[162] These protections would help preserve CPKC as a competitive option to carry traffic efficiently in and around Chicago, and, as such, would not harm competition.

2.6.9. Chicago and Detroit

80. A combined UP-NS would have both increased incentive and ability to foreclose competition from CPKC between Chicago and Detroit, on the portion of NS track where CPKC currently has trackage rights, and would control the infrastructure,

[160] Redd VS, ¶ 270 ("CPKC could readily support dispatching of operations over this trackage from CPKC's dispatching center in Kansas City, and doing so would be more efficient because for the majority of trains, CPKC would already be dispatching them on CPKC's own lines south of Bryn Mawr and north of Tower A-20. CPKC expects that, if given control of dispatching on this line, its dispatchers would be able to avoid delays to CPKC, Metra, and Amtrak operations at Tower A-20 that are occasioned by delays in UP dispatchers providing CPKC freight trains with clearance to exit the Metra MD-N line onto the Techny Line, as well as delays to Metra at Tower B-17 occasioned by UP dispatchers not clearing CPKC trains onto the Techny Line at Bryn Mawr.").

[161] Redd VS, ¶ 271 ("CPKC would welcome UP's voluntary transfer of dispatching responsibility to CPKC, but CPKC is not insisting that such a transfer occur unless UP's continued dispatching generates outcomes that fall short of appropriate performance standards.").

[162] Redd VS, ¶ 268 ("From an operational perspective, granting the condition CPKC seeks would not change anything relative to pre-merger conditions relating to CPKC's operations between Bryn Mawr and Tower A-20.").

dispatching, operating rules, and capacity on which those services depend. Today, for example, NS handles Stellantis traffic for its own destinations and forwards traffic directly from the Detroit Shared Assets Area Plants to UP, BNSF, and CPKC.[163] A combined UP-NS would have incentive to preference its own routes for western destinations, including Mexico, over competing interline options for shippers.[164] In its responsive application, I understand CPKC has proposed (on behalf of itself and its subsidiary, Soo Line Railroad Company) protections for its existing Chicago-Detroit service and separate expansions of permitted traffic and access. These conditions would protect existing independent service and permit additional competition where CPKC can offer a commercially and operationally viable alternative.

81. First, CPKC seeks permanent protection against termination, narrowing, or material impairment of its existing Chicago-Detroit rights.[165] Those rights support through services connecting CPKC's Midwest and eastern Canadian operations through Chicago and Detroit. Protecting that route preserves the services already using it and

[163] Brooks VS, ¶ 54 ("Stellantis's plants in the Detroit Shared Assets Area present a related concern. On paper, those plants are served by Conrail. In practice, CSXT handles its share of the volume by trucking it to CSXT's New Boston, MI facility, while NS handles the volume for its own destinations and forwards traffic directly from the plants to UP, BNSF, and CPKC. After the merger, UP would control NS's role at these plants and could favor its own routes over BNSF, CSXT, and CPKC options for Western and Mexico destinations.").

[164] Majure VS Vol. I, Section 4.

[165] CPKC Chicago-Detroit Responsive Application, p. 3 ("[CPKC seeks] adjustments to Applicants' existing Chicago-Detroit rights and Detroit-area access, including … a prohibition on UP-NS terminating, nonrenewing, narrowing, or materially impairing CPKC's Chicago–Detroit rights[.]").

the operating foundation for the separately requested traffic and access expansions.[166] This protection does not itself grant access to additional Detroit-area customers.

82. Second, CPKC seeks removal of various MTRA restrictions on the traffic that CPKC is allowed to handle using its rights between Detroit and Chicago (as well as removal of an onerous penalty in the event CPKC were to haul automotive traffic using those rights); additional {{REDACTED }}; and authority {{REDACTED }} adjacent to the route.[167] The requested rights also protect the CP 502-IHB/Gibson connections,[168] and include enforceable service and dispatching obligations.[169] These changes would allow CPKC to compete for additional eligible traffic (including automotive and intermodal

[166] Gameiro VS, ¶ 7 ("CPKC's access over NS's Chicago-Detroit route is essential to connect CPKC's Midwest operations to CPKC's eastern Canada operations."), ¶ 8 ("[A] post-merger UP would control critical portions of CPKC's U.S. network … [including] 260.8 miles of trackage rights on NS between Chicago and Detroit[.]").

[167] CPKC Chicago-Detroit Responsive Application, p. 3 ("[CPKC seeks] adjustments to Applicants' existing Chicago-Detroit rights and Detroit-area access, including … removal of the MTRA's traffic-scope, local-service, and interchange restrictions and nullification of the automotive fee increase; [] interchange and connection rights, including access to an operationally appropriate Conrail interchange point in the Detroit area, interchange with the Ann Arbor Railroad at Milan, and the right to connect CPKC's own network or facilities with the trackage-rights line[.]"); Redd VS, ¶ 256 ("{{REDACTED }}").

[168] CPKC Chicago-Detroit Responsive Application, p. 4 ("CPKC seeks confirmation and permanence of its existing rights to enter and exit the Chicago–Detroit route at CP 502 and to operate between CP 502 and points on IHB, including Gibson Yard, and to CP 509 for any and all purposes, with the connections, terminal trackage, and incidental operating authority necessary to make the route operationally complete so that NS or its successor cannot terminate or withdraw those rights.").

[169] CPKC Chicago-Detroit Responsive Application, pp. 3–4 ("[CPKC seeks] adjustments to Applicants' existing Chicago-Detroit rights and Detroit-area access, including […] enforceable service and enforcement protections, including springing relief adequate to restore reliable service if persistent failures occur.").

traffic).[170] The conditions would also protect the practical usability of its existing through services.[171] Where CPKC has access to usable connections and reliable handling, it can provide an additional independent Class I option, which would strengthen shippers' leverage against a combined UP-NS's ability to charge higher rates or provide lower quality service.

83. While both NS and CSXT operate in Detroit today, their observed participation in the movement of finished autos {{{REDACTED }}}. Those carriers {{{REDACTED }}} for finished autos traffic, implying that CSXT has limited ability to put competitive pressure on a combined UP-NS for auto movements leaving Detroit. Based on Dr. Bailey's Six-Railroad Tapes Data from 2019 to 2024, for finished auto shipments from the Detroit BEA, NS participates in {{{REDACTED }}} and {{{REDACTED }}}, while CSXT participates in {{{REDACTED }}}, and {{{REDACTED }}}, all weighted by revenue.[172] {{{REDACTED

[170] Redd VS, ¶ 256 ("{{REDACTED

}}").

[171] Brooks VS, ¶ 214 ("CPKC attempts to participate in intermodal shipments of auto parts to/from Detroit via over-the-road movements between Detroit and our Bensenville intermodal facility outside Chicago, but drayage costs handicap our competitiveness. … Direct access for intermodal traffic to Detroit would lower drayage costs for CPKC's intermodal customers[.]").

[172] See workpaper 2. I adopt Mr. Hunt's definition of the "East," "West," and "Watershed" regions of the U.S., which are mutually exclusive and collectively exhaustive of the continental U.S. See Second Errata Verified Statement of David T. Hunt, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, September 4, 2026, Exhibit 4-8.

}}}, an additional competitive Class I option via CPKC for these movements would put downward pressure on rates and upward pressure on service quality offered by UP-NS.

84. CPKC estimates this transaction would enable it to carry {{REDACTED}} incremental annual movements by Year 3, made up of {{REDACTED}} new movements and {{REDACTED}} extended-haul movements. These movements are further broken down into "approximately {{REDACTED}} loaded auto-parts containers moving annually from Mexico and {{REDACTED}} annual return containers carrying parts racks," {{REDACTED}} annual autorack carloads, and {{REDACTED}} annual auto-parts boxcar loads; and {{REDACTED}} finished-vehicle carloads via Conrail.[173] Based on Dr. Bailey's Six-Railroad Tapes Data from 2019 to 2024, CPKC's estimate of incremental traffic (excluding empty returns) amounts to {{{REDACTED}}} of all traffic originating or terminating from the relevant stations via the Ann Arbor Interchange, regardless of the other endpoint of the movement.[174] Of traffic originating or terminating from these stations,

[173] Brooks VS ¶ 215 ("CPKC believes that the intermodal opportunity described above would encompass approximately {{REDACTED}} loaded auto-parts containers moving annually from Mexico and {{REDACTED}} annual return containers carrying parts racks. Separately, expanded interchange rights with Ann Arbor would allow CPKC to compete for approximately {{REDACTED}} annual autorack carloads and {{REDACTED}} annual auto-parts boxcar loads by Year 3. Together, these opportunities account for the {{REDACTED}} incremental annual movements identified above, consisting of {{REDACTED}} newly handled movements and {{REDACTED}} extended-haul movements. They are separate from the {{REDACTED}} finished-vehicle carloads through the Conrail interchange.").

[174] See workpaper 1. I calculate this percentage as a share of total originating or terminating traffic at relevant stations in Dr. Bailey's Six-Railroad Tapes Data. I identify relevant stations as those within a 5-mile radius of an Ann Arbor Railroad station (defined as within five miles of any SCAC equal to "AA") where the station is associated with at least one shipper from which Mr. Brooks estimates incremental traffic, according to the Brooks VS (Brooks Traffic Volume Projection Workpaper (HC).xlsx) {{REDACTED }}. Because CPKC expects to win traffic from {{REDACTED }}, I include all stations in the specified geographic area with any traffic in STCC 37 (Transportation Equipment). I include only loaded traffic as estimated by Mr. Brooks (i.e., I

{{{REDACTED}}} of it originates or terminates in BEAs that CPKC serves, suggesting the estimated carloads may be up to {{{REDACTED}}} of traffic that CPKC could single-line to its destination if this transaction took place. I similarly estimate that CPKC's estimate of incremental traffic amounts to {{{REDACTED}}} of all traffic originating or terminating from the relevant stations via the Conrail Interchange, regardless of the other endpoint of the movement. Of traffic originating or terminating from these stations, {{{REDACTED}}} of it originates or terminates in BEAs that CPKC serves, suggesting the estimated carloads may be up to {{{REDACTED}}} of traffic that CPKC could single-line to its destination if this transaction took place.[175] These estimates both suggest a reasonable estimate of credible competition for the business of these shippers.

85. Based on CPKC's estimates and my own analysis, this transaction is likely to preserve competition and give shippers a new Class I option. This additional option would strengthen the shippers' bargaining alternatives for covered movements and constrain UP-NS's ability to use dependence on these facilities to foreclose competing

exclude empty returns for consistency with Dr. Bailey's Six-Railroad Tapes data, which includes only loaded traffic).

[175] See workpaper 1. I calculate this percentage as a share of total originating or terminating traffic at relevant stations in Dr. Bailey's Six-Railroad Tapes Data. I identify relevant stations in the Detroit Area as stations in the following Michigan counties: Monroe, Wayne, Macomb, and Oakland, where the carrier is NS and the station is associated with at least one shipper from which Mr. Brooks estimates incremental traffic according to the Brooks VS Brooks Traffic Volume Projection Workpaper (HC).xlsx {{REDACTED }}. As a sensitivity, I assign relevant stations in the Detroit Area as those within a 5-mile radius of the origin locations identified by Mr. Brooks with at least one shipper from which Mr. Brooks estimates incremental traffic. This provides a qualitatively similar result.

service, as I discuss in Majure VS Vol. I, Section 5. However, it would not eliminate a combined UP-NS's leverage over all facilities and movements in a shipper's portfolio.

2.6.10. Rosemount and Fairmont, Minnesota

86. I understand that CPKC has proposed targeted conditions preventing the enforcement of paper barriers affecting the traffic it is allowed to serve using its existing operating rights and arrangements at the Roseport industrial park in Rosemount, MN and at Fairmont, MN.[176] The Roseport restriction currently limits CPKC's ability to serve customers for traffic traveling {{REDACTED }} while the Fairmont restriction limits local customer service.[177] Removing these restrictions would allow CPKC to compete for additional eligible traffic, where its existing network and arrangements provide a viable route.[178]

[176] CPKC Comment Vol. II, pp. 382–383 ("[The Board] should condition that approval on UP's targeted non-enforcement of the Rosemount and Fairmont paper barriers. For Rosemount, the condition should permit CPKC to serve otherwise eligible customers in the Roseport industrial park, including {{REDACTED }}, without the existing restrictions based on the direction or geographic origin or destination of the traffic, including movements over the legacy KCS network. … For Fairmont, the condition should permit CPKC to provide the requested local service over its existing Fairmont–Welcome route[.]").

[177] Gameiro VS, ¶ 184 ("In particular, CPKC cannot handle shipments between Roseport and {{REDACTED }}), ¶ 185 ("Between Fairmont and Welcome, MN, CPKC operated over a short stretch of trackage rights on UP. … Scroll forward, and there are now several important customers adjacent to the shared trackage that, because of a restriction inserted in the agreement in 1974, UP can serve but CPKC cannot.").

[178] Brooks VS, ¶ 233 ("CPKC's network is well positioned to compete for substantially more of Flint Hills' outbound traffic, but {{REDACTED

87. The proposed UP-NS merger would also increase a combined UP-NS's ability and incentive to foreclose competition (including from CPKC, which currently competes to carry traffic to the East—where a combined UP-NS could favor its own routes). As Mr. Brooks explains, the "merger would heighten the problem: the combined UP-NS network would extend east of Chicago and would include {{REDACTED }} of the traffic CPKC moves over Chicago, increasing UP-NS's ability to bundle and lock out competition."[179]

88. CPKC's proposed conditions would help constrain a combined UP-NS's ability to foreclose competition by giving affected shippers an additional independent Class I rail option that can serve more of a shipper's likely destinations—without removing the option that would be provided by UP-NS. This additional independent Class I option would also reduce customers' dependence on UP-NS in negotiations across their facilities and movements.[180] That benefit would partially offset the merger's broader bargaining effects; it would not restore NS as an independent eastern carrier. In my opinion, targeted removal of these restrictions would improve the affected shippers' competitive alternatives while leaving UP-NS free to compete for the same traffic.

}}").

[179] Brooks VS, ¶ 234.

[180] Majure VS Vol. I, Section 5.

VERIFICATION

I, W. Robert Majure declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further I certify that I am qualified and authorized to file this statement.

Executed this 18th day of November, 2026



W. Robert Majure

APPENDIX A

W. Robert Majure, Ph.D.
Senior Vice President

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ACADEMIC BACKGROUND

1990 – 1994 **Massachusetts Institute of Technology** Cambridge, MA
Ph.D., Economics
Specialization: Industrial Organization, Microeconomics, Econometrics
Thesis: Disequilibrium Game Theory

1986 – 1990 **University of Virginia** Charlottesville, VA
B.A., Economics and Mathematics

PROFESSIONAL EXPERIENCE

2019 – Present **Cornerstone Research, Inc.** Washington, DC
Vice President
Provide financial and economic analysis for commercial litigation matters. Support experts in preparing for deposition and trial testimony.

2010 – 2018 **Antitrust Division – U.S. Department of Justice** Washington, DC
Director of Economics
Senior career executive supervising the Antitrust Division's Economic Analysis Group. Helped formulate economic evidence and testimony for cases in industries such as software (*U.S. v. H&R Block, Inc., et al.*), telecommunications (*U.S. and Plaintiff States v. AT&T Inc., et al.*), video (*U.S. v. AT&T Inc., DirecTV Group Holdings, LLC, and Time Warner Inc.*), publishing (*U.S. v. Apple, Inc., et al.*), airlines (*U.S., et al. v. US Airways Group, Inc. and AMR Corp.*), oilfield services (*U.S. v. Halliburton Co. and Baker Hughes Inc.*), and health insurance (*U.S. and Plaintiff States v. Aetna Inc., and Humana Inc.* and *U.S. and Plaintiff States v. Anthem, Inc. and Cigna Corp.*).

2003 – 2010 **Antitrust Division – U.S. Department of Justice** Washington, DC
Chief of Competition Policy Section
Managed a section of about 18 economists and other staff. Supervised economic analysis of antitrust investigations in various industries including computer software (*U.S. v Oracle Corp.*), real estate (*U.S. v Kentucky Real Estate Commission*), and telecommunications (*U.S. v Cingular Wireless et al*). Testified in *U.S. v SBC Communications Inc. and AT&T Corp.* and *U.S. v. Verizon Communications Inc. and MCI, Inc.* Consulted on appellate arguments of the United States in Circuit Court (including *FCC v Prometheus Radio Project*).

1997 – 2003 **Antitrust Division – U.S. Department of Justice** Washington, DC
Assistant Chief of Economic Regulatory Section

Assisted with the management of a section of about 18 economists and other staff. Supervised economic analysis of antitrust investigations in various industries including telecommunications (*U.S. v WorldCom and Sprint*), computer software (*U.S. v Mathworks and Wind River*), publishing, radio and television advertising (*U.S. v Univision and Hispanic Broadcasting Corp*), electricity, and airlines. Consulted on appellate arguments of the United States in Circuit Court and the U.S. Supreme Court (including *Iowa Utilities Board v FCC and U.S.*).

1994 – 1997 **Antitrust Division – U.S. Department of Justice** Washington, DC
Economist
Performed economic analysis in antitrust investigations. Applied developments in the fields of industrial organization, microeconomics, and econometrics to practical questions raised in antirust analysis. Examined mergers or practices in telecommunications (including *U.S. v Sprint and Joint Venture Co.*), computer software, and banking. Testified in the merger of Union Pacific Railroad and Southern Pacific Railroad (before the Surface Transportation Board).

TESTIMONY

Library of Congress Copyright Royalty Judges Case No. 19-CRB-0010 CD (2018-21) – Submitted testimony in re: Distribution of Cable Royalty Funds on behalf of joint sports claimants.

STB Finance Docket No. 36744 – Submitted testimony on behalf of Canadian Pacific Kansas City on competitive effects and remedy in Canadian National Railway's proposed acquisition of Iowa Northern Railway

State of Ohio ex rel. Dave Yost, Ohio Attorney General vs. Google LLC – Testified in deposition on behalf of Google.

Library of Congress Copyright Royalty Judges Case No. 16-CRB-0009 CD (2014-17) – Submitted testimony in re: Distribution of Cable Royalty Funds on behalf of joint sports claimants. Testified at hearing.

STB Finance Docket No. 36500 – Submitted testimony in support of the application by Canadian Pacific Railway Limited, *et al*. to combine with Kansas City Southern, *et al*. Testified in deposition and at hearing.

STB Finance Docket No. 36514 – Submitted testimony on behalf of Canadian Pacific Railway Limited analyzing prospective combination of Canadian National Railway Company, *et al.* with Kansas City Southern, *et al*.

Real Estate Exchange, Inc. v Zillow, Inc. et al. – Filed declaration in support of motion for preliminary injunction.

U.S. v SBC Communications Inc. and AT&T Corp. and *U.S. v. Verizon Communications Inc. and MCI, Inc.* – Filed declarations in Tunney Act proceeding to explain the economic analysis of the United States for the proposed mergers and of the proposed consent decrees.

ICC Finance Docket No. 32760 – Submitted testimony on behalf of the U.S. Dept. of Justice analyzing prospective merger of Union Pacific Railroad and Southern Pacific Railroad. Testified in deposition.

PUBLICATIONS

"Is There a Better Approach to Vertical Merger Analysis," with Andrew Sfekas in *Antitrust Chronicle* June 2025.

"Evaluating Innovation Theories of Harm in Merger Review: Economic Frameworks and Difficulties" with Nathaniel Hipsman and Jessica Liu in *Getting the Deal Through—Merger Control 2022* September 2021

"Comparing Vertical Merger Guidelines Across Jurisdictions" with Peter Davis and Kostis Hatzitaskos in *Law360* February 2020.

"Revisiting Guidance on MFN Terms" with Andrew Sfekas in *Antitrust Chronicle* September 2019.

"Economics at the Antitrust Division 2016-2017: Healthcare, Nuclear Waste, and Agriculture," with A. Gerstle, H. Knudsen, D. Williamson, and J. Lee, *Review of Industrial Organization,* Vol 51, Issue 4, 2017, pp. 515-528

"The Year in Review: economics at the Antitrust Division: 2011," with F. Scott Morton, *Review of Industrial Organization*, Vol. 41, Issue 4, 2012, pp. 321-331

"The Antitrust Division: Economic Issues Presented in 2010-2011," *Review of Industrial Organization*, Vol 39, Issue 4, 2011, pp. 327-334

"The Year in Review: Economics at the Antitrust Division, 2004–2005," with E. Emch and K. Heyer, *Review of Industrial Organization*, Vol 27, Issue 3, 2005, pp. 197-221

"Ensuring Fair and Efficient Access to the Telecommunications 'Bottleneck'" with D. Rubinfeld, in C.D. Ehlermann and L. Gosling (eds.), Third Competition Law Annual 1998: Regulating Telecommunications (Hart Publishing: Oxford)

"An Empirical Analysis of Bank Branching: Portugal 1989-1991" with L. Cabral, in The Empirical Analysis of Industrial Organization Conference Report of the Centre for Economic Policy Research

WHITE PAPERS

"Comment on the January 2022 DOJ and FTC RFI on Merger Enforcement," with John Asker, Kostis Hatzitaskos, Nathan Miller, Aviv Nevo, and Ana McDowall, April 2022, available at https://downloads.regulations.gov/FTC-2022-0003-1847/attachment_1.pdf.

"Comments on the January 2020 Draft Vertical Merger Guidelines," with Kostis Hatzitaskos, Aviv Nevo, and Ana McDowall, February 2020, available at https://media.justice.gov/vod/atr/comments-draft-vmg/dvmg-0012.pdf.

"Comparison with the EU Non-Horizontal and the UK Merger Assessment Guidelines," with Peter Davis and Kostis Hatzitaskos, February 2020, available at https://media.justice.gov/vod/atr/comments-draft-vmg/dvmg-0011.pdf.

"Review: Selected Research of Andrew Sweeting, New Bureau of Economics Director" with Andrew Sfekas, Ross Askenazi, and Laurien Gilbert, January 2020, available at https://www.cornerstone.com/Publications/Articles/Selected-Research-of-Andrew-Sweeting.pdf

HONORS AND AWARDS

President's Award for Meritorious Executive	2017
Assistant Attorney General's Award for Excellence	2015
Attorney General's John Marshall Award for Legal Advice (Nominated)	2004
Assistant Attorney General's Award for Excellence	2001
Distinguished Service Award	1997
National Science Foundation Fellowship	1990 – 1993
Phi Beta Kappa	1989

CONFERENCE PARTICIPATION

8th Annual Bill Kovacic Antitrust Salon 2020
Discussed vertical merger guidelines and enforcement issues in a panel hosted by George Washington University School of Law and *Concurrences Review*.

"New Debates and Tensions in Antitrust: The 2020 Vertical Merger Guidelines" 2020
Discussed newly issued vertical merger guidelines with attorneys and economists in government and private practice.

ABA panel "Sequences & Sparks: Life Sciences Innovation Mergers." (podcast) 2020
Discussed issues of innovation competition, potential competition, and merger enforcement.

DOJ Workshop on Proposed Vertical Merger Guidelines 2020
Discussed issues of vertical merger analysis and suggested modifications to draft guidelines.

ICN Chief/Senior Economist Workshop 2016
Discussed tools and techniques of current interest with senior economists representing competition authorities around the world.

FCC Roundtable on Media Ownership Policies 2001
Discussed economic issues related to prospective changes in the FCC's rules governing media ownership.

PERSONAL

U.S. Citizen. Married with two daughters and one son.

APPENDIX B

Majure V.S., Vol. II, Materials Relied Upon

Bates Stamped Documents

- NS_00181115–9
- NS_STB_00001394–6

Data

- Backup Materials to the Second Errata Verified Statement of Mark A. Israel, September 4, 2026
- Backup Materials to the Supplemental Verified Statement of Elizabeth M. Bailey, July 27, 2026
- Backup Materials to the Verified Statement of John Brooks, November 18, 2026

Depositions

- Deposition of David Lehlbach (Assistant Vice President, Strategic Planning, Norfolk Southern Corporation), September 10, 2026
- Deposition of Michael R. McClellan (Chief Strategy Officer, Norfolk Southern Corporation), October 9, 2026

Decisions and Comments, Surface Transportation Board Dockets

- Applicants' Second Response to Decision No. 21, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, July 27, 2026
- CPKC's Comments on Application and Request for Conditions, Volume II, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, November 18, 2026
- "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, (Sub-Nos. 42–50), November 18, 2026

Press Releases

- "Union Pacific and Norfolk Southern to Create America's First Transcontinental Railroad," *Union Pacific Newsroom*, July 29, 2025, available at https://www.up.com/press-releases/growth/norfolk-southern-transcontinental-nr-250729

Verified Statements

- Expert Statement of W. Robert Majure, Ph.D. Volume I of II, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, November 18, 2026
- Second Errata Joint Verified Statement of Kenny Rocker and Claude E. Elkins, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, September 4, 2026
- Second Errata Verified Statement of David T. Hunt, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, September 4, 2026
- Second Errata Verified Statement of Mark A. Israel, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, September 4, 2026
- Verified Statement of Adolph Gameiro, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, November 18, 2026
- Verified Statement of John Brooks, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, November 18, 2026
- Verified Statement of Katherine N. Novak, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, April 30, 2026
- Verified Statement of Mark Redd, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, November 18, 2026
- Verified Statement of Michael Walczak, "Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, November 18, 2026

If not listed, all other documents cited in my statement, appendices, exhibits, and production.

CPKC-77, FD 36873 (Sub No. 45)

Exhibit 13
Operating Plan

Verified Statement of Mark Redd

PUBLIC REDACTED VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

VERIFIED STATEMENT OF MARK REDD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

— CONTROL —

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED STATEMENT OF MARK REDD

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EXHIBITS

EXHIBIT 1: *CP/KCS General Oversight*, Finance Docket No. 36500 (Sub-No. 6), CPKC Reply to UP and NS Correspondence Regarding Meridian Speedway (CPKC-48) (filed Nov. 13, 2025) 17

EXHIBIT 2: *CP/KCS General Oversight,* Finance Docket No. 36500 (Sub-No. 6), CPKC Letter Reply to UP Letter (CPKC-56) (filed Feb. 10, 2026) 17

EXHIBIT 3: *CP/KCS*, Finance Docket No. 36500, *UP's Comments and Request for Conditions* (UP-10) (filed Feb. 28, 2022), Turner/Rocker V.S. at 34-35 (excerpts) 52, 60

EXHIBIT 4: *Canadian Pacific Kansas City – Acquisition & Operation – Certain Rail Line of Meridian & Bigbee Railroad*, Finance Docket No. 36732, Norfolk Southern's Comments and Request for Conditions (filed Dec. 29, 2023), McClellan V.S. 69

I. INTRODUCTION

1. I am Mark Redd, Canadian Pacific Kansas City Limited's Executive Vice President and Chief Operating Officer, a position I have held since April 2023. In that role, my responsibilities include overseeing the 24/7/365 operations of CPKC's entire North America network.[1] This includes teams responsible for network transportation, operations, mechanical, engineering, training, and safety.

2. I have three decades of experience in the railroad industry. I began my career as a brakeman and conductor at MidSouth Rail in Jackson, Mississippi. MidSouth was later acquired by Kansas City Southern, and I worked my way up from brakeman to increasing levels of responsibility for KCS operations. Ultimately, I served as KCS's Vice President of Transportation from August 2010 to September 2013, when I joined Canadian Pacific.

3. At CP, I served as General Manager of Operations for U.S. West, General Manager of Operations for the Central Division, Vice President of Operations for the West Region, and as Senior Vice President of Operations for the West Region. In September 2019, I was appointed CP's Executive Vice President of Operations, a position I held until CPKC's creation in 2023 through the combination of CP and KCS.

4. One of my principal recent responsibilities has been overseeing the combination of CP and KCS following the Board's decision authorizing that transaction in 2023. As the CPKC executive responsible for leading CPKC's multi-year integration efforts, I have first-hand experience with the degree of effort necessary to integrate the operations of two Class I railroads as well as on-the-ground experience with some of the things that go wrong during an integration.

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[1] A map of the CPKC system, other rail lines and connections and geographic points is attached as Appendix B.

5. I am submitting this statement to address four key points concerning the proposed combination of Union Pacific and Norfolk Southern.

- First, I offer the Board my observations regarding the likely consequences of the proposed transaction for the future operational health of the North American rail network, bringing to bear my own experiences in railroading and the challenges CPKC faced integrating two railroads that are far smaller and have much simpler networks than UP and NS.
- Second, I address Applicants' claims regarding the so-called "single-line" benefits they claim for their transaction. In my view, Applicants have vastly overstated those benefits, particularly by failing to acknowledge the many ways in which interline service can provide outcomes quite similar to single-line service and effectively meet shipper needs.
- Third, I explain a number of specific ways in which the traffic and network changes that Applicants are planning will cause serious disruption to the rail network at crucial locations like Chicago, Kansas City, Meridian, MS and elsewhere.
- Finally, I explain that certain conditions CPKC is proposing in the event the Board concludes that the UP-NS merger is in the public interest—which I do not believe is the case—would be operationally feasible.

II. THE UP-NS TRANSACTION WILL POSE SERIOUS AND EXISTENTIAL RISKS FOR RAIL SERVICE ON THE NORTH AMERICAN NETWORK

6. Knowing what I know about what it takes to manage the operations of a Class I railroad and to do so well, and with deep recent experience integrating two relatively small Class I railroads, I am gravely concerned that the UP-NS network would be *too big to manage, too big*

to handle and too big to integrate, and that stitching together a network of that size and complexity would run material risks of future service failure for the U.S. rail network.

7. Running a railroad well requires that operating personnel at every level have extensive and often intimate knowledge and experience with a massive array of issues that affect network performance. The list would be nearly infinite but certainly includes: safety management systems; track configuration; operating limitations imposed by grades, bridges, siding length, clearances, maintenance issues, and other constraints; the specific service needs associated with each customer facility attached to the network including when it can be served, how it is reached, and its capacity to receive empty or loaded railcars; the capabilities of yards and other terminals; and the peculiar factors that can radically influence local operating conditions, like drainage and interfaces with local community activities. On top of this, railroad operating managers, from trainmasters all the way up to COOs, must have deep problem-solving experience with the kinds of issues that can arise anywhere on the network, at any time of day or night. Mechanical breakdowns, derailments, washouts, traffic surges that tax yard or mainline capacity and countless other operational issues require nimble and informed decision-making to keep a railroad running fluidly. When issues like these arise it is because the conditions necessary for the "transportation plan" to work no longer apply, and improvisation is required to overcome the disruption and prevent it from spiraling into a broader problem affecting network congestion and service levels. And, of course, last but not least, every decision must be implemented by the humans working on the railroad, so an appreciation of their capabilities and cultures, which can vary tremendously across different regions of North America, is absolutely vital.

8. I also know from experience that the knowledge, experience and judgment needed to keep a rail network operating smoothly grow exponentially with the scope, scale, and traffic levels of that network. The entire network needs to be managed by operating officers and employees who have the kind of deep network knowledge and experience that enables them to deal with all of the "stuff" that happens across the network on a day-to-day basis. Those same officers and employees also need to have time during their week to address the countless issues that require advance planning and preparation, like planning for capital maintenance programs, revisions to operating plans to address new traffic or changing traffic flows, investments in new sidings and other capacity projects, and countless other vital tasks.

9. It is against this backdrop and based on my own experience running and integrating a major railroad that I have developed my great concern that forming and operating a transcontinental railroad having the scope and scale of UP-NS would be inviting disaster. There is literally zero precedent for anyone, or any company, managing a railroad network of such great size, scope and scale. There is no way that any COO, or any small group of managers, could have the scope and variety of knowledge and experience necessary to respond in real time to all of the operational issues that would arise on an hourly basis across vast swathes of territory on a railroad the size of post-merger UP. And on such a sprawling railroad there will be no way for local operating personnel (trainmasters, yardmasters, superintendents, and general managers) to gain the years of *indispensable locally specific learning and experience* they would need to make decisions in the locations they might be serving in any given month.

10. This is a problem that will not be limited to any "integration period." The future UP system will simply be unmanageable—it will literally be too big to handle. That does not mean that line employees will not know how to run the railroad to plan, but when issues arise

there will inevitably be wrong on-the-ground decisions made and bad outcomes just because the senior leaders are pulled in too many directions.

11. The industry has already seen how congestion on one small part of a network caused by some seemingly minor event, like a derailment that shuts down a track or two for a few days, can quickly snowball into network-wide congestion unless managed well. With a network of transcontinental scope, there will be an unprecedented amount of room for those snowballs to grow and cause lasting damage to network fluidity and customer service.

12. The integration of UP and NS will be even harder. UP cannot fully appreciate the unique location-specific issues it will be confronted with trying to integrate a railroad that serves geographies in the East that UP does not serve at all today. I have seen such issues firsthand on KCS when CP integrated that railroad. UP will be bringing the "UP way of doing things" to a group of railroaders that have not been trained in those ways, that lack experience in those ways, and likely will think that UP's ways are not superior to what they have been doing. UP and NS both call themselves "PSR" railroads, but my interactions with both of them tell me that the version of PSR that UP practices (itself different from CPKC's) is far different from that of NS.

13. At the same time, UP will need to contend with attrition in NS's operational ranks, some planned and some resulting from the culture clash that will be inevitable. We have already seen indications of this with the rushed departure of John Orr from NS over the span of one weekend, while the merger proceeding has been pending.

14. The bottom line is this: nobody can know precisely what misstep or external event will trigger the next service crisis on UP. But past railroad experience, including on UP and NS, tells us that there will be one, and with a system of unprecedented size and scope that is more difficult to manage than any railroad has ever been, the consequences will be much worse and

much harder to get under control. Allowing UP and NS to merge is a ticket towards the edge of a service crisis cliff.

III. Applicants' Claims About the Operational Advantages of "Single-Line" Service Are Greatly Exaggerated

15. Applicants' central claimed benefit is that their proposed "single line" service will convert thousands of existing interline lanes into faster, more efficient single-line service and, in doing so, save rail shippers on inventory and equipment costs by removing interchange handoffs that can add 24-48 hours.[2] They contend that this would improve not only transit time, but also reliability, visibility, equipment utilization, inventory costs, and accountability to the customer.[3] This is a naïve, uninformed perspective at best.

16. Applicants' characterization of the inherent operational costs of "interchange" is inaccurate. To be sure, there are contexts—like the Kansas City interchange between CP and KCS in the *CP/KCS* merger setting (which I discuss below)—in which a merger can foster operational efficiencies by replacing interline service with single-line service. But as I explain below, there are at least two key mistakes Applicants make when they claim that converting interline movements to single-line movements (*i.e.*, removing an interchange) will generate operational advantages that are otherwise unobtainable.

17. First, Applicants make "interchange" seem more burdensome and time-consuming than it really is by muddling the act of handing off railcars from one railroad to another (in other words, the "interchange") with work performed at or near the point of interchange to sort those cars from one train to another (whether by swapping blocks or breaking

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2 *See* Rev. App. 1-19; *id.* at 261-62 (George V.S. ¶¶ 45, 47); *id.* at 294 (Rocker & Elkins V.S. ¶ 50).

3 Rev. App. 1-60 to -62.

up an entire train at a classification yard). As I explain below, the interchange is not usually what takes time; what takes time is the work that always needs to be performed whether a railcar is moving from one railroad to another or simply moving through a major terminal on a single railroad.

18. Second, when the volume of traffic flows in an interline rail corridor is sufficiently dense to support train- or block-level handling, independent connecting railroads know how to structure efficient interline operations that avoid unnecessary processing at or near the point of interchange. As I explain below, run-through interline trains are common and consume no more time "interchanging" than a single-line train would take to change crews, perform needed refueling, and continue on their way. This is well understood for bulk unit train operations, and it is not surprising that Applicants do not appear to make any claims about how their proposed merger will benefit such operations, because it will not. The same is also true for run-through intermodal trains, run-through manifest trains, and for the deep blocking of manifest carload traffic.

19. As I also explain below, the Mid-Continent gateways that are at issue in this particular merger case make it especially clear that a merger of UP and NS will not be a "single-line service" magic wand that automatically makes service better than it could be without a merger. Unlike in CP/KCS, the East-West traffic volumes across the key UP-NS gateways—Chicago, Kansas City, St. Louis, Memphis, Meridian/Shreveport, and New Orleans—are already dense enough to support efficient interline service. In fact, as I explain further below, the processing of railcars at yards and intermodal terminals that takes place at or near these gateways, especially Chicago, Kansas City and St. Louis, is a feature rather than a bug in America's interconnected rail network. Those gateways support the efficient movement of

railcars from one railroad to another as well as the distribution of those cars across multiple connecting railroads as well as local industrial customers, supporting competition among railroads to meet the needs of rail customers.

A. "Single-Line" Through Train Operations Are Not Materially Different from Run-Through Train Services Offered by Independent Railroads

20. The need for an "interchange" between rail carriers is not inherently a burden on efficient interline rail services. One easy way to see why is to understand how run-through trains work, and how common they are across the U.S. rail network.

21. The classic case—the unit train—helps to illustrate the point. Unit trains involve full-trainload quantities of railcars that are loaded at an origin and move together in a train (i.e., as a "unit") all the way from an origin to a destination. When the railcars are emptied at a destination—such as a coal-fired generating plant or a grain terminal at a port facility—the railcars are often returned to the origin in another unit train of empties for reloading. Unit trains are obviously quite efficient, since very little processing is needed over the course of their cycles between origins and destinations and back. What makes unit trains viable operationally is the density of volumes moving from a single origin to a single destination, so that once in a train, the individual railcars do not need to be split apart from that train and reclassified en route: all of them can move together on one train.

22. This brings me to my point about interchanges. Unit trains are routinely interchanged between railroads, often with run-through locomotive power and run-through end-of-train devices, and the act of interchange incurs no service penalty as compared to the handling of a unit train at a single-line railroad's intermediate terminal. For example, at Kansas City CPKC receives loaded unit trains of grain and coal from connecting railroads (UP and BNSF), and CPKC also handles numerous unit trains that it originates at shipper facilities along its own

lines north of Kansas City on the legacy-CP network and east of Kansas City on the legacy-KCS network. There is no material difference among these scenarios—i.e., interline vs. single-line movements of unit trains at Kansas City. All of them change crews at Kansas City, and all of them run through the Kansas City terminal without dwell related to work events. To the extent there are delays in these trains' forward progress, delays occur as a result of queuing of loaded trains moving to receivers or blocks of empty railcars returning for their next loads, and those kinds of delays affect interline and single-line trains alike.

23. CPKC interchanges unit trains with multiple other railroads at multiple gateways, and none of them require the kind of interchange delays that Applicants misleadingly assert are inherent in today's interconnected rail network. CPKC hands off loaded grain trains to UP at Beaumont for delivery to Houston. We hand off loaded ethanol and frac sand trains to NS and CSXT at Chicago. We hand off loaded grain trains to UP at New Orleans for delivery to receivers reached by UP's lines. As with trains traversing Kansas City, to the extent there is dwell along the routes of these trains, sometimes at gateway cities, it is typically because the trains are being staged en route to destination or empty cars are being staged en route back to origin points. The same staging would occur on a single-line railroad.

24. The same principle illustrated by the unit train example applies equally to the interchange of trains that do not move as a single "unit" all the way from origin to destination but nonetheless "run-through" as a full train when they are handed off by one railroad to another. The delay, or dwell, associated with interchanging a run-through train is not (or need not be) meaningfully greater than the time it takes for one railroad to move a train through one of its major terminal areas.

25. ***The Meridian Speedway***. CPKC's participation in the movement of transcontinental intermodal traffic between Southern California and the U.S. Southeast provides an excellent example. UP originates domestic intermodal traffic in Southern California that it hands off to CPKC in Shreveport, LA. Those UP trains may pick up and drop traffic along the way from Los Angeles to Shreveport, and all of that work would affect their overall transit times and reliability. But when the trains get to Shreveport, they are interchanged seamlessly to CPKC: CPKC moves them intact via the Meridian Speedway (in haulage service on behalf of NS) to Meridian, MS, where CPKC again hands them off (another seamless operational interchange) to NS for movement east to Atlanta and other points. Shreveport and Meridian both are interchange points, but these trains *do not* spend 24-48 hours of dwell at those locations. To the contrary, they run through with only minutes of delay occasioned by the need for CPKC's crews to step on in Shreveport and UP's crews to step off, and then for NS's crews to step on in Meridian and CPKC's crews to step off. The locomotives stay on the train; crews are called in advance of the train's arrival; and the outbound crews step onto the train so the inbound crew can step off. The process takes *minutes* at each interchange point, not days. And in any case, what Applicants do not mention is that even in single-line service, there would still be the need for crews to step on and step off.

26. These three railroads are able to support seamless and efficient handoffs in part because their interests are strongly aligned. CPKC is no less motivated than UP and NS to provide the truck-like levels of service that this transcontinental intermodal service is designed to offer customers. UP and NS have both publicly bragged about how this route provides them

with by far the best and fastest service between California and the Southeastern United States.[4] And CPKC benefits, like KCS before it, from the haulage revenue that traffic provides.

27. The reason the Meridian Speedway joint venture ("MSLLC") is structured as a formal joint venture is because KCS lacked the resources in 2005-2006 to invest in the Speedway without NS's support, and NS wanted an ownership stake in the revenues that were anticipated from the capacity investments it was supporting. With or without that formal structure, however, CPKC would be motivated to support the same level of service performance in order to maintain and grow transcontinental traffic via this route.

28. In late 2025 and early 2026, perhaps in anticipation of making their case in support of a merger of UP and NS, both UP and NS complained bitterly about the service performance of these Los Angeles-Atlanta run-through intermodal trains. They argued that CPKC's service failings had prevented UP and NS from growing their transcontinental traffic via this route. As CPKC showed in response, however, UP's and NS's complaints were wrong. Those arguments likely were advanced for strategic purposes to support Applicants' positions in this merger case.

29. It turned out that what UP and NS were really complaining about was their own decision-making, which really calls into question the two railroads' abilities to work together cooperatively on their proposed merger. CPKC was, as it had always done, delivering excellent over-the-road transit times between Shreveport and Meridian and also doing the other work (like arranging for crew availability) to support prompt hand-offs between UP and CPKC at

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[4] Norfolk Southern Corp., Q3 Earnings Call, Transcript (Oct. 23, 2025) at 11 (remarks of Ed Elkins); Norfolk Southern, Current Report (Form 8-K) Ex. 99.6, at 14 (2007); Press Release, Union Pacific, Union Pacific and Norfolk Southern To Offer Fastest Service Between Southern California and Southeast (Apr. 30, 2007), https://www.uprr.com/newsinfo/releases/service/2007/0430_uprr_ns.shtml.

Shreveport and between CPKC and NS at Meridian.[5] In reality, UP was complaining about modest train delays at Shreveport that had resulted *from UP's own decision* to run trains that UP had to spend time shortening when they arrived at Shreveport. These were not interchange-related delays, but work that UP should have performed elsewhere or avoided altogether by building trains that did not need to be shortened in UP's yard at Shreveport.[6]

30. When CPKC looked into UP's and NS's assertions, we also found that UP was causing further delays to these trains by failing to inspect them for open container doors, which was a major safety hazard that CPKC was encountering regularly with these incoming UP trains. When we pointed this out (and declined to accept trains that had not been inspected), UP brought in a contractor to conduct these inspections, because apparently UP, despite its size and scale, lacked sufficient on-the-ground personnel to do this basic work itself.

31. I understand that UP more recently has reasserted its view that the eastbound UP intermodal trains described above are delayed for a few hours at Shreveport while claiming that single-line service would be preferable.[7] But UP still has its facts wrong. When UP's trains spend hours in Shreveport, it is not because of the interchange process, but because of other work

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[5] *See CP/KCS General Oversight*, Finance Docket No. 36500 (Sub-No. 6), CPKC Reply to UP and NS Correspondence Regarding Meridian Speedway (CPKC-48) (filed Nov. 13, 2025) (Exhibit 1 hereto); *CP/KCS General Oversight,* CPKC Letter Reply to UP Letter (CPKC-56) (filed Feb. 10, 2026) (Exhibit 2 hereto).

[6] UP's underlying gripe about the 8,500-foot train length limit on the Speedway failed to appreciate the genesis of this limit. When KCS and NS invested in the Speedway in 2007-2008, it was rebuilt to an 8,500-foot train standard. Sidings are not long enough to support longer trains without those trains causing unreasonable operational disruption, as we explained to UP in 2025. The 300-mile Speedway has only three longer sidings and they are too far apart to support efficient meeting of longer trains, and in any event they are needed to support local train operations serving local on-line shippers. Local service would suffer if these sidings needed to be kept available for over-length UP-NS haulage trains.

[7] *See* Applicants' Response Regarding Their Prima Facie Case (UP-94/NS-93) (filed Aug. 26, 2026) at 33-34.

that UP chooses to perform at Shreveport—specifically, shortening over-length trains to come under the uniformly applicable train-length limit on the Meridian Speedway and inspecting and rectifying open doors on containers on UP's inbound trains, which is a serious safety hazard.

32. Similarly, at Meridian when CPKC hands off to NS (or vice versa), we found that any delays were not the result of the interchange process but other factors, like congestion on NS's lines east of Meridian (so trains would have to wait in Meridian for clearance to head toward Birmingham and Atlanta) and also the need to weave two daily New Orleans-Atlanta Amtrak trains across this terminal. The same delays would exist even if NS or UP or CPKC controlled the entire route between the West Coast and Atlanta; trains would still need to change crews and compete for capacity on NS's crowded mainline route.

33. Even if the brief time required for all of this work were properly assigned to "interchange" dwell at Shreveport or Meridian, it would add up to only a few hours total. Yet UP falsely claims that its acquisition of NS will allow it to move some of the traffic on these same trains on transcontinental schedules that are much faster than is supported by actual experience today. I am not permitted to review the Highly Confidential workpapers underlying Applicants' Operating Plan, but in general my sense is that Applicants' Operating Plan reflects gamesmanship, such as by rerouting traffic via different gateways and accelerating the speeds their trains move over the separate UP and NS networks to make the post-merger outcomes look better for reasons having nothing to do with the merger. But two things are clear. First, neither such step would require a merger to accomplish. And, second, Applicants' implication that the interchanges associated with a Shreveport-Meridian routing via the Meridian Speedway are somehow inefficient because it is not a single-line route is contradicted by their own plans: Applicants themselves say they will save 70-95 hours by routing other intermodal traffic onto the

same Meridian Speedway routing: "[B]y routing traffic via Shreveport and Meridian rather than via Memphis, UP-NS will save approximately 70 hours of transit time on traffic moving from Southern and Northern California to the Southeast, including Georgia, Florida, and North Carolina, and approximately 95 hours on traffic moving in the opposite direction."[8]

34. NS also complained that traffic levels had been negatively impacted by CPKC service. Since CPKC service was consistently good, that was obviously incorrect. CPKC does not know the reasons why UP and NS have failed to capitalize on their best-in-class transcontinental route via the Meridian Speedway. It appears, however, that the volume challenges they were complaining about in 2025 had much to do with external factors like truck rates, UP's decision to reroute certain traffic off of the Speedway and via a longer and slower route via Memphis, and perhaps UP and NS's own pricing strategies. CPKC has done everything it can to support the efficiency of this route. A merged UP-NS, or even a merged UP-CPKC-NS, could not do any better.

35. It bears mentioning that there is no obstacle whatsoever to UP and NS expanding their service via the Meridian Speedway. Additional train slots are available to NS today to grow its traffic volumes on the Speedway.[9] If UP and NS believe that the siding configuration on the line handicaps the efficiency of their train design, CPKC has made it clear that we are willing to negotiate terms that would enable UP and NS to invest in longer sidings, if they believe that such investments would be a worthy use of their capital dollars. So far they have not

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[8] *See* Rev. App. at 2-614 (Gehringer/Orr V.S. ¶ 7); *id.* at 2-868 (Turner V.S. ¶ 36).

[9] When the Meridian Speedway venture was formed, KCS committed that after the capacity investments contemplated by the venture, NS would be entitled to 13 slots for trains of up to 8,500 feet. Today, NS is using no more than six of these slots, leaving seven available to accommodate NS growth.

been interested in doing that. NS and UP do not need to merge to support longer trains on the Meridian Speedway.

36. ***CPKC-CSXT SMX Service***. Another example of efficient run-through train services where traffic density supports handing off a complete train from one railroad to another involves the "SMX Express" service that CPKC and CSXT interchange at Myrtlewood, Alabama, carrying intermodal traffic between Mexico and the Southeastern United States. CPKC originates the train at its Wylie Intermodal Terminal near Dallas, TX and picks up intermodal traffic from Mexico at Bossier City, LA (near Shreveport) before operating via the Speedway and Meridian to the interchange with CSXT at Myrtlewood, Alabama, where CPKC hands the train off to CSXT for movement to Atlanta and other points in the Southeast. Like the UP-CPKC-NS intermodal trains I described above, the interchange is conducted in minutes by a step-on/step-off crew change. The process works similarly in reverse for westbound trains built by CSXT. Again, there is no interchange-related dwell. Even in a hypothetical world where the railroads on both sides of Myrtlewood were commonly controlled, they would still have to build the trains and change crews somewhere.

37. There are countless other examples of independent railroads setting up efficient run-through train services where the volume of traffic moving across an interchange supports train-level services. The practice is not at all limited to intermodal or expedited train services. UP-CNW run-through manifest trains across the Omaha/Council Bluffs gateway and SP-UP services across the Ogden gateway are well-known historical examples.

38. Even today, CPKC and UP participate in very efficient run-through services. One illustration involves rail traffic interchanged between CPKC and UP at the U.S.-Canadian border at Kingsgate, British Columbia/Eastport, Idaho, where UP and CPKC exchange approximately

[redacted] manifest and bulk trains per day.[10] These trains are handed off seamlessly in both directions through ongoing and collaborative communications between the two railroads' dispatching centers. There is no re-classification of traffic or other work that consumes anywhere near the 24-48 hours that Applicants are claiming publicly will be eliminated just because they convert interline movements to single-line UP-NS services.

39. The cooperation between UP and CPKC over Eastport/Kingsgate is not limited to running complete trains through a gateway. CPKC has made accommodations to the design of the trains it delivers to UP, so that UP can move them seamlessly to their destinations. For example, to accommodate UP's desired minimum train lengths while also meeting UP's horsepower per-ton requirements across its territory west of the gateway, CPKC delivers the train with an extra locomotive. Were CPKC focused only on getting the train to the gateway, we would attach fewer locomotives or run a longer train to optimize locomotive utilization on our own railroad. But, like other connecting railroads, we know that what is important is making the operation work to meet customer needs and handle the traffic, so we make investments like this to achieve that goal.

40. One other example that CPKC is familiar with is the interline automotive train service between the United States and Mexico that CPKC supports in conjunction with BNSF. CPKC delivers trains of loaded autoracks to BNSF at Robstown, TX as CPKC Train 787; CPKC's crews step off the train and BNSF's crews step on; and the train continues on its way seamlessly and expeditiously as BNSF Train VROBSAG destined for Saginaw, TX. The same process is repeated in reverse when BNSF delivers trains of empty autoracks to CPKC at

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[10] *See* Workpaper, "Eastport Arrivals and Departures.xlsx."

Robstown for movement into Mexico for distribution to auto manufacturing plants there for loading.

41. The interchange between KCS and CN at Jackson, MS is a further example of railroads working together to make interline transportation work efficiently. I helped negotiate an arrangement whereby CN would build a full train for KCS at its Memphis yard and deliver that train to us at Jackson, and in return KCS would build a full train for CN at our Shreveport yard and deliver that train to CN at Jackson.

42. One limitation sometimes imposed by the independence of two connecting railroads is where crew changes take place. Typically crews of one railroad may not operate over the track of another, absent a grant of trackage rights. As a result, a merger of two railroads might theoretically be able to shift a crew change point in one direction or another to optimize crew districts, but this is at best a very modest adjustment in the overall scheme of railroad operations. And it is especially unlikely to be significant with respect to "single-line" operations that span major gateways and terminal areas.

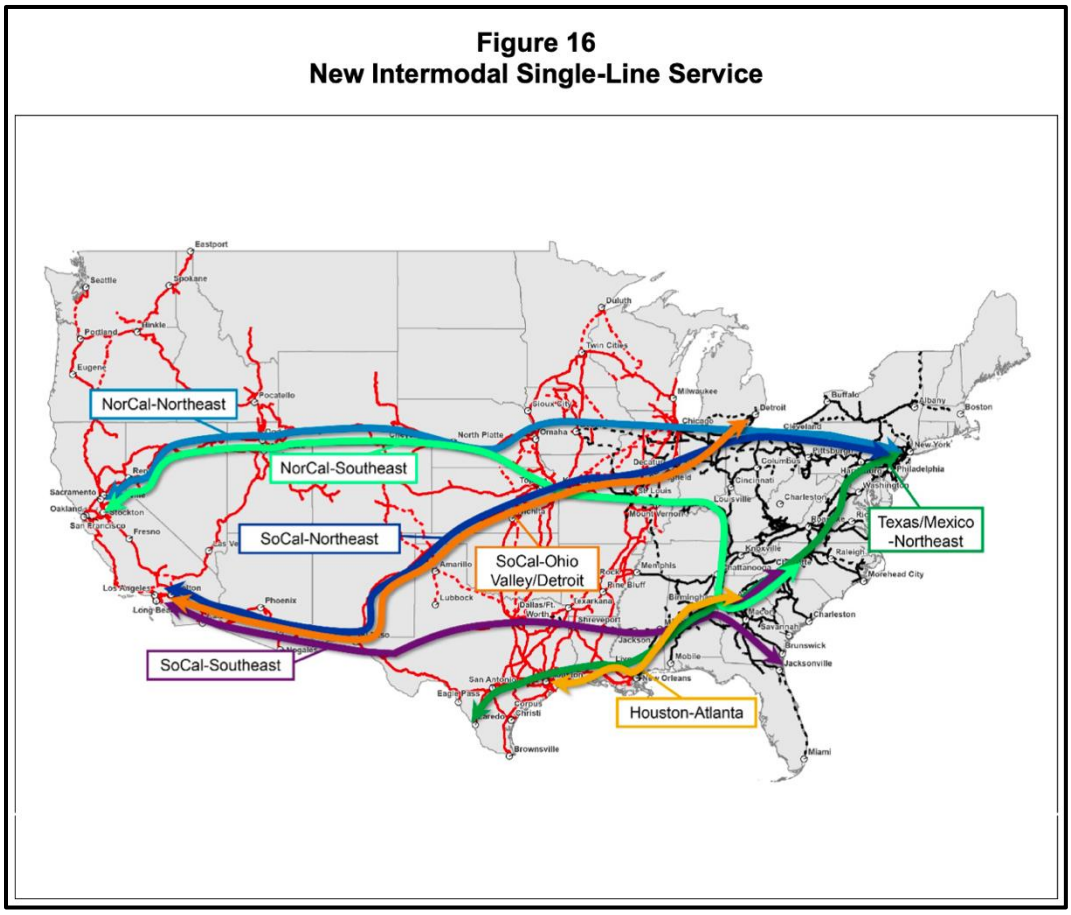
43. Nonetheless, even on this issue railroads have many ways of working together to improve their interline coordination by adjusting the location where crew changes occur. For example, before CP and KCS combined in 2023, [redacted]

B. The Kinds of Long-Haul Transcon Intermodal Services Applicants Tout Are Exactly the Kinds of Services that Independent Connecting Railroads Can and Do Establish Without a Merger

44. A principal focus of Applicants' claims about the benefits of their merger is the new long-haul intermodal services that they say will shift millions of truck movements from trucks to rail. Applicants have pointed to numerous new "run-through" intermodal trains that they plan to operate across the country between the legacy-UP network and the legacy-NS network. Figure 16 in the Verified Statement of Kenny Rocker and Ed Elkins is a good illustration of what Applicants plan, and is reproduced below as Figure 1.[11]

[11] Rev. App. at 1-310 (Rocker/Elkins V.S. at 36).

FIGURE 1
ROCKER/ELKINS FIGURE 16



45. As shown by CPKC's experience with handoffs at Shreveport and Meridian for the existing UP-NS transcontinental service via the Meridian Speedway, however, there is nothing stopping UP and NS from starting up these trains today. Indeed, the purple line on this diagram represents the Southern California-Atlanta/Charlotte/Jacksonville service that already runs via the route shown (via the Meridian Speedway) and relies on two interline handoffs at Shreveport and Meridian. The other train services depicted on this map would entail run-through interchanges at only three locations: Chicago, Kansas City, and New Orleans. If Applicants truly believe these services are capable of attracting millions of truck shipments and generating billions of dollars of new freight revenue for UP and NS, there is no sensible operational reason

why UP and NS could not institute run-through interline trains on these routes today without a merger.

46. In at least some of these cases, the same trains Applicants propose to start up are ones that UP and NS used to operate at least in part but discontinued, perhaps because of a lack of density supporting the operation. For example, UP and NS operated run-through intermodal service via Kansas City until early 2019, when it was cancelled as part of an initiative between the two railroads to "rationalize[] small volume lanes to reduce train complexity."[12] In 2025, the Kansas City routings sprang back into existence when UP and NS jointly announced connecting services between multiple terminals throughout the West and NS's Louisville intermodal facility via the Kansas City gateway (essentially matching much of the green line in Figure 1 above).

47. As to some of these proposed services, Applicants appear to suggest that the reason they need a merger is because routing new trains the way they plan would require investment on NS's network (east of Kansas City or between New Orleans and Atlanta), but as I explain below railroads routinely make investments to support profitable interline traffic flows.

48. The fact that UP and NS are not running more of these claimed new run-through trains today is a strong indication that they believe that the traffic density would not be there to support these services. The Application and its Operating Plan are really just a "story" of what could be possible with or without a merger if one imagined attracting millions of new intermodal loads off the highways and onto new long-haul rail services. CPKC's experience shows that growing traffic is not entirely a fairy tale, but it takes hard work, and where density would support services—like the East-West lanes Applicants claim to address—a merger is not needed

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[12] Press Release, Union Pacific, Interline Service Changes to Eastbound Intermodal Traffic Handled by UP and NS (May 31, 2019), https://www.up.com/customers/announcements/intermodal/allintermodal/IM2019-70.html.

to stand up truck-competitive services like the SMX or the UP-CPKC-NS Los Angeles-Southeast services discussed above.

C. The Reductions in Touchpoints Through Deeper Blocking that Applicants Tout Are Routine *Without a Merger* When Density Is Present

49. Applicants also claim that their merger will unlock the ability to build blocks of manifest (and also intermodal) traffic that move farther between work events (i.e., "touchpoints"), thereby reducing costs, improving reliability, and speeding up transit times between origin and destination.[13]

50. There is no doubt that optimizing the flow of traffic to reduce unnecessary work events is a core precept of modern railroad network design. But in the context of dense East-West transcontinental traffic flows, a merger is not needed to support this kind of optimization. Connecting railroads have long worked together to build long-haul blocks for one another that bypass unnecessary intermediate processing, even when the trains carrying those blocks do not continue intact across interchange gateways. For example, for traffic moving between the CPKC network and the eastern carriers via Chicago, CPKC's St. Paul Yard builds blocks for two NS yards beyond Chicago: [redacted][14] This means that neither CPKC nor NS needs to process these cars at the interchange point in Chicago. When CPKC's St. Paul-to-Chicago manifest train arrives at CPKC's Bensenville Yard in Chicago, CPKC moves these blocks across town to NS's Calumet Yard, where they connect to outbound NS manifest trains. NS reciprocates building Bensenville and St. Paul blocks at its Elkhart Yard.

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13 *See* Rev. App. at 2-629 to 2-638, 2-857 to 2-862.

14 Until late September 2026, CPKC built a Chattanooga, TN block for NS at St. Paul instead of a Conway block, but CPKC adjusted its blocking plan at NS's request.

51. Were CPKC and NS one railroad instead of two, those same blocks would still need to be built in St. Paul, and at Chicago the blocks would still have to make their way to outbound trains destined for points beyond Chicago, and that would almost certainly occur via the same path between CPKC's Bensenville Yard and NS's Calumet Yard that CPKC-NS interchange follows today. The fact that Chicago is an interchange point in addition to being the location of major yard operations does not meaningfully add to the inherent time needed to process cars through the terminal.

52. During my long railroading career, I have seen countless other examples of long-haul deep blocking between interline carriers, including UP building blocks for NS and CSXT, NS building blocks for UP and BNSF.

53. I expect that the network optimization process that UP and NS both undertook as part of their adoption of Precision Scheduled Railroading—what UP called "Unified Plan 2020" and what NS called "TOP21"—led both railroads to focus more on their own networks and to downplay interline connectivity over which they had less complete control. But history, experience and common sense show that in the dense East-West lanes that are most affected by the proposed UP-NS merger, there are abundant opportunities for UP and NS to work together to avoid unnecessary intermediate reclassifications of railcars without needing to merge. The same is true of optimizations between UP and CSXT and between NS and BNSF. If UP and NS were allowed to merge, the UP-NS optimizations would no doubt take precedence over any efforts to hone the UP-CSXT or BNSF-NS routing options: UP's facilities will only have so much capacity to support deep blocking and other measures that improve network flows, and a focus on optimizing flows between legacy UP and legacy NS networks will take resources away from connections with other networks. The long run likely would be a downward spiral that leads to

less density moving via these other connections, which in turn would spur further degradation in the level of service offered for that traffic, and so on.

D. Processing of Railcars at or Near Major Terminals and Gateways Can Be Highly Efficient and Support a Competitive Interconnected Rail Network

54. As I noted above, properly understood, processing of railcars at or near the Mid-Continent gateways is a feature and not a bug of the interconnected U.S. rail network. It is no coincidence that interchanges via those gateways do not involve lonely interchange tracks in the middle of a cornfield somewhere, but occur in the middle of some of the most important industrial centers in America's heartland. Those gateways are not simply locations where UP and NS connect with one another, but where each of them connects with multiple other railroads, often including numerous smaller railroads serving clusters of important customer facilities.

55. As a result, it should not be surprising that each of these gateways has major railroad facilities that are designed—as a feature of the rail network rather than a disadvantage—to support the rail network by carrying out functions that extend far beyond just passing-through UP railcars directly to NS rails and vice versa. Just as highly dense flows of traffic can bypass processing at the major gateways, less dense flows benefit from intermediate processing taking place at network nodes where connections can be made most efficiently and individual carloads can be consolidated into blocks for their next movement (whether on the same railroad that brought the traffic or on a different one via interchange).

56. In the manifest carload space, there is no better illustration than Chicago. UP, NS, BNSF, CPKC, and CN all operate major yards within the Chicago terminal. Those facilities exist not to add unnecessary friction but because Chicago is the sensible place for the work of those facilities to be carried out.

57. I will illustrate using CPKC's Bensenville Yard as an example. Because of its location in the Chicago Terminal, Bensenville acts as an efficient manifest hub for CPKC's network. It supports daily local train connections to NS, UP, Indiana Harbor Belt ("IHB"), and Belt Railway of Chicago ("BRC"). BRC acts as an intermediate party for CPKC's connections at Chicago with CSXT, BNSF, CN, and smaller Chicago-area carriers. Most of the manifest traffic arriving at Bensenville Yard is blocked by connecting railroad at CPKC's St. Paul Yard and Bensenville amalgamates that traffic for delivery to each of those connections. In addition, CPKC also receives an average of about 100 railcars from local customers that CPKC switches in the Chicago Terminal.[15]

58. Based on my experience with Chicago-area operations, almost all Class Is have or until recently had facilities in or near Chicago that perform similar functions. UP's Proviso Yard, NS's Calumet Yard, CN's Kirk Yard, and until recently CSXT's Barr Yard all played roles similar to Bensenville. The processing that these facilities perform is not a "cost" of the interchange network, but an essential set of functions to sort manifest traffic so that it can move on the railroads and routes necessary to get it to its destination. Combining UP and NS will not make it any less important for UP to operate Proviso or NS to operate Calumet; those yards make sense because Chicago is an important hub for reasons far beyond connectivity between UP and NS.

59. Another key addition to my point about Chicago, and just as important, is that the dwell associated with the processing of railcars at or near Chicago is not a problem with "interchange" or "interline" rail solutions, but an advantage associated with having efficient

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[15] Workpaper, "Chicago Cars to and from Local Customers.xlsx."

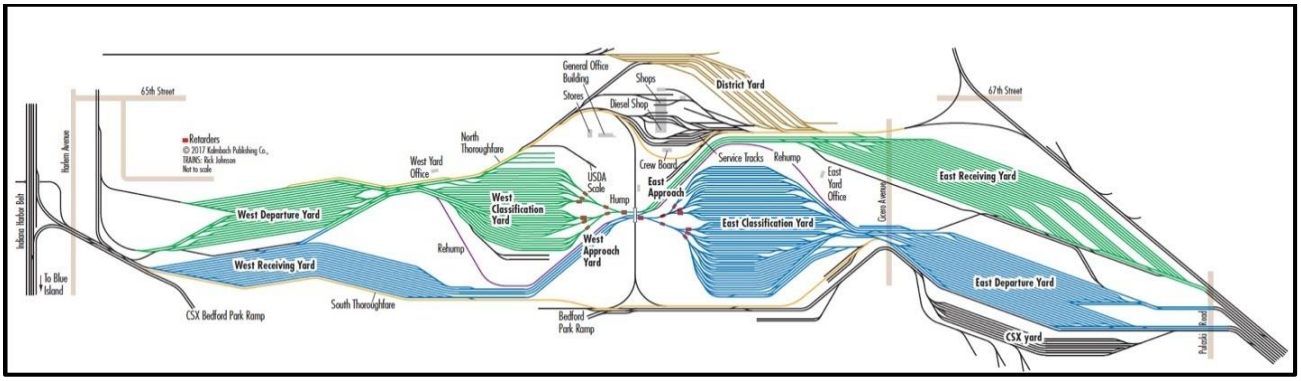
facilities located at or near the Mid-Continent gateways where so many railroads and rail customers come together, and where those facilities can more efficiently gather and distribute traffic while also supporting the needs of proximate rail customers.

60. Perhaps the premier "interchange" facility in the Chicago Terminal—BRC's Clearing Yard—proves the point. One could look at Clearing—as Applicants seem to—and see a source of 24-hour-plus delays in the movement of freight across the country. But that perception is just wrong. Clearing Yard is a vital and efficient facility that saves time and resources that would have to be devoted to the processing of railcars elsewhere (elsewhere in Chicago or in other facilities upstream or downstream from Chicago) if Clearing did not exist. Because Clearing Yard sits in the center of the Chicago Terminal and serves as a "clearinghouse" (the actual historical source of its name) for traffic moving through the terminal, it very efficiently consolidates traffic flows from multiple sources and distributes them optimally to multiple recipients without unnecessary fragmentation or duplication of effort.

61. Typically, BRC/Clearing Yard's issues (when there are delays) come from trains entering the wrong yard or at the wrong time as compared to the schedule. During heavy periods of traffic, there may be some delays, but this is not BRC's fault.

62. Clearing Yard has two parallel humps that process 3,000 or more carloads of traffic per day. A diagram of Clearing is set forth in Figure 2 below.

Figure 2[16]
Diagram of BRC Clearing Yard



63. Clearing receives a total of about 25 or more daily inbound trains, which deliver cars into the West Receiving Yard (the blue yard on the left of the diagram) or the East Receiving Yard (the green yard on the right of the diagram). Those railcars are then processed over one or the other of the directional humps in the middle of the yard, descending down the slope of the hump into one of the 90 classification tracks (green tracks on the left, in the West Classification Yard; blue tracks on the right in the East Classification Yard), that assemble approximately 50 daily blocks for distribution back to rail carriers. In the process, Clearing consolidates smaller flows into denser ones that support efficient downstream movement across the network to the East, to the West, or to shortlines and customer facilities in the Chicago area.

64. Specifically, Clearing Yard builds five daily blocks for four smaller railroads in the Chicago area (*i.e.*, Wisconsin Southern (WSOR); Chicago, South Shore & South Bend (CSSSB); Chicago Rail Link (CRL), and Indiana Harbor Belt (IHB)) by consolidating small numbers of inbound cars from multiple Class Is serving Chicago (separate from any blocks Clearing Yard builds for itself to serve local industry). Otherwise, each Class I would need to

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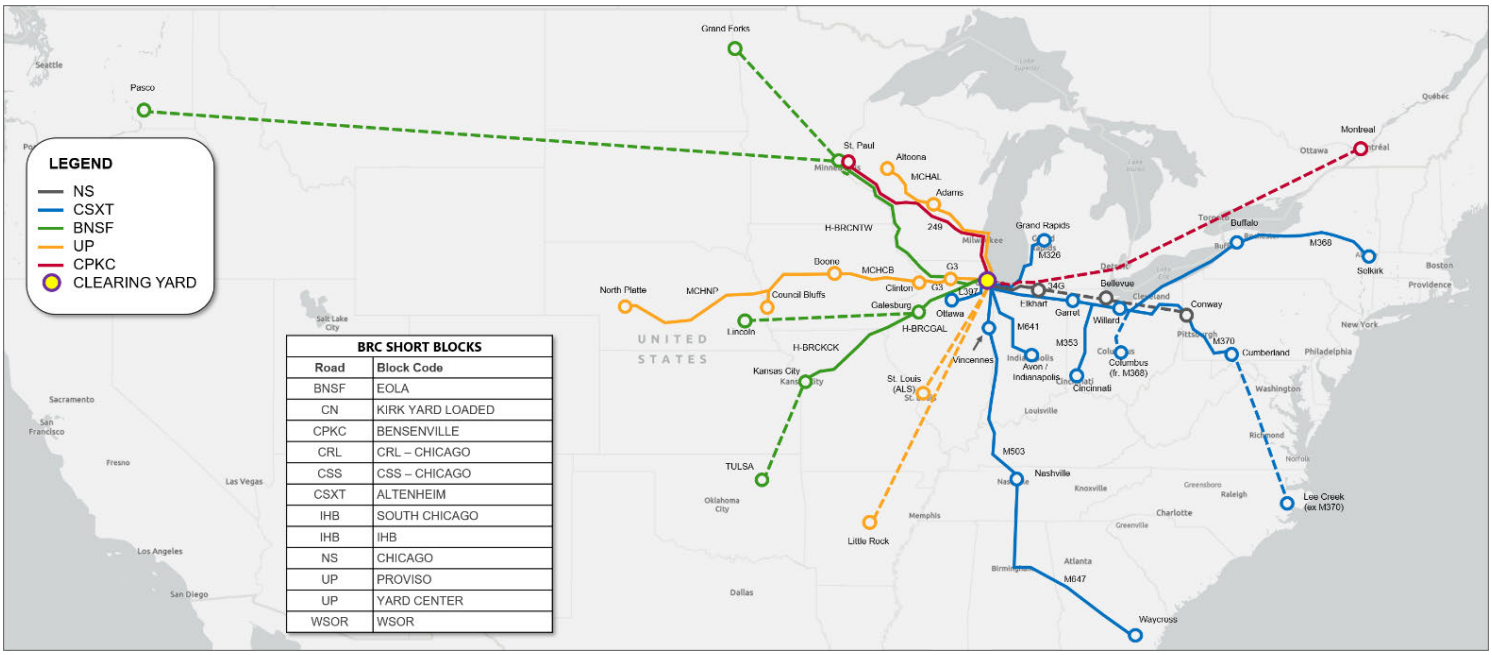
16 *See* Steve Sweeney, *Clearing Yard in Chicago as of 2016*, Trains (Dec. 2, 2021), https://www.trains.com/trn/train-basics/abcs-of-railroading/clearing-yard-in-chicago-as-of-2016/.

find a way to get cars destined for these railroads across the terminal for separate handoffs to each of the smaller railroads.

65. The same principle also applies to Class I-to-Class I interchanges. Clearing builds 45 daily blocks for the Class I railroads serving Chicago that, because of Clearing's consolidation function, often allow long-haul movements out of Chicago that avoid unnecessary processing at facilities nearby. Figure 3 below maps the blocks that Clearing Yard built during September/October 2026 and the trains on which those blocks departed Clearing Yard.

FIGURE 3
TRAINS AND BLOCKS BUILT BY BRC'S CLEARING YARD[17]



66. If Clearing Yard did not exist, there would need to be many more trains operating through the dense Chicago terminal area, and much more classification work performed less efficiently at decentralized facilities scattered across the region.

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17 Workpaper, "BRC Figure 3 Final Workpaper.xlsx."

67. Not all Chicago interchange traffic relies on Clearing Yard. As noted above, CPKC's inbound manifest traffic flows are sufficiently dense to support building blocks at St. Paul for [redacted] And NS builds blocks for Bensenville and St. Paul. However, for flows that are less dense or for which the connecting carrier's facilities are at greater distances from Chicago (as is the case with CSXT today), CPKC delivers cars to Clearing Yard for consolidation with traffic from other railroads. Such consolidation of traffic from multiple sources supports Clearing building many more deep blocks that include traffic from CPKC and destined deep into the manifest networks of all of the Class Is.

68. To be sure, not all use of BRC's Clearing Yard by Class I railroads is efficient. Some carriers, especially UP, have misused Clearing Yard by using it frequently as an available overflow facility for the processing of railcars that by design ought to have been processed at their own facilities. In UP's case, when its own yards become overwhelmed, which occurs with some regularity, UP has routinely delivered railcars to Clearing Yard's West Receiving Yard, designed for processing via Clearing's East Classification bowl for movement to eastern carriers, that are instead destined for *other points on UP's network west of Chicago.* When that happens, cars must be processed over the hump and routed into the East Receiving Yard and then processed again over the hump into the West Classification yard *for movement back to UP*. This kind of operation is known as a "re-hump," and it unnecessarily consumes capacity and gums up Clearing Yard's processes.

69. BRC works hard to establish financial incentives aimed at discouraging this type of use of Clearing except where its "clearinghouse" function provides the most efficient path for moving railcars in the direction of their onward travel. But those charges do not prevent UP from misusing Clearing when it suits its interests. To illustrate the degree of the problem, from

January to March of 2026, CPKC paid zero "re-hump" charges at BRC. UP unfortunately is not getting the message. It had almost 8,000 billable re-humps in the same period. That is about 90 per day.

70. Contrary to the premise of Applicants' merger case and their claims about the benefits of eliminating interchanges, the classification functions at Chicago and other Mid-Continent gateways are not and should not be viewed as a drag on the efficient movement of railcars across the network. Instead, they expedite that movement while also supporting the optionality associated with North America's interconnected rail network that (as structured today) gives shippers options for how to move traffic between their points of origin or destination and major gateways like Chicago.

71. In other words, the 19-20 hours that rail traffic typically spends being processed at Clearing Yard and other terminal-area processing facilities actually expedites the movement of that traffic across the rail network by supporting the consolidation of traffic from multiple carriers destined for a given destination region and railroad. If Clearing Yard and others like it did not exist to perform this work, the sorting of cars would have to move upstream to other facilities, where it would consume capacity less efficiently and consume a greater amount of time and expense.

72. The take-away for purposes of the UP-NS merger proposal is that Applicants' claims that they will eliminate days of dwell at places like Chicago by converting UP-NS movements to single-line service are both not credible and at the same time a major source of concern that their real intention is to discontinue or downgrade the extent to which they support the continued efficient interchange of traffic moving between their own post-merger network and other carriers at these gateways.

73. Chicago is not unique in this regard. For similar reasons, it makes perfect sense that each of the major gateways is home to multiple significant rail yards. They support not just the movement of traffic through those gateways but the processing of traffic to and from local shipper facilities at these major industrial hubs as well as the consolidation and distribution of railcars between multiple inbound railroads and multiple outbound railroads. The role played by TRRA in St. Louis, supported by multiple yards operated by independent carriers (CPKC, UP, NS, and CSXT) is illustrative, as is New Orleans where CPKC, CN, UP, BNSF, and CSXT all have facilities supporting the interchange of traffic among multiple connecting carriers and the New Orleans Public Belt connecting with the port and multiple shipper facilities.

74. Put another way, at any major terminal node on any Class I railroad's network, no matter how far away from a Mid-Continent gateway, railroads operate large yards to process railcars moving across their network and to/from shipper facilities and shortlines in the vicinity of those terminals. Whether Shreveport on the CPKC network, Houston on the UP network, Minneapolis on the BNSF network, Pittsburgh on the NS network, or Cincinnati on CSXT's network, manifest trains are broken up and reclassified, blocks are swapped, and as a result railcars experience dwell. No amount of PSR-based network design can avoid the need for processing and the associated time it takes to perform that work.

75. Indeed, many of these yards remain and continue to conduct major railcar processing functions at locations that used to be major interchange gateways. Just because the "interchange" went away as a result of past mergers, the processing did not. Cincinnati's Queensgate Yard, where B&O and C&O connected with the Louisville & Nashville Railroad prior to the merger that created CSXT is one example. Similarly, Applicants acknowledge that

UP's Alton & Southern Gateway Yard in East St. Louis will not stop processing railcars there if UP and NS were allowed to combine.

76. Once this is understood, it is easier to see the fallacy in Applicants' core hypothesis about their merger: that merging will magically eliminate massive amounts of unnecessary delay. In the context of the dense East-West flows that this proposed merger will affect, the processing that must occur to move traffic from origins and to destinations across the continent has to be performed somewhere, unless Applicants plan to disengage from handling or prioritizing the traffic that is not moving within a closed-loop UP-NS environment—a strategy that would harm the entire U.S. rail network.

77. ***The same principles apply equally to the intermodal domain***. Thus far, I have focused on manifest traffic, but Applicants make the same errors when they describe the problems associated with "interchanging" intermodal traffic at major Mid-Continent gateways.

78. I have already explained how, for intermodal flows that support train load handoffs between carriers, modern Class I railroads have mastered the art of run-through trains and run-through blocks (via steel wheel interchange), and no merger is needed to accomplish this goal. Assuming there is train- or block-level traffic density, a UP-NS interline intermodal train between Northern California and New York (like the blue line on Figure 1) does not need to be broken up and "rubber-tired" across Chicago any more than UP needs to break up that train at places like Salt Lake City or Omaha, or NS needs to do so at Toledo or Harrisburg. The UP-CPKC-NS service between Los Angeles and the Southeast via Shreveport and Meridian proves that.

79. For traffic moving in origin-destination lanes that are less dense, the fact that the Mid-Continent gateways involve the transfer of shipments from one railroad to another,

sometimes by rail and sometimes by short-haul drays, is an advantage rather than a disadvantage. The clustering of intermodal terminals at or near the major gateways supports the gathering of efficient volumes of traffic and supports the efficient interchange of intermodal containers and trailers.

80. Intermodal terminals are located at the Mid-Continent gateways in large part because those gateways are major centers of transportation demand. More than a quarter of the U.S. population is located within a day's truck drive of Chicago, for example, while the Chicagoland region is itself a massive local market for goods.[18] These core demand factors, coupled with the ability to connect to multiple railroads across these gateways, support the intermodal train network in the East and West that fans out from those gateways in both directions. If major intermodal network nodes like Chicago did not exist, there would be fewer intermodal lane pairs that supported service at all.

81. Applicants claim that the current situation is bad because (at least at Chicago and Memphis) intermodal containers are frequently moved between different railroads' intermodal terminals by highway (*i.e.*, "rubber-tired" from one terminal to another) rather than staying on railcars for a "steel-wheel" transfer between terminals. This practice, however, is not necessarily an inefficient feature of "interchange." Instead, when it is used, it can make sense for the railroads involved because of the low density of movements in specific lanes. A "rubber tire" connection means the containers on an individual railcar were not all going to the same destination, or that there were too few cars going to the same destination to justify a move by rail

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[18] These advantages are well recognized in the logistics arena. *See, e.g., Chicago Food Distribution: The Strategic Benefits of a Midwest Hub*, (Dec. 30, 2025), https://northpointfresh.com/guides/chicago-food-distribution/; Gavin Francis, *Cargo Pilots Meet in Chicago for Three-Day Summit*, ALPA (May 1, 2023), https://www.alpa.org/articles/2023/05/cargo-pilots-summit.

to a connecting outbound train service. Indeed, this condition is not always associated with interchange. For example, CSXT delivers to CPKC at the Myrtlewood gateway intermodal cars bound for Mexico that are loaded with containers moving to multiple different Mexican destinations. CPKC transports those cars to its Salinas Victoria terminal (near Monterrey), transfers containers destined to local markets to truck, and then reloads railcars with containers for Puerto Mexico (near Mexico City, deeper into Mexico). The Mexico City-bound containers are not rubber-tired but they are "reclassified" at Salinas Victoria, enabling both sets of moves to benefit from greater density.

82. The impetus for this kind of processing is not the movement from one railroad to another, but the need to make connections for which distribution by individual highway movements (or chassis within a terminal) is more efficient than building an entire train or block at a facility upstream that can move all the way to its ultimate destination by rail.

83. To illustrate, consider intermodal service between Mesquite, TX on UP's network in the West and Chambersburg, PA on CSXT's network in the East. Not surprisingly, there are not enough daily movements between these points to support a run-through train or run-through block. If there are a few containers making this move daily, conceivably the origin terminal could load those containers on one or more railcars that were destined for Chicago, IL, so that the railcars could be interchanged via rail. And this steel wheel interchange was in fact announced by UP in January of 2025.

84. CPKC does that today in Chicago for eastbound containers destined for NS's network, sending them daily to NS's Calumet Yard via "steel wheel" interchange. CPKC also delivers intermodal cars to CN in Jackson, MS via steel wheel interchange. But more generally the origin railroad would have to consider the implications of interchanging a handful of

intermodal railcars to another railroad for its origin terminal operations; should it set cars aside for those specific containers, which may arrive at different times in advance of train departure? That would have a cost. Similarly, at Chicago, the western railroad would need to collect a group of cars going across town to the eastern railroad's terminal and upon arrival those cars would need to be sorted onto individual outbound trains. All of that would have a cost, including the consumption of scarce terminal capacity. It may well make perfect sense (in terms of cost and service performance) instead to load containers onto a Chicago-bound train, ground them at the Chicago terminal, and then fan them out to receivers and other train connections via the highways.

85. Importantly, bringing the two terminals under common ownership is not going to change this calculus, because it will not magically generate the additional lane densities necessary to make a steel-wheel block-level connection viable. Think about it this way: if a steel-wheel block-level connection at Chicago were to enable a big enough service improvement to attract the volumes needed to support it, the railroads involved would have every incentive to establish that service today.

E. Connecting Railroads Do Make Investments to Support Profitable Interline Traffic Flows

86. One of Applicants' explanations for why they need a merger is that independent railroads lack the incentives or ability to make investments to support improvements to interline rail service. That argument is not credible.

87. First of all, to the extent the point is that uncertainty about the financial return on costly investments may deter railroads from investing to increase volumes or improve service, that concern applies to all railroad investments—not just those involving interline traffic. The

more speculative the returns, or the shorter the term of the anticipated traffic gains, the harder it will be to justify a major investment.

88. Second, in assessing the likely returns from an investment, no railroad regards a dollar earned from interline traffic as less valuable than a dollar earned from local traffic. What this means is that railroads can and do make large investments to support interline traffic, when they are sufficiently financially strong to support those investments. Examples abound across the rail network. Consider UP's 1990s-era investments to upgrade its mainline between Omaha and Chicago to support improved service for "transcontinental" rail traffic, all of which was interchanged in Chicago. Consider CSXT's massive investment to double track the legacy Baltimore & Ohio mainline across Indiana to support expanded volumes of traffic moving to/from the Chicago gateway. The list could continue.

89. CPKC's own more recent experience confirms railroads' incentives to make investments based on returns from interline traffic opportunities. In 2024, CPKC invested $50 million to acquire MNBR's Meridian-Myrtlewood line, while CSXT simultaneously reacquired its line between Myrtlewood and Montgomery, AL. CPKC and CSXT have already spent upwards of [redacted] million, with plans to spend more, all based on anticipated growth in intermodal and manifest traffic on the line, 100% of which would be interline traffic.

90. CPKC has also invested heavily to support interline traffic opportunities elsewhere on its network, including on its lines in Canada that feed traffic to UP's network in the Pacific Northwest via the Kingsgate/Eastport gateway. CPKC has invested in multiple sidings and siding extensions in that corridor over the past few years, none of which supports single-line traffic. Similarly, CPKC has added capacity to support the movement of ethanol, frac sand, and

other commodities from points on its U.S. network in the Upper Midwest to Eastern U.S. destinations, all of which depend on interline connections to eastern railroads.

91. Applicants contend that the post-merger investments they plan would not occur unless UP and NS could "align" their incentives by merging. To be sure, there may be times when different railroads perceive market opportunities differently. But the specific investments Applicants are planning here—like NS's proposed post-merger capacity expansions between Kansas City and Springfield, IL—are exactly the kinds of investments that railroads have long made to improve their own networks to support interline traffic opportunities. If UP and NS really stood to make billions on the new transcontinental intermodal traffic that would flow through Kansas City over the NS line between Kansas City and Springfield (which, by the way, is the same route already used by *joint-line intermodal service that UP and NS have launched* between Kansas City and Louisville), it would not be hard for them to justify spending the money.

92. If one of these railroads needed formal protections for investments it might choose to make or support on a connecting railroad, there are many models for obtaining those protections, ranging from trackage rights or haulage rights arrangements, such as UP negotiated with CNW in the early 1990s before it acquired control of that railroad; minority investment mechanisms, such as UP has with FXE in Mexico; and formal joint ventures, such as NS has negotiated with KCS (to form MSLLC) and Pan Am Railway (to form Pan Am Southern).

F. *CP/KCS* Enabled New Single-Line Services that CP and KCS Could Not Have Supported Absent a Merger Because of Insufficient Density

93. Finally, I would like to address a question the Board may have about the consistency of the points outlined above with the positions CPKC took advocating for approval of our own CP-KCS combination. To me, the answer is simple: before CP and KCS combined,

there was not enough density of traffic moving between them, or moving on the CP line north of Kansas City in conjunction with all carriers combined, to support the kinds of run-through and deep blocking that are possible between all of the Class Is connecting via the Mid-Continent gateways.

94. Those limitations did not magically go away because CP and KCS were commonly controlled post-merger. It was only because of the traffic gains CPKC was able to achieve by competing more effectively head-to-head against UP and BNSF, which already had networks that operated across the entire West on both sides of Kansas City, that it could support the kinds of meaningful operational changes that improved service and created competition in this corridor.

95. This proposed merger is completely different for the reasons I have explained. UP and NS already have everything they need to improve their services, and they do not need to merge to do so.

IV. The Traffic Changes Anticipated by Applicants from Their Merger Would Have Serious Adverse Operating Impacts on CPKC's Ability to Compete Using Shared Assets

96. The transcontinental rail network that UP wants to create by acquiring NS would not be isolated from the rest of the U.S. rail network. Along many vital rail corridors, and at many critical chokepoints across the network, other railroads would depend on fluid and efficient access to the rail lines and terminals where UP operates and, in many cases, exercises control. Applicants assert that the merger will dramatically increase the volume of traffic on many of those lines while simultaneously altering operating patterns significantly. Applicants recognize some need to invest in capacity on their own lines in certain areas to accommodate the

significant traffic shifts they forecast, but their plans fail to address the serious adverse impacts Applicants' plans would have on the operations of others.

97. UP-NS should be required to address the serious adverse impacts from their merger in the event the Board approves it. I want to be clear: I continue to believe that the Board should reject the UP-NS merger. Nonetheless, I understand CPKC has proposed some conditions targeted at reducing some of these operational risks. Although the proposed protections could mitigate particular operating risks, they would not replace the competition lost through the merger or resolve my broader concerns about it.

98. As part of this, CPKC has proposed a service assurance framework (the "SAF") in its Comments. If the Board approves the merger, I support requiring this framework to give conditions imposed by the Board to safeguard service assurance and competitive access a realistic chance of working in practice. The SAF appropriately calls for the appointment of an independent, Board-appointed monitor funded by UP-NS, who would be responsible for monitoring compliance and proactively addressing operating problems and disputes. CPKC's experience interacting with UP as a trackage rights tenant teaches that it will not be feasible to try to address future issues of UP-NS's compliance with Board conditions through the typical process of negotiation and escalation followed by potential litigation before the Board or an arbitrator. That kind of process would consume too much time and expense to assure that UP-NS's compliance is policed in real time. In my experience, attempts to resolve problems with UP are too often marked by slow responses, resistance to addressing the problem, obfuscation through the reference to irrelevant matters and hard-line negotiating positions that prolong disputes while operating difficulties continue.

99. For similar reasons, the Board should not rely on a joint service committee or similar mechanism to safeguard post-merger adherence to trackage rights and other conditions. In my experience sitting on joint committees with UP, UP takes advantage of the process requirements associated with such committees to drag out resolution of issues, leading to protracted, unproductive negotiations while service problems and congestion spiral. [redacted]

100. Nor should the Board be the first screen for every compliance problem. Requiring affected carriers and customers to bring every problem directly to the Board would risk overwhelming it. As a result, should the Board approve the merger (which we vehemently oppose), an independent monitor should be established. A monitor should be someone who has the experience and knowledge necessary to serve as a standing resource that understands the affected operations, reviews compliance and planned changes, and helps resolve problems promptly—before issues fester into harm to customers or render competitive access rights ineffective. UP-NS should provide regular reports and respond promptly to the monitor's requests for necessary records, data, and explanations, whether or not a dispute is pending. The

Board should impose strict timelines for all parties involved in the monitorship (including the monitor) to resolve compliance issues because (as I explained previously) even small service problems must be promptly resolved or they can compound and affect the entire network. The monitor should be accountable to the Board, which should retain ultimate authority and provide expedited review when needed.

101. The SAF and related operating conditions also need meaningful performance measures. The Board should convene an expedited technical conference where the Board (in consultation with a range of stakeholders) can develop and adopt objective service standards and performance-based triggers appropriate to each protected operation. CPKC cannot speak for every customer; customers should explain their service requirements and the consequences of missed service. The Board should resolve disagreements, establish binding deadlines, and ensure that the initial standards, monitoring, reporting, and enforcement arrangements are operative before consummation. Applicants should not be able to postpone protection by withholding information or agreement. The Board should also retain authority to revise the measures as traffic, operations, customer needs, and experience change. Establishing and maintaining these protections across the combined network would itself be a substantial and continuing undertaking.

102. The standards should address performance relevant to the effectiveness of the appropriate remedy. For access to jointly-used tracks and switching access, this would include as applicable assuring reliable transit across shared track, effective interchange on shared track, timely performance of reciprocal switching including timely movement from customer facilities to our Baton Rouge yard and timely pickup once cars are available among other metrics. For gateway conditions, this would include prompt interchange in blocks and performance origin to

destination as well as other metrics. Metrics should be set through a technical conference. The standards should require consistently reliable service for the substantial majority of covered movements or required service days, with recrews occurring infrequently and affecting only a minimal percentage of covered movements. CPKC's service performance should be at least comparable to Applicants' performance for comparable movements, and its recrew rates should be no higher than Applicants' rates for such movements. The Board should establish appropriate comparisons and minimum acceptable service requirements, taking account of customer needs, representative operating conditions, and more protective existing contractual obligations. The Board should ensure that any deficient performance by Applicants is not a basis to justify equally poor treatment of CPKC's trains.

103. Before consummation, the Board should, through the technical conference, adopt the applicable thresholds, covered movements and locations, measurement methods, reporting requirements, and relationship between each performance failure and the corresponding remedy. Compliance with performance-based springing triggers should be measured over 30 days. Notice by CPKC identifying a failure over the initial 30-day period should begin a 30-day cure period, during which Applicants must achieve the applicable standard. If the applicable standard remains unmet over the cure period, CPKC should be entitled to activate the corresponding preauthorized remedy by supported notice subject to the predicates specified for that remedy (the "30/30 process"). Any existing contractual duties and independent conditions enforceable without a performance trigger should remain effective.

104. In this section, I address five key areas where the substantial merger-related traffic increases claimed by Applicants—from anticipated traffic growth and planned re-routes of

existing volumes—would cause serious havoc if not addressed by conditions requiring infrastructure investments and operational adjustments:

- Impacts in the Kansas City Terminal;
- Impacts on trackage between Houston and DeQuincy, LA, which UP shares with CPKC, BNSF, and Amtrak;
- Impacts at Meridian, MS, where NS's New Orleans-Birmingham line crosses and connects with MSLLC and two other CPKC lines;
- Impacts in the Chicago Terminal; and
- Impacts at the New Orleans gateway.

If the Board approves the UP-NS merger, it should impose enforceable conditions addressing these adverse impacts, including requirements for capacity investments, imposition of strict service standards and permanent oversight. These service standards should not merely demand equal treatment by UP; in some cases (such as between Victoria and Robstown) CPKC's use of joint trackage involves premium service trains that UP does not operate, and thus equal treatment would mean discriminatory treatment. Rather, the Board should also hold UP-NS to benchmarks established in absolute rather than relative terms. We do not want this merger to result in a service meltdown that does not technically violate the conditions just because service has melted down equally for everyone.

A. The Kansas City Terminal

105. Applicants propose dramatic changes in the way they operate in the Kansas City terminal area. Most fundamentally, Applicants plan to increase the volume of traffic moving between UP and Legacy-NS via the Kansas City gateway while at the same time shifting that traffic to a new route that would conflict directly and substantially with key routes upon which

CPKC and others rely.[19] Instead of interchanging with NS via the Hannibal Bridge (as UP does today), Applicants plan to shift multiple trains per day to a route via Kansas City Union Station, KCS Junction, Airline Junction, the single-track Truman Bridge, and Birmingham, MO.

106. As described below, Applicants' shifted and expanded operations will conflict directly with CPKC's route through the Kansas City terminal for trains between Chicago and Shreveport, bulk trains originating in the U.S. Midwest for Mexico and Southern U.S. destinations, premium intermodal service between Chicago and Mexico, as well as all of the trains CPKC moves into and out of its Knoche Yard in Kansas City. Applicants also plan to increase the work performed at NS's Voltz terminal substantially. Because the leads to that facility are located just east of the Birmingham interlocking (with the intermodal tracks being less than 4,000 feet east and the automotive terminal tracks only about 1,000 feet east), Applicants' planned work will block the movement across the interlocking for CPKC trains moving between Kansas City and points north.

107. On top of all of this, Applicants' settlement with CN would add additional train movements and further complexity directly in the path of CPKC's route through the Kansas City Terminal. CN would acquire or gain trackage rights over UP's lines between Kansas City and St. Louis, which would be accessed from UP's Neff Yard. Those operations would cross over the same tracks that CPKC must use to reach its route to Shreveport as well as its own route between Kansas City and St. Louis.

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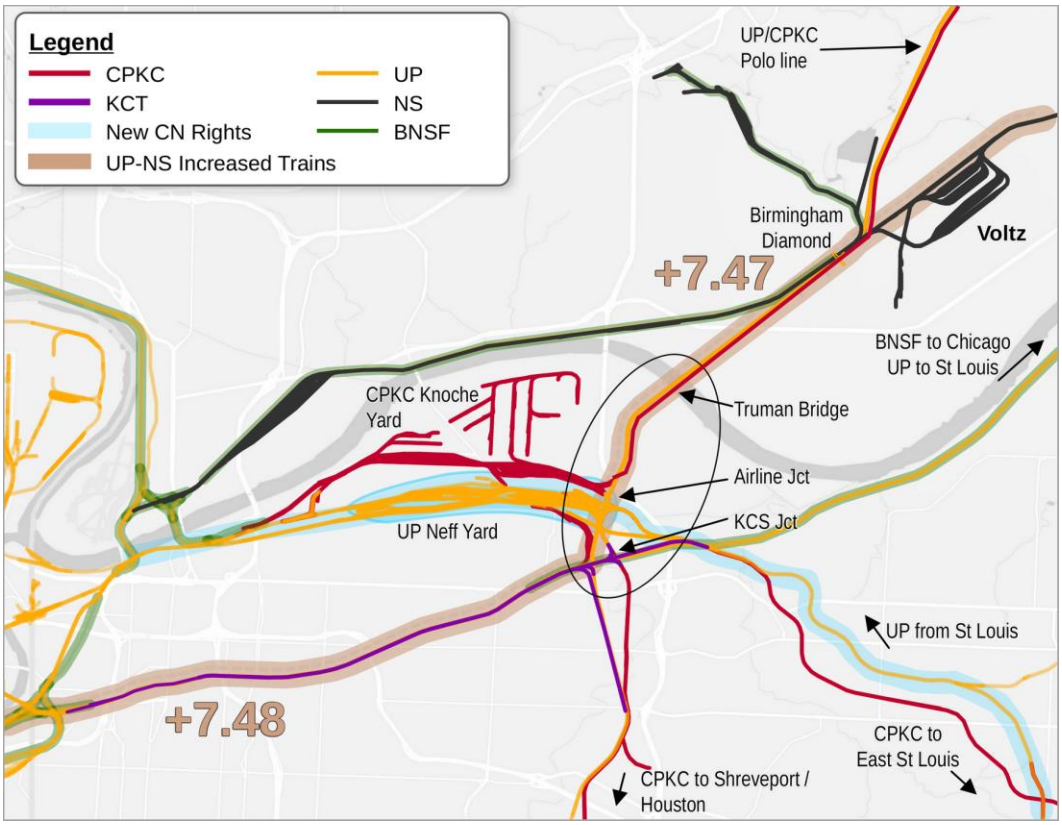
[19] *See generally* Rev. App at 2-903 (Turner Second Errata V.S. ¶ 90).

108. Figure 4 below depicts Applicants' and CN's proposed post-merger operations in the corridor between Birmingham and KCS Junction on the east side of the Kansas City Terminal.

FIGURE 4
EASTERN PORTION OF KANSAS CITY TERMINAL
SHOWING APPLICANTS' PLANNED TRAFFIC SHIFTS AND CN PROPOSED OPERATIONS

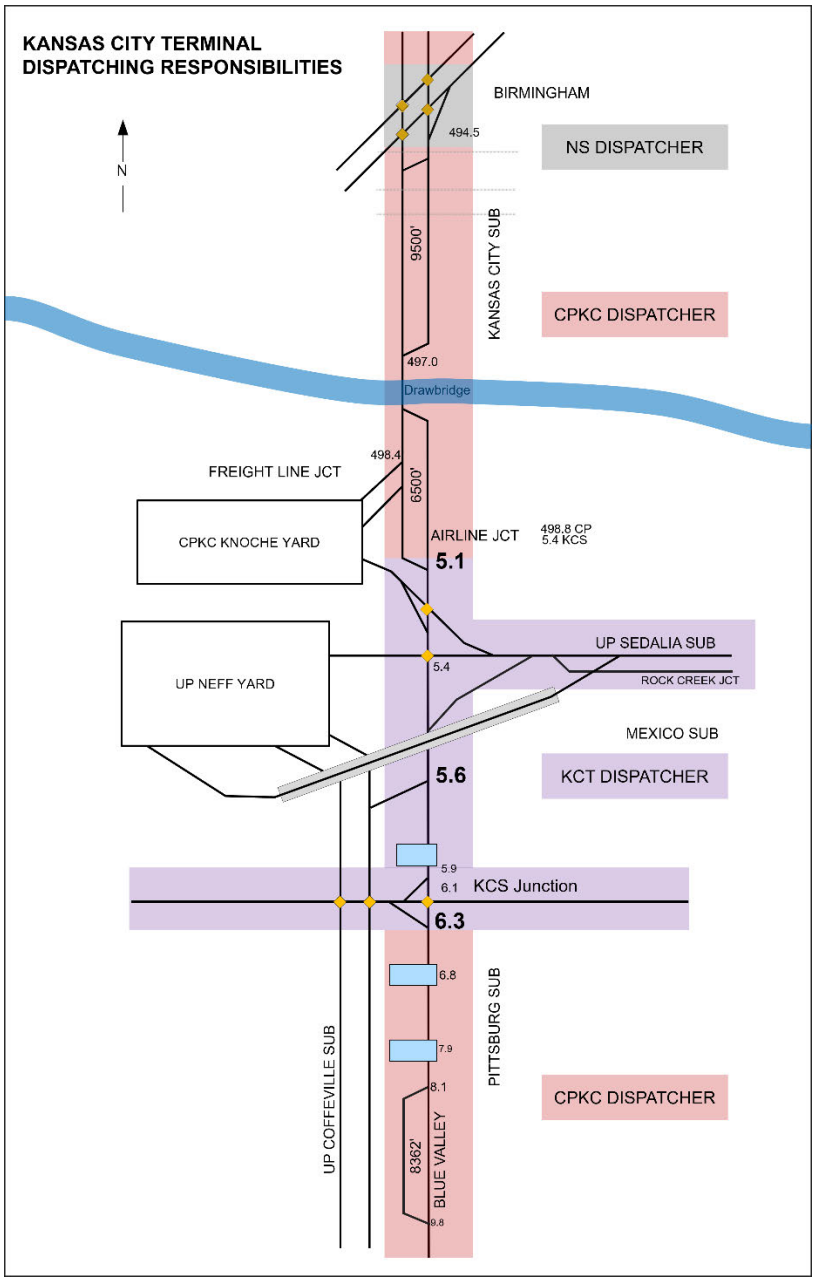


109. As Figure 4 shows,[20] the route of UP-NS's new and re-routed trains, plus the proposed new CN operations, would be superimposed directly on top of the routes that CPKC relies upon to pass through Kansas City and access CPKC's Knoche Yard. A significant portion of the route UP-NS operations would traverse is single-tracked, specifically the portion between

20 *See* EI-34224 at 240, 246 (filed Apr. 30, 2026) (Master Segment Table).

KCS Junction and Airline Junction and the Truman Bridge, as shown in the diagram set forth as Figure 5 below.

FIGURE 5
TRACK CONFIGURATION AND DISPATCHING RESPONSIBILITIES
BIRMINGHAM TO KCS JUNCTION (MP 6.3)



110. The balkanized allocation of dispatching responsibility in this portion of the terminal will heighten the risks, especially with UP-NS and now CN together having effective control of KCT. Currently, between KCS Junction and Birmingham, dispatching control is split three ways, meaning that concurrence of three separate parties is needed to complete any move across this segment. NS controls the Birmingham diamond crossing, CPKC controls dispatching north of Birmingham and between Birmingham and Airline Junction, and KCT dispatches the segment between Airline Junction and KCS Junction, as shown in the diagram in Figure 5. KCT's dispatching role here is especially concerning given the potential that following a UP-NS merger, UP together with CN would effectively control KCT and potentially have inordinate influence over KCT dispatching of this critical segment.

111. UP's and NS's operations here already consume a disproportionate share of capacity in this part of the terminal. UP already blocks the diamonds at Southwest Junction, where KCT has dispatching control, often in upwards of two hours per day departing just a handful of trains from Neff Yard to the East that UP must double out because of their length, consuming extra time. And NS already occupies the Birmingham interlocking, where it has dispatching control, for hours each day for train movement and work, including at its Voltz facility east of the crossing.

112. The additional UP-NS and CN merger trains would place a serious strain on capacity in the Kansas City terminal. To make matters worse, most and perhaps all of the new UP-NS trains would be premium intermodal trains as to which UP-NS would claim dispatching priority on KCT and assert such control directly through their control of dispatching at the Birmingham interlocking. In CPKC's experience, UP dispatchers consistently establish an extensive umbrella of protection around upcoming movements of UP's trains, holding all

potentially conflicting movements until their so-called priority trains have passed. CPKC experiences this consistently at other points controlled by UP's dispatchers, such as Clinton, IA where UP's Chicago-Omaha mainline crosses CPKC, and on joint trackage in Houston, where UP dispatchers put CPKC trains in the siding to ensure that UP's scheduling priorities are maintained.[21] Such a practice in this portion of the terminal would create gridlock for all other users of this vital facility.

113. UP should appreciate the risks here. Ironically, in the *CP/KCS* proceeding, UP argued that the addition of 14 CPKC trains on the UP-CP Polo Line between Airline Junction and Polo, MO would necessitate additional investment in capacity.[22] In that proceeding, CPKC demonstrated that the increase in traffic arising from the CP/KCS transaction would not cause operational concerns.[23]

114. The additional trains UP plans to run via KCS Junction and Birmingham as a result of the UP-NS merger pose far more serious risks, for at least four reasons.

- Applicants' proposed new operations between KCS Junction and Birmingham would be overlaid on a higher base of train operations than was at issue in

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[21] In the *Amtrak Sunset Limited* proceeding, Amtrak complained that UP assigned its premium "Z" trains the same dispatching priority as Amtrak; UP's response was that it gave Amtrak the statutory preference to which it was entitled, but assuming that is true it would not alter the fact that, as between a UP Z train and a foreign carrier's freight train, UP would deem a Z train to be the equivalent of a passenger train for purposes of dispatching prioritization. *See Complaint and Petition of The National Railroad Passenger Corp. Under 49 U.S.C. § 24308(f) for Substandard Performance of Amtrak's Sunset Limited Trains 1 and 2*, Docket No. NOR 42175, UP's Reply Statement and Evidence (filed Dec. 23, 2024) at 109 & n.341.

[22] *See CP/KCS*, Finance Docket No. 36500, UP's Comments and Request for Conditions (UP-10) (filed Feb. 28, 2022) at 62-63; *id.,* Turner/Rocker V.S. at 34-35 (excerpts are Exhibit 3 hereto).

[23] *See CP/KCS*, Finance Docket No. 36500, Applicants' Response to Comments and Requests for Conditions, Opposition to Responsive Applications, and Rebuttal in Support of the Application (CP-53/KCS-39) (filed July 12, 2022) at 166-67; *id.*, Elphick/Orr V.S. ¶¶ 78-80.

CP/KCS. In 2026 (through the end of September 2026), a daily average of [redacted] CPKC and 8.7 UP trains move between Airline Junction and Birmingham or across this path, approximately five trains per day more than the 2019 level of traffic in the corresponding months considered in *CP/KCS*.[24]

- The operations that UP-NS's new trains would conflict with are significantly more numerous and more complex. In *CP/KCS* UP was focused on conflicts with its own operations between Airline Junction and Polo. Here, UP-NS's new operations would conflict with CPKC's operations between Airline Junction and Polo as well as all other operations at Airline Junction and between Airline Junction and KCS Junction. Operations here include:

    - 10.57 trains per day moving across Airline Junction between Knoche Yard and CPKC's Kansas City Subdivision;
    - Approximately one train per month moving between CPKC's Kansas City Subdivision and CPKC's Mexico Subdivision via Birmingham, Airline Junction;
    - Approximately three trains per day moving between CPKC's Knoche Yard and KCT trackage in the western portion of the Kansas City terminal for interchange with BNSF and service to local customers;
    - As many as six UP trains between Neff Yard and UP's River or Sedalia Subdivisions via Southwest Junction; and
    - Some number of yet undetermined future CN trains between Neff Yard and UP's River or Sedalia Subdivisions via Southwest Junction.

- The operations UP-NS *propose to add* would also cause more conflicts because they would traverse the entire segment between KCS Junction and Birmingham,

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[24] Workpaper, "CPKC Oversight Data for Polo Line – 2019 and 2026 to end of August.xlsx."

much of which is single-tracked, and is controlled by three separate dispatchers—KCT, CPKC, and NS. The potential for severe congestion is magnified by the short length of the available double-track segments and the long length of UP's planned train operations. The only place to pass a train between KCS Junction and the single-track Truman Bridge is 6,500 feet of double track just south of the Birmingham interlocking. Were trains allowed into the KCS Junction-Birmingham segment by a KCT dispatcher without a clear path out of the segment, the result would be gridlock. But even if there were a clear path out, the new trains would consume scarce track capacity needed by all other operations into and out of CPKC's Knoche Yard and UP's Neff Yard, as well as CPKC's trains passing through this area.

- To the extent the new UP-NS trains would have scheduled work at the legacy-NS Voltz facility just east of Birmingham, congestion would be magnified sharply. There is already congestion there with 8.7 UP trains and [redacted] CPKC trains passing daily across CPKC's Polo Line (which runs from Polo, Missouri past Voltz to Airline Junction). Already, two thirds of CPKC trains are stopped or delayed for an average of 30 minutes per train. Indeed, CPKC trains already experience long delays several times a month because NS's dispatchers controlling the Birmingham interlocking do not allow CPKC trains across because of NS operations in the area. CPKC has repeatedly had to escalate the issue to NS executives for resolution, which has not prevented the problem's recurrence. (During September 2026, for example, CPKC trains incurred 29 hours of delay at the Birmingham interlocking on account of NS dispatchers not providing

clearance at that location.) This problem will get worse with the influx of UP's Z trains passing through Birmingham and performing work at Voltz.

115. The consequences of congestion in this area would be severe. It would bottle up CPKC trains in Knoche Yard, delay CPKC trains transiting the Kansas City terminal, increase cycle times for bulk trains interchanged in Kansas City with UP and BNSF along with those that originate east of Kansas City, and interfere with CPKC's service to local customers and its interchange with BNSF. CPKC's ability to compete with the new Transcon UP would be undermined.

116. The Board should weigh these risks to the Kansas City gateway in its assessment whether to approve the merger. If it does approve the merger, the Board should impose conditions aimed at ensuring that Applicants take full responsibility for the costs imposed on others by their merger-related changes. Specifically, the Board should:

- Maintain perpetual oversight of the operational fluidity in the Kansas City Terminal and retain jurisdiction to impose new conditions addressing any merger-related concerns that may emerge;
- Grant CPKC's Responsive Application providing CPKC with an alternative route between Knoche Yard and the west end of the Terminal, both avoiding the area where the merger is likely to cause congestion and reducing the burdens on that infrastructure (the specifics of these rights are addressed in Section IX below);
- Require UP-NS to avoid blocking the Birmingham Interlocking, Airline or KCS Junction or Southwest Junction and to provide clearance on a first-to-arrive/first-to-move basis;

- Require UP (and CN to the extent its Responsive Application is granted) to use any influence at KCT to ensure that KCT does not prioritize UP-NS or CN operations in their use of trackage or interlockings dispatched by KCT between KCS Junction and Airline Junction;
- Establish metrics tailored to the specific operational concerns at issue here, including track occupancy times associated with UP train movements between KCS Junction and Airline Junction, between KCS Junction and Birmingham, between Airline Junction and Birmingham, delays gaining clearance to Airline Junction from Knoche Yard, and delays gaining clearance to cross Birmingham Interlocking;
- Require UP-NS to fund construction of a connection between CPKC's Mexico Subdivision and its Pittsburg Subdivision, providing an alternative to the current route across Southwest Junction and KCS Junction as shown in Figure 6 below.[25] Grain trains originating on CPKC's Gateway Line at Corder, Marshall, and Slater, Missouri, and Jacksonville, Illinois, and moving to destinations in the southern United States and Mexico currently cross those junctions with KCT authorization; empty return trains use the same route. Those movements would conflict with the new UP-NS route and trains. The proposed connection would allow these trains to move to and from points south of Southwest Junction and KCS Junction without traversing those junctions, reducing the conflicts and resulting congestion;

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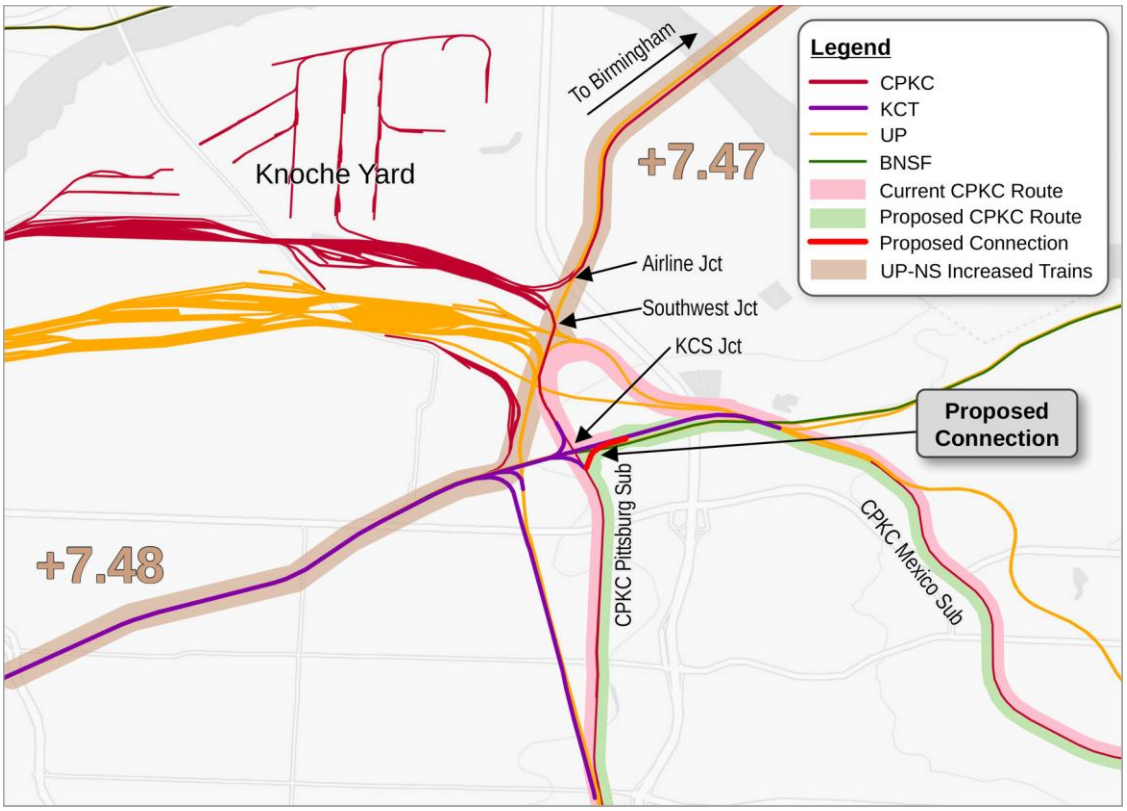
[25] *See* EI-34224 at 240, 246 (filed Apr. 30, 2026) (Master Segment Table).

FIGURE 6 – PROPOSED CPKC CONNECTION BETWEEN PITTSBURG AND MEXICO SUBDIVISIONS IN THE KANSAS CITY TERMINAL



- Establish springing conditions to provide incentives for UP-NS to avoid operational disruption in the Kansas City Terminal and ensure prompt remediation if UP's post-merger operations cause material degradation in fluidity, including:

  - The transfer of dispatching responsibility for Birmingham Interlocking to CPKC;
  - Requiring UP and CN to support a transfer to CPKC of dispatching responsibility for the segment between KCS Junction and Airline Junction from KCT to CPKC;
  - The obligation to double track the route between KCS Junction and Birmingham, including building a new bridge parallel to the Truman Bridge (because the existing Truman Bridge truss cannot accommodate double tracking);

- Requiring UP-NS to reroute sufficient trains via an alternative route between legacy-UP's 18th Street Yard and Birmingham (including via the Hannibal Bridge) to restore pre-merger levels of fluidity.

  - I recommend that the Board consider standards including to address the springing remedies described above. The standards should be designed to enforce conditions meant to prevent congestion and operational interference in KCT as a result of the merger. Those standards should address among other things UP occupancy of track between Birmingham and KCS Junction that is used by other railroads, UP's holding of CPKC trains at Birmingham, impact of UP train interference on transit of CPKC trains between Birmingham and KCS Junction, delays in the admission of CPKC trains to and from Knoche Yard and otherwise as a result of KCT or UP dispatching decisions. The standards should be established through the technical conference and be subject to the 30/30 process.

117. In sum, CPKC's proposed conditions address several interrelated problems in the Kansas City Terminal: existing congestion that Applicants' expanded and rerouted operations would exacerbate; UP's and NS's practices of blocking critical junctions and favoring their own trains; and insufficient capacity and alternative routes to accommodate the resulting traffic conflicts. The requested conditions would address these problems through operating and dispatching requirements, performance standards and oversight, and alternative routes and additional infrastructure that would relieve bottlenecks, reduce conflicting movements, and protect competition.

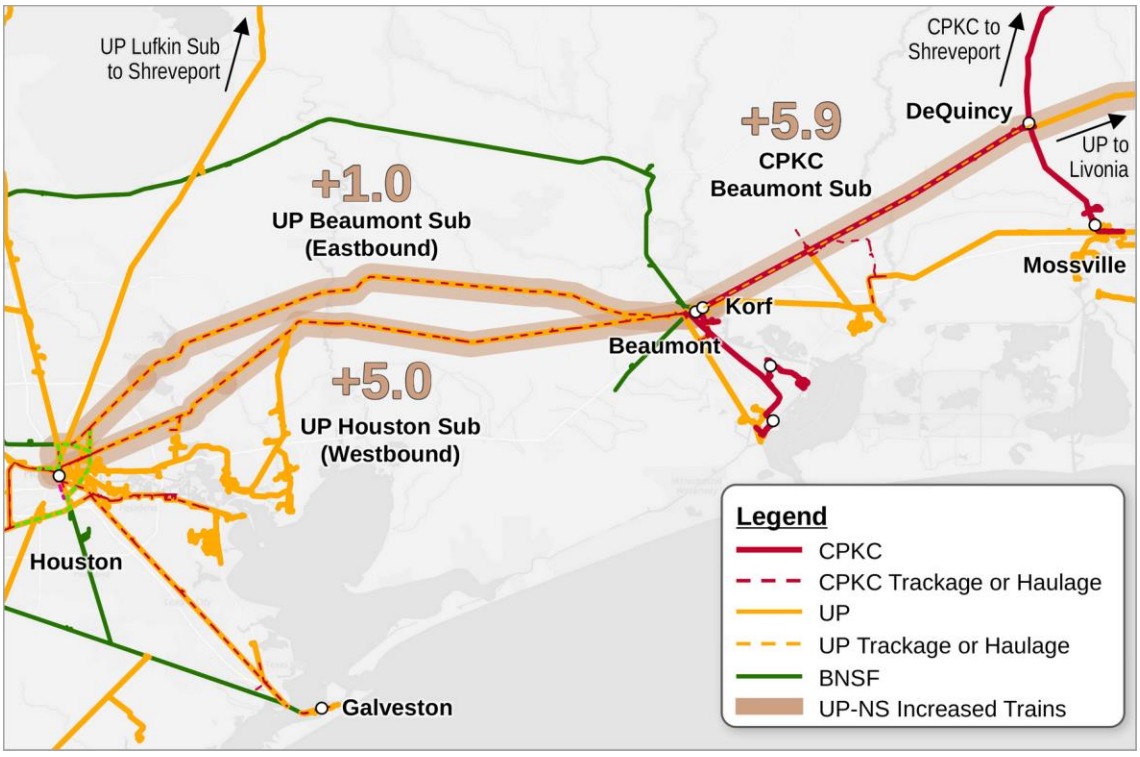
B. Houston to DeQuincy, Louisiana

118. The rail networks of CPKC, BNSF, and UP depend on efficient operation of the Houston Terminal and fluid operations between Houston and Beaumont, and beyond Beaumont on CPKC's single-track Neches River Bridge, over which all three railroads operate along with Amtrak's Sunset Limited. UP and CPKC also depend on fluid operations on CPKC's Beaumont

Subdivision between the east end of the Neches River Bridge and DeQuincy, LA, where UP has trackage rights on CPKC's mainline.

119. Applicants project that the merger will add six additional trains per day between Houston and across the Neches River Bridge and CPKC's Beaumont Subdivision between Beaumont and DeQuincy. Applicants' projections show UP's traffic more than doubling between Beaumont and DeQuincy and its train counts increasing by 35 percent. The implication, of course, is that trains will be much longer as well as more numerous.[26] These increases are shown in Figure 7 below.

FIGURE 7
APPLICANTS' PLANNED TRAFFIC INCREASES HOUSTON-DEQUINCY



[26] *See* Rev. App. 2-762 (Gehringer/Orr V.S. ¶ 316); EI-34224 at 214 (filed Apr. 30, 2026) (Master Segment Table).

120. Although these routes have sufficient capacity to handle current traffic volumes, CPKC is concerned that UP's merger-related traffic increases could result in material congestion that degrades performance of CPKC and other through train operations on these lines and imposes extra costs on CPKC's efforts to compete with UP and serve its customers.

121. These concerns should be familiar to UP. In the *CP/KCS* proceeding, Applicants argued that the addition of eight additional CPKC trains traversing the Houston Terminal would "increase train counts on already busy lines by 25% or more" and contended that additional capacity would be needed at several locations to "prevent the projected jump in traffic from endangering operations in Houston."[27] UP also contended that the Neches River Bridge was a "single-track choke point" that was "near or at the limits of its fluid capacity."[28]

122. In *CP/KCS*, CPKC demonstrated that its new operations through this territory would be straightforward through movements that placed little burden on the Terminal that, when added to the then-existing base levels of traffic, would not tax fluid capacity in these areas. That has been borne out by experience.

123. The same cannot necessarily be said about Applicants' proposed operations, which would be more complex and impose greater risks, for at least three reasons:

- Applicants' proposed new operations between Houston and Beaumont/DeQuincy would be overlaid on a higher base of train operations than was at issue in

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[27] *See CP/KCS*, Finance Docket No. 36500, UP's Comments and Request for Conditions (UP-10) (filed Feb. 28, 2022) at 58-59; *see also id.* Turner/Rocker V.S. at 30-31 (excerpts are Exhibit 3 hereto).

[28] *See id.,* Turner/Rocker V.S. at 32-33 (excerpts are Exhibit 3 hereto).

CP/KCS. In 2026, an average of 31.9 trains per day move through Beaumont and across the Neches River Bridge, about four more than the 2021 average.[29]

- Applicants' proposed new operations would add considerably more operational complexity than the through trains proposed in *CP/KCS,* both at Houston, where there historically has been persistent congestion associated with UP's Englewood Yard and at Beaumont. At Houston, Applicants' Operating Plan anticipates driving a 20 percent increase in daily processing levels at UP's Englewood Yard in the heart of the Houston Terminal and adjacent to the line that CPKC's westbound trackage rights trains must traverse.[30] CPKC has had very bad experiences with the impacts of congestion caused by UP trains working at Englewood and staging to access that facility. This area is shown in Figure 8 below. The potential impacts of more train operations and more congestion associated with Englewood processing activity would be severe.

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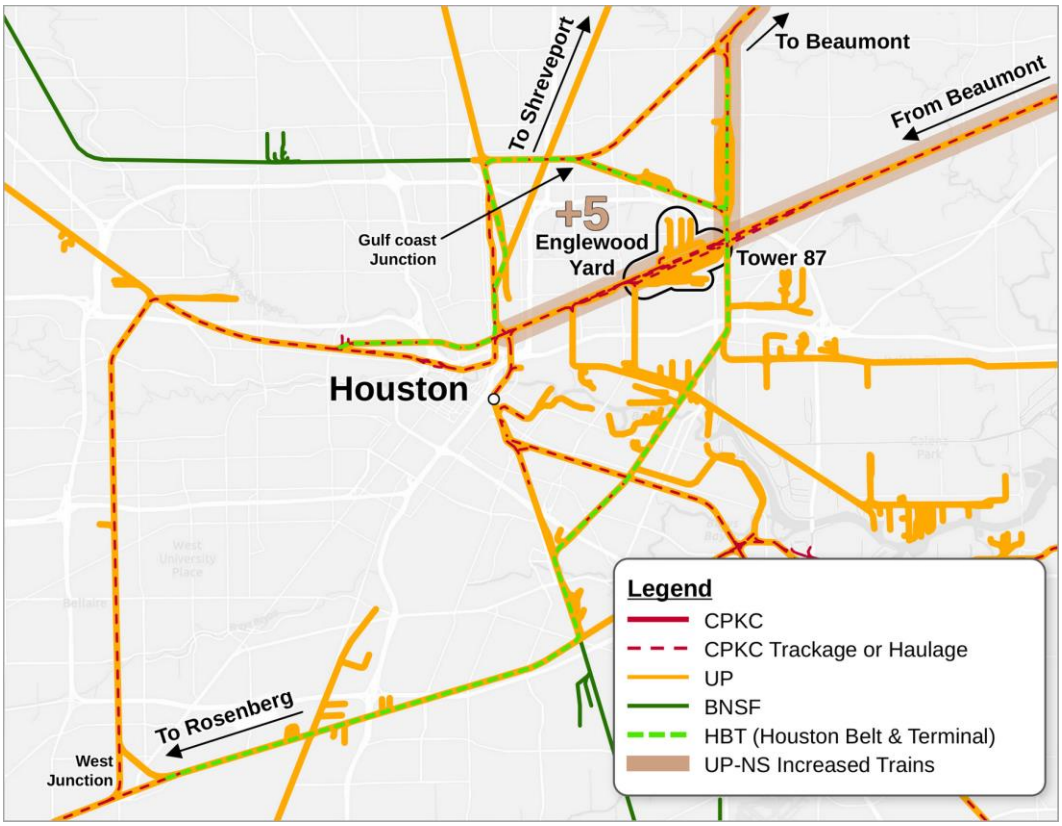
[29] Workpaper, "CPKC Oversight Data for Neches River Bridge – 2021 and 2026 to end of August.xlsx."

[30] Rev. App. at 2-741 (Gehringer/Orr Table 7).

FIGURE 8
IMPACT OF ADDED UP-NS TRAINS AND WORK AT ENGLEWOOD[31]

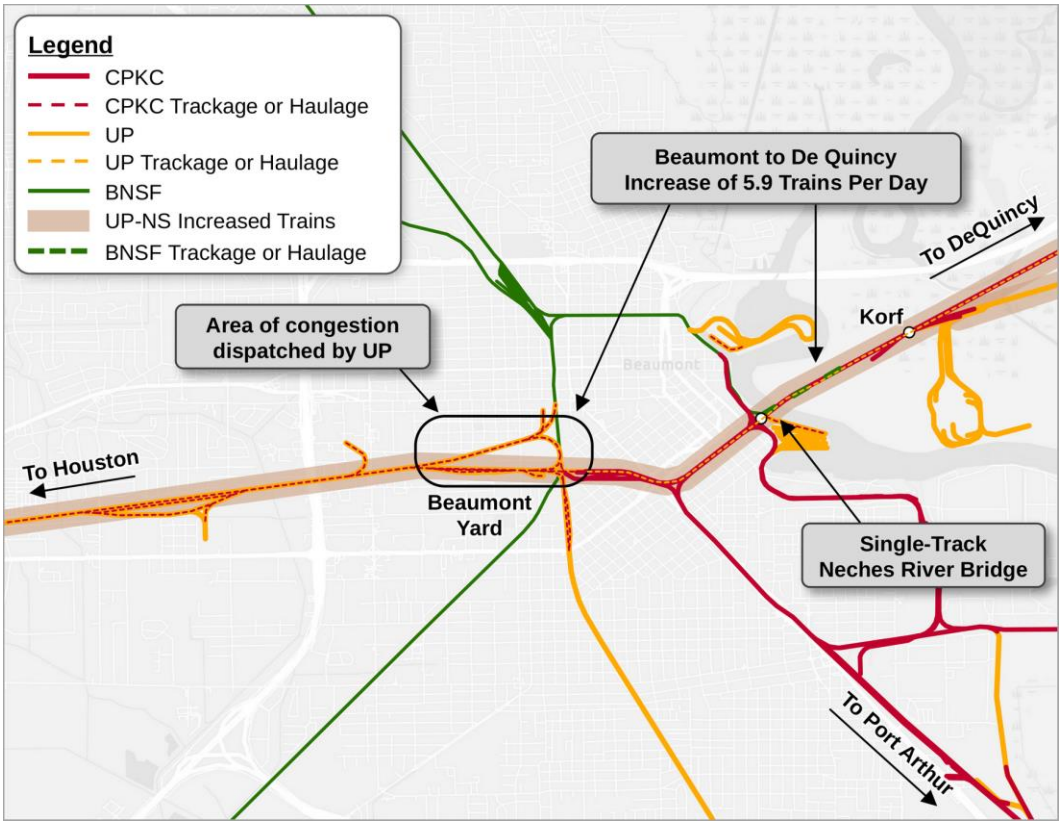


- At Beaumont, UP's yard is heavily congested, which leads to congestion on UP's line between the west end of the Neches River Bridge and the convergence of the Beaumont and Houston Subdivisions. The additional trains UP-NS plan to run here could cause congestion that disrupts fluid movements, potentially backing trains up east of the Neches River Bridge, including on CPKC's single-track Beaumont Subdivision between Beaumont and DeQuincy. In the current environment, CPKC trains already frequently experience significant delays in the Beaumont area waiting for a through route. UP's southbound trains out of Beaumont regularly are required to double or triple out together toward the

[31] EI-34224 at 224 (filed Apr. 30, 2026) (Master Segment Table).

Houston Subdivision. When this happens, the trains pull out toward Amelia blocking CPKC's route toward Houston and potentially even CPKC's route off the UP Beaumont Sub to go toward DeQuincy and Shreveport. This happens as many as three times per day and can result in delays ranging from 2-3.5 hours. UP-NS's "Growth Train Plan" would introduce five new trains with planned crew-change events at Beaumont introducing the high likelihood of additional congestion and delay. Thus, increased congestion at Beaumont will in turn prevent the prompt movement of CPKC's and UP's eastbound trains out of Beaumont, further reinforcing a cycle of service disruption. Figure 9 depicts train movements in this area.

FIGURE 9
IMPACT OF ADDED UP-NS TRAINS AT BEAUMONT[32]



124. The Board should weigh these risks in its assessment of whether to approve the merger. If it does approve the merger, the Board should impose conditions aimed at addressing where possible competition risks/harms from the merger. Specifically, the Board should:

- Maintain perpetual oversight of the operational fluidity in the Houston Terminal and between Houston and DeQuincy and retain jurisdiction to impose new conditions addressing any merger-related concerns that may emerge;

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32 EI-34224 at 214 (filed Apr. 30, 2026) (Master Segment Table).

- Require that UP provide through train operations of CPKC and other carriers with a clear route through both Houston and Beaumont without delays occasioned by congestion resulting from UP-NS operations at Englewood or elsewhere;
- Establish metrics tailored to the specific operational concerns at issue here, including transit times for CPKC trains across the Houston Terminal (between Rosenberg and Beaumont); delays to CPKC entering joint trackage at Rosenberg and Beaumont; and transit times for CPKC and UP trains between Beaumont and DeQuincy;
    - The Board should adopt performance standards that protect CPKC's ability to move reliably between Houston and DeQuincy and between Beaumont and Rosenberg, including through the Houston Terminal. Those standards should address timely acceptance and admission of trains that are offered and ready to proceed onto UP's lines from an appropriate staging point where they would await access to the trackage, transit times across the corridor, delays while being held *en route*, and excessive recrews. They should capture the effects of Applicants' terminal work and dispatching decisions on CPKC's complete movement, including delays incurred before a train enters Applicants' tracks. The standards should be established through the technical conference and subject to the 30/30 process.[33]
- In *CP/KCS,* UP's proposed solution was to require CPKC to add capacity *before* increasing its operations, including potentially to invest in adding a track across

[33] Similarly, the Board should adopt performance standards to protect CPKC's ability to enter and traverse the Victoria-Robstown corridor reliably in both directions. Those standards should address timely acceptance and admission of trains that are offered and ready to proceed onto UP's lines from an appropriate staging point where they would await access to the trackage, transit times across the corridor, delays while being held *en route*, dispatching decisions including equal treatment, and excessive recrews. The standards should be established through the technical conference and subject to the 30/30 process.

the Neches River Bridge.[34] CPKC is not certain that such investments would be necessary to address UP's proposed train count increases, but the Board should require that UP do so before its additional trains cause material degradation in the performance of trains traversing this trackage. Accordingly, the Board should establish springing conditions to provide incentives for UP to avoid operational disruption and ensure prompt remediation if UP's post-merger operations cause material degradation in fluidity, including:

- Grant CPKC's Responsive Application seeking trackage rights between Shreveport and Houston via UP's Lufkin Subdivision. As discussed in detail in Section VIII below, that bypass route option would allow CPKC trains to avoid congestion between Houston and DeQuincy (and adjacent to Englewood Yard in Houston), thereby mitigating the performance impacts of merger-related congestion (albeit at the cost to CPKC of establishing new crewing and other arrangements) while simultaneously reducing congestion between Houston and DeQuincy;
- Fund additional capacity as appropriate to address any identified service degradation between Houston and DeQuincy, potentially including additional double-track and sidings on CPKC's single-track line between Beaumont and DeQuincy and the construction of UP's own bridge across the Neches River.

C. Meridian, Mississippi

125. Were the Board to approve the merger, Meridian, MS would be a major crossroads in the UP Transcon network. Meridian is where the UP-NS traffic transiting the Meridian Speedway in East-West (and Mexico-Southeast) lanes would connect with NS's busy but single-track route between New Orleans and Birmingham, AL.

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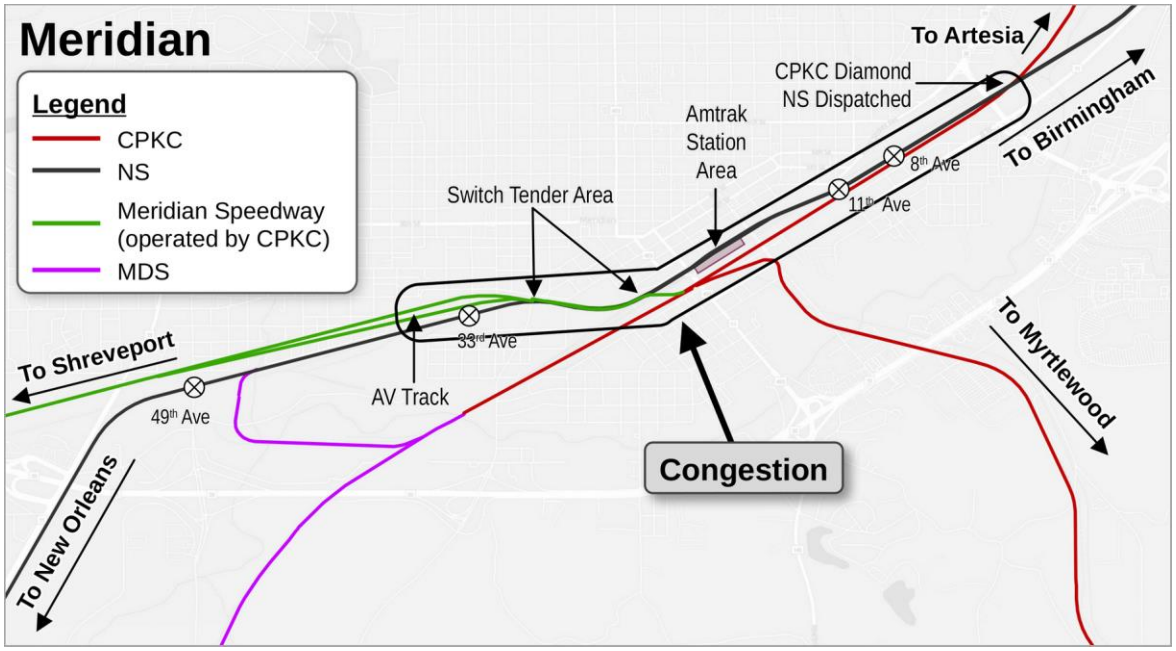
[34] *CP/KCS*, Finance Docket No. 36500, Union Pacific Railroad Company's Final Br. (UP-14) (STB filed Oct. 21, 2022), at 10–12.

126. Meridian is also vital to CPKC's operations, as well as those of shortlines Meridian & Bigbee Railroad ("MNBR") and Meridian Southern Railway. Trains operating in the terminal include:

- Two Amtrak trains per day between New Orleans and Atlanta;
- Six to eight trains per day moving between CPKC and NS via the connection with the Meridian Speedway:
    - CPKC 168/NS 26A intermodal train (CPKC Wylie IMS to NS Meridian), daily except Monday;
    - CPKC 169/NS 29K intermodal train (NS Meridian to CPKC Wylie IMS), daily;
    - CPKC 968/NS 28J intermodal train (UP Shreveport to NS Meridian in haulage service), daily except Wednesday;
    - CPKC 969/NS 29S intermodal train (NS Meridian to UP Shreveport in haulage service), daily;
    - CPKC 966/NS 28A intermodal train (UP Shreveport to NS Meridian in haulage service), daily;
    - CPKC 967/NS 27S intermodal train (NS Meridian to UP Shreveport in haulage service), daily;
    - CPKC L61/NS 339 manifest train (NS Meridian to CPKC Jackson), daily; and
    - CPKC 256 / NS 340 manifest train (CPKC Wylie to NS Meridian), daily;
- Two CPKC-CSXT Southeast-Mexico Express ("SMX") Service trains per day between the Meridian Speedway and CPKC's connection with CSXT at Myrtlewood, AL; and
- Two CPKC trains per day between the Meridian Speedway and CPKC's line to Artesia.

127. All of these operations through Meridian must traverse the same chokepoint in the center of the Meridian Terminal, as shown in Figure 10 which follows.

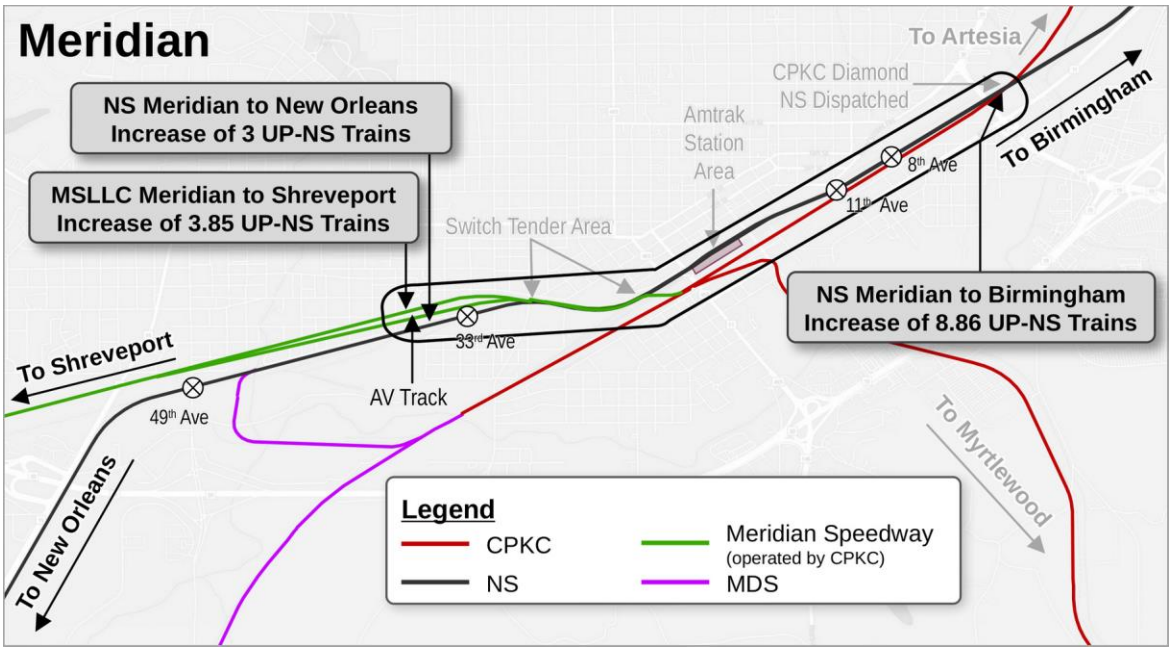
FIGURE 10
OPERATIONS THROUGH THE MERIDIAN TERMINAL



128. Applicants now say that they anticipate their merger adding additional trains that must traverse the Meridian Terminal. These new operations are superimposed on existing train flows in Figure 11 below.[35]

[35] EI-34224 at 202, 205, 236 (filed Apr. 30, 2026) (Master Segment Table).

FIGURE 11
APPLICANTS' PROPOSED NEW OPERATIONS THROUGH MERIDIAN



129. NS is well aware of the seriousness of concerns relating to operations through the Meridian Terminal. In the *CPKC/MNBR* case, NS contended that Meridian was a "singularly complex Gateway city" and argued that CPKC's proposed addition of *just one pair of new trains* moving through the Meridian Terminal between the Meridian Speedway and CPKC's former-MNBR line to Myrtlewood, AL, would "worsen service performance for Norfolk Southern and Amtrak (which runs on Norfolk Southern)."[36] NS identified a raft of investments and operational changes that it wanted the Board to order CPKC to undertake or fund in order to overcome these issues.[37]

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[36] *Canadian Pacific Kansas City – Acquisition & Operation – Certain Rail Line of Meridian & Bigbee Railroad,* Finance Docket No. 36732 ("*CPKC/MNBR*"), Norfolk Southern's Comments and Request for Conditions (filed Dec. 29, 2023), McClellan V.S. at 3, 5 (Exhibit 4 hereto).

[37] *See generally id.* (Exhibit 4 hereto).

130. CPKC responded to NS's concerns in the *CPKC/MNBR* case by pointing out that the concerns NS identified were real, but that they were the product of NS's decision-making and would not be made worse by the addition of two CPKC trains per day. In particular, congestion in Meridian was exacerbated by (a) NS's own train operations, (b) NS's failure to add capacity on its own lines, and (c) NS's practices relating to the crewing and fueling of trains and their scheduling (sometimes in direct conflict with Amtrak operations).[38]

131. These same issues persist today. From an infrastructure standpoint, NS has made no investments. Despite CPKC's invitation for NS to fund the powering-up of the Switch Tender switches, they remain hand-throw, perhaps because CPKC was not willing to cede dispatching control in this area to NS. And with the exception of nearly three miles of extended double track that Applicants propose to add north of Meridian by the end of Year 3 (but with no commitment to complete before adding additional trains),[39] Applicants propose no new infrastructure investments or operational changes to address the additional congestion that would result from the 8–10 new trains that they propose to add through Meridian. But outside the merger proceeding, NS continues to assert the need for improvements at Meridian, as it has sought Amtrak and CPKC support for CRISI funding to undertake many of the same projects it pressed before the Board in *CPKC/MNBR*.

132. The impacts of the new operations Applicants contemplate through Meridian could be severe, especially if NS practices that contribute to congestion continue. Those impacts would be borne disproportionately by CPKC, Amtrak, and others rather than by UP-NS. First,

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[38] *Canadian Pacific Kansas City – Acquisition & Operation – Certain Rail Line of Meridian & Bigbee R.R.*, Finance Docket No. 36732, CPKC's Rebuttal in Support of Its Application (CPKC-13) (filed Jan. 26, 2024) at 21-33.

[39] Rev. App. 2-58 (Turner Second Errata V.S. ¶ 91).

the additional UP-NS operations planned for NS's New Orleans-Birmingham line through Meridian would create material additional interference with all other operations through Meridian. As shown in Figure 11 above, all of those trains would bisect the terminal, preventing any movement of trains off of or onto the Meridian Speedway, regardless of which route east of Meridian those trains would take.

133. Second, the congestion caused by UP-NS's additional New Orleans-Birmingham trains would ripple onto the east end of the Speedway. The problem is not just that these trains must pass through the terminal, blocking all other movements in the process, but that they would consume scarce capacity north/east of Meridian on which the fluid movement of NS-bound trains coming off of the Speedway depends. By delaying those movements, NS's added New Orleans-Birmingham trains would also bottle up the Speedway and CPKC's own operations in both directions there.

134. With additional consumption of capacity in the center of the Meridian Terminal, eastbound Meridian Speedway trains arriving at Meridian would need to stage outside of Meridian at Meehan Siding, 10.6 miles west of the terminal, in order to avoid blocking access to the Meridian Speedway single-track route for westbound trains. That is because the tracks closer to Meridian—AV1 and AV2—are constrained by grade crossings at both ends, preventing most trains from staging at that location because they would block these crossings for long periods. For a train holding at Meehan, once a clear route through Meridian became available, the transit time needed to get to and across the terminal would further constrain capacity in Meridian proper, adding to congestion.

135. Third, the fact that CPKC controls operations through the "Switch Tender" area would not give CPKC any ability to prevent or overcome those impacts. It would be

counterproductive for CPKC to attempt to respond by prohibiting NS from moving its Birmingham-New Orleans trains through that area because doing so would add congestion on NS's line north/east of Meridian and in turn prevent NS-bound trains off the Speedway from moving out of the way.

136. Fourth, the additional trains Applicants anticipate on the Speedway itself would also make matters worse in the Meridian Terminal, particularly in light of NS's practices relating to crew changes and fueling for its trains. NS's westbound trains change crews and refuel adjacent to the Amtrak passenger station. Those operations block Amtrak arrivals, movements by CPKC to/from its Artesia Subdivision, and movements of *all NS trains* through the terminal, including trains moving from the Speedway to NS's Birmingham line.

137. The Board should weigh these risks in its assessment of whether to approve the merger. If it does approve the merger, the Board should impose conditions aimed at ensuring that Applicants take full responsibility for the costs imposed on others by their merger-related changes. Specifically, the Board should:

- Maintain perpetual oversight of the operational fluidity in the Meridian Terminal and retain jurisdiction to impose new conditions addressing any merger-related concerns that may emerge;
- Require UP-NS to forbear from practices that contribute to congestion in the Meridian Terminal, including a prohibition against NS fueling or recrewing trains in a manner that consumes capacity in Meridian between 29th Street and the CPKC diamond;
- Require UP-NS to fund the following capacity projects with adequate lead time and phasing to timely address the risks of potential adverse impacts from new UP-

NS trains and/or operating changes (in no event later than when Applicants complete the work that they are proposing north of Meridian on their own track):

- (a) completing the double-track investments north of Meridian described in the Application, plus the addition of staging tracks east of Meridian allowing NS trains headed toward the Speedway to wait for clearance onto the Speedway, change crews, and refuel (as necessary) without interfering with other movements through the Meridian Terminal;
- (b) requiring the addition of siding and staging capacity on the Speedway approach to Meridian sufficient to ensure that additional UP-NS eastbound trains awaiting entry to Meridian do not obstruct westbound movements onto the Speedway.

- Establish metrics tailored to the operational concerns at Meridian. The Board should adopt performance standards that protect CPKC's ability to enter, move through, and leave the Meridian Terminal reliably and in timely fashion. Those standards should address issues including NS trains and related crews and fueling creating blockages or other bottlenecks in or near Meridian that may result in delays traversing Meridian or prolonged staging nearby. These standards should be set through the technical conference and subject to the 30/30 process; and
- Establish springing conditions to provide incentives for UP to comply with objective service standards, and ensure prompt remediation if UP's post-merger operations cause material degradation in fluidity. One such condition would transfer to CPKC dispatching authority for all train movements on or across CPKC's routes between the Meridian Speedway and the CPKC Artesia Subdivision, subject to CPKC exercising that authority in a manner that does not discriminate against the operations of UP-NS. This would prevent NS from abusing its control of the CPKC Diamond in a manner that would facilitate NS

trains operating across that diamond being allowed to contribute unreasonably to congestion at Meridian.

D. The Chicago Gateway

138. History shows that operational disruption affecting the Chicago gateway poses a serious threat to the health of rail operations across the entire continent. The winter of 2014 provides a stark example: congestion in Chicago reached "critical levels," disrupting rail traffic throughout the United States and producing a national rail-service crisis that "reverberated for much of the year."[40] Because Chicago is the principal interchange point connecting the major eastern, western, and Canadian railroads—and handles roughly one-third of U.S. rail freight—delays there do not remain local: trains back up on lines approaching Chicago, equipment and crews fall out of cycle, and congestion propagates outward across interconnected railroad networks.[41] Indeed, the very existence of the CREATE program reflects the industry's long-standing recognition that improving capacity and fluidity in Chicago is a matter of national, not merely local, importance.[42]

139. Applicants plan massive changes to rail operations in Chicago, only some of which are detailed in the Application's Operating Plan. The Application spells out significant revisions to how UP and NS will exchange rail traffic via facilities in the Chicago area, including a major reshuffling of the roles played by UP's more than five yards and four intermodal terminals (Global 2, 3, 4, Yard Center) and NS's more than five yards and four intermodal

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40 *Report of the Amtrak Chicago Gateway Blue Ribbon Panel* 16 (Oct. 2015), https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/businessplanning/Chicago-Gateway-Amtrak-Blue-Ribbon-Panel-Final-Report.pdf.

41 *See id.* at 8, 14, 16-17.

42 *Id.* at 17-18.

terminals (47th, 63rd, Calumet, Landers) in or near Chicago. Applicants plan to increase traffic substantially on a route through the heart of Chicago connecting the UP and NS networks via UP's Proviso Yard, the BRC, and NS's Ashland Avenue Yard. They plan to reduce rubber tire interchanges between one another by adding new steel-wheel connections, adding traffic to the Chicago rail network. They plan to reduce the volume of railcars NS delivers to BRC for processing at Clearing Yard, but not to reduce their reliance on that facility to connect with other carriers in Chicago. And UP has simultaneously negotiated the right to expand its use of CN's EJ&E route to connect UP's network with NS's network without passing through the heart of the Chicago terminal.

140. The Chicago Terminal is the most complex in the world. On a daily basis it performs the vital function of facilitating the efficient exchange of traffic among six large railroads and five smaller railroads, hosting nearly 600 daily passenger movements (excluding CTA rapid transit and Metra Electric), and supporting approximately 20,000 daily intermodal and carload originations and terminations that serve the transportation needs of rail customers in America's industrial heartland.[43]

141. In light of the complexity of Chicago, and the speculative nature of the extensive changes that Applicants seem to have in mind for their operations in and around Chicago, it is very difficult to predict with clarity the consequences of the proposed merger for Chicago. But the risks are enormous, and risk will be heightened by the fact that the interests of UP-NS in a well-functioning gateway will be greatly diminished. UP-NS will be less interested in well-functioning interchanges with other carriers and less interested in avoiding congestion that clogs

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[43] Workpaper, "Chicago Daily Passenger Trains.xlsx"; Workpaper, "Chicago Daily Intermodal and Carload Units.xlsx."

Clearing Yard or routes used by others across the terminal (particularly with its EJ&E bypass option).

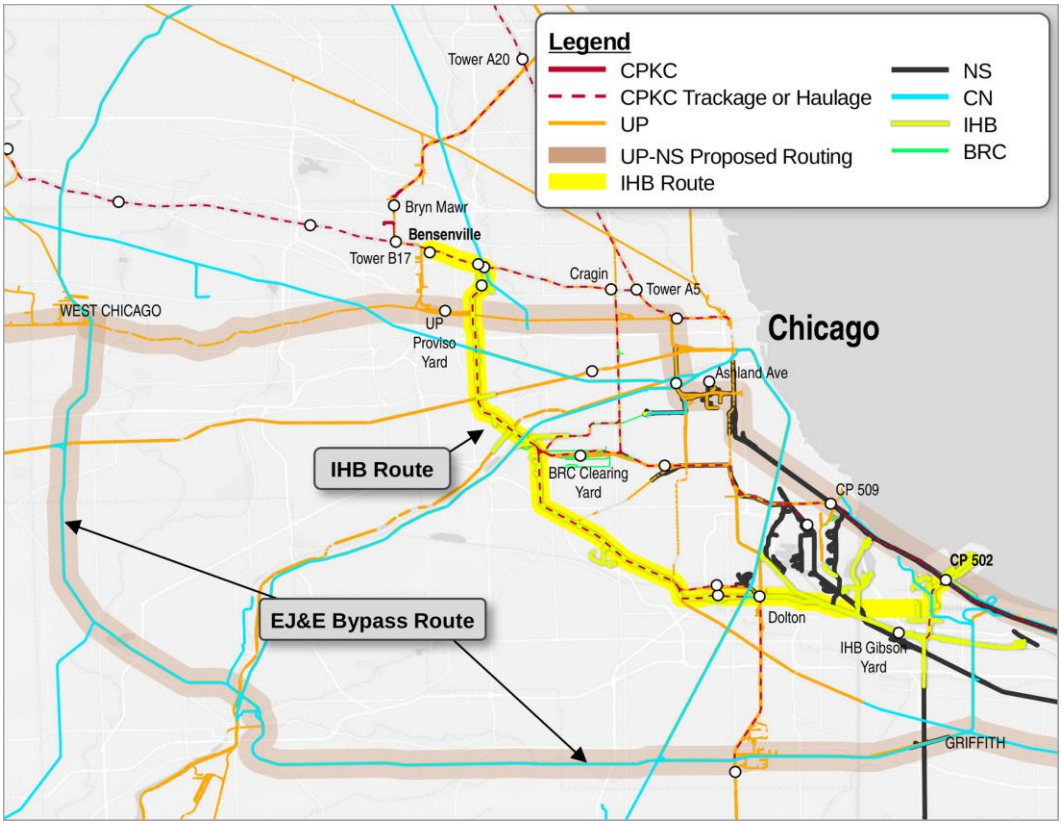
142. Among the key risks posed by the UP-NS merger in the Chicago area is the efficient functioning of BRC's Clearing Yard as the processing hub for much of the manifest carload interchange among carriers in Chicago. CPKC depends on Clearing for its interchange of manifest traffic with CSXT, BNSF, CN, and many other smaller carriers at Chicago. BRC builds blocks for direct movement deep into every carrier's network allowing traffic destined for interchange via Clearing to be handled more efficiently and with less processing upstream and/or downstream. For example, because Clearing builds blocks for three downstream yards on the NS network (Elkhart, Bellevue and Conway), 15 on CSXT, 10 on UP, and seven on BNSF, in addition to blocks for all of the smaller railroads serving Chicago (*see* Figure 3 above), CPKC and others can reallocate upstream processing capacity to build a clearing block instead of separate, lower-density blocks for all of these destinations.

143. Applicants' stated plan to remove traffic from Clearing might superficially appear to enable more of Clearing's capacity to be used for other interchange flows, but the reality is likely to be quite different. UP's past patterns, coupled with UP-NS's post-merger incentives, suggest a much more problematic outcome: UP-NS is likely to rely less on Clearing to support efficient day-to-day flows of traffic to others, but to make *greater use of Clearing* as a backstop to protect the fluidity of the UP-NS network at the expense of others. In other words, to overcome challenges faced by UP-NS in their manifest network, where new blocking patterns may stress the capacity of other facilities, UP-NS is likely to treat Clearing as a form of "bladder" into which it would dump overflow traffic during high traffic periods.

144. UP has heavily over-relied on Clearing Yard in the past to dump traffic. For the first nine months of 2026, UP delivered [redacted] cars (about [redacted] cars per day) to CPKC via the BRC. Meanwhile, only 76 cars were delivered to UP through the BRC in that same period, with CPKC instead relying on its direct interchange with UP rather than via BRC. This illustrates UP's overreliance on Clearing Yard to process traffic that it in many cases should have processed itself.

145. CPKC's access to IHB's Gibson Yard is vitally important. Gibson Yard is an important interchange location, including for automotive traffic, and CPKC regularly uses it for that purpose. The value of that access will only increase as the requested expansion of CPKC's Michigan trackage rights enables CPKC to handle new traffic.

FIGURE 12
IHB ROUTE AND OTHER CHICAGO RAIL CONNECTIONS



146. As Mr. Adolph Gameiro explains, UP's acquisition of NS would transfer to UP NS's effective veto over investments by IHB arising from NS's share of Conrail's 51% stake in IHB. Unlike today's independent eastern carriers (NS and CSXT), which have every incentive to support IHB's role in providing efficient and neutral connections with all western carriers (including CPKC), UP will not have those incentives given its western route structure. The Board should remove NS's veto (as addressed in Mr. Gameiro's Verified Statement) and take steps to ensure the availability of the IHB route for all Chicago carriers.[44]

147. CPKC also depends on efficient access to UP's "Techny Line" to connect Bensenville Yard with CPKC's route between Chicago and the Twin Cities. The Techny Line extends from CPKC's line at Bryn Mawr to Tower A-20 as shown in Figure 13 below. UP has its own route between the Twin Cities and Chicago, and its acquisition of NS will give it heightened incentives to limit CPKC's competition with UP using the Techny Line, especially if CPKC gains expanded access to shippers in Southeastern Michigan. CPKC operated around eight freight trains on this line per day in 2026[45] (which is typical and consistent with past volumes). Were CPKC to have to route these trains via its alternative route via Tower A-5, they would be in direct conflict with Metra MD-W, MD-N, and NCS line trains as well as Amtrak passenger trains between Chicago and Milwaukee (which operate between Tower A-5 and Tower A-20). In addition, CPKC's route via Tower A-5 does not support a progressive connection with the BRC lines on which CPKC depends to reach Clearing Yard and connections

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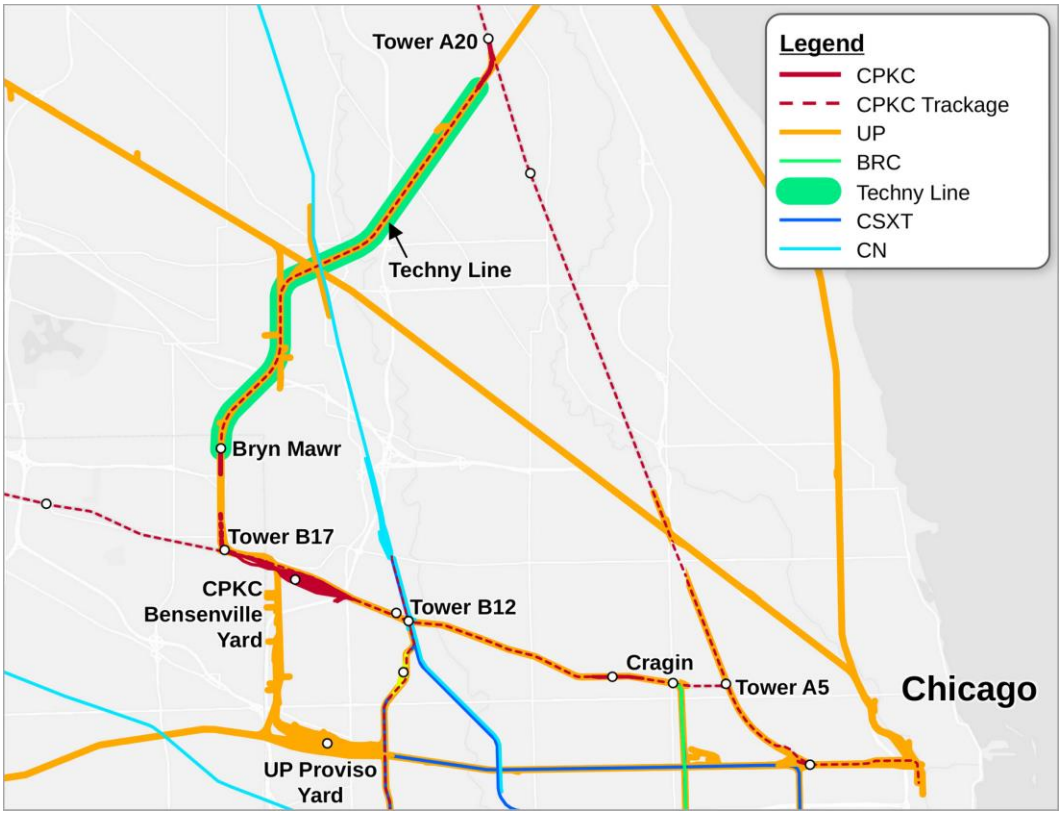
44 *See* Verified Statement of Adolph Gameiro, § IV.A.2.

45 Workpaper, "Shermer_BrynMawr_Crossings .xlsx."

with eastern carriers.[46] By contrast, operations via the Techny Line, Tower B-17, and Tower B12 enable a progressive connection between CPKC and BRC at Cragin Junction.

FIGURE 13
UP TECHNY LINE



148. Based on what Applicants have said in their Application, CPKC does not see any basis for concern that UP-NS operations on the Techny Line would need to interfere with CPKC's use of the line, but Applicants should be required to maintain CPKC's access to the line's capacity at no less than pre-merger levels.

149. The Board should weigh these risks in its assessment of whether to approve the merger. If it does approve the merger, the Board should impose conditions aimed at ensuring

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[46] There once was a progressive connection between CPKC's Chicago & Milwaukee Subdivision and BRC via a UP (former-CNW) track segment known as the Cragin Connection (or more recently the UP Cragin Industrial Lead), but UP severed that route in around 1990.

that Applicants' merger does not disrupt the efficient function of the Chicago gateway. Specifically, the Board should:

- Maintain perpetual oversight of the operational fluidity in the Chicago Terminal and retain jurisdiction to impose new conditions addressing any merger-related concerns that may emerge;
- Impose conditions limiting UP's ability to disrupt Clearing Yard by delivering traffic for processing back to UP-NS and impacting the fluidity of the Chicago terminal.
- Impose conditions ensuring that UP-NS does not have inordinate influence on the board of directors of BRC or IHB, and requiring NS to support CPKC's access to IHB as a bypass route for CPKC trains operating between Bensenville Yard and IHB Gibson Yard/Southeast Michigan;
- Grant CPKC's Responsive Application providing CPKC with continued access to UP's Techny Line connecting Bensenville Yard with CPKC's route between Chicago and the Twin Cities (the specifics of these rights are addressed in Section XI below); and
    - Establish metrics tailored to protect CPKC's ability to provide reliable and commercially effective service over the NS-controlled Chicago-Detroit route. Those standards should address dependable passage over the route, delays from dispatching, holding, slow orders or outages, and timely completion of necessary interchange, connections, and scheduled work. The standards should address specific operational concerns relating to Chicago, including transit times for CPKC trains across the Chicago Terminal between Bensenville Yard and CP-502 (near Burns Harbor, IN) on NS's Chicago Line and control of UP-NS's use of Clearing Yard. The Board should also adopt performance standards that protect timely access to the Chicago-Detroit route for CPKC trains offered and ready to move from Walkerville. Those standards should address the time from a valid offer to actual acceptance and from availability for entry to actual admission, including delays incurred while awaiting access outside Applicants' tracks. The standards should ensure that admission delays do not prevent CPKC from making

effective use of the route and completing its planned service. These standards should be set through the technical conference and subject to the 30/30 process.[47]

E. The New Orleans Gateway

150. Applicants plan significant but somewhat opaque changes to operations in the New Orleans gateway, including a partial shutdown of NS's Oliver Yard. Applicants claim that they will improve fluidity on the Back Belt ("Back Belt") route connecting the Huey P. Long Bridge with NS's New Orleans-Birmingham line by downgrading UP-NS interchange that occurs on the Back Belt (with trains stopping on the mainline for crew changes there) and by shifting BNSF-NS interchange to Avondale Yard on the west side of the Mississippi River.

151. Although CPKC does not have operating rights on most of the Back Belt, it uses a short segment of that line to access West Yard, CPKC's yard in New Orleans. CPKC once had its own route into West Yard, but as a result of a 1977 highway project CPKC's (then KCS's) line between Orleans Junction at Kenner, Louisiana and Shrewsbury was removed and CPKC gained rights over CN from Frellsen/Orleans Junctions to East Bridge Junction and over the NS Back Belt a few hundred feet from East Bridge Junction to CPKC West Yard connection track. CPKC serves the Port of New Orleans and interchanges with NS and CSXT via the New Orleans Public Belt Railway ("NOPB"), which operates into and out of West Yard. CPKC's connection to its West Yard, and the NOPB line via which interchange with CSXT and NS is carried out, are shown in Figure 14 below.

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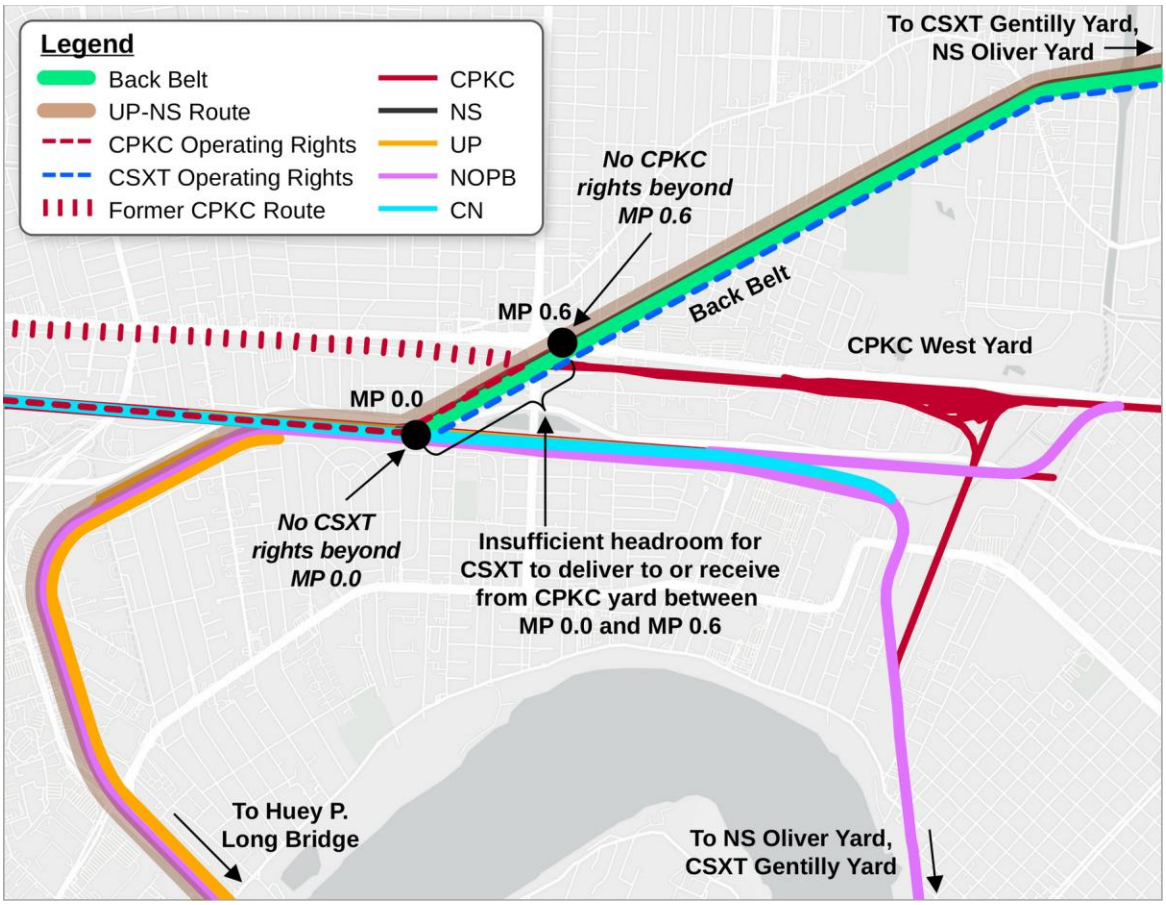
[47] The Board should similarly through the technical conference set performance standards designed to protect CPKC's practical ability to enter, traverse, and leave the Techny Line reliably. Those standards should address timely availability of a requested route, delays awaiting admission or clearance at connecting lines, reliable passage through the protected segment, and holding or stopping that impairs CPKC's operations or connections. The standards should be subject to the 30/30 process.

FIGURE 14

INABILITY OF CPKC AND CSXT TO INTERCHANGE VIA THE NEW ORLEANS BACK BELT



152. Applicants' planned reconfiguration of New Orleans area operations, if successful, would highlight and magnify the disparity between the UP-NS connection via the Back Belt and the relatively inefficient connection between CPKC and CSXT via NOPB. As a result of CPKC's own line having been removed as a result of the 1977 public works project, and despite an understanding at the time of the project that CPKC would retain its pre-existing rights, a Catch-22 has emerged so that CSXT and CPKC lack the rights necessary to interchange directly with one another: CSXT has the right to operate on the NS Back Belt to East Bridge Junction but it lacks rights on CN's track to progress beyond that onto CN so that its trains can back into CPKC's West Yard. And although CPKC can operate on CN beyond East Bridge

Junction, NS has taken the position that CPKC cannot operate trains on the Back Belt beyond the entrance to CPKC's yard, which is where CSXT's trains would need to be positioned to interchange via West Yard. As a result, CPKC cannot deliver trains to CSXT, and CSXT cannot deliver trains to CPKC. Instead interchange must take place in a relatively cumbersome fashion through the NOPB that is time consuming for customers.

153. The Board should carefully assess the impacts of the proposed merger at the New Orleans gateway and consider whether the current disparity is in the public interest. If it does approve the merger, the Board should impose conditions aimed at ensuring that Applicants' merger does not disrupt the efficient function of the New Orleans gateway and enabling direct interchange among all carriers at New Orleans via the Back Belt. Specifically, the Board should:

- Maintain perpetual oversight of the operational fluidity in the New Orleans Terminal and retain jurisdiction to impose new conditions addressing any merger-related concerns that may emerge;
- Require UP-NS to grant interchange rights for CPKC over the Back Belt, enabling a direct interchange between CSXT and CPKC via CPKC's West Yard; and
- Establish metrics tailored to the specific operational concerns relating to New Orleans, including transit times for CPKC trains moving to and from CPKC's West Yard. The metrics should be set through the technical conference and be subject to the 30/30 process.

V. THE CONDITIONS CPKC SEEKS IN THE EVENT THE BOARD ALLOWS UP AND NS TO COMBINE WOULD BE OPERATIONALLY FEASIBLE AND EFFECTIVE

154. In this section I address some of the conditions CPKC has proposed in the event UP and NS are allowed to combine. All of the conditions that contemplate operational changes

on the part of CPKC would be feasible to implement, would enable CPKC to meet customer needs and accommodate the volumes Mr. John Brooks forecasts,[48] and would not disrupt operations of Applicants or others.[49] Appendix A below summarizes the anticipated incremental carload volumes associated with CPKC's proposed rights, including high and low estimates where available, and identifies the anticipated interchange or gathering points for that traffic. The operating plans discussed below describe how CPKC would handle that traffic.[50]

A. CPKC's Proposed Operations Between Robstown and Beaumont Would be Feasible and Efficient

1. CPKC Already Provides Efficient Through Service Over this Trackage

155. CPKC already conducts through service between Robstown and Victoria and between Rosenberg and Beaumont via the UP (and Houston Belt & Terminal Railway Company ("HBT")) lines shown in Figure 15 below. Those UP lines connect with the CPKC-owned segment between Victoria and Rosenberg, which includes CPKC's Kendleton Yard. In addition to overhead movements between Robstown or Corpus Christi on the southern end and Beaumont on the northern end, CPKC serves traffic to/from shippers served by the Port Terminal Railway Association ("PTRA") in Houston via a local train that operates between Kendleton and PTRA's

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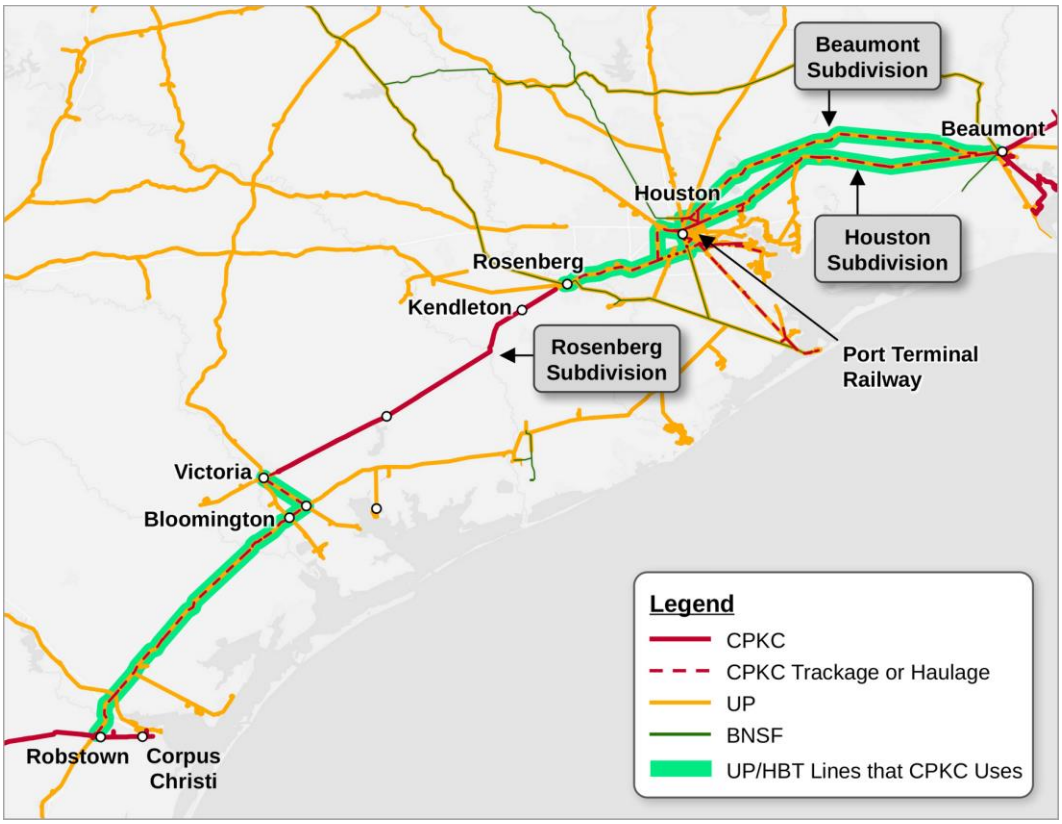
48 *See* John Brooks V.S. § VI.

49 I have reviewed CPKC's responsive applications. Based on my knowledge and experience of railroad operations, I do not anticipate that implementation of the requested rights and conditions would adversely affect CPKC employees during the first three years following implementation. The operations contemplated by those rights and conditions would be performed by CPKC employees. To the extent implementation affected CPKC employment, I would expect that effect to take the form of increases in headcount. Any employee adversely affected by implementation would receive the protections required by applicable law and Board precedent.

50 There is also a density chart appended to the responsive applications and accompanying my verified statement in those applications providing 2025 traffic density data.

North Yard. CPKC also originates and terminates certain traffic on its Victoria-Rosenberg line. These existing operations provide the operating backbone for the additional services contemplated by CPKC's proposed modifications to its trackage rights.

FIGURE 15
CPKC RIGHTS BETWEEN ROBSTOWN AND BEAUMONT



156. CPKC currently operates approximately 15 trains per day on its existing UP trackage rights between Robstown and Victoria and approximately the same number of daily trains on its rights between Rosenberg and Beaumont. Many of these trains change crews at CPKC's Kendleton Yard.

157. CPKC's operations include:

- Approximately four daily 100-Series trains:
    - Expedited trains 180/181 operating daily between Bensenville, IL and Interpuerto, San Luis Potosí, Mexico

- Expedited trains 174/175 operating daily between Bossier City, LA (near Shreveport) and Salinas Victoria, Nuevo León, Mexico

- Approximately three 200-Series manifest trains per day:
  - Manifest trains 274/275, operating four times weekly between Jackson, MS and Sanchez, Tamaulipas, Mexico
  - Manifest trains 280/281, operating daily between Shreveport, LA and Sanchez, Tamaulipas, Mexico

- Approximately seven on-demand 300, 500, and 800 Series trains per day carrying grain, refined products, soda ash, and finished automobiles; and

- Local train M75 operating approximately three days per week between Kendleton, TX and PTRA North Yard in Houston, TX.

2. CPKC's Overhead Operations Between Robstown and Victoria and Between Rosenberg and Beaumont Would Not Fundamentally Change

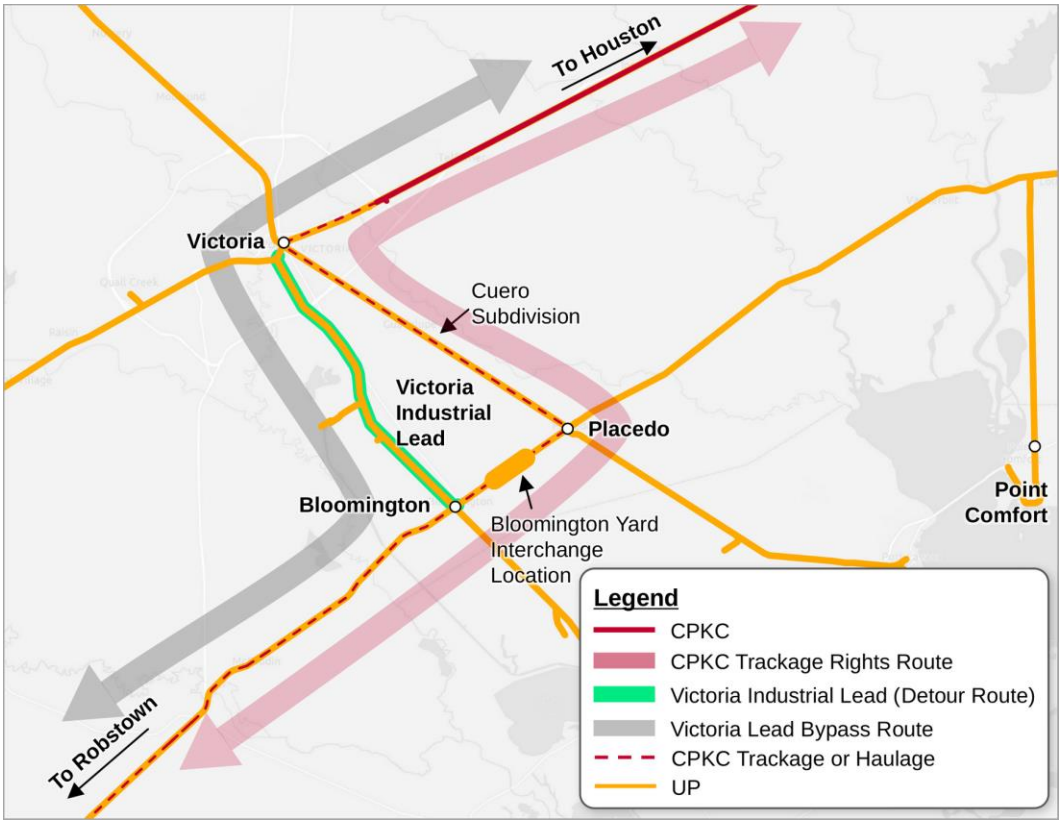
158. CPKC anticipates that it would continue to operate the same overhead trains that currently use the Robstown-Beaumont trackage rights, along with others as appropriate to handle available traffic volumes, whether or not the proposed conditions relating to these trackage rights are granted.

159. CPKC also anticipates that it would continue to have the ability to avoid congestion at Bloomington Yard or between Victoria and Bloomington on the Cuero Subdivision. UP's dispatchers [redacted] the Victoria Industrial Lead, which provides a route between Victoria and Bloomington that bypasses the Cuero Sub and Bloomington Yard to avoid congestion. Diversions of CPKC trains to this route increased from [redacted] of trains in 2022 to [redacted] in 2026.[51] When

[51] Workpaper, "CueroTripsForMerger.xlsx."

UP dispatchers are unable or unwilling to allow CPKC trains to use the bypass route, those trains often experience substantial congestion-related delays as a result of congestion at Bloomington. The detour route via the Victoria Industrial Lead is shown in Figure 16 below. The Victoria Industrial Lead is about 12 miles long and is subject to a 10 mile-per-hour speed limit.

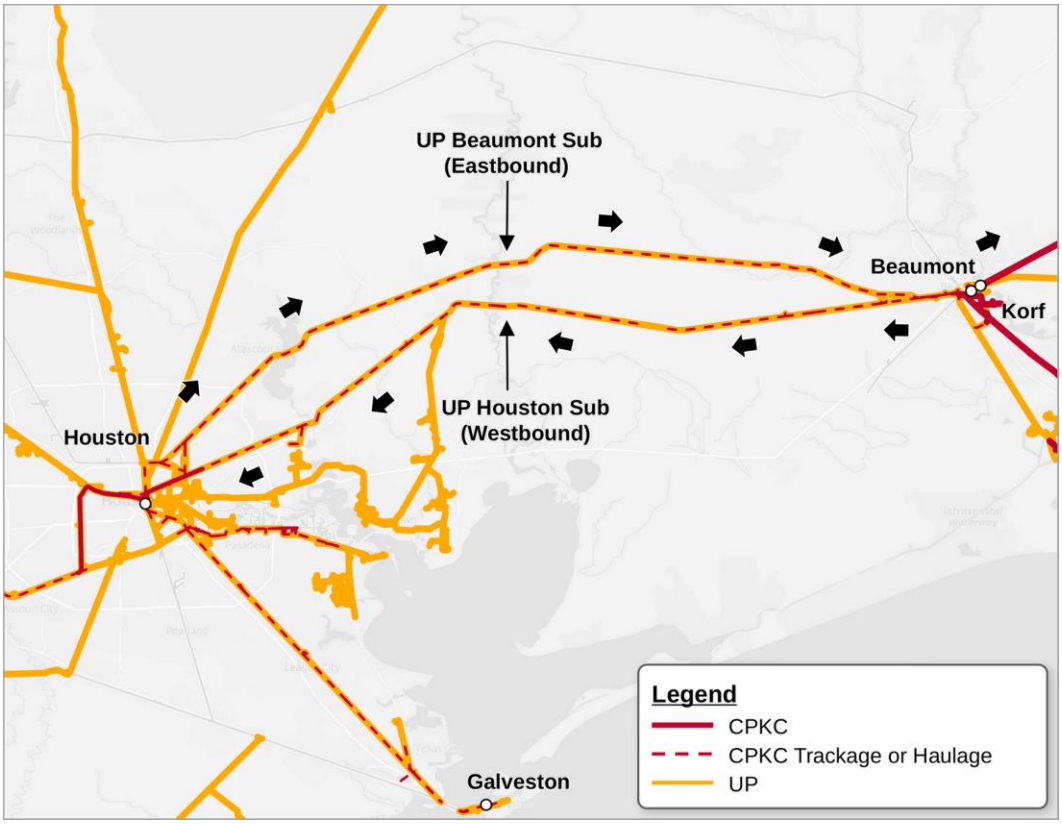
FIGURE 16
BYPASS ROUTE VIA VICTORIA INDUSTRIAL LEAD



160. CPKC believes it is vital that CPKC retain the ability to use this route, and it has therefore sought a condition requiring UP to grant formal rights to use that route, at its option and that of UP dispatchers (including for local customer service) as appropriate to ensure fluidity between Bloomington and Victoria.

161. Between Houston and Beaumont, CPKC's trains operate directionally consistent with UP's directional flow operating patterns, as shown in Figure 17 below.[52]

FIGURE 17
UP DIRECTIONAL OPERATIONS BETWEEN HOUSTON AND BEAUMONT



162. Eastbound CPKC trains operate over UP's Beaumont Subdivision between Gulf Coast Junction in the Houston Terminal and Langham Road in Beaumont, while westbound CPKC trains use UP's Houston Subdivision, beginning at Langham Road in Beaumont and entering the Houston Terminal adjacent to UP's sprawling and often congested Englewood Yard. CPKC has sought a condition confirming that UP may not discontinue CPKC's access to either the Houston or Beaumont Subdivision even if UP ceases this directional running scheme.

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52 *Amtrak Sunset Limited Complaint*, UP's Reply Statement and Evidence at 39.

163. Maintaining this directional flow is critical to CPKC's operations between Houston and Beaumont. Losing access to the Houston Subdivision would force CPKC's traffic in both directions onto the predominantly single-track Beaumont Subdivision, where widely spaced, relatively short sidings would materially restrict capacity. The approximately 29-mile gap between Hull and Workman is a particular bottleneck. Supporting CPKC's bi-directional operations on the Beaumont Subdivision would require substantial staging to arrange meets at Amelia, lengthening existing schedules. Alternatively, CPKC would be required to add additional trains that fit in the short sidings on this line, but the line lacks sufficient capacity for this. With bidirectional running on the Beaumont Subdivision, a substantial share of CPKC's trains would exceed siding length on the line: [redacted][53]

164. Nor could CPKC independently remedy the line's capacity constraints: UP controls dispatching and capital work, leaving CPKC dependent on UP both to accommodate opposing movements and to undertake the infrastructure improvements needed to relieve the bottlenecks.

165. UP has publicly extolled the value of directional running when defending its practice of operating Amtrak's eastbound Sunset Limited train with the current of flow via the Beaumont Sub route rather than "against the flow of freight traffic" on the Houston Subdivision. As UP explained, its directional running scheme "effectively increases line capacity and service reliability for all trains operating in the corridor by reducing the number of meets that would otherwise occur."[54]

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53 Workpaper, "Train Size Analysis UPNS Merger.xlsx."

54 *Amtrak Sunset Limited Complaint*, UP's Reply Statement and Evidence at 39-40.

166. Given UP's past statements, one might expect that UP would want to retain the directional running scheme. CPKC hopes that it does. But CPKC is concerned that UP's acquisition of NS will give it heightened incentives to look for ways to disadvantage CPKC's competition with UP-NS, such as for traffic moving between Mexico and points on NS's Southeast U.S. network. UP might decide that taking away CPKC's ability to use the Houston Subdivision (and removing all of CPKC's trains on that largely double-tracked UP route) would present a strategic tradeoff worth making: hampering CPKC's through service by exiling it to the low-capacity Beaumont Sub route while allowing UP (and BNSF and Amtrak) to use the higher-capacity Houston Sub route. The Board should not allow UP to attempt such an anticompetitive gambit.

3. CPKC's Access to Additional Traffic Would Be Operationally Feasible

167. The removal of existing traffic restrictions on CPKC's use of its Robstown-Beaumont rights, coupled with access to certain solely-served UP customers, would open up competition for shippers by allowing CPKC the opportunity to serve (a) traffic to/from shippers along the Victoria-Robstown lines over which CPKC operates; (b) traffic served by transloads on, or build-ins/build-outs connecting to, CPKC's Rosenberg Subdivision; and (c) traffic to/from shippers already accessed by CPKC but currently restricted to movements that touch CPKC's line between Corpus Christi and Laredo (*i.e.*, preventing movements between South Texas and CPKC's U.S. network north of Beaumont). I address CPKC's plan for handling that new traffic below.

(a) Customers Between Victoria and Robstown

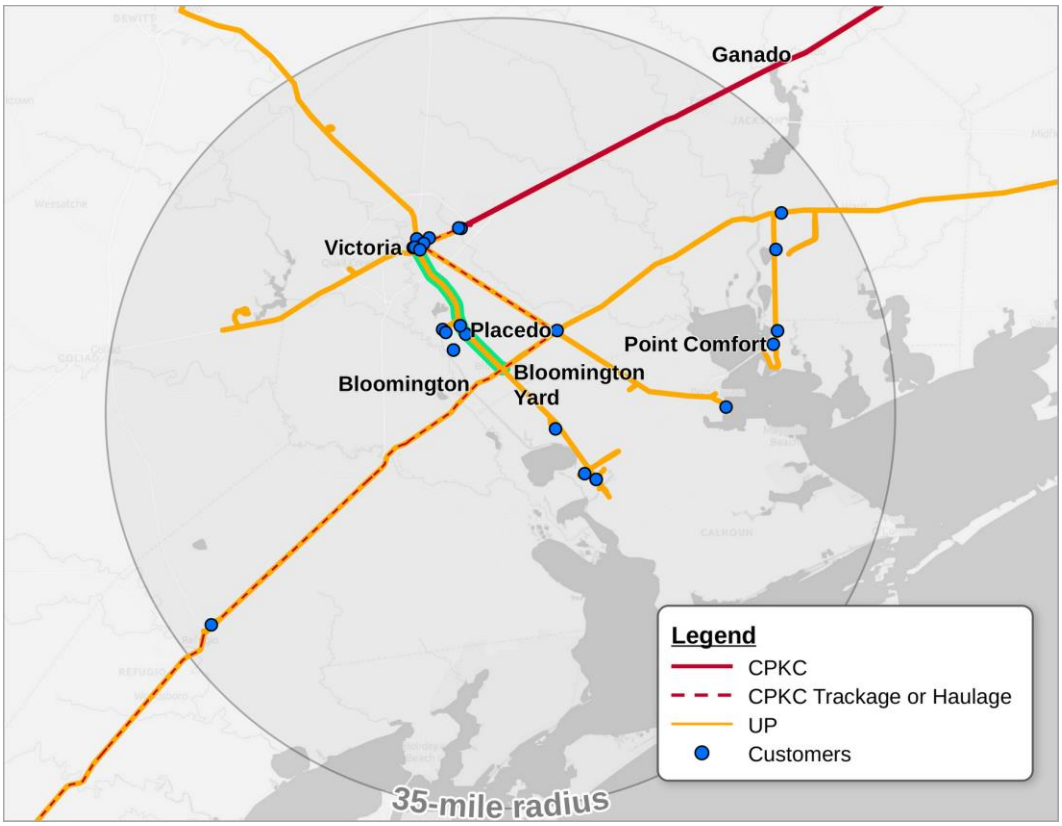
168. CPKC proposes that it be granted access to UP solely served customers adjacent to the lines south of Victoria, TX over which CPKC already operates. CPKC anticipates serving

traffic to/from these facilities via reciprocal switching provided by UP. As such, CPKC would interchange traffic at locations that accommodate UP's existing service patterns.

169. CPKC anticipates two distinct service patterns that line up with UP's services in this part of Texas, basically north of and south of Sinton, TX which sits between Bloomington and Robstown, TX. Specifically:

170. ***For shippers between Victoria and Sinton, TX,*** including at Point Comfort, TX and Bloomington, TX, CPKC would deliver and receive cars at UP's Bloomington Yard or other agreed location. The customer locations within this zone are shown in the map set forth in Figure 18 below. None of these locations is more than [redacted] miles from Bloomington Yard, and all are served by UP today, either directly or by interchange with the Point Comfort & Northern ("PC&N") shortline which interchanges with UP at Lolita, TX on UP's Angleton Subdivision. CPKC understands that locals operating out of Bloomington Yard serve most of these customers, while UP trains moving between Houston and Robstown handle interchange with PC&N.

FIGURE 18
PROPOSED RECIPROCAL SWITCHING FOR CUSTOMERS IN BLOOMINGTON, TX



171. UP local operations serve customers between Victoria and Sinton. For example, its local trains service customers located in the Victoria area and on the Seadrift Lead. UP also has Bloomington locals that serve Victoria customers and work the Victoria Industrial Lead and yard.

172. CPKC's existing manifest trains operating through Bloomington—manifest train pairs 274/275 and 280/281—would pick up and deliver traffic to/from the shipper facilities in this service zone. As discussed below, these trains have ample capacity to handle anticipated additional volumes, which CPKC estimates at approximately [redacted] loads per day and a comparable number of empties per day, 75 percent of which would be moving to/from CPKC's network north of Beaumont, TX.

173. According to the Application, UP is adding substantial capacity at Bloomington Yard that would take its processing capacity to 430 cars per day, while anticipating post-merger processing demand of only 290 cars per day. The excess capacity would go a long way toward supporting the additional sorting to support handoffs to/from CPKC, since most of the traffic CPKC anticipates handling is already processed by UP at Bloomington.

174. Accommodating CPKC's new shipper access between Sinton and Victoria would not overburden UP's operations or facilities. UP already provides first-mile/last-mile service to these customers. At Bloomington Yard, UP would build new blocks for CPKC, but CPKC's access would not add material volumes of *new* traffic to that facility or require any additional local train operations on UP's part.

175. CPKC nonetheless recognizes that investment in additional trackage at or near Bloomington Yard may be required to support the additional processing needed to support CPKC's new access and interchange.[55] CPKC would propose extending Bloomington Siding towards Placedo (to a total length of 20,000 feet) and installing a crossover between the main and the siding. This work would allow two trains (one north and one south) to simultaneously work in Bloomington Yard (or change crews) while leaving a through route open. This would also increase through train capacity at Bloomington, allowing four trains to meet and pass there if necessary to support traffic flows. CPKC would work with UP to design, fund and install the requisite facilities, but UP should be prohibited from resisting or delaying such work.

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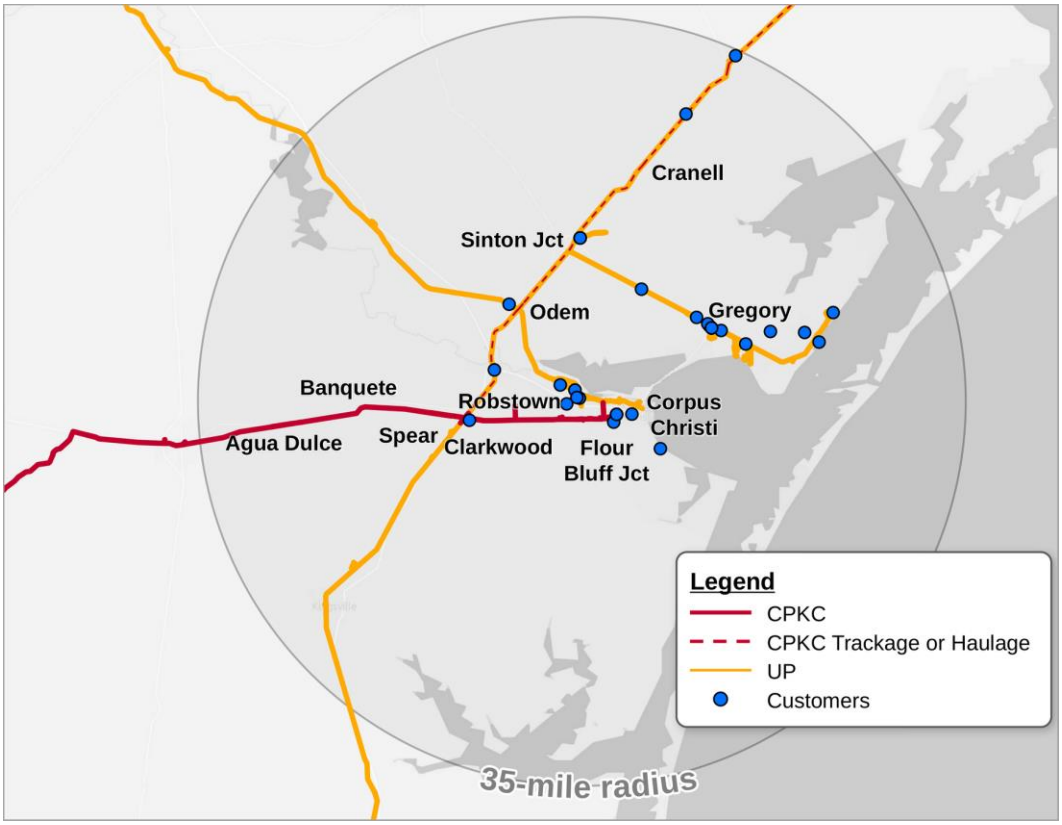
[55] Bloomington Siding is 16,156 feet today, with no crossover. When a UP or CPKC train works at Bloomington or waits for a crew, it blocks the entire siding regardless of the train's length. As currently configured, if a second train were required to work Bloomington it would be brought side-by-side blocking any through route.

176. ***For shippers located between Robstown and Sinton, TX***, CPKC would deliver and receive cars as part of the existing interchange between UP and CPKC at Corpus Christi. Key traffic points on this segment would include Corpus Christi and Gregory, TX. UP serves these points via locals based at Corpus Christi, and traffic from these points is routinely interchanged with CPKC at Corpus. CPKC anticipates that the same interchange operations would readily handle the additional volume of traffic attracted to CPKC line-haul service by the proposed new reciprocal switching access.

177. UP serves customers in this area through local assignments based at Corpus Christi, supplemented by over-the-road trains. The Corpus locals service customers in Sinton and Robstown with transfers to Odem.

FIGURE 19
PROPOSED RECIPROCAL SWITCHING FOR CUSTOMERS IN CORPUS CHRISTI, TX



178. CPKC anticipates that its existing operational design for traffic to/from Corpus Christi, including current interchange with UP there, could readily accommodate the additional volumes of traffic that CPKC would win through competition with UP. CPKC estimates that volume at between [redacted] and [redacted] loads and empties per day, 75 percent of which would be moving to/from CPKC's network north of Beaumont, TX. Currently CPKC picks up interchange traffic from UP at the Port of Corpus Christi-owned Common Interchange Yard. This traffic is brought back to CPKC's Corpus Christi Yard where local traffic is separated and separate blocks are built for movement to Mexico and points north. Mexico-bound traffic departs on Train 270, destined for Sanchez Yard (near Nuevo Laredo) and northbound traffic is brought to the Robstown Siding where it is picked up by Train 281, operating daily between Laredo and Shreveport. As discussed below, CPKC's manifest trains serving this route have ample capacity to accommodate additional volumes.

179. Inbound traffic would be sorted by CPKC at its Corpus Christi Yard and separated into blocks for interchange to BNSF, the Port of Corpus Christi, and UP. CPKC would deliver the UP block (along with that for Port of Corpus Christi) to the Common Interchange Yard where it would be picked up by UP.

180. Accommodating CPKC's new shipper access between Robstown and Victoria would not overburden UP's operations or facilities. UP already provides first-mile/last-mile service to these customers. The interchange facilities at Corpus Christi and the UP and CPKC operations at Corpus Christi also would have no difficulty accommodating the additional increment of railcars moving between UP and CPKC there as a result of CPKC's expanded customer access. UP already builds blocks for CPKC to pick up at the Common Interchange Yard, and there is ample room there to handle the modest additional volumes that CPKC

anticipates, including a separation of that traffic into northbound and southbound blocks. The common interchange yard has ample capacity with 68,385 feet of tracks that would accommodate the increased volumes interchanged between CPKC and UP. CPKC would pick up those blocks daily and deliver them to CPKC's yard in Corpus Christi for pick up by CPKC's through manifest trains.

(b) New Traffic Reached Via CPKC's Rosenberg Subdivision

181. Under restrictions imposed by UP, CPKC is not permitted to use its trackage rights to move certain traffic to and from facilities reached via CPKC's Rosenberg Subdivision between Victoria and Rosenberg. Of particular note, CPKC cannot handle traffic moving between transload facilities on the Rosenberg Subdivision and points north of Beaumont, and CPKC also may not serve any traffic to/from shipper facilities that might be reached via build-outs or build-ins connecting with the Rosenberg Subdivision. CPKC seeks a condition removing these restrictions.

182. CPKC would have no difficulty supporting the traffic opportunities unlocked by the removal of these restrictions. Were CPKC to serve new transload facilities, it would do so in the same manner that it serves existing customers on the Rosenberg Subdivision Line: via local service based at Kendleton. CPKC would anticipate that the same service pattern would apply to potential shipper access via build-outs or build-ins.

183. Were larger opportunities to materialize, CPKC would work with the customer to design new train service that met the customer's needs and invest in facilities needed to support that service. For example, CPKC could support the traffic of customers such as [redacted] at [redacted] TX, which would require a build-out of approximately [redacted] miles to reach CPKC's Rosenberg Subdivision. Were the prospective

customer interested in pursuing this opportunity, I expect it would represent a meaningful amount of traffic, and CPKC would be eager to make the investments in service and capacity necessary to ensure that the customer's needs were met.

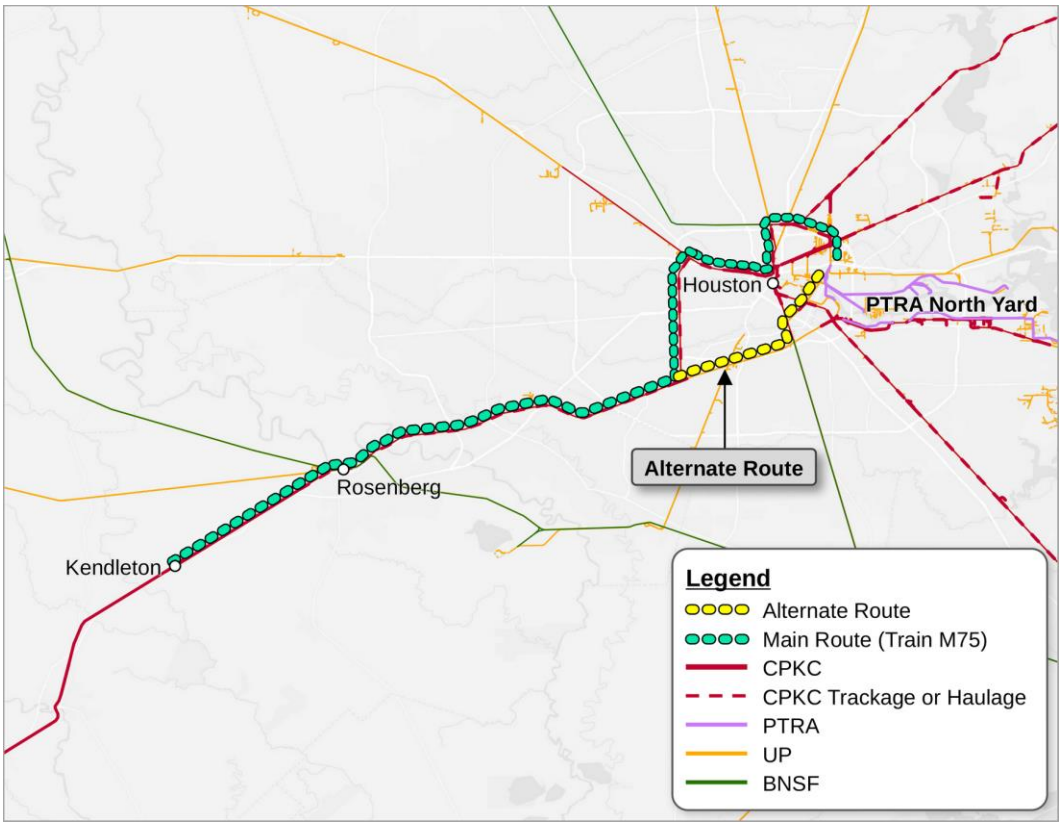
(c) Additional Traffic for Customers to Which CPKC Already Has Access

184. Removing restrictions on CPKC's use of its existing trackage rights to serve customers to which CPKC already has access would allow CPKC to attract additional traffic for customers served by the PTRA in Houston, and HBT customers to which CPKC was granted access in the Board's decision approving the *UP/SP* merger.

185. As noted above, CPKC currently serves traffic originated or terminated on PTRA via its local train M75, which operates approximately three days a week between Kendleton and PTRA's North Yard in Houston, as shown in Figure 20 below. Because of the current restrictions on CPKC's trackage rights traffic, CPKC's interchange with PTRA is geared toward traffic moving between Houston and points reached via CPKC's Corpus Christi-Laredo line. Traffic moved by Train M75 is picked up or delivered at Kendleton by CPKC's Mexico-U.S. manifest trains (274/275 and 280/281).

186. It would be in the public interest for CPKC to be allowed to provide an additional competitive option for shippers by originating and terminating traffic at PTRA that was not required to move on CPKC's Corpus Christi–Laredo line. Kendleton Yard has the capacity to handle all of this traffic, and CPKC owns property adjacent to Kendleton Yard that would support expansion of that facility if necessary.

FIGURE 20
ROUTE OF EXISTING CPKC TRAIN M75 BETWEEN
KENDLETON AND HOUSTON NORTH YARD



187. CPKC anticipates adapting the same operating framework to handle additional PTRA (and HBT) volumes moving between Houston and points north. Train M75 would provide local service between Kendleton and PTRA North Yard, and trains 281 and 275 would move the traffic north into the CPKC network, with further processing at Shreveport and beyond. Train M75 could handle considerable additional volumes of traffic, as it averages only [redacted] cars delivered to PTRA and [redacted] cars received from PTRA today. As volume increases CPKC would anticipate increasing the frequency of operation of this train to five days per week.

188. Initially, CPKC would pick up and deliver all traffic to/from PTRA and sort northbounds and southbounds at Kendleton. As volumes grew, CPKC would anticipate PTRA building separate blocks for CPKC containing southbound and northbound traffic. Such

treatment is consistent with PTRA's practice of building multiple blocks for UP (*e.g.*, for UP's Englewood and Settegast yards), and CPKC understands that PTRA has sufficient capacity and is willing to perform this work were CPKC to have the right to move PTRA traffic northbound.

189. Depending on longer-term growth in volumes, CPKC would anticipate working with PTRA to build full trains that CPKC would power, crew and launch from PTRA's North Yard.

190. In 1996, CPKC also was granted access to a number of customers on the HBT, which is now operated by UP and BNSF. With the right to use CPKC's trackage rights on UP for traffic moving between Houston and points north, CPKC may have the ability to attract additional volumes from those customers, which we would serve via switch access provided by UP or BNSF.

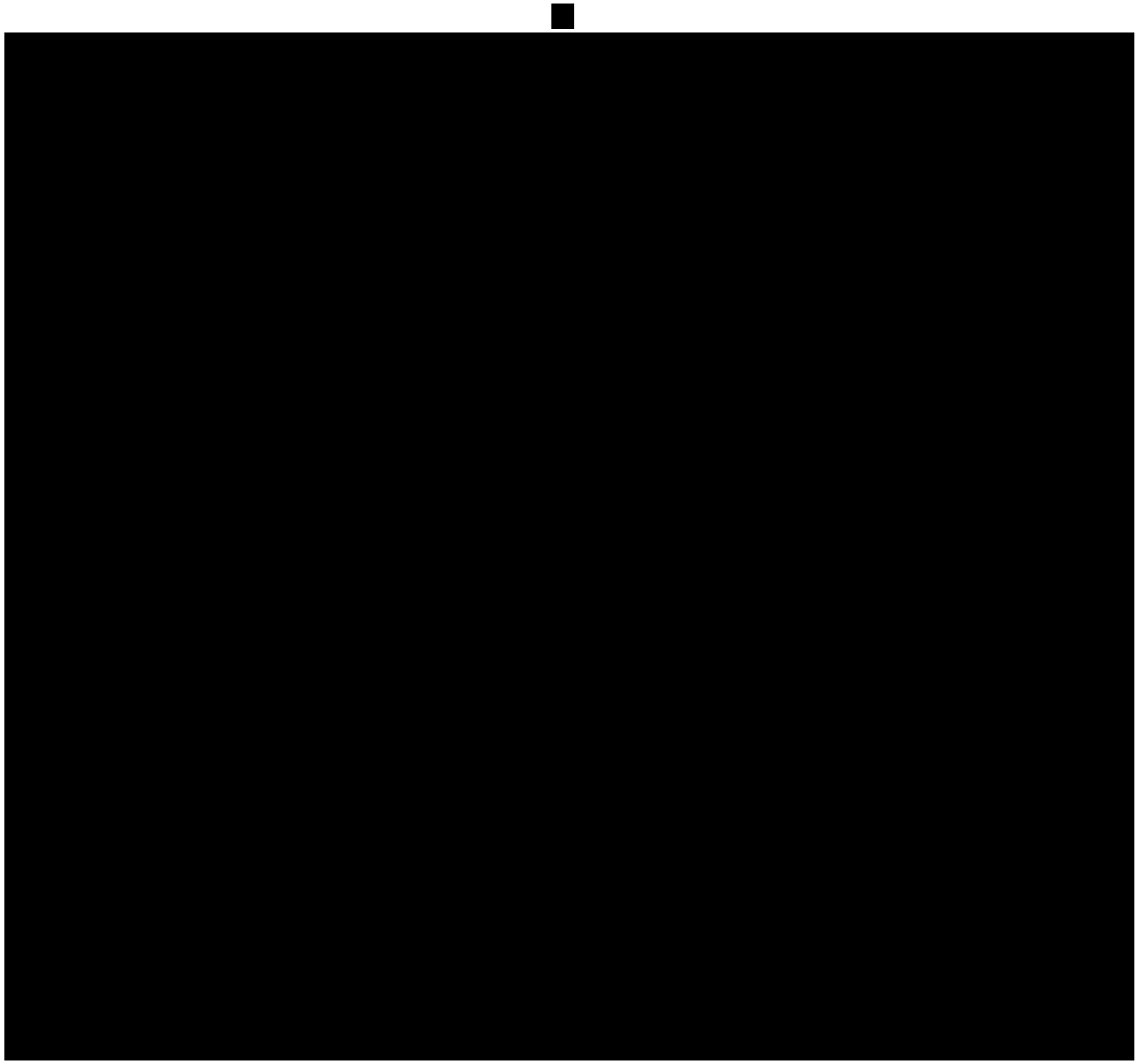
4. CPKC's Existing Manifest Train Network Would Handle the Additional Traffic for Which CPKC Would Be Allowed to Compete

191. The new traffic handed off by UP at Corpus Christi and Bloomington, and the new traffic interchanged with PTRA in Houston or generated by former-HBT customers, would be handled by the same Laredo-Beaumont manifest trains that already operate over the line today. Manifest train pairs 274/275, 280/281, and 270/271 (a manifest train pair operating twice a week between Corpus Christi, Texas and Sanchez, Tamaulipas, Mexico) would deliver and pick up traffic at Corpus Christi, Bloomington, and Kendleton and move traffic into the CPKC network to destination or connecting gateways.

192. There would be ample capacity on these trains for additional traffic, including via increased frequency of operation. Table 1 shows the average train lengths of each of these trains and the capacity (or "headroom") available to pick up or deliver additional cars at Corpus Christi, Bloomington, and Kendleton. There is ample capacity to handle the volume of traffic

CPKC anticipates, and additional capacity would be created by increasing the frequency of these trains in the event traffic exceeds forecasts.

TABLE 1
WORK PLAN AND AVAILABLE CAPACITY FOR CPKC[56]
EXISTING MANIFEST TRAINS BETWEEN BEAUMONT AND ROBSTOWN



56 Workpaper, "Train Size Analysis UPNS Merger.xlsx."



5. Shifting Dispatching Responsibility for the Victoria-Robstown Segment to CPKC Would Foster Improved Operational Coordination

193. CPKC is by far the largest user of the UP lines between Victoria and Robstown over which CPKC operates, with train counts that significantly exceed those of UP and BNSF combined. CPKC could readily support dispatching of operations over this trackage. CPKC's dispatcher at the Spring, TX Joint Dispatching Center where UP dispatches the Robstown-Victoria line already handles the dispatching of trains on CPKC's lines south of Robstown and between Rosenberg and Victoria. It would be highly efficient for that dispatcher to also handle the middle segment of the route for CPKC trains moving between Rosenberg/Kendleton and Laredo, along with UP and BNSF trains in that corridor (*i.e.*, Victoria-Robstown).

194. CPKC would welcome UP's voluntary transfer of these dispatching responsibilities to CPKC, but CPKC imagines that UP would not want to give up that operational control, and CPKC is not insisting that such a transfer occur unless UP's continued dispatching generates outcomes that fall short of appropriate performance standards. In that event, a transfer of responsibility to CPKC could be swift and seamless. CPKC would expect that the potential for such a transfer will incentivize UP to perform more effectively.

VI. CPKC's Proposed Access to Customers Near Baton Rouge Would Be Feasible and Efficient

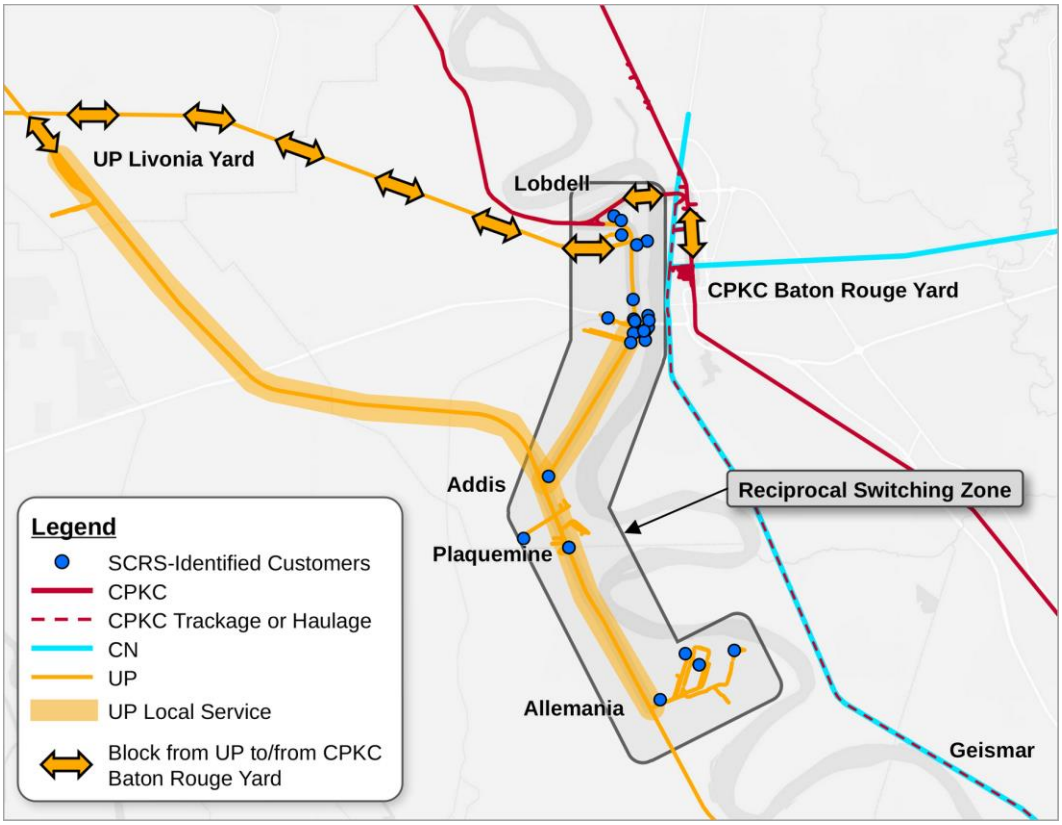
1. Access to Customers Via Reciprocal Switching Is Feasible and Straightforward

195. The reciprocal switching access CPKC seeks to UP-served customers in the vicinity of Baton Rouge would be feasible and would not disrupt UP's operations in the area. UP serves these customers via local train service linked to UP's Livonia Yard, and UP interchanges with CPKC daily at Baton Rouge via service also based at Livonia. This would

make it simple to augment the current interchange with volumes to/from additional Baton Rouge-area UP-served customers.

196. CPKC's proposed zone of reciprocal switching access is shown in Figure 21 below. The Board should require UP to provide reciprocal switching between CPKC and all eligible existing and future UP sole-served facilities within a reciprocal switching zone that encompasses all shipper facilities on or reached through the West Baton Rouge route extending from Lobdell to Addis over the Avoyelles Subdivision alignment and necessary connecting trackage at Addis, and continuing south over the Livonia Subdivision to MP 79.7, including the siding and industrial trackage along that route and the customer leads and connections necessary to reach the covered facilities.

FIGURE 21
PROPOSED RECIPROCAL SWITCHING FOR CUSTOMERS IN BATON ROUGE



197. UP's current service plan for these customers could readily support reciprocal switch access for CPKC. Customers south of Addis, LA at Plaquemine and Allemania are served by a UP local based in Addis, and a local that moves traffic gathered at Addis to/from Livonia Yard. Customers north of Addis along UP's track that parallels the west side of the Mississippi River between Anchorage and Port Allen are served by a UP local based at Livonia.

198. At Livonia, UP today builds a CPKC interchange block and delivers that block daily to CPKC's Baton Rouge Yard via the UP Anchorage Subdivision, connecting to the UP Avoyelles Subdivision at Anchorage Junction (MP 621.0 Anchorage & MP 10.4 Avoyelles), thence to CPKC's New Orleans Subdivision at Lobdell (MP 12.2 Avoyelles/MP 780.7 New Orleans). UP's existing operation could readily absorb the additional cars moving to/from CPKC as a result of CPKC's new reciprocal access to shippers in the area. UP-CPKC interchange volumes average [redacted] cars delivered to CPKC by UP and [redacted] cars picked up by UP from CPKC at CPKC's Baton Rouge Yard.[57] The UP train that handles this traffic, and the Livonia Yard operation that processes this block for interchange, have ample capacity to add the additional cars—anticipated to be approximately [redacted] cars per day in each direction—that CPKC could attract were it to have access to compete to win these customers' business.

2. Converting CPKC's Access from Reciprocal Switching to Direct Access Via Trackage Rights Would Be Feasible and Improve Efficiency

199. CPKC proposes conditions enabling it to convert to serving Baton Rouge-area UP customers directly via trackage rights if UP's reciprocal switching service fails to support competitive levels of service. The trackage rights would extend from Lobdell to Allemania as

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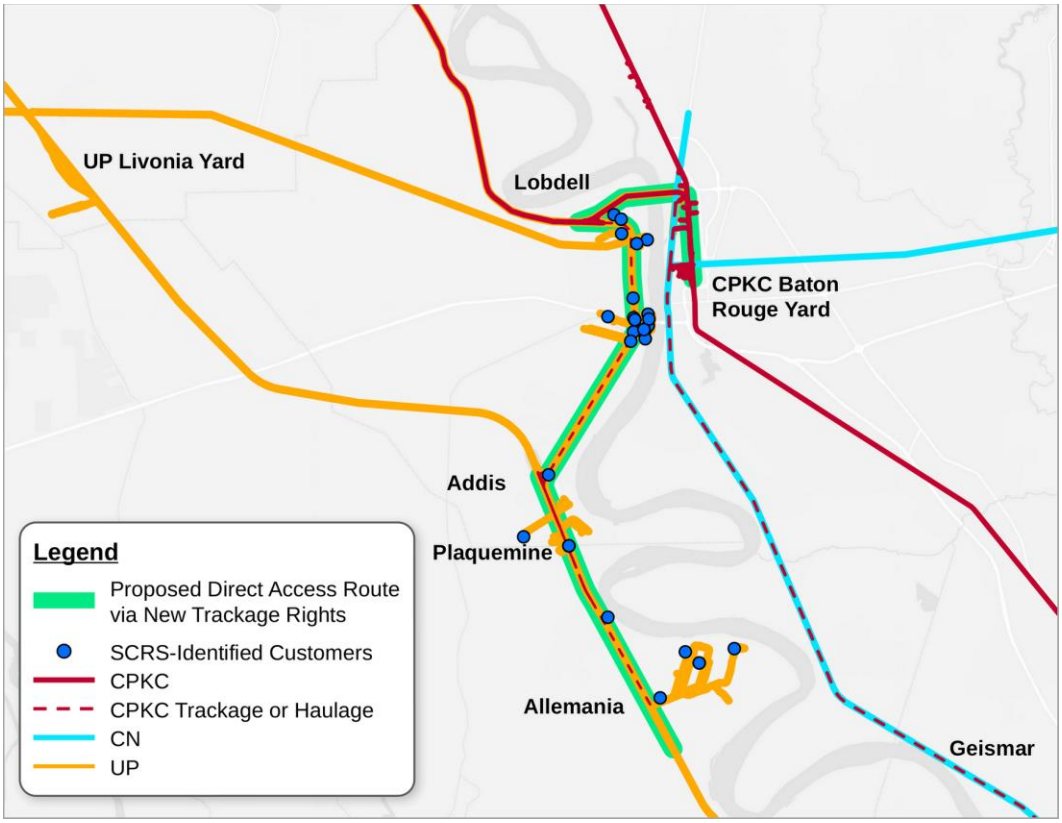
[57] Workpaper, "Baton Rouge Interchange Data.xlsx."

shown in Figure 22, and include sufficient headroom beyond the customer turnout at Allemania to provide headroom for CPKC trains serving facilities there. This would be a very straightforward and feasible switch in operating protocols in the Baton Rouge terminal area, and would in fact reduce workload at UP's crowded Livonia Yard.

200. CPKC would establish a new local turn service that operates from Baton Rouge across the Mississippi River to Lobdell, on the UP Avoyelles Sub to Addis, and down UP's Livonia Sub as far as Plaquemine and Allemania to service the industries to which CPKC would gain access. CPKC would add an additional set of locomotives to its Baton Rouge assignment pool to support this service. The operating plan for this service is shown in Figure 22 below.

FIGURE 22
CPKC PLAN TO SERVE CUSTOMERS NEAR BATON ROUGE, LA DIRECTLY



201. This daily operation would require coordination with both UP and the customers CPKC would serve, and CPKC would work with these parties to identify an optimal slot for its operations that meets the needs of all parties. There should be no obstacle to this arrangement being workable, provided UP is reasonable and cooperative. The joint UP and CPKC access to customers on the Chiason Branch near Beaumont provides an illustration of how this can work effectively. There, UP and CPKC have worked out access to shared customers during separate time windows that avoid the railroads getting in each other's way.

202. Direct service by CPKC would be advantageous in at least two respects. It would reduce UP's need to devote capacity at its Livonia Yard to the processing of cars being switched to CPKC. And it would support faster transit times for CPKC's customers, by eliminating the time required for intermediate handling by UP at Livonia Yard.

3. CPKC Can Efficiently Handle Traffic to/from These Customers Via Its Existing Service Design

203. The traffic generated by CPKC's new customer access could readily be handled within its current manifest train design. CPKC operates a manifest train pair, 268/269, between Baton Rouge, LA and Shreveport, LA six days per week. CPKC also operates daily manifest train L60, in both directions between Baton Rouge and New Orleans.

204. Both sets of trains have ample capacity to handle the anticipated volume of traffic moving to/from the Baton Rouge area shippers to which CPKC would have access. Trains 268/269 would move traffic destined to points north of Baton Rouge. Train 268 (southbound from Shreveport to Baton Rouge) averages [redacted] Train 269 (northbound from Baton Rouge to Shreveport) averages [redacted] The design length for these trains is 10,000 feet, and the contemplated additional traffic would not approach 10,000 feet.

205. Train L60 would move traffic to destinations south of Baton Rouge. Train L60 averages [redacted] feet southbound from Baton Rouge to New Orleans and [redacted] feet northbound from New Orleans to Baton Rouge. Given the ample capacity headroom on these trains, the additional daily traffic volumes could be added to them without compromising safety or train performance, as shown in Table 2 below.

TABLE 2
WORK PLAN AND AVAILABLE CAPACITY FOR CPKC[58]
EXISTING MANIFEST TRAINS SERVING BATON ROUGE

[redacted]

206. CPKC's Baton Rouge Yard has ample capacity to handle a higher volume of interchange with UP and to process the cars into CPKC's northbound and southbound manifest

58 Workpaper, "Train Size Analysis UPNS Merger.xlsx."

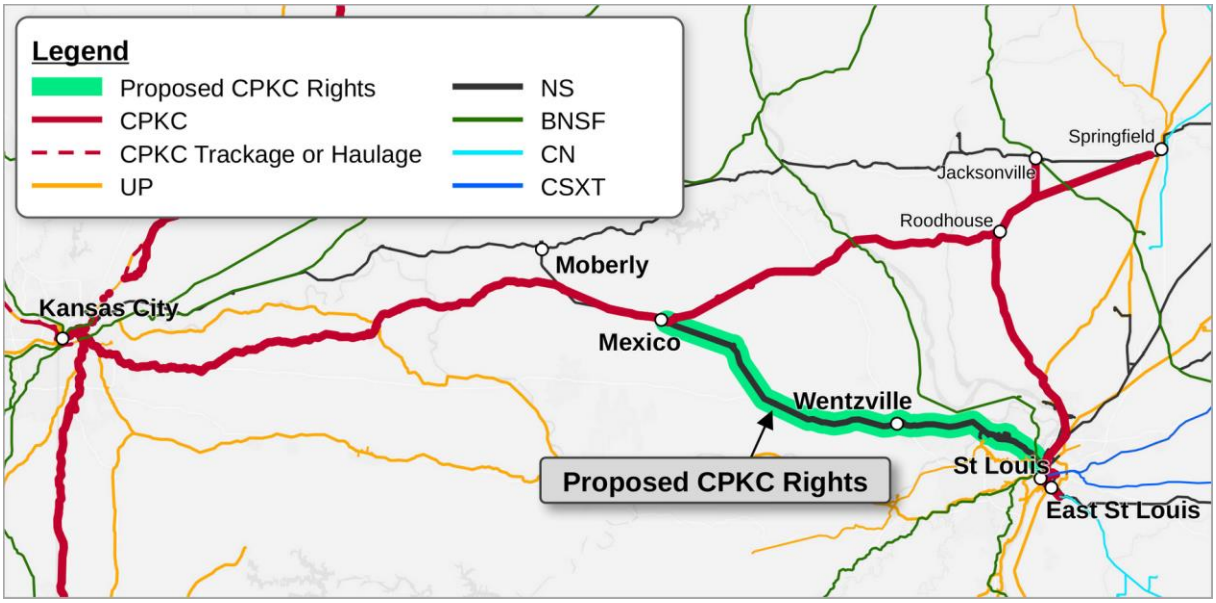
[redacted]

trains as described above. Baton Rouge Yard has a maximum operational capacity of 525 cars and the design model calls for the processing of a volume well under that capacity.

VII. CPKC's Proposed Operations Between East St. Louis and Mexico, Missouri Would Support Strengthened Competitive Options Between Kansas City and St. Louis

207. CPKC proposes to acquire new trackage rights over NS's line between Mexico, Missouri, and St. Louis, and via TRRA's line connecting NS with CPKC's network in East St. Louis. The proposed Mexico-St. Louis rights are shown in Figure 23 below.

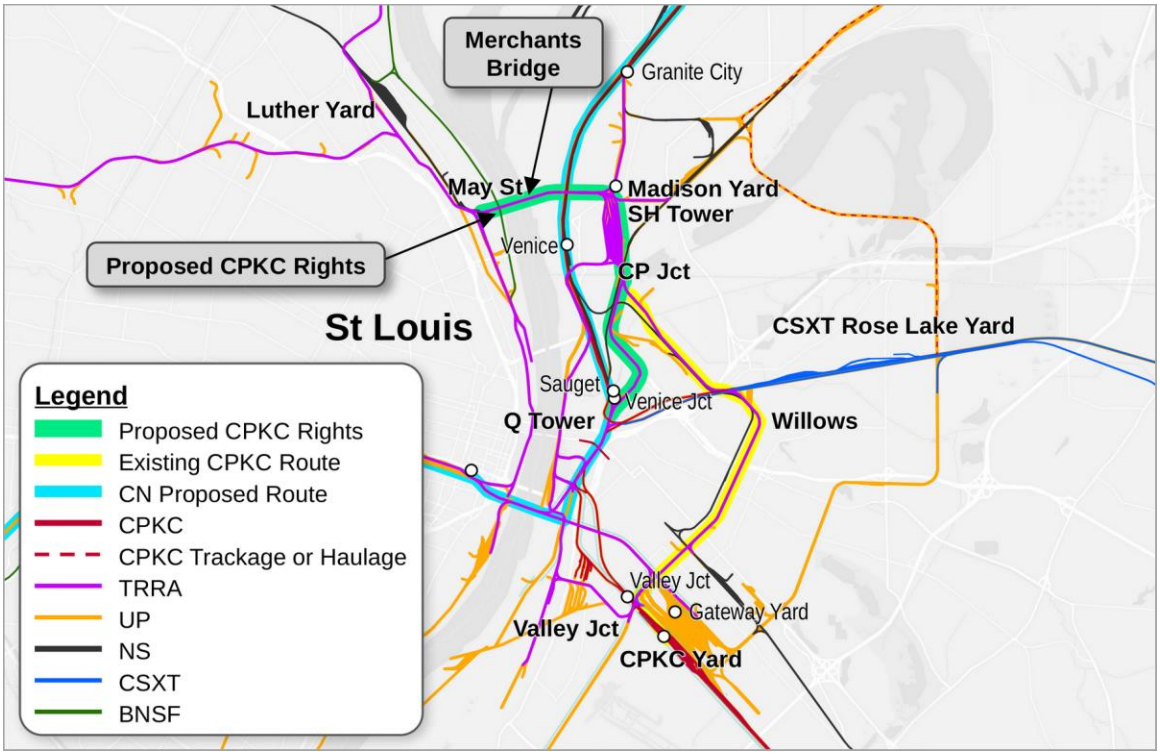
FIGURE 23
CPKC RIGHTS BETWEEN MEXICO AND ST. LOUIS



208. The proposed rights on TRRA are shown in Figure 24 below. CPKC seeks full overhead trackage and operating rights in both directions from NS's connection with TRRA at May Street Interlock (where CPKC's rights on NS would end) to a reconnection with CPKC's trackage in East St. Louis, in order to "close the gap" between these two portions of CPKC's network. Specifically, CPKC would operate over TRRA's West Belt Subdivision from May Street to West Approach Interlock, over the Merchants Subdivision across the Merchants Bridge to SH Interlock, and over the Illinois Transfer Subdivision to CP Junction and Valley Junction.

209. The Board should grant full overhead trackage and operating rights for CPKC over each of these segments without restrictions that would prevent the proposed operations including between CP Junction and Q Tower. Those rights should permit CPKC to move traffic in its own account between the new NS route rights and its East St. Louis facilities and eastern interchange connections making the separately requested Mexico to East St. Louis rights operationally effective.

FIGURE 24
PROPOSED RIGHTS ON TRRA TRACKAGE



1. CPKC's Planned Overhead Operations Using Mexico-St. Louis Trackage Rights

210. New trackage rights between Mexico, MO and East St. Louis would provide CPKC the ability to enhance competition with a more direct route that is faster and about 45 miles shorter than its existing route via Roodhouse, IL. CPKC anticipates that it would improve

performance of trains using this route by approximately one to two hours as compared with CPKC's current service.

211. CPKC's use of the new route for its Kansas City-St. Louis trains would be carried out without downgrading the quality of service CPKC offers to customers served by its lines east of Mexico, MO (*i.e.*, Mexico-to-Springfield and Roodhouse-to-East St. Louis). Customers east of Mexico would receive the same level of service from CPKC going forward as they've had in the past.

212. CPKC currently operates approximately [redacted] trains per day on its lines between Kansas City and St. Louis (including traffic moving to/from CPKC's Springfield and Jacksonville Subdivisions):

- Manifest train pair 258/259 operates three days per week in each direction between Kansas City and St. Louis, with stops to pick up and/or drop blocks en route at Slater, MO; Mexico, MO; and Roodhouse, IL.
- Local K10 serves customer facilities between:
    - Slater, MO and Mexico, MO two days per week; and
    - Slater, MO and Mayview, MO three days a week.
- Local K11 serves customer facilities between:
    - Roodhouse, IL and Jacksonville, IL two days per week;
    - Roodhouse, IL and Mexico, MO two days per week; and
    - Roodhouse, IL and Springfield, IL one day per week
- Local K12 serves customer facilities between Roodhouse, IL and Jerseyville, IL five days per week and often runs into East St. Louis as needed.

- Various bulk trains operating on demand (averaging 1-2 per day) (a) serving major grain facilities, including at Corder, MO; Marshall, MO; Slater, MO; and Jacksonville, IL; and (b) between East St. Louis or the St. Louis gateway and Kansas City.

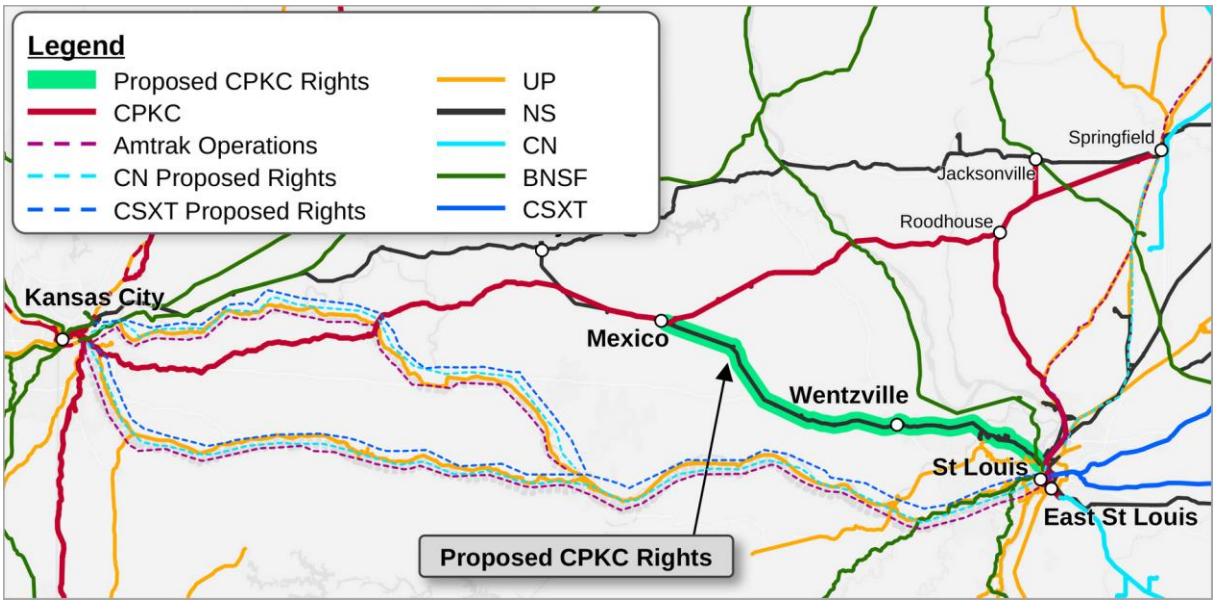
213. To more efficiently handle current CPKC volumes between Kansas City and St. Louis, CPKC would reroute manifest trains 258/259 and bulk trains moving between St. Louis and points west of Mexico, MO via the more direct trackage rights route, accounting for approximately one train per day. CPKC's trains would continue to change crews at Mexico, as they do today.

214. The proposed rerouting would not reduce CPKC's commitment to or ability to serve customers located on its existing lines east of Mexico. Local traffic currently handled by trains 258/259 between Mexico and Roodhouse would instead be handled by the existing K11/K12 local train operation, with local schedules coordinated with trains 258/259 at Mexico and East St. Louis. Existing customers would therefore retain their current service frequency while benefiting from a more efficient line-haul operation. The re-routing would not jeopardize the viability of CPKC's line between East St. Louis and Roodhouse, which handles manifest traffic moving between the St. Louis gateway and Jacksonville, IL.

215. [redacted]

216. An improved CSXT-CPKC-BNSF bridge route between St. Louis and Kansas City would provide an advantageous alternative to pending and anticipated divestiture/trackage rights proposals in this proceeding relating to UP's Sedalia Subdivision and River Subdivision lines between those gateways. Among the advantages would be reduced congestion in the Kansas City Terminal, since the bridged traffic could transit the Kansas City Terminal efficiently via existing CPKC routes (augmented by a confirmed right to connect with BNSF via the Incline Track/North End Freight Line route discussed above), and a lack of need to coordinate with Amtrak, which does not operate over the lines that CPKC would use between East St. Louis and Kansas City but does operate on the lines to which CN and CSXT seek access.

FIGURE 25
CPKC ROUTE VIA PROPOSED NS RIGHTS IN COMPARISON WITH CN OR CSXT RIGHTS OVER UP LINES



217. CPKC would establish a dedicated premium train service operating on an expedited schedule to serve intermodal traffic opportunities if sufficient volume was attracted to this route. CPKC anticipates that this train, if it were established, would also handle any automotive traffic moving between General Motors at Wentzville, MO and the Kansas City or

St. Louis gateways. Provided there was sufficient traffic, CPKC would operate these trains daily. CPKC could also support traffic volumes to/from GM and other customers at Wentzville via new local service between there and East St. Louis.

2. CPKC's Planned Local Service to Customers Adjacent to Proposed Mexico-St. Louis Trackage Rights

218. CPKC has proposed to gain access to shipper facilities located between Mexico, MO and St. Louis. CPKC anticipates that this access would be via reciprocal switching service provided by NS via NS's local serving yards at St. Louis (Luther Yard) and Wentzville, MO.[59]

219. At Wentzville, NS would assemble CPKC-destined traffic from customers located between Mexico, MO and Wentzville into blocks and place those blocks at an agreed interchange location at NS's Wentzville Yard. CPKC trains 258/259 operating on increased frequencies to meet customer needs, or a future dedicated premium train service (for GM automotive traffic if volumes warranted), would set out inbound blocks and lift outbound blocks as part of their scheduled movement through Wentzville.

220. NS would perform the same function at Luther Yard in St. Louis for traffic to/from NS-served customers between Wentzville and St. Louis. CPKC anticipates that UP-NS local train service would collect/distribute the traffic. At present, NS locals D16 and/or D20 operate as a turn from Moberly, MO to Wentzville, MO servicing local industries between Mexico, MO and Wentzville, MO; those locals could handle any traffic moving to/from CPKC. NS Local D67 or D99, which operate between St. Louis Luther Yard and Wentzville, serve GM at Wentzville, MO and any intermediate customers; those trains also could handle any traffic moving to/from CPKC. UP-NS would be required to build a Kansas City block for CPKC to

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[59] CPKC should have the option of serving these customers directly if volumes warrant.

pick up on our 259 at Wentzville, MO, and the same train would drop cars destined for industries between Mexico and St. Louis.

221. CPKC could handle additional manifest and automotive traffic on existing trains 258/259, which would have ample capacity to take on additional carloads. Train 258 from Kansas City to St. Louis currently averages [redacted] while train 259 averages [redacted] and neither train operates daily. The trains could grow to at least 8,600 feet and be able to meet or pass at sidings on the NS line between Mexico and St. Louis. Available capacity would increase significantly as the frequencies of these trains expanded to daily service, as shown in Table 3 below.

TABLE 3
WORK PLAN AND AVAILABLE CAPACITY FOR CPKC[60]
REROUTED MANIFEST TRAINS BETWEEN KANSAS CITY AND ST. LOUIS

[redacted]

[redacted]

3. NS's Mexico-St. Louis Line Has Ample Capacity for CPKC's Planned Operations

222. CPKC anticipates that its exercise of rights over NS's Mexico-St. Louis line would add approximately two trains per day to this line, plus potential run-through trains with CSXT, which CPKC is confident is well within the capacity of this CTC-signaled route. Applicants indicate that the route will host only about 10 trains per day in Year 5, taking account of organic growth, and Applicants forecast that their merger will add fewer than two additional trains per day to the line.[61]

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60 Workpaper, "Train Size Analysis UPNS Merger.xlsx."

61 *See* EI-34224 (filed Apr. 30, 2026) (Master Segment Table) (Segment 10206, NS St. Louis Subdivision between Moberly, MO and St. Louis, MO, showing Year 5 trains per day of 10.27 without merger and 1.56 trains per day of merger-related growth).

[redacted]

223. CPKC's overhead operations would not cause any new congestion or disrupt fluidity on this line. CPKC trains would move progressively onto and off of NS trackage at Mexico, MO. CPKC would stage eastbound trains on its own tracks at Mexico when necessary to await clearance onto the NS. CPKC would dispatch westbound trains in a manner that allowed them to exit the NS trackage promptly at Mexico.

4. Operations on TRRA Between St. Louis and East St. Louis

224. To close the gap between its NS rights and CPKC's existing lines in East St. Louis, CPKC would also require terminal trackage rights over TRRA trackage between May Street and CPKC's lines.

225. To reach its yard in East St. Louis, CPKC would operate on TRRA trackage across the TRRA-owned Merchants Bridge, which underwent a reconstruction project in 2022 that restored full double-track capability and increased bridge capacity to approximately 70 trains per day while eliminating speed, clearance, and load restrictions that had previously existed. Accordingly, the limited number of CPKC movements contemplated under the proposed rights would represent only a small fraction of the bridge's available daily capacity.

226. From NS's connection at May Street Interlock, CPKC would operate over TRRA's West Belt Subdivision, West Approach Interlock, the Merchants Subdivision, the Merchants Bridge, the SH Interlock, and the Illinois Transfer Subdivision through CP Junction and Valley Junction to reach its East St. Louis Yard and CSXT's Rose Lake Yard. Overhead trackage rights on this complete route, in both directions, would allow CPKC to close the gap between its own network in East St. Louis and CPKC's rights on NS in St. Louis. There is ample capacity headroom on these lines to support the limited number of additional CPKC trains contemplated. CPKC would interchange railcars (or full trains) with CSXT at CSXT's Rose

Lake Yard in the same manner it does today, via movement from CPKC's East St. Louis Yard to CSXT's Rose Lake Yard via Valley Junction and Q Tower, or, in the event CPKC and CSXT establish run-through service between Kansas City and CSXT's network, directly via CP Junction.

VIII. CPKC's Exercise of Trackage Rights on UP's Lufkin Subdivision Between Shreveport and Houston Is Feasible and Would Not Cause Disruption

227. As I explained above, the UP-NS merger could lead to severe congestion between Houston and DeQuincy, LA, and in the Houston Terminal near UP's Englewood Yard. A number of potential steps may be necessary to prevent or remedy the adverse impacts of such congestion. One such step would be to enable CPKC through trains to bypass the area of congestion via rights over UP's Lufkin Subdivision between Houston and Shreveport.

228. CPKC trains moving between Houston and Shreveport have used this route in the past on a detour basis. That is less frequent today because UP chose to demand massive increases in the detour fees on this territory, raising them from about $25/train mile to $100/train mile today. (UP's $100/train mile detour charge is an outlier, well outside the range other carriers charge for detour rates.)

229. CPKC's trackage rights on the Lufkin Sub could be triggered by evidence of merger-related service degradation on trackage CPKC shares with UP and where UP's volumes are anticipated to increase as a result of the merger, specifically between Houston (where the Lufkin Sub begins) and DeQuincy, LA.[62] Use of the Lufkin Sub would allow CPKC trains to

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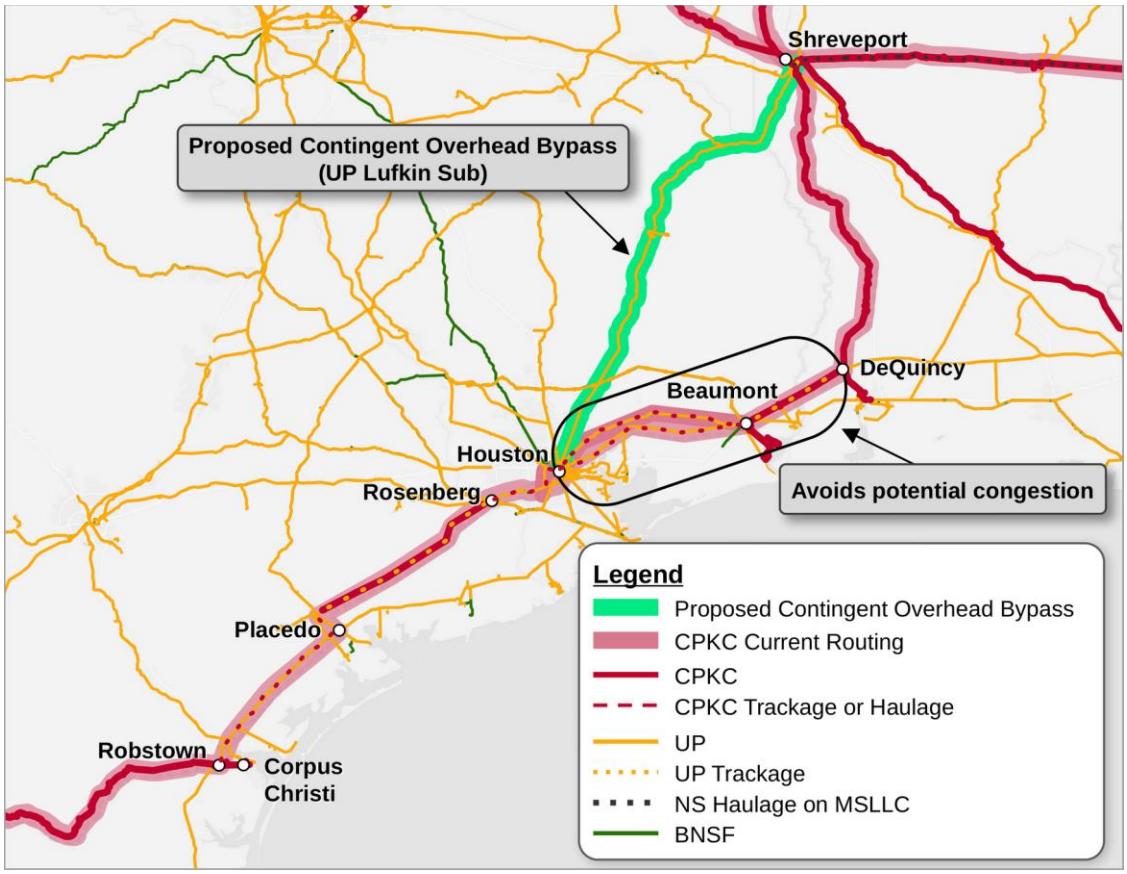
[62] The Board could set standards governing this trigger at the technical conference. The standards should protect CPKC's ability to complete its movements over the shared Houston-DeQuincy route reliably. Those standards should assess timely acceptance and admission, delays while awaiting access or trains held along the route, unreliable passage, and excessive recrews. The standards should be subject to the 30/30 process.

avoid congestion-related delays between Houston and DeQuincy, while also reducing train volumes on that segment, thereby alleviating congestion.

230. UP's Lufkin Subdivision is shown in Figure 26 below.

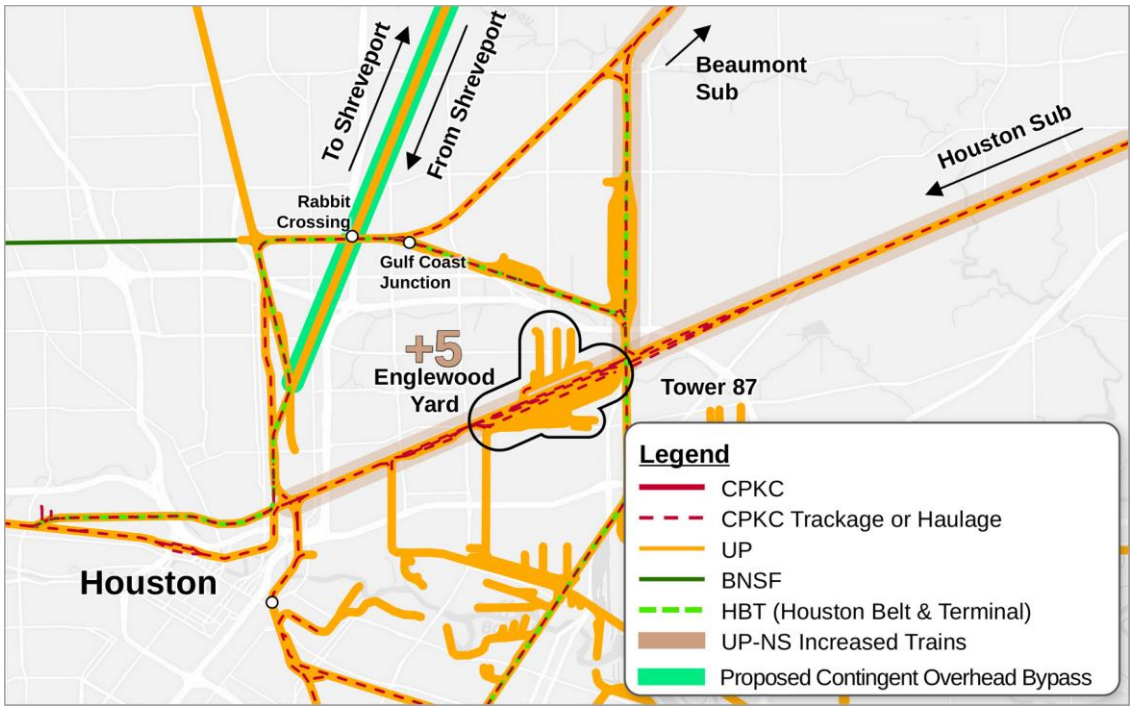
FIGURE 26
PROPOSED CPKC RIGHTS ON UP LUFKIN SUBDIVISION



231. The Lufkin Sub route would bypass the Houston-DeQuincy route that UP's merger-related traffic would use, allowing CPKC trains to move between Houston and Shreveport without needing to use the segments most vulnerable to merger-caused congestion.

232. At the southern end of the route, CPKC trains would enter or exit the Houston Terminal at MP 230.87 MT 3 on the UP Houston West Belt Subdivision, avoiding the need to operate past Englewood Yard, which historically has been a major area of UP-caused congestion. This Lufkin Sub route is shown on the Houston Terminal map set forth in Figure 27 below.

FIGURE 27
TRAFFIC FLOW IN HOUSTON VIA NEW LUFKIN SUB RIGHTS

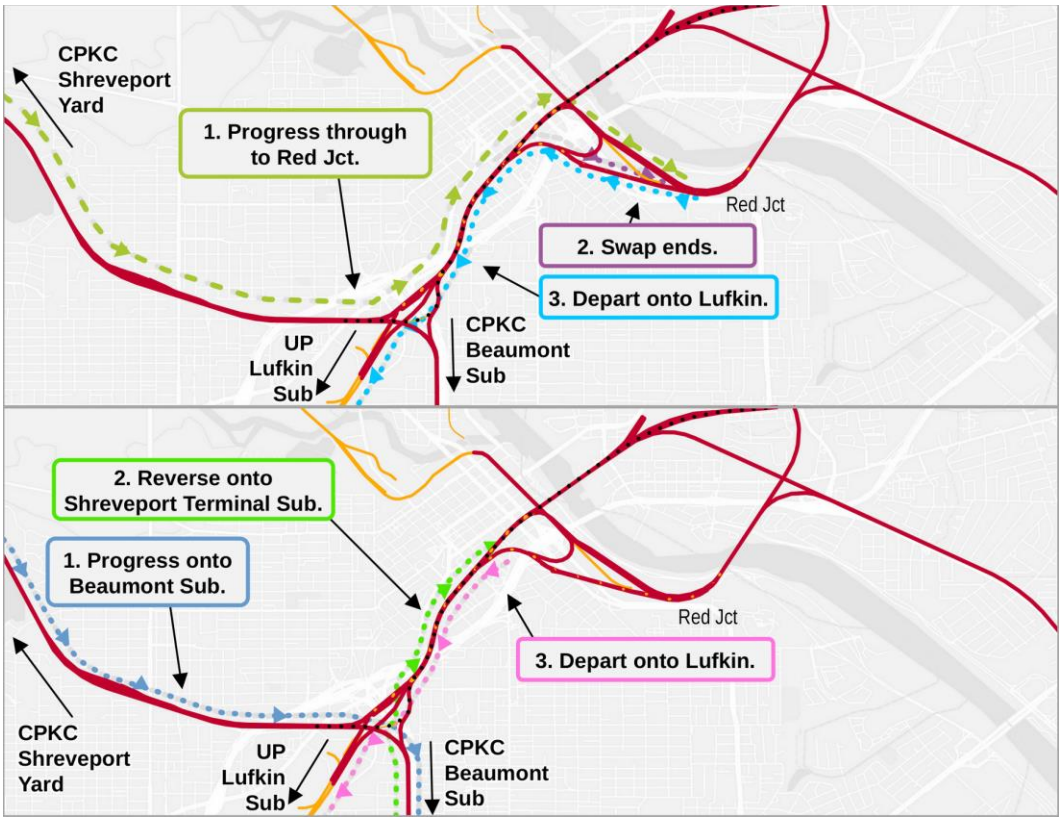


233. At the northern end of the route, CPKC trains would exit or rejoin CPKC's network at MP L-558.8, No. 3 Main Track on the CPKC Shreveport Terminal Subdivision. CPKC trains connecting with the MSLLC route at Shreveport (*i.e.*, current train pairs 174/175 and 274/275), would make a progressive connection via CPKC's Wilson's Alley. These trains would change crews at Bossier City at the usual crew change point for CPKC trains connecting with the MSLLC. Trains progressing to/from MSLLC would not represent additional volume on the MSLLC route, so there should be no delays entering or exiting.

234. There are alternative means by which CPKC trains originating at CPKC's Shreveport Yard could access the Lufkin Sub for southbound moves. One route would have trains connecting between the Lufkin Sub and CPKC's Shreveport Yard and/or routes to Dallas and Kansas City move via Red Junction on Main 3, swap controlling ends and continue their movement, with the route shown in blue in Figure 28 below.

235. Alternatively, trains can move via CPKC's "Hollywood" track, perform a reverse move and then proceed onto the Lufkin Sub, via the route shown in pink in Figure 28 below. Whichever route they used, these trains would change crews at Shreveport Yard, consistent with CPKC's current practice. We know that these moves are feasible because CPKC and BNSF route coal trains via these routes to reach the BNSF-served generating plant in Martin Lake, TX.

FIGURE 28
DIAGRAM SHOWING POSSIBLE ROUTES OF TRAINS ACCESSING LUFKIN SUB IN SHREVEPORT



236. UP operates the Lufkin Sub as a single-crew district between Houston and Shreveport, and CPKC would operate its trains over the route using its own crews between Shreveport and Kendleton when possible. Transits between Shreveport and Kendleton that avoid significant delay would support this plan, but CPKC anticipates that it will often need to change crews en route. Based on its experience with detour moves over this line, CPKC would plan to

change crews (when necessary) at Jensen Drive, just south of Tower 76 (the point labeled "Rabbit Crossing" in Figure 27 above). CPKC would have crews in its Kendleton and Shreveport South crew bases qualified on this territory (via familiarization runs and certification in conjunction with UP) to support operations on the route and support re-crewing of trains when necessary.

237. CPKC trains that could feasibly be diverted to the Lufkin Sub route would include only those that had no work to perform between Houston and Shreveport. Based on CPKC's current transportation plan, CPKC anticipates that [redacted] trains per day would be candidates to divert to this route, as follows:

- Trains [redacted]

238. Decisions about the routing of CPKC's trains would be based on an evaluation of conditions on the two available routes and CPKC would provide UP with appropriate notice of a plan to route particular trains via the Lufkin Route. For southbound trains, CPKC would anticipate providing UP with [redacted] advance notification of a movement via the Lufkin Sub route. Since UP currently uses the Lufkin Sub primarily for southbound directional running today, northbound CPKC trains would require more advance notice, perhaps [redacted]

239. CPKC's use of this route would depend on UP giving prompt acceptance to trains at Shreveport and Houston, and dispatching of the trains on terms no less favorable than its dispatching of UP and BNSF movements over the same territory.

240. CPKC's decisions regarding use of the route would also take into account train length limitations and locomotive power needs. Trains that exceed any generally applicable length limitation would either be operated via CPKC's normal route or shortened in Kendleton or Shreveport. To the extent operation via the Lufkin Sub required additional locomotive horsepower, CPKC would add that power at Kendleton or Shreveport.

241. There is more than ample capacity on this route to accommodate CPKC's potential operations. As Applicants have informed the Board, fewer than eight trains per day are anticipated to use this route in Year 5, and the merger will increase the number of trains by only 0.03 trains per day.[63]

IX. CPKC's Requests for Operating Rights in the Kansas City Area

1. CPKC Access to the Incline Track/North End Freight Line Route Is Both Important and Feasible

242. A condition confirming (or granting) CPKC's right to operate on UP trackage between Troost Avenue and a connection with Kansas City Terminal Railway ("KCT") trackage at Broadway, as shown in green on Figure 29 below, would enable the restoration of an efficient route that CPKC historically used to operate between Knoche Yard on the east side of the Kansas City Terminal and points on the west side of the Terminal, including customer facilities served

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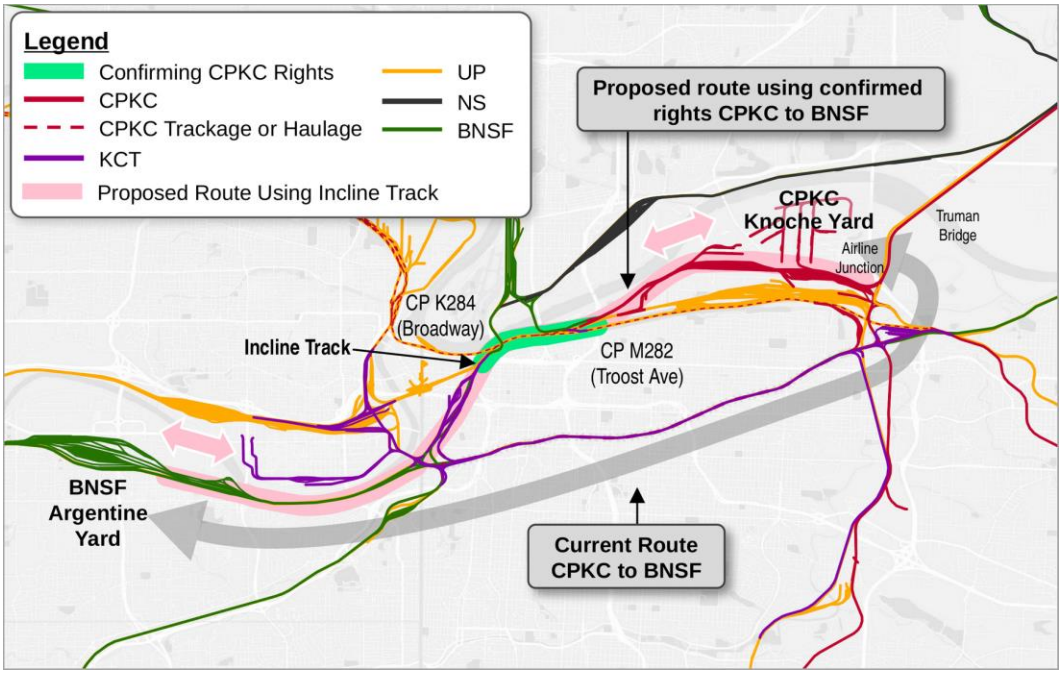
[63] *See id.* (Segments 10527-10531, from Riverfront on UP's Shreveport Sub to Bender on UP's Lufkin Sub).

by KCT and interchange with BNSF at its Argentine Yard. UP abruptly claimed the right to terminate that route in 2024 and has refused to allow CPKC or BNSF access for over two years.

FIGURE 29
ROUTES BETWEEN CPKC'S KNOCHE YARD AND BNSF'S ARGENTINE YARD



243. As Mr. Gameiro explains,[64] CPKC's predecessor had rights on this segment for decades as a result of a transition in the 1990s from operations over KCT's North End Freight Line, until UP purported to cancel CPKC's rights in 2024. The proposed condition would merely allow a reinstatement of pre-2024 operational patterns, most importantly allowing CPKC to interchange with BNSF via the Incline Track route rather than operating "around the horn" through Airline Junction, KCS Junction and KCT's heavily used main line past Kansas City Union Station.

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64 Gameiro V.S. ¶ 41.

244. The current route required by UP's refusal to allow CPKC use of the Incline Track route is incompatible with the additional congestion that the UP-NS merger will bring to the Kansas City Terminal. The problems with the current route are already acute. They begin as CPKC's local train, destined for interchange with BNSF and KCT on the west side of the Terminal (Train KK20), prepares to depart from Knoche Yard, on the east side of the Terminal. The train must exit the east end of Knoche Yard onto the busy shared UP-CPKC single main line at Airline Junction. Train KK20 must first wait for clearance from the KCT dispatcher. If a UP train is working at UP's nearby Neff Yard and blocking the Southwest Junction, which currently occurs approximately once a month, the wait can be several hours. This can cause the Train KK20 crew to expire on hours of service, missing its transfer assignment. This missed transfer in turn causes congestion in Knoche Yard.

245. Once Train KK20 receives clearance to proceed, it must assemble, or double up, the train, which requires it to occupy the shared main. Train KK20 first pulls a block of cars from Knoche's Track 1 out onto the main line and then pushes back to the block of cars on Track 2. Then it conducts federally mandated airbrake tests and inspections, before departing south. The doubling up process takes approximately 45 minutes. During this time, the train blocks the north-south main line and also the UP east-west main line running through the Southwest Junction crossing diamond just to the south of Airline Junction.

246. Train KK20 then continues south via KCS Junction onto KCT's Transcon Route, which is dispatched by KCT and is shared with Amtrak, which operates six trains daily on the line: the Amtrak Southwest Chief operates once in each direction and the Amtrak River Runner operates twice in each direction. From there, Train KK20 proceeds west to Santa Fe Junction. At Santa Fe Junction there is a flyover with a grade of 1.2 percent. This grade requires that

CPKC (and BNSF) either limit the size of the train consist or operate a high horsepower road locomotive, which is generally not an option due to availability and efficiency issues. This is different from the traditional route via the KCT North End Freight Line (including the Incline Track), where there are no grade-related tonnage restrictions that affect Train KK20. Train KK20 then proceeds to BNSF's Argentine Yard, delivers the cars, and operates the locomotive light over the same route to return to Knoche Yard.

247. From a safety perspective, operating over the Incline Track/North End Freight Line route is far superior. On the Incline Track/North End Freight Line route, the crew doubles the train in the yard. On the current route trains must occupy the main line while doubling up, which increases safety risk. On the Incline Track/North End Freight Line route, BNSF-bound cars can be cleared on a daily basis. On the current route, volume limitations and missed transfers can create yard congestion at Knoche Yard. If UP causes delay resulting in a missed transfer, the train must be re-yarded occupying tracks normally used for inbound traffic. Re-yarding the train and dealing with yard congestion generally requires additional switching activities which creates additional risks. Additionally, whereas KCS and BNSF were normally able to both deliver and pull interchange in the same trip via the Incline Track/North End Freight Line route, delays inherent in the current route mean that CPKC delivers to BNSF (unless the transfer has to be canceled due to delays explained above), and BNSF separately delivers to CPKC, taking two trains to do the work of one.

248. In summary, UP's blocking CPKC and BNSF from interchanging via the KCT Incline Track/North End Freight Line route would make CPKC-BNSF interchange less safe, less reliable and much less efficient, leading to additional yard congestion and congestion on the busy KCT Transcon line. These adverse impacts would be sharply exacerbated by UP's plan to run an

additional 7.48 trains across the KCT southern main line and past Southwest Junction and Airline Junction, as I discuss above. CN's proposed operations into Neff Yard would also conflict with the current route of CPKC's operations to the west side of the Kansas City Terminal.

249. Confirming CPKC's rights to use the Incline Track/North End Freight Line route would allow CPKC's and BNSF's operations to return to the pre-2024 patterns described above. The feasibility of CPKC using the Incline Track/North End Freight Line route is unquestionable, for two reasons. First, CPKC traditionally operated via this route, and nothing has changed about the route to make those operations infeasible. Second, the settlement agreement between CN and UP appears to provide for UP granting trackage rights access to CN across the exact same route between Neff Yard and Broadway via Troost and the Incline Track.[65]

2. Continued CPKC Access to the UP-Owned Portion of the Polo Line Paired Track Is Important and Feasible

250. A condition preserving CPKC's right to operate on the UP-owned portion of the "Polo Line" paired track between Airline Junction in Kansas City and Polo, MO (where the UP and CPKC lines diverge), as shown in Figure 30 below, would ensure that UP did not seek to terminate these important and efficient rights when the term of the agreement expires in 2030.[66]

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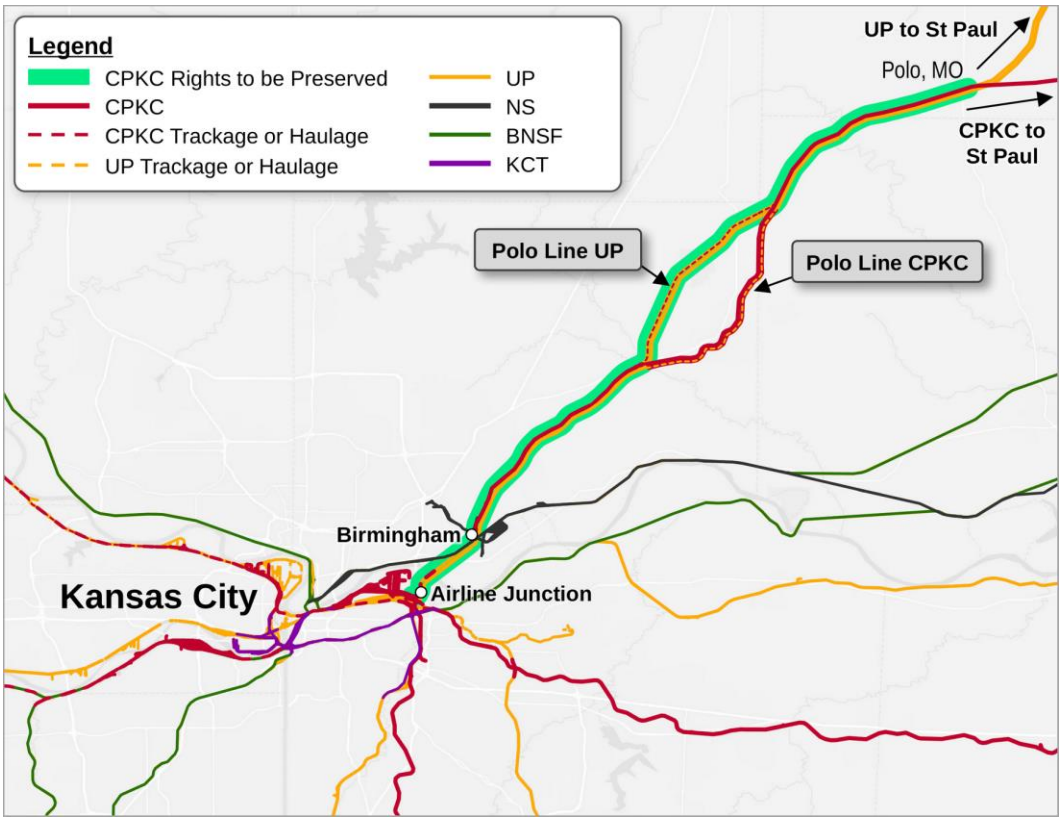
[65] CN's Description of Anticipated Responsive Applications (CN-30) (filed Sept. 9, 2026), stated that CN would seek trackage rights over UP lines between "Lydia Avenue and Broadway in Kansas City, Missouri," which is the same Troost-Broadway segment I am discussing here.

[66] *See* Gameiro V.S. ¶ 157.

FIGURE 30
CPKC RIGHTS ON THE POLO LINE

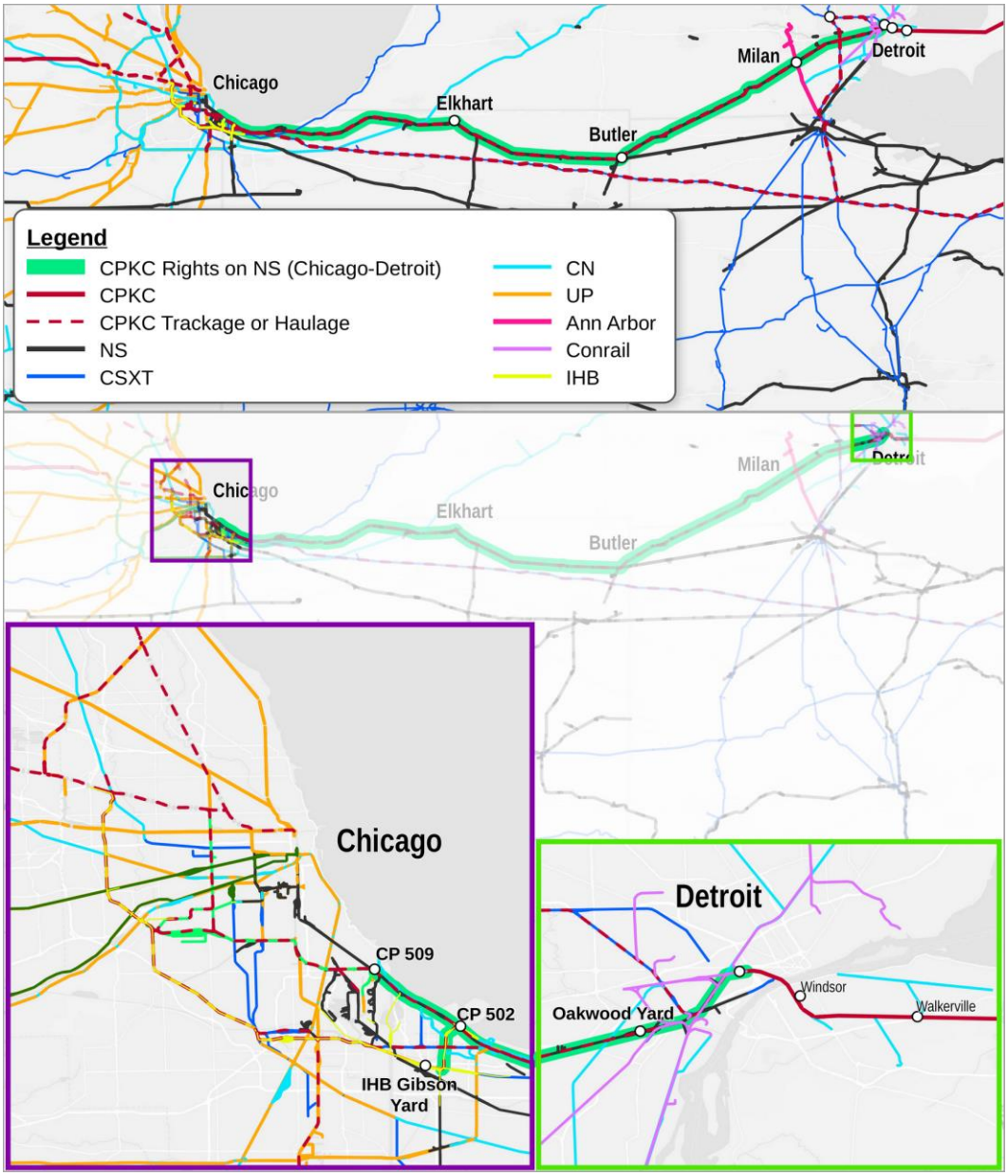


251. From an operational perspective, granting the condition CPKC seeks would not change anything relative to pre-merger conditions relating to CPKC's operations between Airline Junction and Polo. CPKC would have no objection to having this condition require that CPKC likewise maintain UP's access to the CPKC-owned portion of the Polo Line on the same terms as CPKC's access to the UP segment. As discussed above, the Board should also act to ensure that Applicants' merger-related changes to the volume and routing of traffic through the Kansas City Terminal do not disrupt CPKC's and others' operations on the eastern side of the Terminal, especially between KCS Junction and Birmingham. *See* ¶¶ 116-17 above.

X. CPKC's Proposed Operations Between Chicago and Detroit Would Be Feasible and Efficient

252. CPKC already conducts through service between Chicago and Detroit on the UP-NS lines shown in Figure 31 below.

FIGURE 31
CPKC CHICAGO-DETROIT RIGHTS ON NS



253. CPKC's rights over those NS lines connect with the Belt Railway of Chicago at CP 509 and with the Indiana Harbor Belt via rights over NS between CP 502 and IHB's Gibson

Yard, including delivering finished automobiles to IHB Gibson Yard. In Detroit, CPKC's rights on NS connect at Delray (MP 4.4 of NS's Detroit Huntington District), with CPKC rights over a short segment of Conrail trackage in Detroit to a connection with CPKC's line through the Detroit River Tunnel between Detroit and Windsor, ON (at 24th St. Detroit at MP 115.0 of CPKC's Windsor Subdivision).

1. CPKC's Overhead Operations Between Chicago and Detroit on NS Trackage Rights Would Not Fundamentally Change

254. CPKC currently operates approximately four trains per day using its existing trackage rights on NS between Chicago and Detroit. These operations include:

- [redacted]

255. Each of these trains changes crews at Elkhart, IN. CPKC anticipates that all of these through trains would continue to use the modified trackage rights as proposed by CPKC,

but CPKC anticipates that transit times would improve with better attention by NS to service standards.

2. CPKC's Operations Could Readily Accommodate the Anticipated Traffic Gains Resulting from Removal of Traffic Restrictions

256. [redacted]

257. CPKC anticipates handling the anticipated traffic as follows:

258. ***Traffic Interchanged with Ann Arbor Railroad.*** CPKC would handle traffic interchanged with Ann Arbor Railroad by replacing existing Train 730 with a new pair of trains (trains 232/233) that would operate daily between Chicago (likely via CP502 and the IHB) and Toronto, with pick ups and set outs en route at NS's Oakwood Yard in Detroit and elsewhere as appropriate. Like CPKC's other through trains on this line, these trains would change crews at Elkhart.

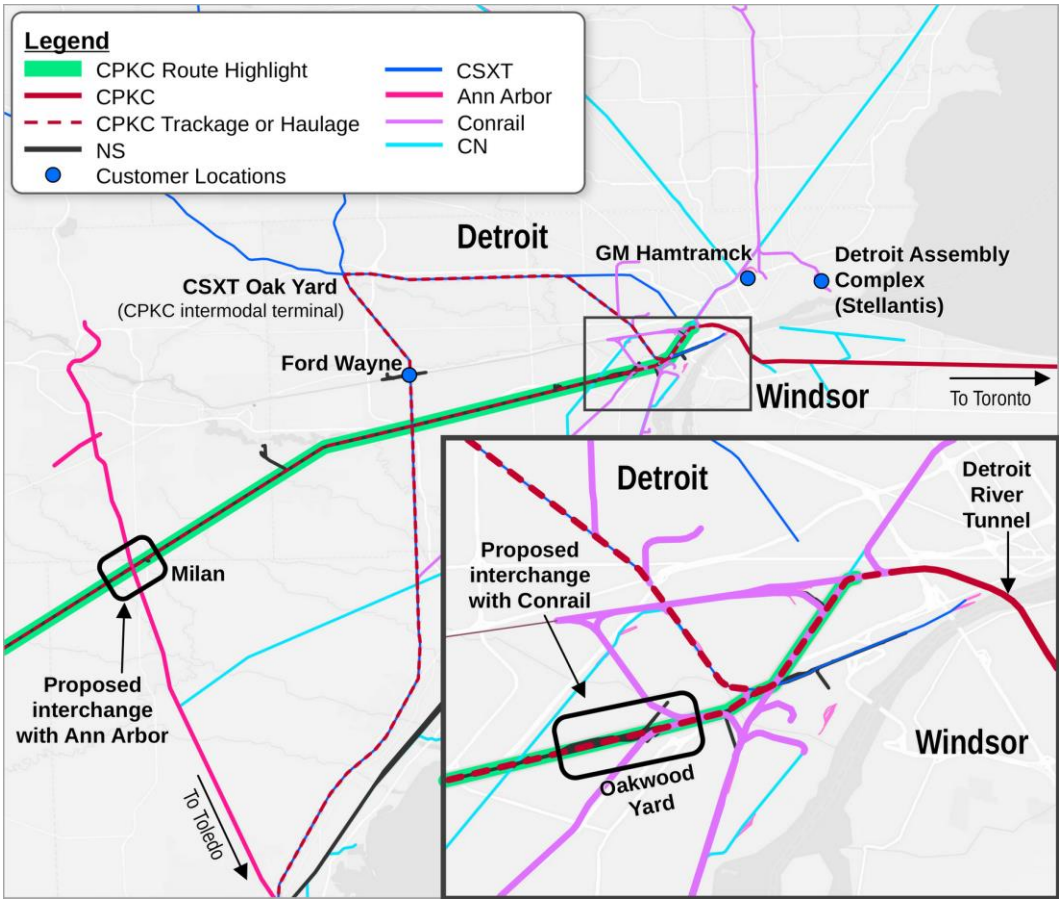
259. CPKC anticipates that the most efficient way to interchange traffic with the Ann Arbor Railroad via Milan, MI would be for those cars to move via the same local train services that Ann Arbor operates between Toledo and Milan, connecting with the local train service that NS already operates between Milan and Detroit, and for CPKC to receive and deliver cars moving to/from the Ann Arbor at Oakwood Yard (with NS providing the handling for cars in CPKC's account between Milan and Oakwood for a haulage fee). (Alternatively, CPKC trains could stop on the main line at Milan to pick up and set out traffic for Ann Arbor, but CPKC is mindful of the potential congestion this could cause). CPKC anticipates that Ann Arbor would

build a CPKC interchange block for delivery to CPKC at Oakwood Yard without needing further processing there.

260. ***Traffic Interchanged with Conrail at Detroit.*** CPKC would establish a new connection with Conrail at Detroit for traffic moving via reciprocal switching to/from Conrail-served customers in the Detroit terminal area. CPKC anticipates that the ideal location for that arrangement would be at Oakwood Yard, which CPKC's trains already pass through and which Conrail already serves. Conrail traffic would be set-out and picked up on new CPKC train service (trains 232 and 233) operating between Chicago and Toronto. Eastbound Train 232 would set-out any traffic for Detroit/Conrail and the Ann Arbor Railroad at Oakwood and lift any interchange traffic for Canada. Westbound Train 233 would set-out any interchange traffic at Oakwood and pick up any Chicago-destined traffic and continue west.

261. Anticipated service patterns for traffic to/from Conrail and Ann Arbor Railroad customers are shown in Figure 32 below.

FIGURE 32
PLANNED CONNECTIONS WITH CONRAIL AND ANN ARBOR RAILROAD



262. ***Traffic to/from New CPKC-Served Facilities.*** Were it granted these rights, CPKC would evaluate investing in a new intermodal and automotive facility capable of serving transportation customers throughout Southeast Michigan via intermodal service and transloads of automotive and other shipments. To the extent such a facility required Board or other authorization, CPKC would seek that authorization.

263. CPKC's current estimate of the traffic volumes available in the foreseeable future as a result of its ability to use NS trackage rights to reach such a facility could be accommodated on the planned Midwest-Michigan Express train pair discussed above. CPKC's planned daily train pair would support significant upside for potential further growth in traffic volumes.

3. CPKC's Contemplated Operations Would Not Have Adverse Impacts on UP-NS or Others

264. The additional operations that CPKC contemplates would not unduly burden UP or disrupt operations by other carriers serving Detroit. NS's Chicago Line is among America's highest-capacity main lines, with capacity to accommodate nearly 100 freight trains per day. CPKC's additional traffic, mostly handled on trains that are already running on NS today, would not interfere with post-merger UP's use of these lines.

265. On the segment between Butler, OH and Detroit, CPKC's traffic would likewise cause no disruption. CPKC's anticipated train counts would remain well within the line's capacity. To the extent CPKC's trains were called upon to perform work en route, such as at the connection with Ann Arbor Railroad at Milan, MI or at a future CPKC facility adjacent to the line elsewhere in Southeastern Michigan, CPKC would anticipate performing that work off of the main line, and CPKC would invest in additional sidings to accommodate that work as necessary.

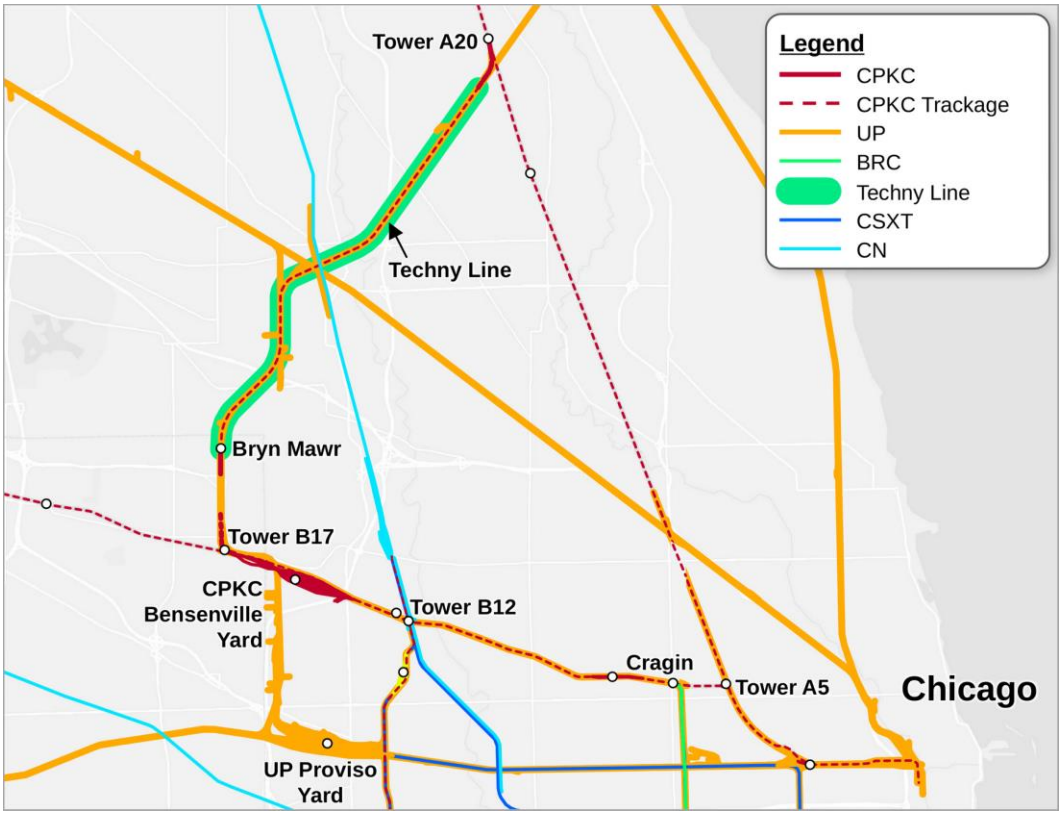
266. At Detroit, that traffic is already moving through NS's facility (albeit in NS's account). CPKC could simply replace an existing manifest interchange assignment to/from Windsor and Oakwood with a through train for Chicago operating in the same window thereby addressing any capacity concerns UP-NS might raise regarding disruption of NS's other operations at Oakwood Yard.

XI. The Board Should Require UP to Preserve CPKC's Existing Rights on the Techny Line and Impose New Incentives for UP to Support Efficient CPKC Operations There

267. A condition preserving CPKC's right to operate on UP's "Techny Line" between Bryn Mawr, IL and Tower A-20, as shown in Figure 33 below, would ensure that UP did not

seek to terminate these important and efficient rights [redacted] as discussed in Mr. Gameiro's Verified Statement.

FIGURE 33
CPKC RIGHTS ON TECHNY LINE



268. From an operational perspective, granting the condition CPKC seeks would not change anything relative to pre-merger conditions relating to CPKC's operations between Bryn Mawr and Tower A-20. CPKC's operations on this line connect the west end of Bensenville Yard with CPKC's Chicago & Milwaukee Division at Tower A-20. This route is important because it allows CPKC trains a route that avoids operating via Tower A-5, which requires traversing Metra's MD-W commuter line between Bensenville and Tower A-5 and Metra's MD-N commuter line between Tower A-5 and Tower A-20 (a route between Towers A-5 and A-20 that Amtrak also uses). The Techny Line is thus an important freight bypass that minimizes interference with passenger operations.

269. The Techny Line is a more efficient route for other reasons as well. For CPKC freight trains operating between St. Paul or Milwaukee, on the one hand, and points in the Chicago Terminal beyond Bensenville Yard, the Techny Line route provides a progressive connection to the Belt Railway of Chicago (via E Junction), whereas a routing via Tower A-5 would require a reverse move to reach the BRC line, magnifying potential interference with passenger and other operations.

270. CPKC is a major user of UP's Techny Line. CPKC could readily support dispatching of operations over this trackage from CPKC's dispatching center in Kansas City, and doing so would be more efficient because for the majority of trains, CPKC would already be dispatching them on CPKC's own lines south of Bryn Mawr and north of Tower A-20. CPKC expects that, if given control of dispatching on this line, its dispatchers would be able to avoid delays to CPKC, Metra, and Amtrak operations at Tower A-20 that are occasioned by delays in UP dispatchers providing CPKC freight trains with clearance to exit the Metra MD-N line onto the Techny Line, as well as delays to Metra at Tower B-17 occasioned by UP dispatchers not clearing CPKC trains onto the Techny Line at Bryn Mawr.

271. CPKC would welcome UP's voluntary transfer of dispatching responsibility to CPKC, but CPKC is not insisting that such a transfer occur unless UP's continued dispatching generates outcomes that fall short of appropriate performance standards. In that event, a transfer of responsibility to CPKC could be swift and seamless. CPKC would expect that the potential for such a transfer will incentivize UP to perform more effectively.

XII. CPKC's Proposed Operation of the Wylie Intermodal Terminal

272. CPKC's facilities at Wylie, TX, northeast of Dallas, encompass three principal operations—(a) facilities to support bulk and manifest traffic, including a

switching/classification yard, receiving and departure tracks, and shop facilities; (b) an automotive compound (of approximately 30 acres) supporting the unloading of railcars delivering finished automobile and ancillary support functions; and (c) the Wylie Intermodal Terminal ("WIT") (or approximately 97 acres), which supports the loading and unloading of intermodal railcars. The WIT is designed to be and functions as a self-contained intermodal handling facility.

273. CPKC both operates the WIT and also conducts all rail operations in the vicinity of the WIT. NS does not operate on CPKC trackage in the vicinity of Wylie. [redacted] Whatever NS might acquire, however, it would not have the right to operate trains to/from Wylie. That right and responsibility would remain with CPKC.

274. As a result, if NS somehow were to acquire more than the WIT itself, CPKC's ability to run trains to and from the WIT, to serve its automotive compound at Wylie, and to support manifest and bulk operations at Wylie would be crippled. If NS acquired only the WIT, CPKC's train operations to/from Wylie likely would be unaffected, except that CPKC would be required to depend on NS's efficient and non-discriminatory operating of the WIT proper—maintaining efficient in-gate operations, loading containers promptly, grounding containers promptly, etc. – to continue its intermodal operation.

275. Were UP to acquire NS following NS's acquisition of the WIT, I am not at all confident that UP would continue to support the efficient handling of CPKC containers at the WIT (much less that UP would support other CPKC operations were NS to acquire more than the

WIT proper). For example, UP-NS would likely not have enough space for empty flatcars waiting to load containers; I am concerned that UP will just leave them on the loading tracks blocking CPKC trains that are bound for many destinations. Accordingly, in the event it approves UP's acquisition of NS and NS has by then already acquired CPKC property at Wylie, CPKC is asking the Board to require that the WIT and any other CPKC property acquired by NS be restored to CPKC ownership and control upon CPKC's rebate to NS of the consideration NS paid CPKC for the WIT.

276. Were this condition triggered, I anticipate that CPKC would resume operating the WIT (and any other property NS might acquire) in the same manner as it does so today. In the following paragraphs I explain those operations as they relate specifically to the WIT.

277. CPKC carries out all of the movement of loaded and empty railcars into and out of the WIT. This is not a WIT function. Today, the WIT handles two categories of intermodal traffic—dedicated intermodal trains to/from NS moved over the Meridian Speedway, and intermodal cars moving in manifest service to/from points across CPKC's system via Shreveport, including Chicago, Mexico, and the Southeast (via interchange with CSXT at Myrtlewood, Alabama). None of this would change.

278. The WIT in turn performs the loading and unloading of intermodal railcars within the facility. CPKC itself does not perform the intermodal handling tasks at the WIT; rather, a CPKC contractor performs the functions of managing the movement of containers and chassis within the WIT, operating and maintaining cranes, stripping and reloading the intermodal cars, and readying intermodal shipments to depart the WIT. CPKC anticipates that it would continue to employ the services of an intermodal operator to perform these functions.

279. From the standpoint of intermodal terminal operations, the WIT is fairly typical. For containers and trailers departing the terminal by rail, tractors pulling chassis bearing intermodal containers (or trailers) arrive at the WIT, enter the gate area and are cleared through the in-gate. The truck is directed to one of approximately 1,500 assigned, numbered parking spaces on the concrete pad within the fenced-in WIT. At the assigned parking space, the driver disconnects the truck tractor from the intermodal container and chassis (or trailer), then checks out and departs the terminal through the out-gate.

280. The WIT is a wheeled facility, meaning that containers stay mounted to chassis while in the terminal. The WIT is not designed to ground containers and stack them, and rarely does so.

281. The intermodal container and chassis (or trailer) remain in the parking space until it is time for the container or trailer to be loaded onto the empty intermodal rail cars. At that time, a drayage driver employed by the terminal operator moves the container and chassis (or trailer) to a position parallel to and alongside the intermodal car wells into which the containers will be placed. The intermodal terminal operator stages the chassis with the containers that will go in the bottom of the well closest to the rail car. Intermodal cranes, beginning at each end of the cut of intermodal cars on the track, pass along the cars, picking the container off the chassis and placing it in the well, where it is secured. When the bottom layer of containers has been placed and secured, the intermodal cranes are then in the middle of the cut of cars, and start back toward the ends of the cut, loading the top containers, which are then secured.

282. For containers and trailers arriving at the WIT by rail, the intermodal terminal operator inventories the railcars to ensure that the containers received match the manifest. Then, starting with the top layer of containers, the terminal operator uses intermodal cranes to "de-

ramp" the containers from the cars. Beginning at each end of the cut of intermodal cars on the track, the cranes pass along the cars, picking the container off the car and placing it on a chassis positioned parallel to and alongside the intermodal car. When the top layer of containers has been placed onto waiting chassis, the intermodal cranes start back toward the ends of the cut, unloading the bottom containers. The terminal operator then moves the loaded chassis to the numbered parking spots to await arrival of the drayage company or other truck operator authorized to remove the shipment from the terminal.

283. The same cars comprising the inbound NS dedicated intermodal train are reloaded within the WIT for the outbound NS dedicated intermodal train to the Speedway. Intermodal cars moving in manifest service from Shreveport are similarly stripped and reloaded, but not stored, at the WIT. Once loaded, the intermodal cars moving in manifest service are pulled from the WIT and added to the outbound manifest train. Once the manifest train is completely assembled and has been inspected by CPKC's mechanical department, it will leave the yard tracks and depart on the main line.

284. Were CPKC to reacquire the WIT in accord with the condition we are seeking, CPKC would operate the WIT generally along the lines of its current operations, as described above. CPKC would continue to honor its contractual obligations without discrimination and would make every effort to work with customers to provide the support they need.

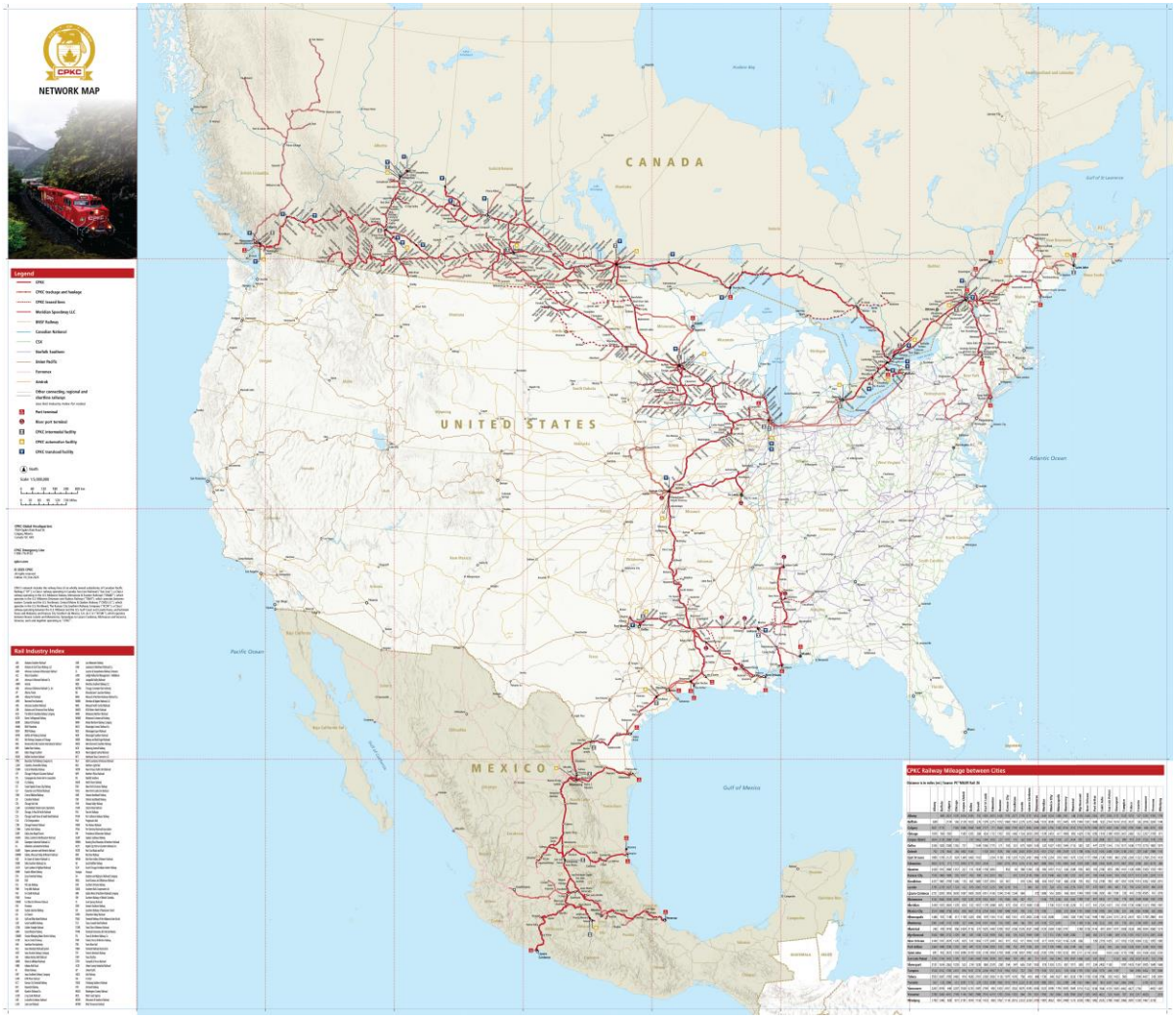
Highly Confidential Attachment

Filed under seal pursuant to Protective Order

APPENDIX B

CPKC SYSTEM

MAP[68]



68 An electronic version of this system map has been uploaded separately.

VERIFICATION

I, Mark Redd, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 18 day of November, 2026.



Mark Redd

PUBLIC REDACTED VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

VERIFIED STATEMENT OF MARK REDD

EXHIBIT 1

310198
CPKC-48
ENTERED
Office of Chief Counsel
November 13, 2025
Part of
Public Record

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500 (SUB-NO. 6)

CANADIAN PACIFIC RAILWAY LIMITED, ET AL. – CONTROL – KANSAS CITY SOUTHERN, ET AL. (GENERAL OVERSIGHT)

CPKC REPLY TO UP AND NS CORRESPONDENCE REGARDING MERIDIAN SPEEDWAY

Canadian Pacific Kansas City Limited, on behalf of its U.S. rail carrier subsidiaries (collectively "CPKC"),[1] submits this reply to the separate letters filed by Norfolk Southern Railway Company ("NS") and Union Pacific Railroad Company ("UP") on September 30, 2025.[2]

The issues raised by NS and UP in their separate but seemingly-coordinated submissions are not matters that fall within the ambit of Board oversight, and, in any event, their submissions lack merit as a matter of fact. Aware that CPKC is not remotely in breach of its contractual obligations to NS under the agreements governing the Meridian Speedway joint venture, particularly the 2006 Norfolk Southern Railway-Meridian Speedway LLC Joint Use Agreement, NS and UP attempt to convert their dispute into a merger condition enforcement matter that UP's CEO has suggested (perhaps for collateral purposes) demonstrates that "cooperation agreements"

[1] CPKC's U.S. rail carrier subsidiaries include Soo Line Railroad Company; Central Maine & Quebec Railway US Inc.; Dakota, Minnesota & Eastern Railroad Corporation; Delaware & Hudson Railway Company, Inc. (collectively "CP" or "CP/Soo"); The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, "KCSR").

[2] Replies to these submissions would have been due on October 20, but deadlines for all submissions to the Board were tolled during the federal government shutdown. *See Materials Due to Be Submitted During the Federal Government Shutdown*, Ex Parte No. 751 (STB served Oct. 1, 2025). CPKC is filing this Reply on the earliest practical opportunity following the Board's notice that it is again accepting filings.

among railroads do not work.[3] NS's and UP's desperation to concoct a merger oversight claim out of thin air is all the more obvious in light of the utter lack of notice provided by NS and UP before they submitted their letters to the Board. Indeed, on September 30, just hours before NS and UP filed their letters with the Board, CPKC and NS had participated in a meeting of the MSLLC Joint Operating Committee ("MSLLC JOC") to address concerns about transit time that NS had raised just days earlier. Obviously, NS allowed for no meaningful opportunity for a cooperative dialogue to consider the issues. From CPKC's perspective, these circumstances show that arrangements among independent railroads like MSLLC, a demonstrably successful and cooperative arrangement, *can work effectively*, but that their effectiveness is challenged when—as appears may be the case here with NS, acting in concert with its partner UP—one party no longer desires to pursue the cooperation that previously made the venture successful.

In any event, on the facts NS and UP have no claim. Other than a brief period of service issues associated with CPKC's May 3, 2025 "Day N" IT cut-over, which have been thoroughly rectified,[4] there has been no "degradation of service" on, nor breach of gateway conditions in relation to, the Meridian Speedway. CPKC is living up to its commitments, and the Board therefore should reject the relief requested by NS and UP. There is no need for a Service Action Plan (as NS seeks) or any Board "investigation" (as UP seeks). Indeed, as NS's Chief Marketing Officer Ed Elkins touted on NS's Q3 2025 earnings call, "[w]hen I think about service from the West Coast into the Southeast, I think about UP and NS utilizing the Meridian Speedway as the fastest, shortest route between those two regions—period."[5] Mr. Elkins referenced service via

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[3] *See* pages 27-28, below.

[4] Neither NS nor UP mention or take issue with CPKC's Day-N difficulties associated with the transition to a consolidated IT systems following CP control of KCS.

[5] Norfolk Southern Corp. Q3 Earnings Call Transcript (Oct. 24, 2025) at 11 (excerpts are Exhibit 1 hereto).

the Speedway as among the "key lanes where Norfolk Southern offers exceptional value for customers that really can't be replicated anywhere."[6] There is no service problem to solve here, much less one warranting Board attention.

I. INTRODUCTION

NS's and UP's assertions relate entirely to a daily pair of intermodal trains that are interchanged between UP and NS via the haulage service that CPKC provides to NS across the Meridian Speedway between Shreveport, LA, where the Speedway connects to UP, and Meridian, MS, where the Speedway connects to NS. These trains carry intermodal traffic moving between the Western United States and NS-served points in the Southeastern United States that, pursuant to the agreements between NS and KCS that created the MSLLC in 2006 is "exclusive" to NS. Under those agreements, CPKC is not permitted to compete to handle such traffic in linehaul service via the Meridian Speedway. *See CP/KCS*, Decision No. 35 at 130 (NS became "sole provider of rail service for certain transcontinental intermodal traffic over the line").

Both NS and UP present their assertions as involving some sort of alleged failure of CPKC to "live up to its commitments." In NS's case, the ostensible claim is that CP's acquisition of KCS, which was consummated *more than two years ago* in April 2023, led to a "substantial deterioration in intermodal train service provided by the CPKC over the Meridian Speedway and at the Shreveport gateway." NS Letter at 2. NS presents data that it says show frequent "transit time failures" for the two UP-NS Shreveport-Meridian haulage trains (westbound train 29S and eastbound train 28J). *Id.* at 3. NS also contends that its haulage

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[6] *Id.* at 10.

service has experienced a "marked decrease in traffic" from 2022 to 2025 that it says is "attributable in large part" to CPKC's service failures. *Id.*

UP's claims are different. UP focuses entirely on CPKC's decision to "impose[] an 8,500-foot length limit on trains it would accept at Shreveport for movement over the Meridian Speedway." UP Letter at 1. UP does not suggest that CPKC's enforcement of that limit was inappropriate—indeed, UP says it "agreed to abide" by it. *Id*. Instead, UP is unhappy because it has continued to send 11,000-foot trains to Shreveport and thus has been required to "cut" those trains to "match the new length restriction," which in turn has led to increased "average car dwell" at UP's Hollywood Yard in Shreveport while the over-length cars wait for a later train to move them east across the Speedway. UP Letter, Davis V.S. at 2.

There are only two kernels of truth in NS's and UP's assertions. One is that CPKC did experience a brief period in the summer of 2025 when service on the Meridian Speedway was affected by CPKC's Day-N IT cut-over. The Day N service issues have long-since been resolved, with transit times on the Speedway for NS's haulage trains *now better than* already-good pre-merger levels.

The other kernel is that CPKC did decide to enforce a uniform 8,500-foot length limit for trains on the Speedway corresponding to the design length of the sidings there, as contemplated in the applicable agreements between CPKC and NS. Other than that, UP's assertions are both insubstantial and already out-of-date. CPKC and NS have agreed that CPKC will operate one eastbound train of up to 11,000 feet until crews are available to support an additional daily train pair (planned to start November 17), and in exchange NS will partially compensate CPKC for delay costs the over-length train inflicts on other traffic on the Speedway.

II. NORFOLK SOUTHERN AND UP MISSTATE THE NATURE OF CPKC'S MERGER COMMITMENTS

As we demonstrate below, there is no merit to the NS and UP claims as a factual matter, so the Board need not reach the question whether any of what NS or UP allege is at all related to conditions imposed on CPKC in the CP/KCS proceeding. For the record, however, the Board should understand that NS and UP have a flawed understanding of the conditions the Board imposed in that case.

Again, NS appears to invoke Applicants' commitment to "keep gateways open on commercially reasonable terms" and its "Service Promise." Neither applies here.

The gateway condition does not apply because the traffic at issue is not "affected traffic." In its decision approving the CP/KCS transaction, the Board made clear that it was not expanding the scope of Applicants' gateway commitments and that the gateway condition would apply only to traffic "for which the Transaction creates a new single-line or extended haul for the combined entity so as to maintain existing interline options that shippers seek to preserve." *CP/KCS*, Decision No. 35 at 69. The UP-NS haulage traffic at issue here was not affected by the transaction. As noted above, it is intermodal traffic moving between the U.S. Southwest and the Southeastern United States, neither of which CP serves today or served pre-merger. In fact, under the MSLLC agreements, that traffic (so called "NS Traffic") is exclusive to NS—the agreements prohibit CPKC from using the Speedway to handle that traffic in its account. Accordingly, CPKC has not closed any gateway, and the gateway condition simply does not apply.

The Service Promise and CPKC's statements in the merger proceeding about its incentives to provide good service on the Speedway for NS haulage and other traffic likewise have no bearing here. CPKC's service action plan commitments were quite clear, and there has

not been any decline in CPKC's bulk train on-time percentage that has come close to triggering them. *See CP/KCS,* Applicants' Final Brief (CP-71/KCS-57) (filed Oct. 21, 2022), Appendix A, p. A9 (defining service action plan metrics to which Applicants were committing). CPKC's bulk on-time performance (which includes intermodal trains) stands well above 90 percent as of September 2025. *See CP/KCS General Oversight*, CPKC'S September 2025 Data Submission (CPKC-47) (filed September 15, 2025) at 5.

The coordinated efforts of UP and NS to link events to specific asserted "representations" in the *CP/KCS* merger proceeding are even more futile. Both railroads suggest that CPKC's behavior somehow fails to live up to CPKC's plan to be a "good steward of service" and "increase train frequency and improve service" on the Speedway. *See* UP Letter at 1; NS Letter at 2. CPKC stands by its statements, but CPKC never promised that no railcar moving in UP-NS haulage service would ever be delayed, much less that UP and NS would never face potential disruptions associated with CPKC's reasonable enforcement of train length limitations for the benefit of all customers whose traffic uses the Speedway. To reiterate, CPKC has lived up to the specific language that both UP and NS cite.[7] Contrary to the assertions of UP and NS, they are the parties seeking to degrade service by insisting on running over-length trains that largely force all other Speedway trains to clear a path for them, rather than building shorter trains that fit the sidings on the Meridian Speedway.

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[7] Applicants' statement that CPKC would be a "good steward of service" was made in the context of statements that CP would stand in the shoes of KCS, with a strong financial interest to "incentive to support the continued success of the line from Wylie to Meridian" [by] supporting high-quality service." CP/KCS, Applicants' Response to Comments (filed July 12, 2022) at 264. CPKC continues to have such incentives. Applicants' statement that CPKC would strive to "*increase* train frequency and *improve* service" was made in the specific context of the plan to add manifest traffic to KCS's daily eastbound intermodal train from Wylie to Meridian. *Id.* at 267. CPKC continues to strive to grow traffic and improve service.

III. NORFOLK SOUTHERN'S CONTENTIONS ABOUT DETERIORATING TRANSIT TIMES ARE WRONG

NS contends that transit times on the Speedway have "ballooned" "over the last six months." NS Letter at 2. NS is wrong. CPKC has provided consistently good service for NS's haulage trains (albeit with a brief dip in performance in June arising from CPKC's post-Day N challenges), and neither the CP/KCS transaction nor CPKC's service levels have caused a downturn in NS's haulage traffic.

A. NS's Data Are Not Measuring Transit Times on the Speedway

The data NS presents in its letter *do not reflect* transit times on the Meridian Speedway. *See* NS Letter at 3. Instead, those data reflect the time between a location on UP's track near Shreveport that is *beyond the west end* of the Meridian Speedway and a location on NS's track in Meridian, MS that is *beyond the east end* of the Meridian Speedway. As a result, the transit times that NS is reporting capture its own delays at Meridian and delays that occur on UP trackage in Shreveport over which CPKC has no control.

On the west end (Shreveport), NS is measuring trains using an AEI reader on UP's Reisor Subdivision, located at the south/west end of UP's Hollywood Yard (referred to as the Hollywood Junction AEI reader). This location is more than five miles beyond the west end of the Speedway, between UP's Hollywood Junction AEI reader and the west end of the Speedway lies UP's Hollywood Yard, where UP-NS haulage trains change crews and perform other work.[8] CPKC has no control over train performance across those five miles of UP trackage.

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[8] That work includes any refueling, and power swaps that UP chooses to perform. Another activity that must occur at UP's Hollywood Yard before eastbound UP-NS haulage trains depart is to inspect those trains for open container doors, which are a serious safety hazard. CPKC has observed open container doors on these trains once or twice per week recently. Stopping trains on the Speedway to rectify the problem incurs substantial delays for those trains and others, so for safety and efficiency CPKC has begun to inspect these trains before they enter the Speedway, adding 10-15 minutes to time spent preparing to enter the Speedway.

This measurement location also is inconsistent with the agreement reached between KCS and NS in 2010 (through the MSLLC JOC) to measure the west end of the Speedway for transit time measurement purposes using UP's AEI reader at Jordan Street (UP Lufkin Subdivision MP 230.8), near the switch connection between UP and KCS trackage west of downtown Shreveport, and more than five miles north/east of the Hollywood Junction AEI reader. The minutes of the June 1, 2010 meeting of the MSLLC JOC reflect this agreement, as shown in Figure 1 below.[9]

FIGURE 1

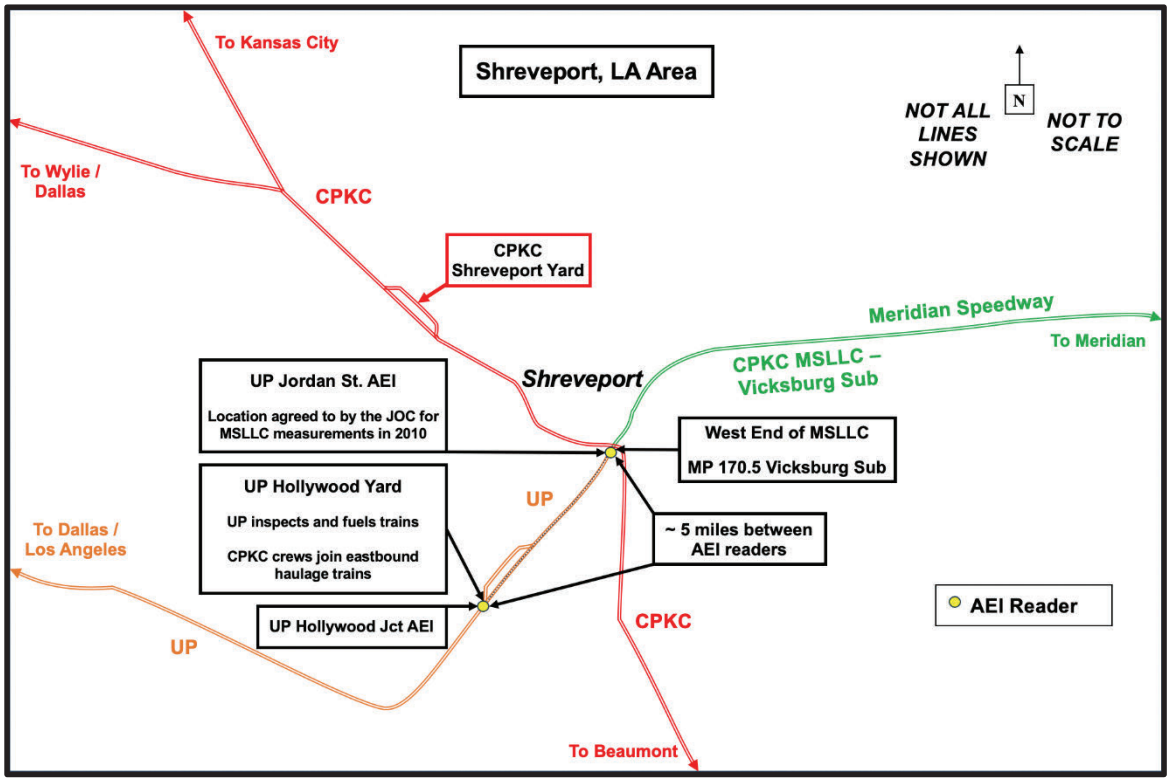
Item 2 – Service Standard Compliance / January 2011

- JOC agreed to start the clock on transits at Shreveport using the UP's Jordan St AEI reader.

Figure 2 below is a map of the Shreveport area showing the locations of the Hollywood Yard AEI reader NS used for its transit time calculations and the Jordan Street AEI reader that the MSLLC JOC agreed to use for that purpose. As the map shows, these two readers are at opposite ends of UP's Hollywood Yard.

[9] The reference to "January 2011" refers to the date when the Service Standards would become effective.

FIGURE 2



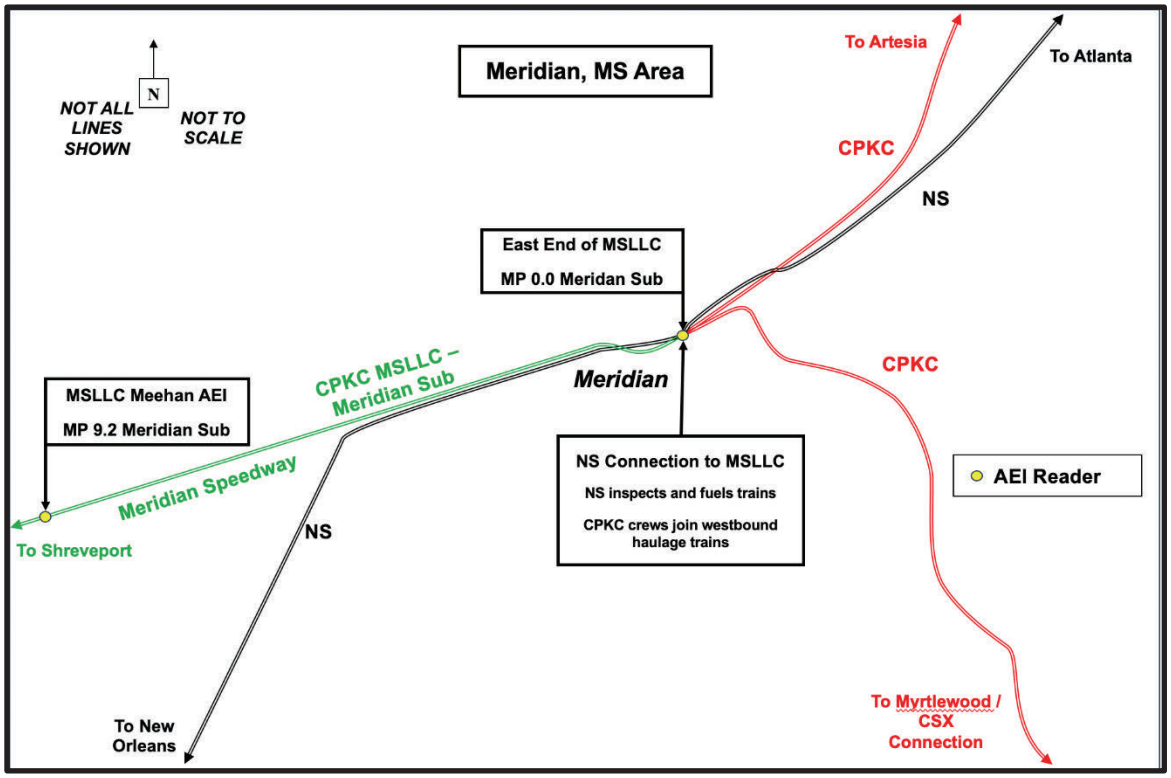
As UP states in its letter, according to its calculations NS eastbound haulage traffic (UP-NS Train 28J) historically dwelled for *almost four hours* between these points (*i.e.*, at Hollywood Yard). UP Letter, Davis V.S. at 2.[10] Subtracting this 3.9 hours from the transit times reported in NS's letter (and without making any further corrections needed at the east/Meridian end of the Speedway) implies actual transit times ranging between 9:03 (in April) and 12:03 (in August), all *well below* the "13 hour transit time" that NS presents as its performance expectation. *See* NS Letter at 3.

[10] CPKC notes that UP's statistics do not correspond with CPKC's calculations of Hollywood Yard dwell. Using the UP Hollywood Yard AEI reader (which NS's letter used for its "arrival" times and the Jordan Street AEI reader, CPKC calculates an average dwell at Hollywood Yard of only 2.8 hours from April through July 2025, and 4.6 hours from August 25 through 30. In all of these periods, Speedway transit times satisfied CPKC's contractual commitments to NS.

NS's measurement point on the east end of the Speedway is also incorrect. CPKC has not been able to determine precisely how NS is measuring train arrival and departure times at or near Meridian, MS, but the transit time figures NS presents range between 15 minutes and several hours longer than transit times measured in accordance with the agreement reached at the MSLLC JOC in June 2010. That agreement defines the "east end" of the Speedway for transit time measurement purposes as be KCS Milepost 0.00, and specifies that arrivals and departures there will be measured using CPKC's AEI reader at Meehan (MP 9.2), with a 15 minute offset to reflect times at MP 0.00. As with Shreveport, the difference is important, because of the work—especially fueling—that NS performs on trains before they are available for crewing by CPKC and departure westbound onto the Speedway.

Figure 3 below is a map of the Meridian area showing the locations of MP 0.00, the Meehan AEI reader, and the NS trackage beyond the east end of the Speedway where NS fuels westbound haulage trains and performs other work before those trains are ready to be crewed by CPKC for movement west across the Speedway.

FIGURE 3



As NS's data for westbound haulage trains (UP-NS Train 29S) show, however, even though NS is erroneously including excess time in its reported transit times, those trains consistently cross the Speedway considerably *faster than* NS's 13-hour transit time target.

B. Properly Measured, Transit Times for UP-NS Haulage Trains Are Stable and Performance Is Well Above the Standards Agreed to by NS and KCS in the MSLLC Agreements

Once the measurement errors in NS's data are corrected, it is clear that there is no basis for NS's claim that service is deteriorating. NS's letter asks how often CPKC meets a 13-hour transit time, but it is doing so with end points that add many hours to the transit on UP or NS trackage over which CPKC has no control. It is not surprising that a high percentage of trains need more than 13 hours to move from south of UP's Hollywood Yard to NS trackage east of Meridian.

Correctly measured transit time data show that there has been no recent deterioration in performance, apart from the brief (and long-concluded) impacts arising from CPKC's Day N service issues. Figure 4 below shows average transit times for the period 2019 to present for all of the UP-NS haulage trains between Shreveport and Meridian.[11] As demonstrated by these data, transit times have been *lower* since the CP/KCS combination in April 2023 and have similarly improved since CPKC's May 2025 IT cut-over that temporarily disrupted service performance here (as it did elsewhere on the legacy-KCS network). The average transit time for all of NS's haulage trains since May 2023 (following CP/KCS common control) was 10.3 hours, compared to 11.1 hours for the pre-transaction period from January 2018 to March 2023.

[11] As discussed below, under the KCS-NS MSLLC agreements, the 13-hour goal applies only to trains that are "qualified" for purposes of Service Standard measurement (*e.g.*, those that meet specified horsepower-per-ton standards and are not delayed for causes beyond CPKC's control, like force majeure weather events), and the 13-hour goal is lengthened when NS or UP deliver haulage trains earlier or later than scheduled. Since 2018, more than 40% of all UP-NS haulage trains were disqualified from measurement against the contractual Service Standard, and more than three-quarters of those disqualifications were on account of the train being underpowered. Nonetheless, CPKC is presenting transit time data for 100% of those haulage trains to make clear that the CP/KCS transaction did not cause any transit time deterioration.

FIGURE 4
TRANSIT TIMES ON MERIDIAN SPEEDWAY FOR ALL UP-NS HAULAGE TRAINS

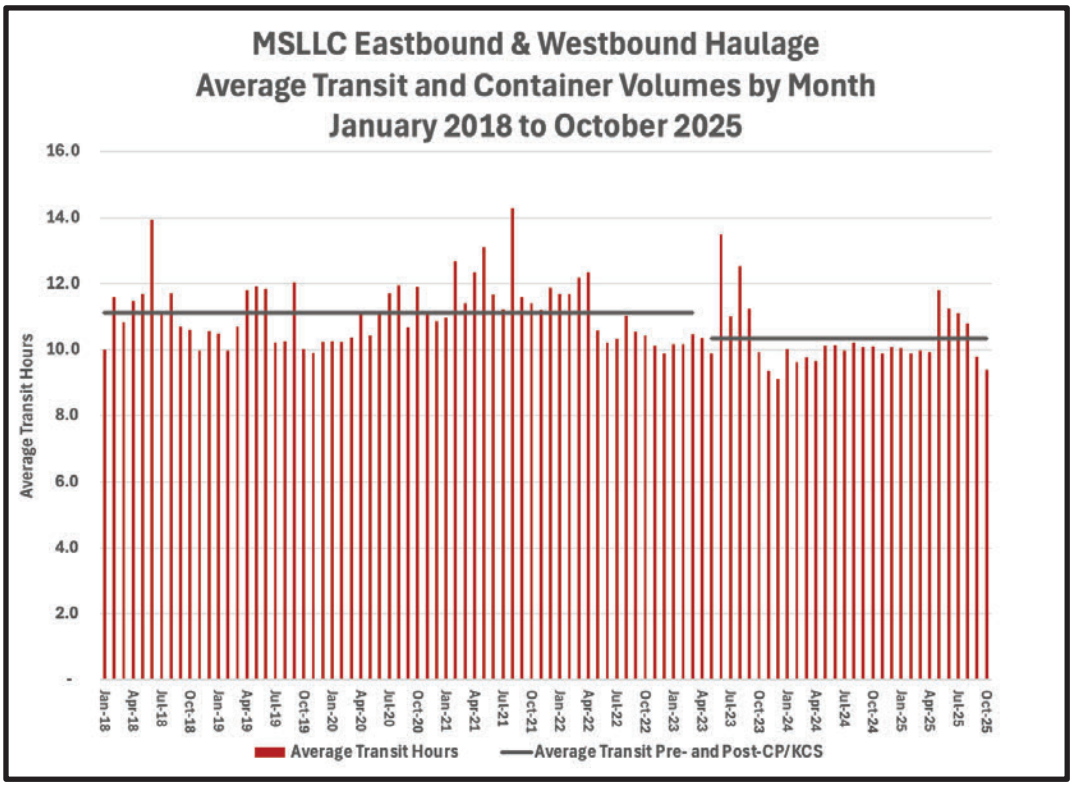


Figure 5 below shows that the same pattern is reflected in the performance data for the subset of UP-NS haulage trains operating eastbound from Shreveport to Meridian.

FIGURE 5
TRANSIT TIMES ON MERIDIAN SPEEDWAY FOR EASTBOUND UP-NS HAULAGE TRAINS

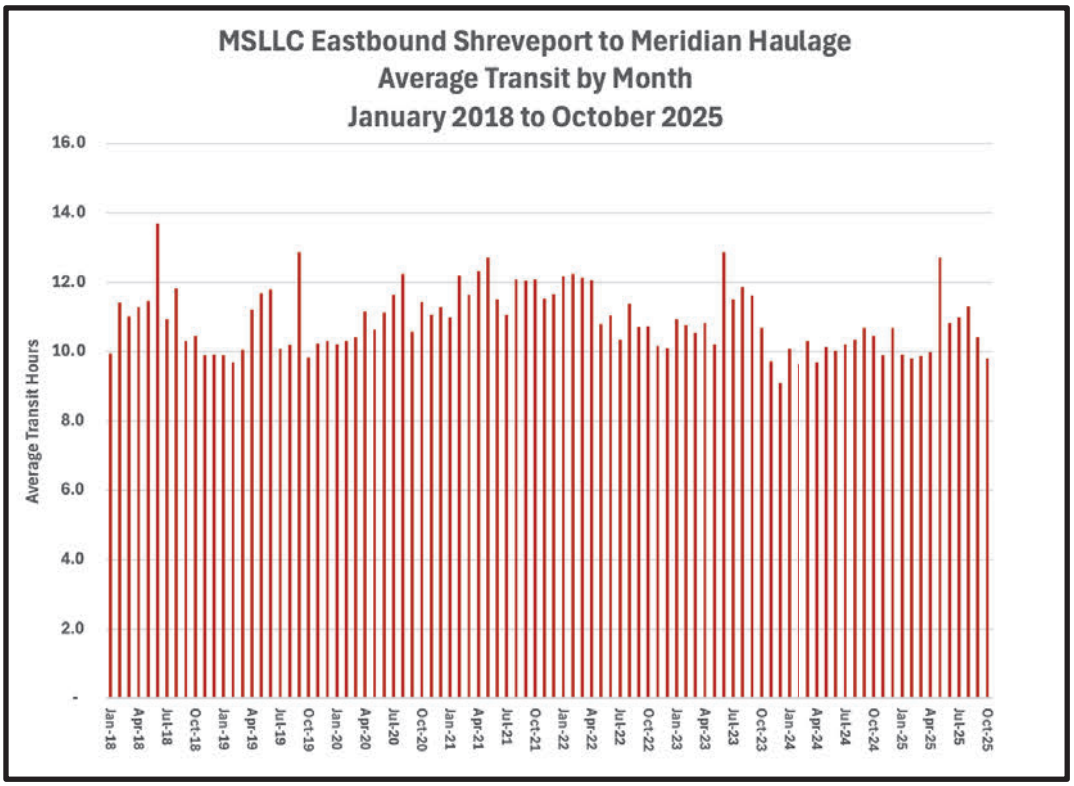
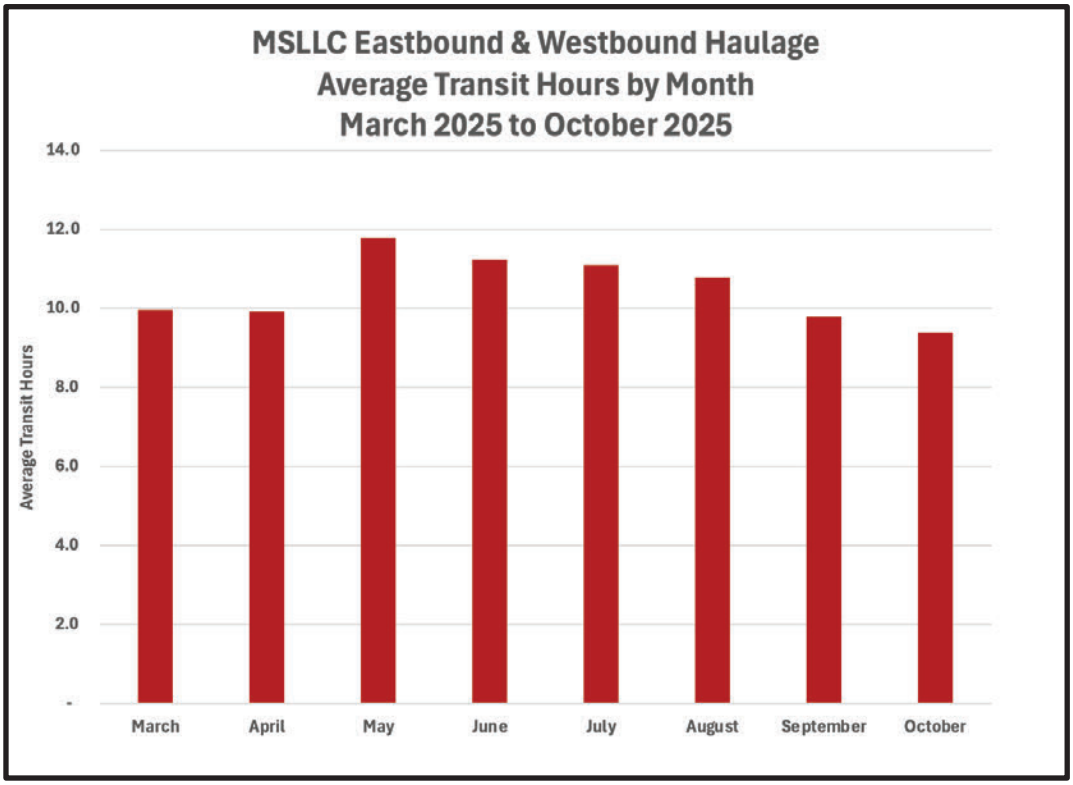


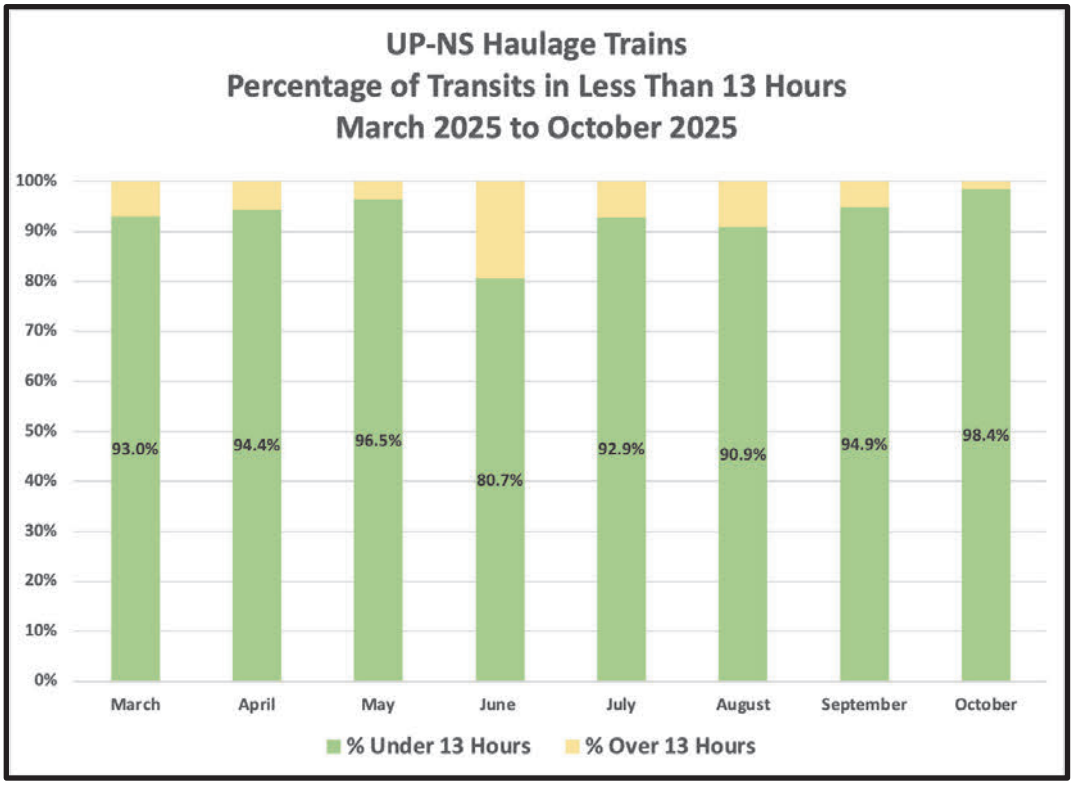
Figure 6 below zooms in on the period since January 2025, and shows the steady trend of improving transit times in recent months.

FIGURE 6
TRANSIT TIMES ON MERIDIAN SPEEDWAY FOR UP-NS HAULAGE TRAINS SINCE MARCH 2025



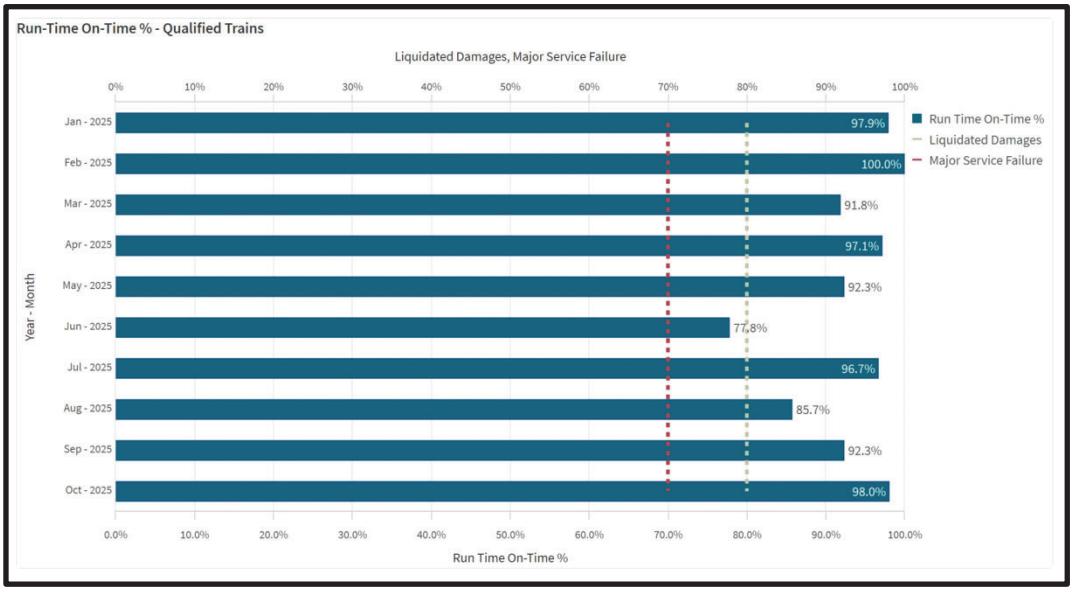
NS also contends that a high *percentage* of haulage trains are "transit time failures." This assertion is incorrect for the same reason: NS is not measuring transit times correctly. Figure 7 below shows the percentage of UP-NS haulage trains that meet NS's 13-hour target between March and October 2025 based on correctly calculated transit times. As reflected in that Figure, performance was affected briefly in the aftermath of CPKC's Day N difficulties, but performance has rebounded with no lingering adverse effects.

FIGURE 7
PERCENTAGE OF TRANSIT TIMES LESS THAN 13 HOURS FOR NS-UP HAULAGE TRAINS



As noted above (at page 12, note 11), including *all* of the UP-NS haulage trains in transit time calculations is not how the parties measure CPKC's performance against contractual Service Standards data. CPKC's contractual service commitments apply only to "qualifying" trains, as the MSLLC agreements specify. Figure 8 below shows the percentage of "qualified" UP-NS haulage trains that met contractual transit time standards. Excepting a dip in June, that percentage has consistently been well above contractual standards.

FIGURE 8
PERCENTAGE OF QUALIFIED UP-NS HAULAGE TRAINS MEETING SERVICE STANDARD
JANUARY 2025 TO OCTOBER 2025



NS complains that measuring only qualified trains somehow is unfair, since according to NS the Board's oversight authority extends "beyond narrow contractual interpretations." NS Letter at 1. CPKC acknowledges the Board's broad authority, but the service standards agreed to between NS and CPKC are indeed relevant. In light of CPKC's strong transit time performance regardless of which group of trains is measured, this debate is largely academic. But NS is also wrong to suggest that CPKC should be held accountable for the transit times of trains that are not "qualifying" under the parties' agreements. To the contrary, the standards for a train being "qualified," and thus subject to measurement against the contractual service standards, are directly relevant to whether CPKC should be held responsible for delays to those trains. NS expressly agreed, for example, that CPKC should not be responsible for the performance of trains that are delayed as a result of "scheduled maintenance windows," "crossing accidents," holidays, and weather incidents and other "force majeure" events. In addition, NS expressly

agreed that trains do not qualify for measurement against service standards if NS or its interline partner fails to provide locomotive horsepower meeting prescribed standards.[12]

In fact, many of NS's haulage trains are not "qualifying" because NS and UP have persistently underpowered them. The data presented in NS's letter to the Board covered NS haulage trains operated between March 1 and August 31, 2025. Of the 185 westbound haulage trains delivered to CPKC at Meridian, 41 (or 22%) were deemed not "qualifying" because they failed to comply with the HPT standards established by the MSLLC JOC. Likewise, of the 153 eastbound haulage trains delivered to CPKC at Shreveport, 14 (nearly 10%) were underpowered and thus not "qualifying."[13] Lower HPT ratios translate to more sluggish train acceleration, and thus contribute to slower transit times and greater consumption of track capacity, compromising performance of all other trains using the line. It seems that NS and UP are choosing to prioritize locomotive productivity metrics over the fluidity of the Meridian Speedway for the benefit of all of the customers (NS's and CPKC's alike) that expect reliable service there.[14]

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[12] *See* MSLLC NS Joint Use Agreement, Commercial Appendix B, § 2(B)(1). NS is contractually responsible for providing locomotives used on its haulage trains. *See* MSLLC NS Joint Use Agreement, § 2(b)(iii). In June 2010, the MSLLC JOC agreed that the governing HPT standard for UP-NS haulage trains would be 2.15 horsepower-per-ton.

[13] As noted above (at page 12, note 11), since 2019 fully one-third of all UP-NS haulage trains were disqualified from measurement against the contractual Service Standard, and more than three-quarters of those disqualifications were on account of the train being underpowered. Ironically, NS's Chief Operating Officer touts NS's progress in achieving significant reductions in horse-power-per ton ratio since 2019. *See* Norfolk Southern Corp. Q3 Earnings Call Transcript (Oct. 24, 2025) (Exh. 1 hereto) at 12 (remarks of John Orr) ("right now, we're running a year-to-date, 23% less horsepower per ton").

[14] CPKC's Chief Operating Officer recently communicated this point to his counterpart at NS. *See* Letter from Mark Redd to John Orr (Oct. 4, 2025) at 3 (Exhibit 2 hereto).

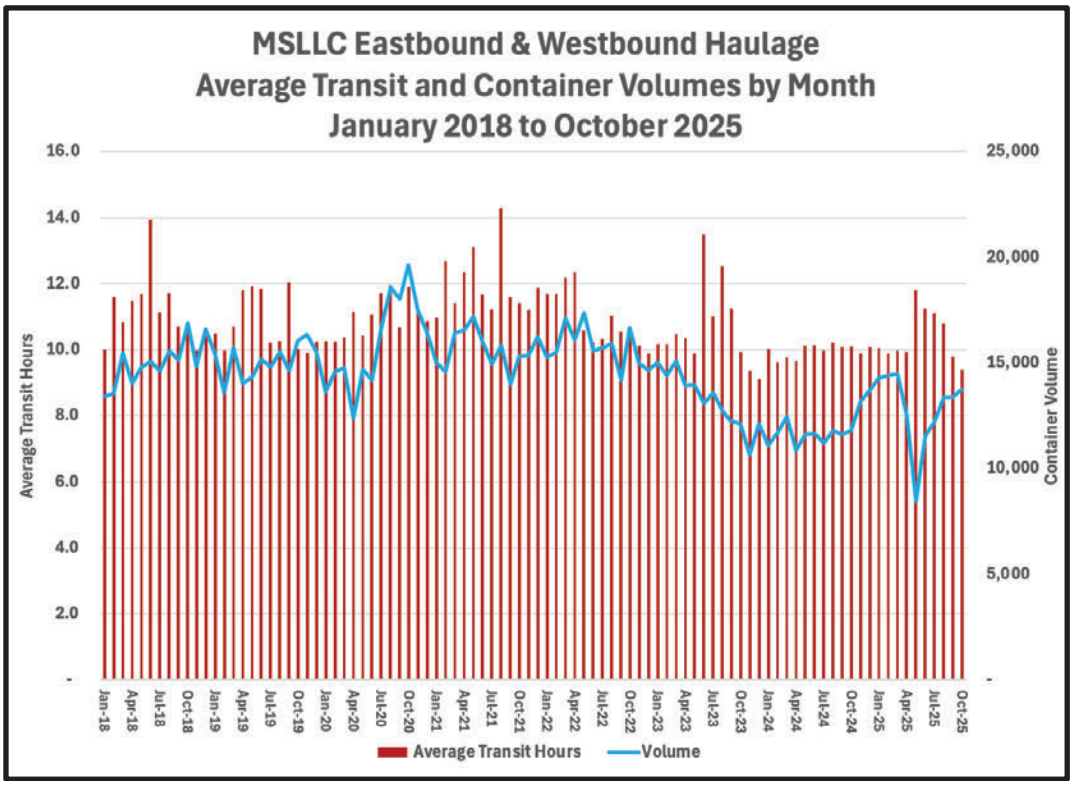
C. Norfolk Southern's Claims About Traffic Loss Are a Red Herring

Norfolk Southern's claim that service performance on the Speedway since CP acquired control of KCS in 2023 has somehow been responsible for declines in the volume of traffic handled in UP-NS haulage service is equally erroneous. Let's examine the facts.

As a threshold matter, it is obvious that service on the Meridian Speedway (as good as it has been) is not the determinant of the how intermodal customers experience the transcontinental rail transportation that UP and NS are offering their customers. The 300 miles of the Meridian Speedway represent a tiny fraction of the 2,000-plus rail miles UP-NS haulage traffic takes between UP west coast intermodal terminals and NS terminals in Atlanta and other Southeast points. Perhaps not surprisingly, that traffic is often already running late when it arrives from UP at Shreveport or from NS at Meridian from the east, as a result of service issues on the UP and NS rail networks. And CPKC imagines that UP-NS haulage shipment also get later after they move from the Speedway onto UP's or NS's networks.

The specious nature of UP's and NS's claims is also revealed by examining the volume of haulage traffic over time and average transit times during the same period. Figure 9 below superimposes the volume of containers handled on the UP-NS haulage trains interchanged onto the Figure 4 chart showing the average transit times of those trains on the Speedway. Three things are apparent.

FIGURE 9
UP-NS HAULAGE CONTAINER VOLUMES



First, the period since 2019 with the highest volume levels was from mid-2020 through early 2022, which coincides with the widely observed surge in intermodal traffic occasioned by COVID-era consumption and import patterns and the related shortage of truck drivers.

Second, volumes began to decline steadily in early 2022, more than a year *before* CP acquired control of KCS in April 2023. That decline began during a period of strong transit time performance, dispelling NS's myth that deteriorating transit times drove traffic away. Among the macroeconomic factors leading to that trend was the significant decline in trucking rates coming out of the COVID pandemic.[15]

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[15] *See, e.g., "COVID aftershocks still imperil freight companies: There are too many trucks for too little freight*," FreightWaves (Sept. 17, 2024) ("The post-pandemic boom spurred freight companies to overinvest in equipment to capitalize on then-high demand. However, freight hauling rates have

Third, the volume declines of 2022-2023 reversed in the fall of 2023, just months after CP acquired control (and also during a period of strong post-transaction transit time performance on the Speedway). Again, nothing about the CP/KCS transaction had any negative effect on NS haulage volumes. In fact, volumes rose sharply through March 2025 until suffering a brief downward spike in April and May 2025. The slight drop-off in April no doubt resulted from the announcement of increased tariffs on imports from China, which also had led to a bump-up in volumes in the months leading up to April as importers accelerated imports ahead of those tariffs.[16] It is telling that NS's Chief Marketing Officer gave similar advice to securities analysts, contending that NS's intermodal volumes were challenged by "navigating the complexity of ongoing trade and tariff uncertainty" and "persistently abundant highway truck capacity."[17]

The sharper decline from April to May and rebound in June was at least in part the result of CPKC's May 3 IT system cut-over. As Figure 9 also shows, volumes recovered sharply in the June-October period. Service reliability may have been an issue in June 2025, but it has not been since then.

The Board should also understand that NS's discussion of haulage volumes on the Speedway is not entirely candid about the other factors that influenced those volumes. In late 2024, a few months before the sharp downturn in NS haulage volumes, UP announced that it was

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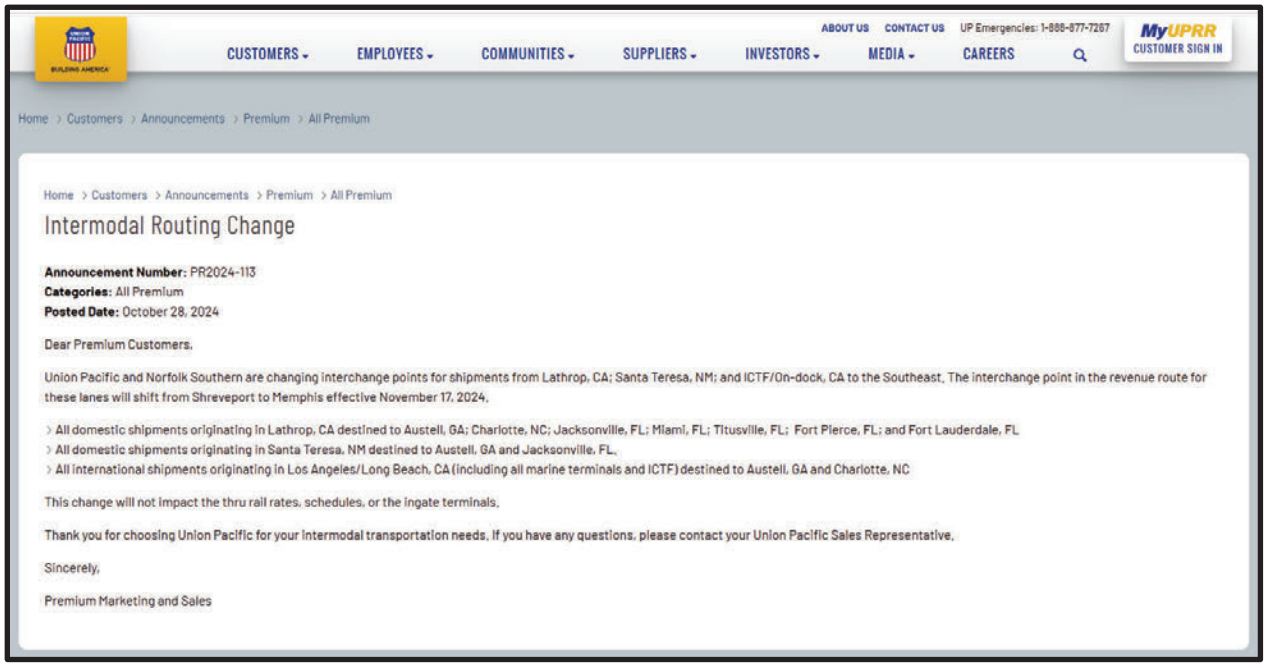
pancaked since 2022, and there are simply too many trucks for too little freight."), *available at* https://www.freightwaves.com/news/covid-aftershocks-still-imperil-freight-companies#:~:text=The%20FreightWaves%20SONAR%20Outbound%20Tender,trucks%20for%20too%20little%20freight.

[16] *See, e.g.,* https://www.weforum.org/stories/2025/06/trumps-us-china-trade-tariffs-timeline/.

[17] Norfolk Southern Corp. Q3 Earnings Call Transcript (Oct. 24, 2025) (Exh. 1 hereto) at 4 (remarks of Ed Elkins). Mr. Elkins also noted that in "intermodal markets, we expect softer import demand in the near-term. This reflects the impact of tariff volatility and growing trade pressures. Warehousing capacity remains tight as inventory levels expanded at the beginning of the year ahead of tariffs, and truck capacity remains oversupplied." *Id.*

shifting UP-NS intermodal traffic away from Shreveport to the Memphis gateway. Specifically, UP announced that it was diverting domestic intermodal traffic moving from Northern California (at Lathrop) to key destinations in the Southeast and international intermodal traffic from the Ports of Los Angeles and Long Beach in Southern California to those destinations from Shreveport to Memphis. *See* Figure 10 below.[18] This shift was possible because, under the MSLLC agreements, CP's control of KCS automatically removed NS's contractual volume commitments, allowing NS to divert Speedway haulage traffic to other UP-NS interline routes. It is not surprising that the UP shift from Shreveport to Memphis showed up in NS's haulage volumes.

FIGURE 10
UP ANNOUNCEMENT REGARDING SHIFT FROM SHREVEPORT TO MEMPHIS GATEWAY



[18] *See* https://www.up.com/customers/announcements/premium/internationalintermodalpriceandservice/PR2024-113.html

The bottom line is clear: NS haulage traffic is not suffering from the level of service that CPKC provides, but rather from macroeconomic factors and NS's and UP's own business decisions.

IV. THE REAL ISSUE HERE IS UP'S INSISTENCE ON DELIVERING 11,000-FOOT TRAINS FOR MOVEMENT ON A RAIL LINE BUILT FOR 8,500-FOOT TRAINS

UP's letter and verified statement make abundantly clear that the real issue here is CPKC's decision, effective August 25, 2025, to re-establish a uniform 8,500-foot limit on the length of trains operating on the Speedway. The cause of the dwell UP complains of is UP's desire to continue building over-length 11,000-foot trains and sending them across a single-track route with sidings designed and built to accommodate trains up to 8,500-feet long.

A. CPKC Acted Responsibly When It Limited Train Lengths to Reflect Siding Lengths on the Meridian Speedway

UP's witness is up-front about the fact that he does not know why CPKC would impose an 8,500-foot restriction on train length. The reason is one that NS and UP are very aware of: the operation of UP's over-length eastbound train materially degrades the performance of the other trains on the line. Following its acquisition of control of KCS, CPKC witnessed the impact these trains were having on all of the other trains using the Meridian Speedway and the rail customers those trains support, and CPKC acted as a good steward of service when it chose to require that the length of that train conform to the design of the line's sidings.

When KCS and NS entered into the MSLLC joint venture in 2006, they proceeded to make major investments to upgrade capacity on the Meridian Speedway to support more, faster, and longer trains. Prior to those investments, siding lengths on this single-track line had generally limited operations to trains no longer than 7,500 feet. The new and extended sidings in which MSLLC invested were designed to an 8,500-foot train length standard, and the 2006 Joint Use Agreement entered into among MSLLC, NS and KCSR reflected that fact. Section 6(b)(v)

provides that, upon completion of the planned capital improvement work, the "maximum length of NSR trains" would be "increased to no less than 8,500 feet," with longer trains permitted only up to the maximum length of "other train[s] regularly operated over" the line.[19]

The 8,500-foot limit was chosen because, even with the MSLLC investments, only three sidings out of the 20 in the 300 miles between Shreveport and Meridian can accommodate trains longer than 8,500 feet. The Speedway has a passing siding every 15 miles, but there is a siding that can fit an 11,000-foot train only every 100 miles on average, with gaps between the longer sidings (from west to east) of 48.5 miles, 38 miles, 109 miles, and 95 miles. This configuration means that when UP delivers an eastbound train longer than 8,500 feet at Shreveport, the movement of that train across the Speedway inevitably causes operational disruption by forcing all opposing traffic to take sidings.

The operational impacts of over-length trains on the Speedway have been understood by NS and KCS for some time. In 2020, three years before the CP/KCS combination, KCS discussed with NS representatives the impacts of running over-length trains on the Speedway. KCS presented to the MSLLC Management Committee data showing that the advent of longer trains had driven up run times for all trains on the Speedway. In November 2020, the issue was again discussed, and KCS's recommendation was to "add[] Capital to extend sidings." It was understood that without longer sidings longer trains would adversely impact transit times:

> "• If we choose not to spend Capital, and require KCS to make current "Run Time Requirement", *we will be forced to make all Roads reduce back to an 8500' restriction*.
>
> "• If we want to continue to allow UP, NS, and KCS to exceed the 8500' restriction, we will need to extend the "Run Time Agreement" and adjust the TSP slightly.

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[19] The same provision noted that, prior to the completion of the improvements, train length would be "7,500 feet" unless a higher maximum length was permitted for trains regularly operated over the trackage.

> • If we do decide to spend the Capital to extend sidings, we will still need some flexibility on Runs times and TSP until that Capacity is in service."[20]

NS was not prepared to fund longer sidings to support longer trains, but the run-time requirement nonetheless was not adjusted upward. In May 2022, KCS acted unilaterally to reduce the length of the eastbound intermodal train it was originating at the Wylie Terminal near Dallas to a maximum of 8,500 feet. In August 2022, KCS presented the MSLLC Management Committee with data showing that this step alone had led to immediate improvements in transit time performance on the Speedway.

For its part, NS's comments in the *CP/KCS* proceeding in 2022 expressed grave concern about running trains that were too long for the sidings on the Meridian Speedway. NS argued that new trains proposed in Applicants' Amended Operating Plan "would not fit in the existing sidings" on the Speedway and as a result would cause "all other traffic (including all other trains carrying NS's interline and haulage intermodal traffic) on the line … to hold in sidings while the new trains passed."[21]

Experience since August 25, 2025 validates CPKC's decision to limit train length to available siding capacity. CPKC has found that transit times for all trains on the Speedway—not just NS's haulage trains—improved markedly as soon as the over-length UP-NS train was shortened to fit within available sidings. In the aggregate, removing the one over-length train from the Speedway reduced the aggregate delays incurred by other trains on the Speedway by

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[20] Email from Steve Simmons to Jeffrey Songer (Nov. 6, 2020) (reporting on teleconference between KCS and NS) (Exhibit 3 hereto) (emphasis added).

[21] *CP/KCS*, Amended Comments of Norfolk Southern Ry. & Request for Conditions (NS-12) (filed June 9, 2022) at 24. CPKC disagreed with the degree of concern NS had expressed (*see CP/KCS*, Decision No, 35 at 132), but CPKC's experience since April 2023 with long trains on the Speedway has convinced it that NS's concerns were valid.

more than ten hours a day. CPKC expected this result, since the shortening of these trains meant that dispatchers now can arrange train meets more efficiently, minimizing the time the first train to the siding must wait for an opposing train to arrive. Although the most direct benefit was to allow westbound trains to proceed more expeditiously from Meridian to Shreveport without needing to swim against the tide of the mammoth UP-NS eastbound train, those improvements also benefitted transit times for eastbound trains by moving the previously-delayed westbound trains off the line faster and freeing up siding capacity.

B. There Is No Basis for Board Action to Address the Hollywood Yard "Dwell" UP Says It Is Experiencing

UP's letter does not take issue directly with CPKC's decision to re-establish an 8,500-foot train length limitation. Instead, the "service" issue that UP addresses is increased dwell for railcars at UP's Hollywood Yard in Shreveport since August 25, 2025, when CPKC implemented the 8,500-foot limitation. The increase in dwell at Hollywood Yard, however, is the natural consequence of UP's decision—notwithstanding UP's awareness of the 8,500-foot limit—to continue to push over-length trains towards the Speedway from origins on UP's Western U.S. network, despite knowing that UP would have to shorten those trains at Hollywood Yard. The time that the over-length railcars spend waiting for another train to move them east, plus the time required to perform the shortening, naturally shows up in Hollywood Yard dwell statistics. UP apparently sees advantages in continuing to originate long trains for movement across its own network rather than building length-compliant trains that could move seamlessly onto the Speedway, as UP's trains historically did. But the consequences of UP's train design choices for dwell at Shreveport are not CPKC's responsibility.

In any event, the "investigation" UP requests is not necessary for another reason. CPKC and NS have been working together to address the transition to a uniform 8,500-foot train length

limitation on the Speedway. Between August 25 and October 1, CPKC operated seven additional eastbound haulage trains to accommodate the traffic removed from trains when UP down-sized them at Hollywood Yard.

CPKC is working with NS in other ways as well. On September 16, 2025, NS formally requested that CPKC support a pair of additional daily haulage trains (one eastbound and one westbound), and CPKC is accommodating that request by training the crews needed to support that service. CPKC informed NS that it expected the new daily train pair to commence operating on November 17. In the meantime, at a September 30, 2025 meeting of the MSLLC JOC CPKC offered to allow a continued exception from the train length limitation for one daily eastbound departure from Shreveport, provided that NS compensated CPKC for a portion of the added costs associated with the impact of running that train on the other trains operating on the Speedway. On October 1, NS agreed to the terms offered by CPKC,[22] and the first over-length eastbound train ran on October 3. UP's concerns accordingly are now moot—the single daily eastbound overlength train that had operated prior to August 25 will continue to operate until the additional train pair requested by NS begins operating, which will happen within a matter of days from now.

C. UP's Insistence on Delivering 11,000-Foot Trains at Shreveport Disregards the Needs of Others

Notwithstanding the ample justification for CPKC's decision to limit train length to 8,500 feet, recent public comments of UP's CEO Jim Vena suggest that UP is not willing to tolerate having neutral operating rules limit its freedom of action, and may retaliate against CPKC using

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[22] *See* Exhibit 4 hereto.

its control of the UP trackage over which CPKC must operate to reach Mexico. Speaking at a conference in Chicago on September 30, Mr. Vena reportedly said the following:

> "I think we'd have a different outcome with CPKC because we operate a lot of their trains and we allowed them to run on our railroad to get to Mexico. We need to have a coming to Jesus moment. All of a sudden you wake up and then you tell me that you're short of crews. Well, you're short of crews because you decided not to run this 11,000 foot train that you always used to be able to run. There it is. I'm not happy with it. Hopefully, they wake up and change their mind and go back to operating the trains the way they were supposed to. That's why cooperation agreements don't work."[23]

Mr. Vena, of course, is wrong in suggesting that trains were "supposed to" operate in the over-length configuration that Mr. Vena desires. That configuration may benefit UP, but as shown above it inflicts pain on all of the other rail customers using the Meridian Speedway.

More troubling still is Mr. Vena's apparent desire to force the outcome UP desires through coercive retaliation. CPKC is not sure what Mr. Vena means by a "coming to Jesus moment," but CPKC does understand Mr. Vena's remarks to be threatening to use UP's control over CPKC's trackage rights route to Mexico to coerce an outcome UP prefers on the Meridian Speedway. Mr. Vena has done that before, in October 2023. Mr. Vena's view of "cooperation agreements" appears to be that other railroads give UP whatever UP wants or UP won't cooperate. If that is what UP expects, it is no surprise that Mr. Vena feels compelled to acquire other railroads as a means of bending them and the customers they serve to UP's will.

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[23] These remarks were reported in a Journal of Commerce article published on October 2, 2025. *See* Journal of Commerce, Michael Angell, "*CPKC pushes back on NS complaint over Meridian track access*" (Oct. 12, 2025). That article quotes Mr. Vena's remarks in part and reports on them more fully. CPKC understands the quotation in text to accurately reflect Mr. Vena's oral remarks on October 1 at the Journal of Commerce Inland Distribution Conference in Chicago.

CPKC initially established the 8,500-foot train length limit for trains on the Meridian Speedway in May 2023, and that limit became effective in June 2023.[24] Not coincidentally, Mr. Vena returned to UP as CEO in August 2023, and by October he had decided to retaliate for the Meridian Speedway limitation by imposing an arbitrary 8,000-foot limit on trains using UP's Brownsville Subdivision, a key link in CPKC's route to and from Mexico, despite knowing that CPKC's trains were readily accommodated by the frequent long sidings in that corridor.[25] There was no justification for this, particularly since KCS had recently spent tens of millions of dollars to add or lengthen the sidings there to support train lengths of 12,000 feet (as shown on UP's train length diagram map, which is Exhibit 6 hereto). An excerpt of that map showing the "12k" train length limit on the portion of the Brownsville Sub used by CPKC trains (*i.e.*, between

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[24] Writing to UP in October 2023, CPKC explained why it had limited train lengths to 8,500 on the Meridian Speedway:

> "Our experience – backed up by observations during the period when exceptions were allowed – shows that running even one overlength eastbound train causes extensive delays to other trains by forcing all opposing trains to take sidings to let that train pass, which in turn impacts the performance of other eastbound trains as well. Those service impacts are not consistent with our obligations to meet service assurances to our customers and otherwise run a railroad efficiently. Indeed, the re-imposition of an 8,500-foot limit in late May led to improvement in the reliability of train operations on the Meridian Speedway. Accordingly, it would not be reasonable or responsible for us to remove the 8,500-foot limit at this time."

Email from Raymond Elphick (CPKC) to Rick Lichtas (UP) (Oct. 24, 2023) (Exhibit 5 hereto).

[25] CPKC uses UP's Brownsville Subdivision between Bloomington, TX and Robstown, TX as part of its route between Houston and the Laredo gateway.

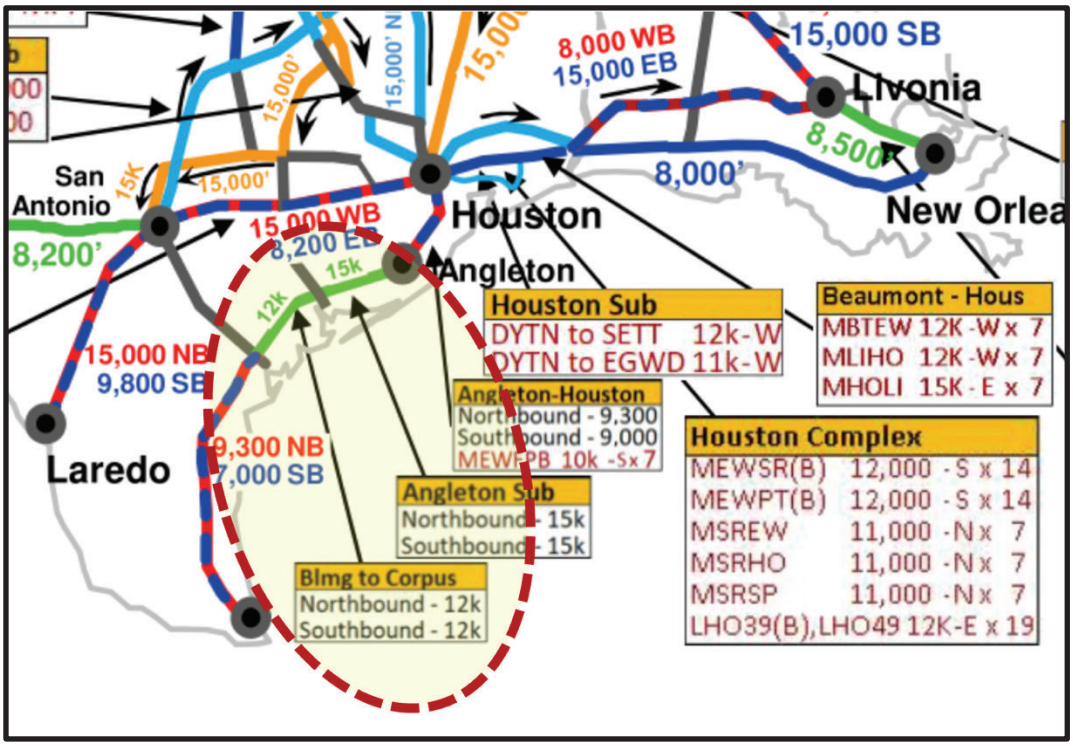
Bloomington and Corpus Christi) is Figure 11 below.[26] NS, by contrast, has not been willing to spend the money necessary to lengthen sidings on the Meridian Speedway.[27]

[26] Between 2011 and 2019, KCS helped fund four new long sidings or siding extensions on or adjacent to the portion of the Brownsville Subdivision between Bloomington and Robstown to support the movement of long trains, as shown in the Table below. UP's trains on that line tend to be shorter because they also traverse UP lines north or south of the Bloomington-Robstown segment where UP has not made investments in longer sidings.

SIDING BUILT OR LENGTHENED WITH KCS FUNDS	STATE IN 2011	CURRENT STATE
Benavides Siding (at Placedo, TX)	Did Not Exist	10,400 ft. siding
Inari Siding	7,667 ft. siding	10,000 ft. siding
Greta Siding	7,270 ft. siding	14,000 ft. siding
Cranell Siding	Did Not Exist	10,500 ft. siding

[27] Mr. Elphick's October 2023 email to Mr. Lichtas at UP explained that "CPKC would like to be able to support the operation of longer trains, and we would be willing to enter into tri-party discussions (among CPKC, UP and NS) to identify the infrastructure needs associated with such trains and how costs could be allocated in a manner that is fair to all parties. (As you may be aware, KCSR and NS have had extensive discussion about the investments needed to support longer trains, and NS has elected not to fund those investments.) Until infrastructure is added to support long trains on this line, it would be irresponsible for CPKC to allow those operations to proceed." *See* Exhibit 5 hereto.

FIGURE 11
EXCERPT FROM UP TRAIN LENGTH MAP



When CPKC's CEO Keith Creel asked Mr. Vena why he had imposed an 8,000-foot length limit on the Brownsville Sub, Mr. Vena answered unabashedly: "because you restricted my trains." It apparently did not matter to UP that the Meridian Speedway was designed for 8,500-foot trains, whereas the portion of the Brownsville Subdivision used by CPKC was designed for 12,000 foot trains. Mr. Vena retaliated using whatever leverage was at hand.

The UP train length limit immediately and severely affected CPKC's operations between the United States and Mexico, forcing unwarranted delays to more than a dozen trains during the first days of UP's edict. This leverage compelled CPKC to agree to an arrangement permitting the continued operation on the Meridian Speedway of a single eastbound UP-NS haulage train of up to 11,000 feet in length from Shreveport to Meridian in exchange for UP's lifting the Brownsville Subdivision limit and cooperating on other commercial matters. One of those matters involved the sale of a sliver of real property that CPKC needed to support double-

tracking its mainline in Blue Valley, Missouri, near Kansas City (one of the projects for which CPKC sought Board approval in the *CP/KCS* proceeding).[28]

In the intervening period after CPKC agreed to accommodate UP's insistence on delivering an overlength train for movement across the Meridian Speedway, UP's real estate department was processing the Blue Valley land sale agreement without issue, but Mr. Vena intervened to block that deal, apparently for no reason other than to obtain still more leverage over CPKC. Mr. Vena's repudiation of his promised cooperation at Blue Valley removed a key underpinning of CPKC's October 2023 acquiescence in the continued operation of the UP-NS 11,000-foot train. UP was well aware that CPKC would not continue to accede to that operation despite its consequences for the rail customers served by all of the other operations on the Speedway.

CONCLUSION

For the reasons discussed above, the concerns raised in the UP and NS letters lack merit and warrant no further action by the Board.

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[28] *See CP/KCS,* Decision No. 35 at 153; Final EIS at 2-15.

Respectfully submitted,



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Attorneys for CPKC

November 13, 2025

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VERIFICATION

I, Adolph Gameiro, declare under penalty of perjury under the laws of the United States of America that the factual content of the foregoing document is true and correct. Further, I certify that I am qualified and authorized to execute this Verification.

Executed this 11/13/2025 day of November, 2025

Signed by:
Adolph Gameiro
1ADB0EB90B89482...

Adolph Gameiro
Managing Director, Interline & Network Strategy

Docusign Envelope ID: 38528D36-D0E7-476C-AA

VERIFICATION

I, Stephen Simmons, declare under penalty of perjury under the laws of the United States of America that the factual content of the foregoing document is true and correct. Further, I certify that I am qualified and authorized to execute this Verification.

Executed this 11/13/2025 day of November, 2025

Signed by:
Steve Simmons
B33FB0F8931F421...

Stephen Simmons
Director of Border and Interline Operations]

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing CPKC's Reply to UP and NS Correspondence Regarding Meridian Speedway to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ David L. Meyer
David L. Meyer

November 13, 2025

PUBLIC REDACTED VERSION

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500 (SUB-NO. 6)

CANADIAN PACIFIC RAILWAY LIMITED, ET AL. – CONTROL – KANSAS CITY SOUTHERN, ET AL. (GENERAL OVERSIGHT)

CPKC REPLY TO UP AND NS CORRESPONDENCE REGARDING MERIDIAN SPEEDWAY

EXHIBIT 1

NORFOLK SOUTHERN CORP. 3Q 2025 EARNINGS CALL TRANSCRIPT (EXCERPTS) (OCT. 24, 2025)

Q3 2025 Earnings Call

Company Participants

- Ed Elkins, Executive Vice President and Chief Commercial Officer
- Jason A. Zampi, Executive Vice President and Chief Financial Officer
- John Orr, Executive Vice President and Chief Operating Officer
- Luke Nichols, Senior Director, Investor Relations
- Mark R. George, President and Chief Executive Officer

Other Participants

- Bascome Majors, Susquehanna Financial Group, LLP
- Brandon Oglenski, Barclays Capital Inc.
- Brian Ossenbeck, J.P. Morgan Securities, LLC
- Chris Wetherbee, Wells Fargo Securities
- David Vernon, Sanford C. Bernstein & Co., LLC
- Jonathan Chappell, Evercore ISI
- Jordan Alliger, Goldman Sachs & Company, Inc.
- Richa Harnain, Deutsche Bank
- Scott Group, Wolfe Research, LLC
- Stephanie Moore, Jefferies LLC
- Thomas Wadewitz, UBS Securities, LLC

Presentation

Operator

Good afternoon, ladies and gentlemen, and welcome to Norfolk Southern Third Quarter 2025 Earnings Conference Call. At this time, all participant lines are in the listen-only mode. Following the presentation, we will conduct a question-and-answer session. (Operator Instructions).

And I would like to turn the conference over to Luke Nichols, Senior Director, Investor Relations. Please go ahead.

Luke Nichols [redacted]

Good afternoon, everyone. Please note that during today's call, we will make certain forward-looking statements within the meaning of the Safe Harbor Provision of the Private Securities Litigation Reform Act of 1995. These statements relate to future events or future performance of Norfolk Southern Corporation, which are subject to risks and uncertainties and may differ materially from actual results. Please refer to our annual and quarterly reports filed with the SEC for a full discussion of those risks and uncertainties we view as most important.

Our presentation slides are available at norfolksouthern.com in the Investors section, along with a reconciliation of any non-GAAP measures used today to the comparable GAAP measures, including adjusted or non-GAAP operating ratio. Please note that all references to our prospective operating ratio during today's call are being provided on an adjusted basis.

Turning to Slide 3, I'll now turn the call over to Norfolk Southern's President and Chief Executive Officer, Mark George.

Mark R. George [redacted]

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With that, I'll turn it to you, Ed.

Ed Elkins [redacted]

Thanks much, John.

Now let's go to Slide 10, where you'll see that we achieved 2% year-over-year growth in both revenue and RPU in the quarter. We see several dynamics at play in the business portfolio. We have strength within our merchandise markets, partially offset by meaningful declines in export coal markets. We see reduced fuel surcharge revenue and softer than expected intermodal volumes. Overall, our volume for the third quarter finished flat, despite gross ton miles growth of 4%.

Let's look inside of merchandise. Volume grew 6% from a year ago, driven by our auto, chemical, and metals in construction markets. Revenue less fuel grew 7%, which underscores our pricing discipline and our volume performance. However, we had mixed headwinds from growth in commodities such as natural gas liquids, sand, and scrap metal, which diluted our overall RPU performance.

In intermodal, we're navigating the complexity of ongoing trade and tariff uncertainty, persistently abundant highway truck capacity, and outside factors, including competitor responses to our merger announcement, which caused volumes to decrease 2%. Intermodal revenue less fuel and RPU less fuel both grew, reflecting the overall stable pricing environment right now. Now here, I have to note that year-over-year RPU comparisons benefited from an abnormally high volume of empty shipments ahead of the East Coast port disruptions last year.

Let's turn to coal, where weakening seaborne coal prices drove RPU less fuel lower by 7%, and this was the most significant revenue headwind for the quarter. We enjoyed stronger demand in our Utility segment, but it didn't offset the sustained weakness in export. This interaction has been playing out throughout the year, and we expect it to persist.

Let's go to Slide 11, and talk about the market outlook. Like the third quarter, we continue to navigate a dynamic economic environment, along with competitive cross currents. For our merchandise markets, we forecast vehicle production will be challenged, in part due to recent disruptions at a key material supplier to our customers.

We expect this will have a meaningful impact to production at several NS-served automotive plants in the fourth quarter. At the same time, overall manufacturing activity remains mixed, with output expected to grow despite the backdrop of trade and tariff uncertainty. Strong fracking activity in the Marcellus/Utica basin is supporting demand, and NGLs in sand in our merchandise markets.

Looking into our intermodal markets, we expect softer import demand in the near-term. This reflects the impact of tariff volatility and growing trade pressures. Warehousing capacity remains tight as inventory levels expanded at the beginning of the year ahead of tariffs, and truck capacity remains oversupplied. Coal prices have remained pressured with significant uncertainty surrounding export trade. And at the same time, we're expecting utility demand to see continued support from growing electricity demand and lower existing coal stockpiles.

Now, these dynamics should be considered against the backdrop of our recently announced merger, which has intensified competitor activity across the industry. And as a result, we anticipate volume pressure, particularly in our intermodal segment. And so we're maintaining a cautious outlook for the remainder of 2025.

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Operator

Thank you. Next question will be from Tom Wadewitz at UBS. Please go ahead, Tom.

Q - Thomas Wadewitz [redacted]

Yes, good afternoon. Wanted to ask a little more on the topic of the competitive responses. I guess the kind of name that comes out and seems most prominent in Intermodal would be J.B. Hunt. And I just want to get a sense if you could help us think about to the extent that BN's going to exert some control here and push more business over to CSX. How much of the business do you think should be sticky to Norfolk?

I recall back quite a long time ago, you had some corridor initiatives that I think are differentiated, like the Crescent Corridor, lines that maybe CSX isn't going to serve markets as well. So I just want to see if you have some high-level thoughts on what can make business with J.B. Or Intermodal in general sticky in terms of network differences and how much, kind of risk is there of kind of BN forcing some business over CSX? Thank you.

A - Mark R. George [redacted]

So I think we talked about it before that more than half of our business with J.B. Hunt originates and terminates here in the East, and we continue to provide a really excellent service product to them, and we feel comfortable and confident with that, retaining that business. I think for the balance, particularly in certain geographies, perhaps in the Southeast that's really what's at risk right now that Ed can go in and talk about.

But I just want to reemphasize that one thing. About two decades ago, we started investing hundreds of millions of dollars to build out our Intermodal franchise. We built out that Premier Corridor and the Crescent Corridor. We've built terminals, and we have an unrivaled Intermodal franchise in the East. And it's a franchise that people want to be on because it provides the fastest route to the major markets and with a terminal footprint where customers want it to be.

So with time, cargo owners are going to want that business back on the NS, and we are going to work aggressively to help them get that cargo back on the NS. So, Ed, please chime in.

A - Ed Elkins [redacted]

Well, gosh, I think you pretty much summarized it, but let me say this. There are a number of key lanes where Norfolk Southern offers exceptional value for customers that really can't be replicated anywhere. There's -- I would say this, from experience, there's a reason why we have the second largest Intermodal franchise in North America, and it's because of the superior route structure that we've built out that Mark just referenced, and also a terminal network that gets you with your freight landed closer to the consumer than any other network out there.

So there's lots of things that can happen in terms of pushing freight around that what I would call, be unnatural. But over time, we're very confident, John and I are, that we put our heads together, make sure our service is exceptional the way it is now, we continue to partner with the right folks, we're going to be in good shape.

Q - Thomas Wadewitz [redacted]

I guess one component of that as well is just that CSX has had this major construction project in debottlenecking with their Howard Street Tunnel, and so that makes them a lot more efficient

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north-south along the east. Is that -- like is that a significant competitive impact, or do you think that's kind of an impact on a modest portion of your domestic?

A - Ed Elkins [redacted]

I can't really comment on that project for them. I hope it makes them a lot more competitive with trucks.

Q - Thomas Wadewitz [redacted]

Right. Okay. Thanks for the time.

A - Mark R. George [redacted]

Thank you, Tom.

Operator

Next question will be from Brian Ossenbeck at J.P. Morgan. Please go ahead, Brian.

Q - Brian Ossenbeck [redacted]

Hey, good afternoon. Thanks for taking the question. First, just a quick follow-up maybe for Ed. I think you mentioned that business that we're talking about here, it would come back to the network even without a merger. So maybe you can just elaborate exactly what would have to change if it's better service or competing more on price.

And then this may be for, on the upside, for John. When you think about fuel efficiency, I mean, we've always heard it was going to be a challenge at Norfolk because of length of haul and mix and a bunch of other things, weight. It looks like you've clearly broken through. Is that something you feel like you can get to sort of best-in-class levels with your peers? More thoughts on that would be helpful. Thanks.

A - Ed Elkins [redacted]

All right. I'll go first before I forget the question. When I think about service from the West Coast into the Southeast, I think about UP and NS utilizing the Meridian Speedway as the fastest, shortest route between those two regions -- period. There's not a better ride out there when it comes to that kind of freight for intermodal. So that's one thing.

The second thing is the exceptional amount of terminal capacity that we have and expertise to back it up, both in the Carolinas, Florida, as well as in Georgia. That's just going to be a force multiplier and has been. So we're confident that over time, cargo owners are going to make the right decision about where their freight's routed.

I'll hand it off to you, John.

A - John Orr [redacted]

Well, I'm glad you're noting the hard work the team has done on fuel. And I won't comment on what the art of the possible may have been thought through back then, but I'll tell you right now. And as we go forward, it's a big part of a strategy that includes all of our strategic sourcing and logistics approach, including the assessment of distribution, the use and consumption of the product, like fuel.

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And the current efficiency represents a significant dollar value. And if you look at the mosaic of measures that we present to you all, we're balancing speed, a locomotive productivity, the fuel burn. And we're looking at it, not how fast can we go just to get faster and to get to point A to point B quicker. We will, if that means we can use a crew at the end of that trip to use them within a yard and save money somewhere else.

But as we work through fuel consumption, we want to make sure that how we manage our fuel resources is aligned to what our train service plan is. And we're always looking at that service plan. We're taking more detailed approach on each element of it. What resources we need, how much fuel we need to move the tonnage, how soon we need to get to a customer so on a product level view, we're satisfying the contractual obligations and elevating our service metrics and how they face the customer.

And we're taking that, the nice thing is we're taking that approach in mechanical, how we service our locomotives, how we maintain our parts inventory, how we're putting stress on our engineering team through Ed Boyle and his great leadership and managing ties, plates, rail, ballast, all of those things. So across all of those things, whether it's fuel and operational resources, we're taking a really hard line approach on it.

So I think we've got room to grow on fuel. I don't have any end in sight to the value we can create managing all of those components, but I can tell you it's the tip of the iceberg as we move forward against all our enterprise resources.

A - Mark R. George [redacted]

And I would just add one other thing, Brian, is when I look back six years ago, when I came in, we had roughly high-teens percent of our locomotive fleet that was AC. And through those investments that we've been making every year systematically to upgrade our locomotive fleet from DC to AC, we're now approaching 80% AC. So that is definitely helping provide more runway for the future that John is extracting using the method that he's talking about. So that definitely is a driver as well, right?

A - John Orr [redacted]

Yes, and that gives us the runway. Let's look at 2019, which was one of the bellwether years from a financial and service perspective. And right now, we're running a year-to-date, 23% less horsepower per ton. When you have that discipline in managing locomotives, the utilization of your power, your crews, you're reducing your stops, you're creating more fluidity, it shows up in fuel and shows up in so many other P&L items. So you're right, Mark, those investments, those wise investments are paying dividends.

A - Mark R. George [redacted]

But the discipline you're bringing now for the things you're just talking about is really what's accelerating the benefits and providing more runway into the future. So congratulations on that.

A - John Orr [redacted]

Team effort, for sure.

A - Mark R. George [redacted]

Thanks, Brian.

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BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500 (SUB-NO. 6)

CANADIAN PACIFIC RAILWAY LIMITED, ET AL. – CONTROL – KANSAS CITY SOUTHERN, ET AL. (GENERAL OVERSIGHT)

CPKC REPLY TO UP AND NS CORRESPONDENCE REGARDING MERIDIAN SPEEDWAY

EXHIBIT 2

LETTER FROM MARK REDD (CPKC) TO JOHN ORR (NS) (OCT. 4, 2025)

Mark Redd
EVP & Chief Operating Officer

427 W 12th Street
Kansas City, MO 64105

T 816-705-4080
C 204-793-2374
Mark.redd@cpkcr.com

October 4, 2025

John.Orr@nscorp.com
Mr. John Orr
EVP and Chief Operating Officer
Norfolk Southern Corporation
650 West Peachtree St., NW
Atlanta, GA 30308

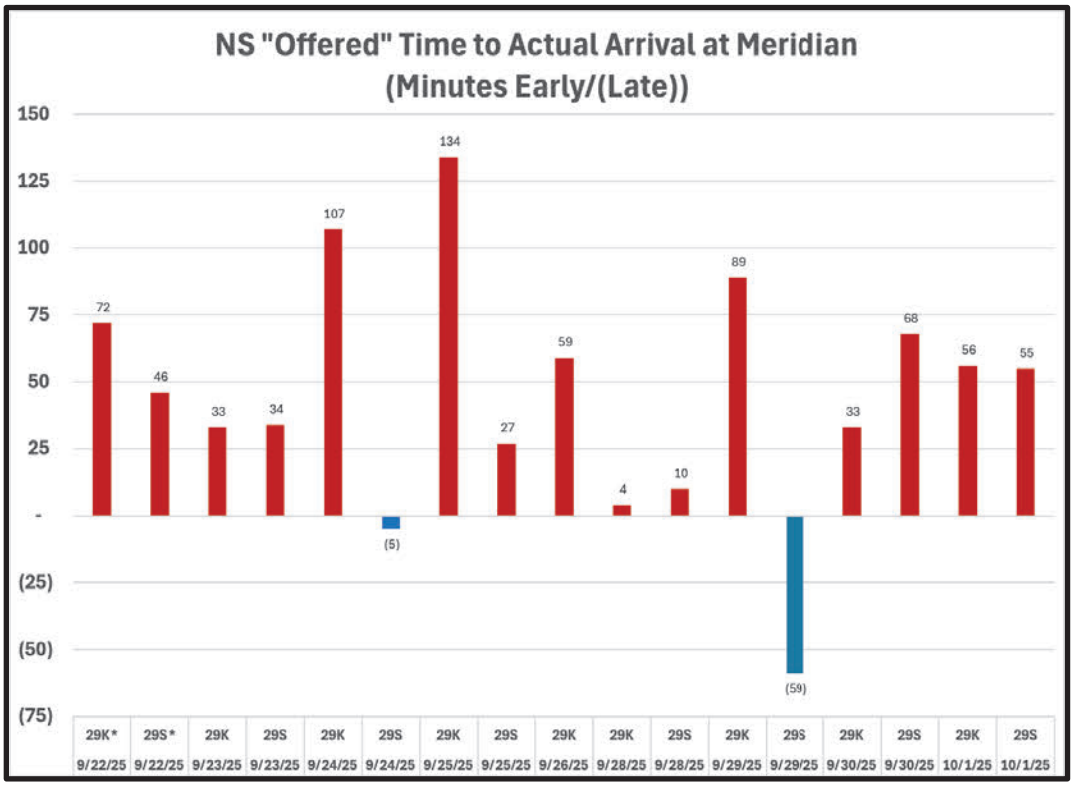
Dear John:

RE: Forecasting Train Availability and Qualifying Trains

I am writing about two issues concerning the operation of NSR haulage trains on the Meridian Speedway.

First, CPKC (as designated operator of MSLLC) requests that NSR improve its forecasts of westbound train availability at Meridian. As you know, NSR typically communicates a forecasted time when westbound haulage trains will be available for crewing by CPKC and departure onto the Speedway some hours before those trains actually arrive in Meridian.

Unfortunately, our recent experience shows that NSR's forecasts have been poor. NSR trains often arrive at Meridian long after the forecasted availability time, and they often are not ready to be crewed and departed by CPKC for considerable time after arrival on account of fueling and other work that NSR performs on its own lines in Meridian. Since September 22, of 17 westbound haulage trains, 15 arrived in Meridian later than the forecasted availability time that NSR communicated to CPKC (or the crew availability time that CPKC communicated to NSR), eight of those 15 arrived more than 50 minutes later than NSR's forecast, and two arrived more than an hour and a half later. This pattern is depicted in the chart below (with "*" denoting that the lag was from crew availability to train arrival). The number of minutes shown below that trains arrived later-than-forecast are in addition to the 30 minutes or more that many of NSR's westbound trains dwell on NSR tracks in Meridian while refueling before they can be crewed and departed by CPKC.



NSR's misestimates of train availability at Meridian jeopardize service quality for all customers using the Meridian Speedway. They impact the crew resources that CPKC is responsible for providing to move both NSR's haulage trains and all of the other trains operating on the Speedway. CPKC has based its crew calling on NSR's train availability forecasts, yet frequently the called crews spend hours waiting for NSR's westbound trains to arrive and be ready for movement onto the Speedway west of Meridian. This wasted time squanders crews' available hours of service and has required recrewing of trains before they reach Shreveport, which in turn unnecessarily consumes more crew resources and also makes track capacity unavailable to support fluid and efficient operations.

To remedy this problem, CPKC requests that NSR promptly improve the accuracy of its forecasts. We will monitor and evaluate progress over the coming weeks until Saturday, October 18, 2025, and if the pattern of inaccurate forecasts continues (whether those forecasts are earlier or later than trains are actually available to be crewed), we will have no choice but to revise our approach

to crew calling to reflect more reliable estimates of train availability, such as actual arrival in Meridian.

Second, I understand that NSR has recently expressed concern about the percentage of NSR haulage trains that are deemed "Qualifying" trains for purposes of assessing CPKC's compliance with the Service Standards in the MSLLC agreements. This is an issue largely within the control of NSR and its interline partners. As the data NSR recently presented to CPKC shows, between March 1 and August 31, 2025, of the 185 westbound haulage trains delivered to CPKC at Meridian, 41 (or 22%) were deemed not Qualifying because they failed to comply with the horsepower-per-ton (HPT) standards established by the MSLLC Joint Operating Committee (JOC). Likewise, of the 153 eastbound haulage trains delivered to CPKC at Shreveport, 14 (nearly 10%) were underpowered and thus not Qualifying.

As you know, lower HPT ratios translate to more sluggish train acceleration, and thus contribute to slower transit times and greater consumption of track capacity, compromising performance of all other trains using the line. It seems that NSR and its partners are choosing to prioritize locomotive productivity metrics over the fluidity of the Meridian Speedway for the benefit of all of the customers (NSR's and CPKC's alike) that expect reliable service there. If NSR desires that more of its haulage trains be included in calculations of Service Standard performance, I encourage you and your interline partners to power your trains in accordance with JOC standards.

Sincerely,



Mark Redd

PUBLIC REDACTED VERSION

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500 (SUB-NO. 6)

CANADIAN PACIFIC RAILWAY LIMITED, ET AL. – CONTROL – KANSAS CITY SOUTHERN, ET AL. (GENERAL OVERSIGHT)

CPKC REPLY TO UP AND NS CORRESPONDENCE REGARDING MERIDIAN SPEEDWAY

EXHIBIT 3

EMAIL FROM STEVE SIMMONS (KCS) TO JEFFREY SONGER (KCS) (NOV. 6, 2020)

From: Steve D Simmons <SSimmons@KCSouthern.com>
Sent: Friday, November 6, 2020 10:39 AM
To: Jeffrey Songer <JSonger@KCSouthern.com>
Cc: Steven E. Truitt <STruitt@KCSouthern.com>; Mike Walczak <MWalczak@KCSouthern.com>
Subject: MSLLC JOC Meeting Update

Jeff,

Steve, Mike, and I had a call with Chip yesterday. The other NS JOC members were not able to join.

Steve reiterated the following from or last meeting;

- All Railroads, UP, NS, and KCS are running longer trains to reduce the number of trains, crews, and locomotives needed to run the same volume.
- Recommend adding Capital to extend sidings on the Meridian Speedway
- KCS Engineering has estimates on every siding on the route
- We have a list of the top 5 that we would recommend extending
- If we choose not to spend Capital, and require KCS to make current "Run Time Requirement", we will be forced to make all Roads reduce back to an 8500' restriction.
- If we want to continue to allow UP, NS, and KCS to exceed the 8500' restriction, we will need to extend the "Run Time Agreement" and adjust the TSP slightly.
- If we do decide to spend the Capital to extend sidings, we will still need some flexibility on Runs times and TSP until that Capacity is in service.

Chip stated the NS would like to do some modeling before they could agree to adding capacity. We are providing our TSP of the IM trains and plan to circle back later this month. Chip also stated that NS and UP have been in discussions about trains size that they would like to run. This could impact the MSLLC even more.

Chip also mentioned that Mike McClellan will be meeting with Pat next week. He did not give any details, but mentioned train length could be a topic.

Steve/Mike – please add to or correct any of the above.

Thanks,

Steve Simmons
Director of Interline Operations
The Kansas City Southern Railway Company
427 West 12th Street | Kansas City, MO 64105
Office: 816.983.1589 | Cell: 816.718.0891
Email: ssimmons@kcsouthern.com

PUBLIC REDACTED VERSION

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500 (SUB-NO. 6)

CANADIAN PACIFIC RAILWAY LIMITED, ET AL. – CONTROL – KANSAS CITY SOUTHERN, ET AL.
(GENERAL OVERSIGHT)

CPKC REPLY TO UP AND NS CORRESPONDENCE REGARDING MERIDIAN SPEEDWAY

EXHIBIT 4

LETTER AGREEMENT RE:
TEMPORARY ACCOMMODATION OF HAULAGE TRAINS OF NS TRAFFIC
EXCEEDING 8500 FEET IN LENGTH
(SEPT. 30, 2025)

From: "Orr, John" <John.Orr@nscorp.com>
Date: September 30, 2025 at 8:40:28 PM CDT
To: Mark Redd <mark.redd@cpkcr.com>
Cc: "Morris, Jason M." <Jason.Morris2@nscorp.com>
Subject: Re: JOC discussion

Mark
Thank you for the constructive discussion today, I have reviewed and accept the terms.
I will sign and send to you first thing when I am in office tomorrow.
I have conveyed the news to Yannik and Dewayne.
Have a good evening,
John

Get Outlook for iOS

From: Mark Redd <Mark.Redd@cpkcr.com>
Sent: Tuesday, September 30, 2025 9:28:19 PM
To: Orr, John <John.Orr@nscorp.com>
Subject: [EXTERNAL] JOC discussion

John, as discussed in the JOC today. I have attached a letter to cover temporary train length with a sum payable. Please review and sign for the ability to run over length.

Being tomorrow is Wednesday, I believe the first train received at Shreveport would be Thursday that can run through at 11k.

Thank you

Mark Redd
Executive VP and COO
204-793-2374

Mark Redd
Executive Vice-President and Chief Operating Officer

7550 Ogden Dale Road SE
Calgary, AB
Canada T2C 4X9

T (816)705-4080
C (204)793-2374

Mark.Redd@cpkcr.com

September 30, 2025

VIA E-MAIL: john.orr@nscorp.com
Mr. John Orr
EVP & Chief Operating Officer
Norfolk Southern Corporation
650 W. Peachtree Street NW
Atlanta, Georgia 30308

RE: Temporary Accommodation of Haulage Trains of NS Traffic Exceeding 8500 Feet in Length

Dear John,

I am writing to follow up on CPKC's offer at today's MSLLC Joint Operating Committee (JOC) meeting for MSLLC to suspend our train length limitation of 8500 feet and temporarily allow eastbound NS Haulage trains exceeding 8500 feet in length to move over MSLLC until approximately November 17, 2025, when the MSLLC expects to be able to implement the requested NS schedule changes as was previously discussed.

As discussed at today's JOC meeting and in repeatedly the past, there are currently only 3 sidings on MSLLC exceeding 10,000 feet in length. This creates significant operational issues when trains are received for NS Haulage service exceeding 8500 feet in length. Accordingly, consistent with the Norfolk Southern Railway Company - Meridian Speedway LLC Joint Use Agreement, in late August, CPKC as Designated Operator for MSLLC removed the temporary exception allowing NS to receive haulage trains of NS Traffic from Union Pacific at Shreveport up to 11,000 feet long. UP has not adopted operating practices in line with the current 8500-foot limitation.

Having said that, as a good faith exception in the interim and without establishing any precedence, CPKC, as Designated Operator, agrees to move 1 eastbound train per day of NS Traffic up to 11,000 feet in length received from UP at Shreveport and moving across MSLLC in haulage for NS until such time as the MSLLC is able to implement the requested NS schedule changes. CPKC shall give NS 3 days' notice when said schedule change is in place to return to the 8500-foot train

length limit on the number of trains of NS Traffic currently requested by NS. It shall be NS's responsibility to communicate restoration of the 8500-foot limit to NS's interline connections.

In exchange for this accommodation, NS shall pay CPKC a nominal surcharge of $2,500 USD (Two Thousand, Five Hundred and no/100 US Dollars) per train start for each train of NS Traffic exceeding 8500 feet in length moving under this temporary accommodation until CPKC restores the 8500-foot limit pursuant to this temporary accommodation. This nominal surcharge does not represent the full direct and indirect costs associated with the loss of capacity and inefficiency, but is a partial incentive for NS to be judicious when overburdening the infrastructure.

If the foregoing accommodation is acceptable to NS, please countersign in the blank indicated below. CPKC will institute the temporary exception for trains exceeding 8500 feet within 72 hours of receipt of NS's countersigned copy of this letter.

Sincerely,

Mark Redd

Acknowledged and agreed.

Printed name: John F. Orr

Date: 10/1/25

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500 (SUB-NO. 6)

CANADIAN PACIFIC RAILWAY LIMITED, ET AL. – CONTROL – KANSAS CITY SOUTHERN, ET AL. (GENERAL OVERSIGHT)

CPKC REPLY TO UP AND NS CORRESPONDENCE REGARDING MERIDIAN SPEEDWAY

EXHIBIT 5

EMAIL FROM RAY ELPHICK (CPKC) TO RICK LICHTAS (UP) (OCT. 24, 2023)

PUBLIC REDACTED VERSION

BEFORE THE SURFACE TRANSPORTATION BOARD

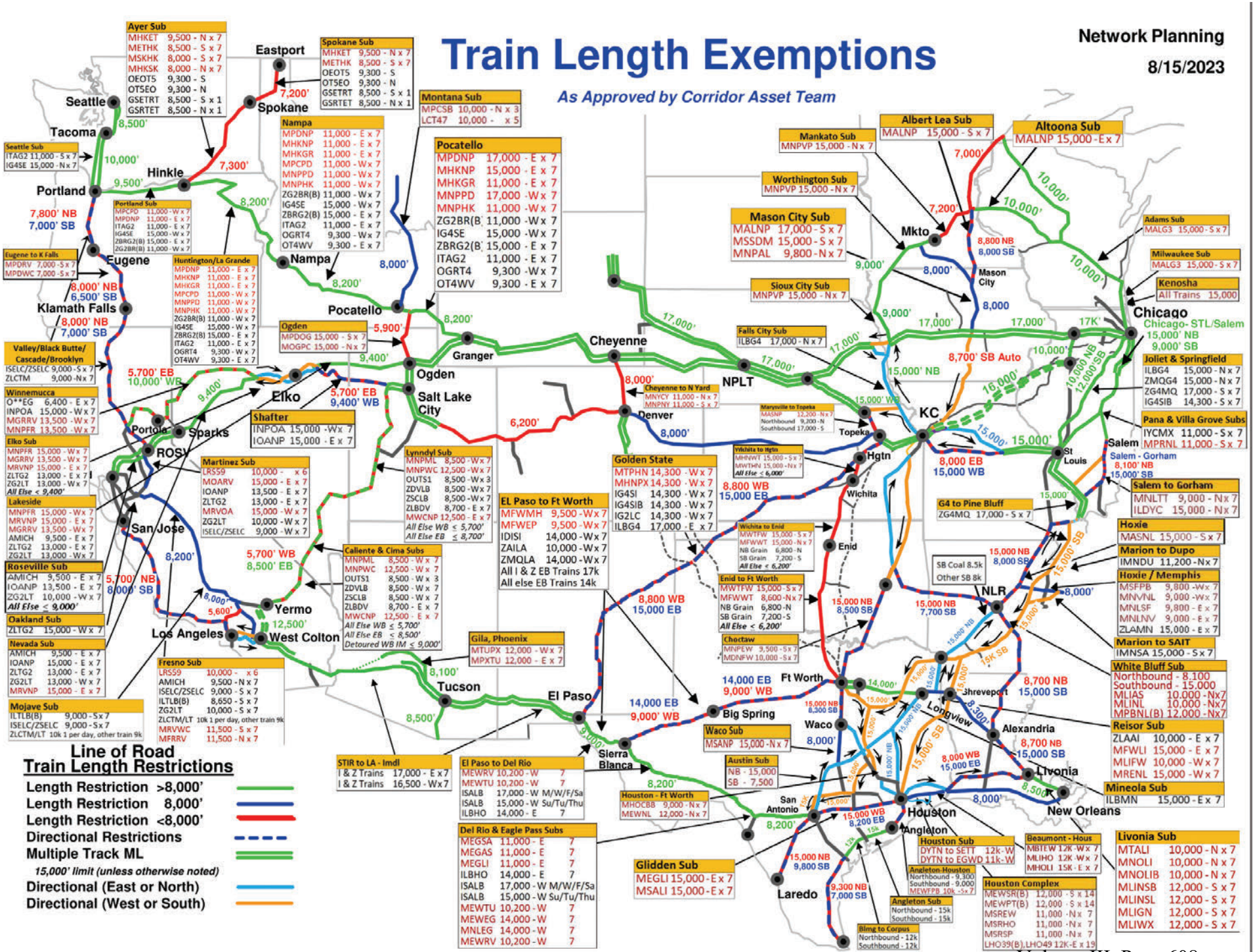
FINANCE DOCKET NO. 36500 (SUB-NO. 6)

CANADIAN PACIFIC RAILWAY LIMITED, ET AL. – CONTROL – KANSAS CITY SOUTHERN, ET AL. (GENERAL OVERSIGHT)

CPKC REPLY TO UP AND NS CORRESPONDENCE REGARDING MERIDIAN SPEEDWAY

EXHIBIT 6

UP SYSTEM TRAIN LENGTH DIAGRAM MAP


Train Length Exemptions
As Approved by Corridor Asset Team
Network Planning
8/15/2023
Line of Road
Train Length Restrictions
Length Restriction >8,000'
Length Restriction 8,000'
Length Restriction <8,000'
Directional Restrictions
Multiple Track ML
15,000' limit (unless otherwise noted)
Directional (East or North)
Directional (West or South)
Ayer Sub
MHKET 9,500 - N x 7
METHK 8,500 - S x 7
MSKHK 8,000 - S x 7
MHKSK 8,000 - N x 7
OEOT5 9,300 - S
OT5EO 9,300 - N
GSETRT 8,500 - S x 1
GSRTET 8,500 - N x 1
Spokane Sub
MHKET 9,500 - N x 7
METHK 8,500 - S x 7
OEOT5 9,300 - S
OT5EO 9,300 - N
GSETRT 8,500 - S x 1
GSRTET 8,500 - N x 1
Montana Sub
MPCSB 10,000 - N x 3
LCT47 10,000 - x 5
Nampa
MPDNP 11,000 - E x 7
MHKNP 11,000 - E x 7
MHKGR 11,000 - E x 7
MPCPD 11,000 - W x 7
MNPPD 11,000 - W x 7
MNPHK 11,000 - W x 7
ZG2BR(B) 11,000 - W x 7
IG4SE 15,000 - W x 7
ZBRG2(B) 15,000 - E x 7
ITAG2 11,000 - E x 7
OGRT4 9,300 - W x 7
OT4WV 9,300 - E x 7
Pocatello
MPDNP 17,000 - E x 7
MHKNP 15,000 - E x 7
MHKGR 11,000 - E x 7
MNPPD 17,000 -W x 7
MNPHK 11,000 -W x 7
ZG2BR(B 11,000 -W x 7
IG4SE 15,000 -W x 7
ZBRG2(B 15,000 - E x 7
ITAG2 11,000 - E x 7
OGRT4 9,300 -W x 7
OT4WV 9,300 - E x 7
Albert Lea Sub
MALNP 15,000 - S x 7
Altoona Sub
MALNP 15,000 - E x 7
Mankato Sub
MNPVP 15,000 - N x 7
Worthington Sub
MNPVP 15,000 - N x 7
Mason City Sub
MALNP 17,000 - S x 7
MSSDM 15,000 - S x 7
MNPAL 9,800 - N x 7
Sioux City Sub
MNPVP 15,000 - N x 7
Falls City Sub
ILBG4 17,000 - N x 7
Cheyenne to N Yard
MNYCY 11,000 - N x 7
MNPNY 11,000 - S x 7
Marysville to Topeka
MASNP 12,200 - N x 7
Northbound 9,200 - N
Southbound 17,000 - S
Wichita to Hgtn
MHNWT 15,000 - S x 7
MWTHN 15,000 - N x 7
All Else ≤ 6,000'
Golden State
MTPHN 14,300 - W x 7
MHNPX 14,300 - W x 7
IG4SI 14,300 - W x 7
IG4SIB 14,300 - W x 7
IG2LC 14,300 - W x 7
ILBG4 17,000 - E x 7
EL Paso to Ft Worth
MFWMH 9,500 - W x 7
MFWEP 9,500 - W x 7
IDISI 14,000 - W x 7
ZAILA 10,000 - W x 7
ZMQLA 14,000 - W x 7
All I & Z EB Trains 17k
All else EB Trains 14k
Wichita to Enid
MWTFW 15,000 - S x 7
MFWWT 15,000 - N x 7
NB Grain 6,800 - N
SB Grain 7,200 - S
All Else ≤ 6,200'
Enid to Ft Worth
MWTFW 15,000 - S x 7
MFWWT 8,600 - N x 7
NB Grain 6,800 - N
SB Grain 7,200 - S
All Else ≤ 6,200'
Choctaw
MNPEW 9,500 - S x 7
MDNFW 10,000 - S x 7
G4 to Pine Bluff
ZG4MQ 17,000 - S x 7
SB Coal 8.5k
Other SB 8k
Lynndyl Sub
MNPML 8,500 - W x 7
MNPWC 12,500 - W x 7
OUTS1 8,500 - W x 3
ZDVLB 8,500 - W x 7
ZSCLB 8,500 - W x 7
ZLBDV 8,700 - E x 7
MWCNP 12,500 - E x 7
All Else WB ≤ 5,700'
All Else EB ≤ 8,700'
Martinez Sub
LRS59 10,000 - x 6
MOARV 15,000 - E x 7
IOANP 13,500 - E x 7
ZLTG2 13,000 - E x 7
MRVOA 15,000 -W x 7
ZG2LT 10,000 -W x 7
ISELC/ZSELC 9,000 -W x 7
Shafter
INPOA 15,000 -Wx 7
IOANP 15,000 - E x 7
Caliente & Cima Subs
MNPML 8,500 - W x 7
MNPWC 12,500 - W x 7
OUTS1 8,500 - W x 3
ZDVLB 8,500 - W x 7
ZSCLB 8,500 - W x 7
ZLBDV 8,700 - E x 7
MWCNP 12,500 - E x 7
All Else WB ≤ 5,700'
All Else EB ≤ 8,700'
Detoured WB IM ≤ 9,000'
Gila, Phoenix
MTUPX 12,000 - W x 7
MPXTU 12,000 - E x 7
Fresno Sub
LRS59 10,000 - x 6
AMICH 9,500 - N x 7
ISELC/ZSELC 9,000 - S x 7
ILTLB(B) 8,650 - S x 7
ZG2LT 10,000 - S x 7
ZLCTM/LT 10k 1 per day, other train 9k
MRVWC 11,500 - S x 7
MFRRV 11,500 - N x 7
Mojave Sub
ILTLB(B) 9,000 - S x 7
ISELC/ZSELC 9,000 - S x 7
ZLCTM/LT 10k 1 per day, other train 9k
Roseville Sub
AMICH 9,500 - E x 7
IOANP 13,500 - E x 7
ZG2LT 10,000 -W x 7
All Else ≤ 9,000'
Oakland Sub
ZLTG2 15,000 - W x 7
Nevada Sub
AMICH 9,500 - E x 7
IOANP 15,000 - E x 7
ZLTG2 13,000 - E x 7
ZG2LT 13,000 - W x 7
MRVNP 15,000 - E x 7
Lakeside
MNPFR 15,000 - W x 7
MRVNP 15,000 - E x 7
MGRRV 13,500 -W x 7
AMICH 9,500 - E x 7
ZLTG2 13,000 - E x 7
ZG2LT 13,000 - W x 7
Elko Sub
MNPFR 15,000 - W x 7
MGRRV 13,500 - W x 7
MRVNP 15,000 - E x 7
ZLTG2 13,000 - E x 7
ZG2LT 13,000 - W x 7
All Else ≤ 9,400'
Winnemucca
O**EG 6,400 - E x 7
INPOA 15,000 - W x 7
MGRRV 13,500 -W x 7
MNPFR 13,500 - W x 7
Valley/Black Butte/ Cascade/Brooklyn
ISELC/ZSELC 9,000 - S x 7
ZLCTM 9,000 -N x 7
Eugene to K Falls
MPDRV 7,000 -S x 7
MPDWC 7,000 -S x 7
Seattle Sub
ITAG2 11,000 - S x 7
IG4SE 15,000 - N x 7
Portland Sub
MPCPO 11,000 - W x 7
MPDNP 11,000 - E x 7
ITAG2 11,000 - E x 7
IG4SE 15,000 - W x 7
ZBRG2(B) 15,000 - E x 7
ZG2BR(B) 11,000 - W x 7
Huntington/La Grande
MPDNP 11,000 - E x 7
MHKNP 11,000 - E x 7
MHKGR 11,000 - E x 7
MPCPD 11,000 - W x 7
MNPPD 11,000 - W x 7
MNPHK 11,000 - W x 7
ZG2BR(B) 11,000 - W x 7
IG4SE 15,000 - W x 7
ZBRG2(B) 15,000 - E x 7
ITAG2 11,000 - E x 7
OGRT4 9,300 - W x 7
OT4WV 9,300 - E x 7
Ogden
MPDOG 15,000 - S x 7
MOGPC 15,000 - N x 7
Del Rio & Eagle Pass Subs
MEGSA 11,000 - E 7
MEGAS 11,000 - E 7
MEGLI 11,000 - E 7
ILBHO 14,000 - E 7
ISALB 17,000 - W M/W/F/Sa
ISALB 15,000 - W Su/Tu/Thu
MEWTU 10,200 - W 7
MEWEG 14,000 - W 7
MNLEG 14,000 - W 7
MEWRV 10,200 - W 7
El Paso to Del Rio
MEWRV 10,200 - W 7
MEWTU 10,200 - W 7
ISALB 17,000 - W M/W/F/Sa
ISALB 15,000 - W Su/Tu/Thu
ILBHO 14,000 - E 7
STIR to LA - Imdl
I & Z Trains 17,000 - E x 7
I & Z Trains 16,500 - W x 7
Houston - Ft Worth
MHOCBB 9,000 - N x 7
MEWNL 12,000 - N x 7
Waco Sub
MSANP 15,000 - N x 7
Austin Sub
NB - 15,000
SB - 7,500
Glidden Sub
MEGLI 15,000 - E x 7
MSALI 15,000 - E x 7
Houston Sub
DYTN to SETT 12k-W
DYTN to EGWD 11k-W
Angleton-Houston
Northbound - 9,300
Southbound - 9,000
MEWPB 10k - S x 7
Angleton Sub
Northbound - 15k
Southbound - 15k
Blmg to Corpus
Northbound - 12k
Southbound - 12k
Beaumont - Hous
MBTEW 12K-W x 7
MLIHO 12K-W x 7
MHOLI 15K - E x 7
Houston Complex
MEWSR(B) 12,000 - S x 14
MEWPT(B) 12,000 - S x 14
MSREW 11,000 - N x 7
MSRHO 11,000 - N x 7
MSRSP 11,000 - N x 7
LHO39(B),LHO49 12K-E x 19
Adams Sub
MALG3 15,000 - S x 7
Milwaukee Sub
MALG3 15,000 - S x 7
Kenosha
All Trains 15,000
Chicago
Chicago- STL/Salem
15,000' NB
9,000' SB
Joliet & Springfield
ILBG4 15,000 - N x 7
ZMQG4 15,000 - N x 7
ZG4MQ 17,000 - S x 7
IG4SIB 14,300 - S x 7
Pana & Villa Grove Subs
IYCMX 11,000 - S x 7
MPRNL 11,000 - S x 7
Salem - Gorham
8,100' NB
15,000' SB
Salem to Gorham
MNLTT 9,000 - N x 7
ILDYC 15,000 - N x 7
Hoxie
MASNL 15,000 - S x 7
Marion to Dupo
IMNDU 11,200 - N x 7
Hoxie / Memphis
MSFPB 9,800 -W x 7
MNVNL 9,000 -W x 7
MNLSF 9,800 - E x 7
MNLNV 9,000 - E x 7
ZLAMN 15,000 - E x 7
Marion to SAIT
IMNSA 15,000 - S x 7
White Bluff Sub
Northbound - 8,100
Southbound - 15,000
MLIAS 10,000 - N x 7
MLINL 10,000 - N x 7
MPBNL(B) 12,000 - N x 7
Reisor Sub
ZLAAI 10,000 - E x 7
MFWLI 15,000 - E x 7
MLIFW 10,000 -W x 7
MRENL 15,000 -W x 7
Mineola Sub
ILBMN 15,000 - E x 7
Livonia Sub
MTALI 10,000 - N x 7
MNOLI 10,000 - N x 7
MNOLIB 10,000 - N x 7
MLINSB 12,000 - S x 7
MLINSL 12,000 - S x 7
MLIGN 12,000 - S x 7
MLIWX 12,000 - S x 7
Seattle
Tacoma
Portland
Eugene
Klamath Falls
Eastport
Spokane
Hinkle
Nampa
Pocatello
Granger
Ogden
Salt Lake City
Elko
Portola
Sparks
ROSV
San Jose
Los Angeles
Yermo
West Colton
Tucson
El Paso
Sierra Blanca
Big Spring
Waco
Ft Worth
Cheyenne
Denver
NPLT
Topeka
KC
Hgtn
Wichita
Enid
NLR
St Louis
Chicago
Mkto
Mason City
Shreveport
Longview
Alexandria
Livonia
New Orleans
Houston
Angleton
San Antonio
Laredo
7,200'
7,300'
8,200'
9,500'
10,000'
7,800' NB
7,000' SB
8,000' NB
6,500' SB
8,000' NB
7,000' SB
5.700' EB
10,000' WB
9,400'
5,700' EB
9,400' WB
6,200'
5,900'
8,000'
17,000'
9,000'
8,700' SB Auto
16,000'
10,000' NB
12,000' SB
17K'
15,000' NB
15,000' WB
15,000'
8,000 EB
15,000 WB
8.800 WB
15,000 EB
8,800 WB
15,000 EB
14,000 EB
9,000' WB
14,000 EB
9,000' WB
8,000 WB
15,000 EB
8,200 EB
15K
15,000 WB
8,200 EB
15K
15,000 NB
9,800 SB
9,300 NB
7,000 SB
5,700' WB
8,500' EB
5,700' NB
8,000' SB
8,200'
8,000'
5,600'
12,500'
8,100'
8,500'
9,000'
8,000'
8,200'
8,000'
15,000 NB
8,500 SB
15,000 NB
7,700 SB
15,000 NB
8,000 SB
15,000 NB
8,300 SB
8,700 NB
15,000 SB
8,700 NB
15,000 SB
15,000 NB
8,000 SB
15K SB
8,300'
8,500'
8,000'
8,000'
8,000

PUBLIC REDACTED VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

VERIFIED STATEMENT OF MARK REDD

EXHIBIT 2

LAW OFFICE OF DAVID L. MEYER
WWW.MEYERLAWDC.COM

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WASHINGTON, D.C. 20009
202-294-1399

310858

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Office of Chief Counsel
February 10, 2026
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Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: Finance Docket No. 36500 (Sub-No. 6), *Canadian Pacific Ry. – Control – Kansas City Southern (General Oversight)*

Dear Chief of Case Administration:

I am writing on behalf of Canadian Pacific Kansas City Limited and its U.S. rail carrier subsidiaries (collectively "CPKC"),[1] in reply to the letter filed in this docket on February 6, 2026 on behalf of Union Pacific Railroad Company ("UP").[2]

UP's letter ignores the facts outlined in CPKC's November 13 Reply ("CPKC-48") and badly distorts the facts it presents. UP's letter is transparently designed to use Board processes to coerce a change in CPKC's operating rules governing train length on the Meridian Speedway to further UP's self-serving desire to send very long trains over infrastructure that was not built to accommodate them.

UP's new grievances about dwell at Shreveport reflect nothing more than UP's unhappiness with the fact that cannot bend MSLLC to its will. Having decided that it will continue to run very long trains all the way to Shreveport for its own operating convenience, UP is upset that it must take some time shortening those trains before they can move east across the Speedway. Respectfully, that is UP's problem, not a *CP/KCS* merger issue, and not an issue of "deteriorated service" over the Speedway. The Board should decline UP's request to intervene here.

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[1] CPKC's U.S. rail carrier subsidiaries include Soo Line Railroad Company; Central Maine & Quebec Railway US Inc.; Dakota, Minnesota & Eastern Railroad Corporation; Delaware & Hudson Railway Company, Inc. (collectively "CP" or "CP/Soo"); The Kansas City Southern Railway Company; Gateway Eastern Railway Company; and The Texas Mexican Railway Company (collectively, "KCSR").

[2] On December 10, 2025, Norfolk Southern Railway Company ("NS") filed a letter effectively withdrawing its request for Board intervention, stating that "NS is optimistic that CPKC and NS will be able to reach a satisfactory resolution without the need for further Board action." Finance Docket No. 36500 (Sub-No. 6), Letter from Jason Morris, NS COO (filed Dec. 10, 2025) at 2.

1. As CPKC explained in CPKC-48, the issues UP complains of *do not implicate CPKC's merger commitments*. The "dwell" that UP alleges in its latest letter involves UP's intermodal train originating in Los Angeles, which UP hands off to CPKC for movement across the Speedway in NS haulage service to destinations on NS in the Southeastern U.S. This traffic was not affected, and could not have been affected, by the CP/KCS merger. Legacy-CP could not have played any role in that traffic, and thus Applicants' gateway commitments could not apply. *See* CPKC-48 at 5 (citing Decision No. 35 at 69).

The passage from Mr. Brooks' testimony in *CP/KCS* that UP's new letter quotes is not to the contrary. Mr. Brooks was simply describing what it meant to keep gateways open *when those commitments applied*, not expanding the scope of the traffic to which CP's commitment applied. *See CP/KCS*, Application Vol. I, Brooks V.S. at ¶ 45.

Accordingly, the Board should reject UP's requested relief as outside the scope of the CPKC's merger commitments.

2. CPKC also wishes the Board to understand that UP's contentions that CPKC service on the Meridian Speedway has "deteriorated" are wrong.

(a) *First*, UP's sole focus is on the "dwell" that UP says its eastbound trains experience in Shreveport because CPKC has "reimposed" an 8,500-foot length restriction for trains on the Meridian Speedway.[3] Although CPKC does not have access to the data UP is using for its dwell calculations, among the activities its statistics are capturing is the work UP is choosing to perform in Shreveport to comply with train-length rules on the Meridian Speedway. UP is making the choice to operate extra-length trains all the way to Shreveport for UP's own convenience rather than shortening them at some other location. However, UP is not free to dictate that trains exceeding generally applicable length limits must be permitted to continue past Shreveport onto the Speedway in order to save UP some time reducing their length. Dwell incurred by UP for this purpose is a UP choice that says nothing about the level of service CPKC is providing at Shreveport or on the Speedway.[4]

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[3] UP's focus there is perhaps unsurprising given that CPKC has been moving NS's eastbound haulage trains across the Speedway in an average of only 10.2 hours, 2.8 hours faster than the 13-hour service standard under the MSLLC agreements.

[4] UP's dwell measures no doubt also reflect other work that must be performed at Shreveport, including time spent by CPKC's crews prepping these trains for departure, time traversing the boundaries used by UP to measure dwell, and many others. Were the Board to examine the details associated with time spent by UP's trains in Shreveport, it also would learn how often UP delivers trains that are not ready to depart because of such failures as open container doors (a serious safety hazard), non-functioning locomotives, or bad-order railcars and the delays occasioned by conflicting movements *of UP trains* on the trackage that connects UP's Hollywood Yard with the Speedway.

(b) *Second*, UP makes much of the longer dwell experienced by UP's "second train" (*i.e.*, the one created when UP's overlength train is reduced in length). This dwell similarly does not reflect any CPKC service deterioration. To the contrary, it is fully explained by the fact that *NS agreed with CPKC* that the second eastbound NS haulage train *would be scheduled to depart four hours and 40 minutes after the first*. UP's supposed "gotcha"—reflected in "dwell" of its second train that averaged 3.2 hours longer than that of the first train—in fact simply reflects the design UP's interchange partner implemented to handle an additional eastbound train on the Speedway.

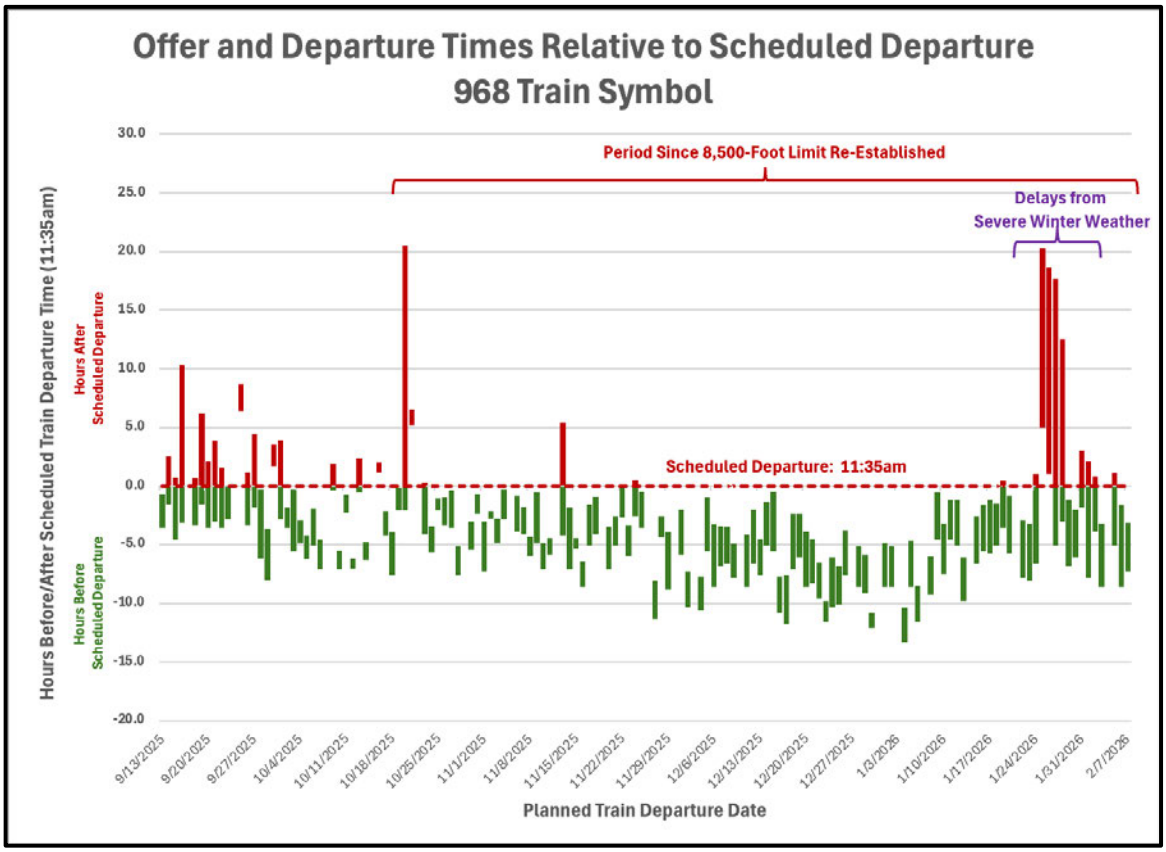
(c) *Third*, UP's histrionics mask a more fundamental truth: CPKC's performance has been of high quality. The two charts below depict, for both sets of eastbound NS haulage trains (the up-to-8,500-foot train and the additional train built from excess length portion of UP trains arriving in Shreveport), the amount of time elapsed between UP's predicted availability of the train (*i.e.*, its "Offer Time") and the train's actual departure. UP's Offer Time is the time communicated by UP to CPKC when UP predicts that it will make its outbound train ready for crewing by CPKC. The vertical bars show, for each train, the elapsed time between Offer Time and the train's actual departure relative to the train's scheduled departure time in accordance with the schedules agreed to between the owners of MSLLC—CPKC and NS.[5]

The first chart (Figure 1) provides this data for CPKC Train 968, which departs first with up to 8,500 feet of traffic delivered by UP's train ZLAAI. Two things are noteworthy. First, since CPKC's re-establishment of the 8,500-foot limit (*i.e.,* since late November 2025), the time between UP's Offer Time and train departure was *consistently brief* (as shown by the shortness of the vertical bars), with the exception of a period in late January when CPKC's crew availability was hampered by the devastating winter storm that brought major snowfall and icing conditions to much of the eastern United States, including the portions of Louisiana and Mississippi traversed by the Meridian Speedway. In other words, when UP makes trains available to CPKC for movement across the Speedway as NS haulage trains, CPKC handles them promptly and efficiently. CPKC accomplished this exceptional performance despite UP's Offer Times being highly variable and very often well in advance of (often by 5-10 hours) the time when the train was scheduled to depart.

[5] After a UP train is "offered" for a specific time, before a train can depart CPKC must call a train crew on duty and transport that crew from CPKC's yard in Shreveport to the location of the train in UP's Hollywood Yard, the train crew must perform work on the train, including initializing PTC, conducting safety checks, and obtaining routing permissions from two separate UP dispatchers (for its Reisor and Lufkin Subdivisions) in addition to obtaining clearance from CPKC's dispatcher, and CPKC must complete a roll-by inspection to ensure that the train is safely configured with no open container doors.

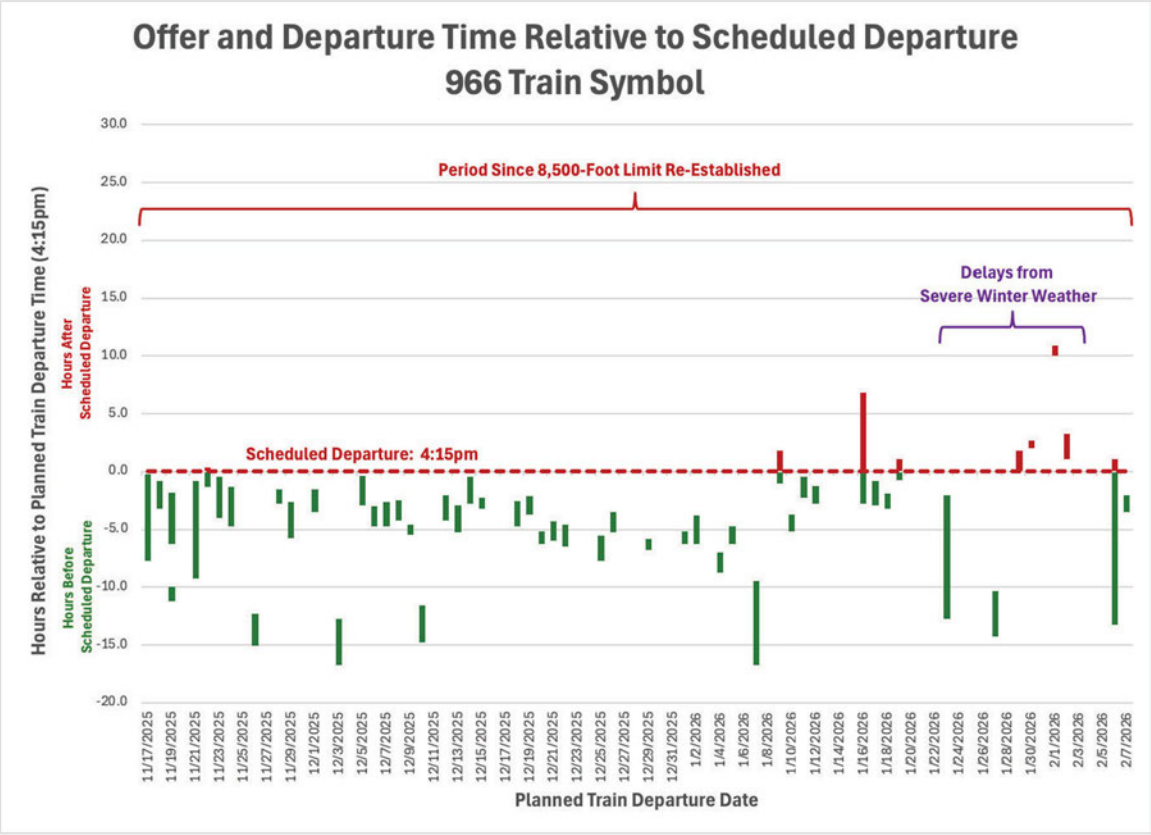
Second, CPKC almost always departed these trains *well ahead of schedule* (as shown by the top end of the bars being below the scheduled departure time), allowing UP's customers to benefit from more-rapid-than-planned transit times.

FIGURE 1
HANDLING OF CPKC TRAIN 968 AT SHREVEPORT



The second chart (Figure 2) provides this data for CPKC Train 966, which departs second—scheduled for four hours and 40 minutes later than the first (*i.e.*, at 4:15 pm rather than 11:35 am)—with the traffic in excess of 8,500 feet that did not fit on Train 968. As with Train 968, the time from Offer Time to departure was almost always brief and the train almost always departed well ahead of schedule.

FIGURE 2
HANDLING OF CPKC TRAIN 966 AT SHREVEPORT



* * *

As the discussion and data above demonstrate, UP's effort to manufacture a "condition compliance" issue arising from CPKC's enforcement of the 8,500-foot train length limit on the Meridian Speedway is meritless. That limit, and the scheduling of the additional train start to accommodate the railcars that do not fit on a single train, were established to reflect infrastructure limitations on the Speedway and assented to by NS, CPKC's co-owner of the Speedway. If UP is determined to have CPKC run UP's long trains past Shreveport, it should try to persuade NS to fund the investments in longer sidings and related MSLLC changes needed to support the operation of longer trains, perhaps even the 14,000 to 18,000 foot trains that UP CEO

Jim Vena describes as UP's standard "intermodal package."[6] Until that happens, the Board should not countenance UP's effort to substitute Board intervention for investments that the railroads moving the traffic—here, UP and NS—are unwilling to make. The Board should reject UP's call for an "investigation."

Please contact me with any questions.

Respectfully submitted,



David L. Meyer

Attorney for Canadian Pacific
Kansas City Limited

cc: All Parties of Record

[6] UP 4Q25 Earnings Call Transcript (Jan. 27, 2026) at 10 ("We don't run 10,000-foot trains. We run our intermodal package because we have built a system to be able to do that somewhere between 14,000 feet and 18,000 feet, and we do that every day, and we've been doing it for now the last few years.") (remarks of Jim Vena).

PUBLIC REDACTED VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

VERIFIED STATEMENT OF MARK REDD

EXHIBIT 3

304028

UP-10

ENTERED
Office of Proceedings
February 28, 2022
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC.
—CONTROL—
KANSAS CITY SOUTHERN; THE KANSAS CITY SOUTHERN RAILWAY COMPANY; GATEWAY EASTERN RAILWAY COMPANY; AND THE TEXAS MEXICAN RAILWAY COMPANY

UNION PACIFIC RAILROAD COMPANY'S COMMENTS AND REQUEST FOR CONDITIONS

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February 28, 2022

sufficient capacity to accommodate current demand. However, Applicants' plan to add more than eight new trains per day would push use of the line above the line's fluid capacity.[202]

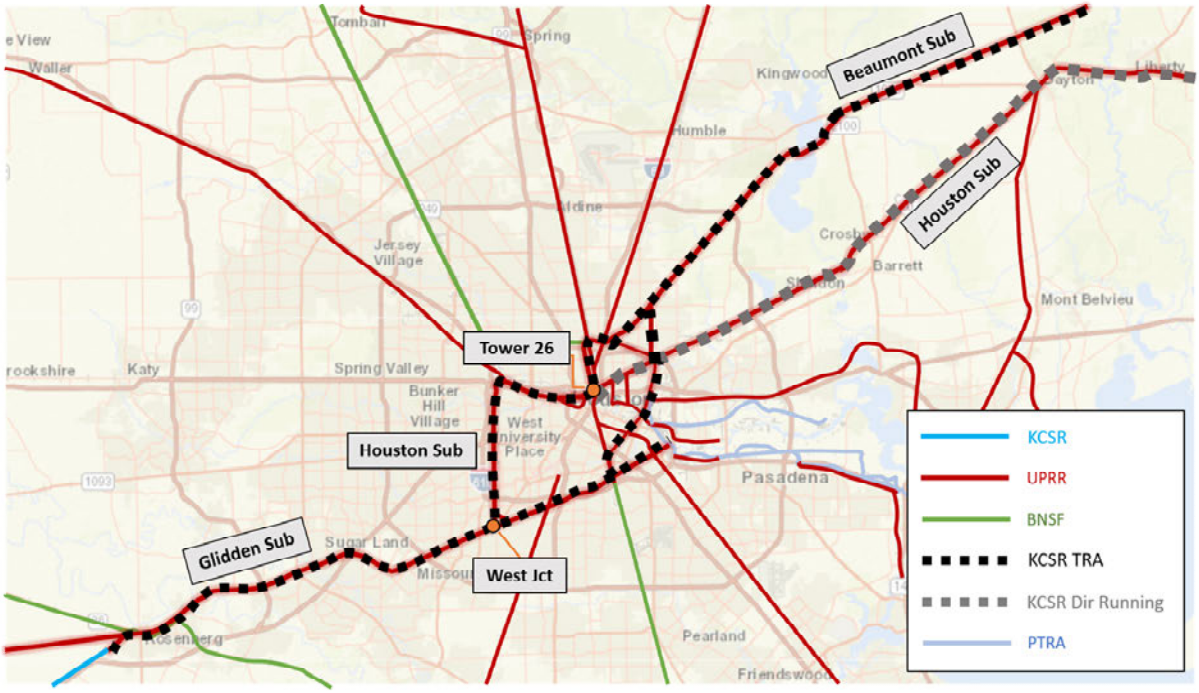
Houston terminal area. Applicants also fail to address the impact of their planned new traffic on operations in the Houston terminal. Houston is an extremely challenging area in the best of times, requiring careful operational coordination among UP, BNSF, KCS, Amtrak, and the Port Terminal Railroad Association (PTRA). UP has learned through hard experience how congestion in one part of Houston can rapidly spread throughout the terminal and ripple across its network.[203] As shown in the figure below, KCS has extensive trackage rights in Houston, allowing it to participate in the generally directional flow of traffic through the terminal and interchange traffic with the PTRA. KCS has trackage rights over UP's Houston Subdivision between West Junction and Tower 26, then over the West Belt, which provide KCS access to UP's Beaumont Subdivision. UP, BNSF, and KCS all use the Beaumont Subdivision for traffic moving eastbound towards Beaumont. Amtrak also uses the Beaumont Subdivision for its Sunset Limited train. KCS also has rights from the Beaumont Subdivision directly past UP's Settegast Yard on the East Belt, which connect to KCS's rights on the Glidden Subdivision. UP has also given KCS rights to move traffic westbound on UP's Houston Subdivision, which run past UP's Englewood Yard toward Tower 26.[204]

[202] *See id.*

[203] *See id.*

[204] *See id.* at 29–30.

Figure 2: Houston Area KCS Trackage Rights



Applicants plan to add more than eight trains per day to the mix of traffic in Houston, which could increase train counts on already busy lines by 25% or more.[205] However, Applicants provide no analysis of the impact their plans would have on terminal operations or the need for new capacity. As discussed above, { }

When Mr. Elphick was asked whether Applicants performed any formal evaluation of how increases in rail traffic from the proposed transaction would affect operations in Houston, he replied, { }[206] CP appears to believe there are no impediments to moving more trains through Houston. CP's Executive Vice-President Operations was recently quoted as saying, "you can get through Houston pretty quick."[207] However, as Mr. Turner explains,

[205] *See id.* at 30.

[206] Ex. 15 (Elphick/Orr Tr. 94:21–95:1).

[207] *See* Rocker/Turner VS at 30–31 & Rocker/Turner workpaper "P - Rail Group Interview.pdf."

additional capacity would be necessary at several locations in the terminal to prevent the projected jump in traffic from endangering operations in Houston.[208]

On the eastern end of the Houston terminal KCS has trackage rights on UP's Beaumont Subdivision and UP's Houston Subdivision between Houston and Beaumont. BNSF also uses those two lines to move its own traffic between Houston and New Orleans, and as noted above, Amtrak's Sunset Limited operates over the Beaumont Subdivision. These two lines are fluid at current traffic levels, but both would be at or above capacity if Applicants' traffic in the corridor grows by more than eight trains per day, as Applicants project in their Application.[209]

Applicants' complete failure to address the impacts of their planned traffic growth on the need for capacity investment on the Tex Mex trackage rights lines reflects a serious gap in their Application, especially given the essential role these rights play in their post-merger plans.

B. Applicants Failed to Fully Address Operations on Facilities They Own and Share With Others.

Applicants not only failed to evaluate the impacts of their planned traffic growth on lines CPKC would use but would not own, their analyses failed to account for the operations of other railroads with rights to use lines owned by Applicants. In some instances, {

} Three examples are discussed below.

Neches River Bridge. UP is particularly concerned about the proposed transaction's impact on the Neches River Bridge. KCS owns the bridge, which spans the Neches River at

[208] *See* Rocker/Turner VS at 31.

[209] *See id.*

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC.
—CONTROL—
KANSAS CITY SOUTHERN; THE KANSAS CITY SOUTHERN RAILWAY COMPANY; GATEWAY EASTERN RAILWAY COMPANY; AND THE TEXAS MEXICAN RAILWAY COMPANY

VERIFIED STATEMENT

OF

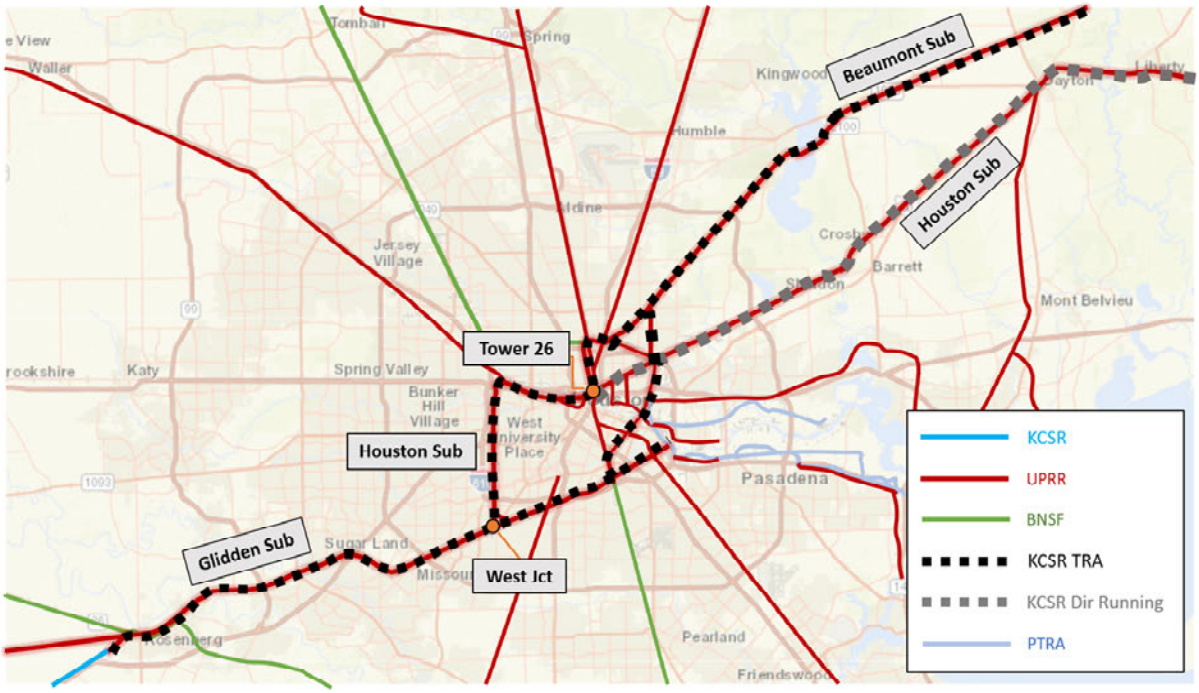
KENNY ROCKER

AND

JOHN TURNER

Beaumont. Amtrak uses the Beaumont Subdivision for its Sunset Limited train. KCS also has rights from the Beaumont Subdivision directly past UP's Settegast Yard on the East Belt, which connect to KCS's rights on the Glidden Subdivision. UP has also granted KCS rights to move traffic westbound on UP's Houston Subdivision, which runs past UP's Englewood Yard towards Tower 26. This provides UP's dispatchers options to move trains through Houston as efficiently as possible.

Figure 2: Houston-Area KCS Trackage Rights



Applicants plan to add more than eight trains per day to the mix, which could increase train counts on already crowded lines by 25% or more. But Applicants say nothing about how their additional trains will affect operations in Houston. They appear not to have even considered the problem. They make no commitment to invest in the capacity necessary to accommodate their expansion of service. They apparently plan simply to increase their operations and let others address the consequences. We noted that CP's Executive Vice-President Operations, Mark Redd,

was recently quoted as saying, "you can get through Houston pretty quick."[38] That is not true in our long experience with Houston, and his glib statement suggests CP does not fully appreciate the complexities of rail operations in the Houston terminal.

Additional capacity would be needed at several locations in Houston to prevent Applicants' planned jump in traffic from endangering operations in the terminal. UP has not begun to study how to most effectively mitigate the additional demands CPKC's plans would place on operations in Houston. We know from experience, however, that the terminal could not sustain the pressure of an additional eight trains per day—which would equal record volumes—on a constant basis, especially while also addressing normal surges and disruptions. Authorizing such a dramatic growth in train traffic in one of the most sensitive rail operating environments in the country without any plan or commitment to invest in new capacity would be irresponsible.

Applicants' additional trains will also impair service on the eastern end of the Houston terminal. On the eastern end, KCS has trackage rights on UP's Beaumont Subdivision and UP's Houston Subdivision between Houston and Beaumont. BNSF also uses those two lines to move its own traffic between Houston and New Orleans, and as noted above, Amtrak's Sunset Limited train operates over the Beaumont Subdivision. These two lines are fluid at current traffic levels, but both would be at or above their limit if Applicants' traffic in this corridor grows by more than eight trains per day, as is Applicants' plan.

* * *

Applicants' plan to double their train operations between Robstown and Beaumont in just three years would make addressing capacity issues even more challenging. We question whether it would be possible to complete the analysis, design, planning, permitting and construction

[38] *See* Rocker/Turner workpaper "P - Rail Group Interview.pdf."

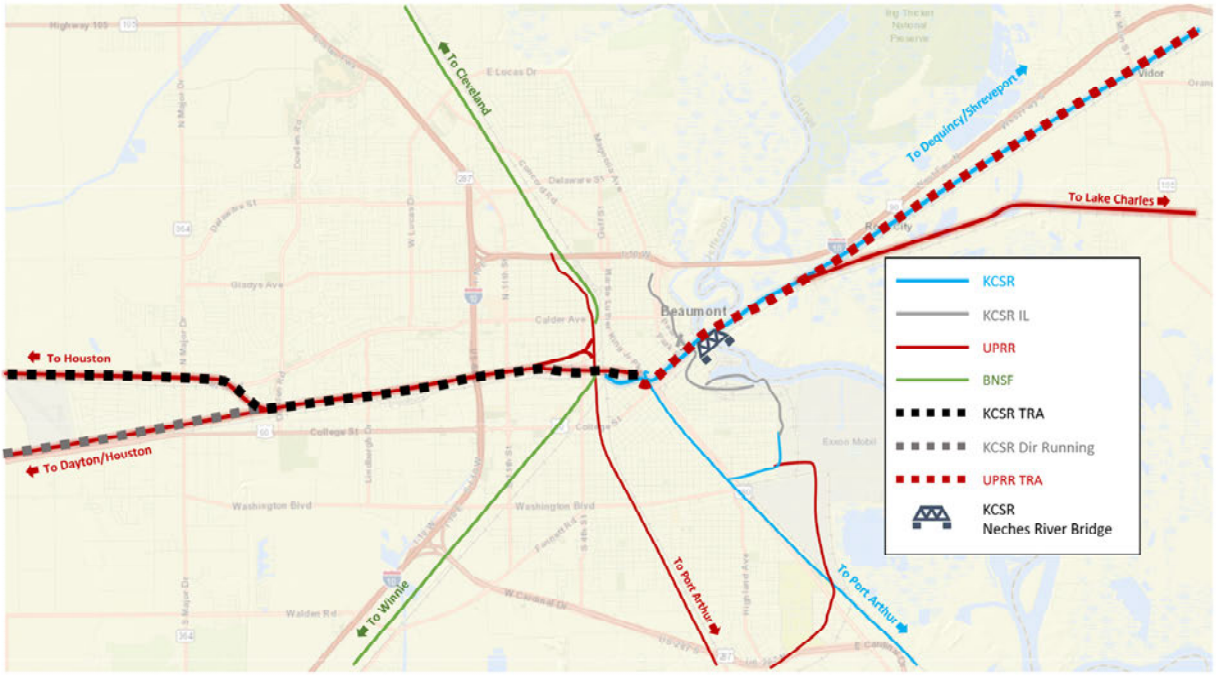
process in the timeframe set forth in the Application. As owner of the lines, our participation is critical. If the Board were to approve the proposed transaction, UP would be willing to work with Applicants to determine how to meet their need for new capacity, and we would be willing to construct new capacity and pay our fair share for any portion of the capacity we use in the future. However, UP should not be required to *subsidize* Applicants' implementation of their merger, either directly by financing the new capacity or indirectly through interference with our own service if Applicants increase their traffic before the new capacity is operational.

B. Applicants Failed to Evaluate the Impacts of Their Planned Operations Where Other Railroads Share Applicants' Lines.

Applicants' disregard for the impacts of their planned operations on others appears to extend to locations where other railroads operate on lines owned by one of the Applicants. UP is concerned by Applicants' lack of plans to add capacity in many locations, and we are particularly concerned about three locations: the Neches River bridge, the paired tracks north of Kansas City between Airline Junction and Polo, and the Twin Cities area. We discuss these three examples below.

Neches River Bridge. KCS owns the Neches River bridge. The bridge spans the Neches River at Beaumont. As shown in the figure below, UP's Beaumont and Houston Subdivisions converge at the western end of the bridge. KCS's Beaumont Subdivision and UP's Lafayette Subdivision (known as the "50/50 Line," because BNSF jointly owns the line) converge at the eastern end of the bridge. The bridge is a single-track choke point.

Figure 3: Neches River Bridge Area



UP believes the Neches River bridge is near or at the limits of its fluid capacity. UP and BNSF operate approximately 25 trains per day over the bridge. Amtrak's Sunset Limited train also uses the bridge, which limits freight operations. The bridge opens several times each day to allow river traffic to pass underneath, further reducing the time available for rail operations. Bridge capacity is also limited by the nature of railroad activity adjacent to the bridge. To the east, UP and KCS move unit trains to the Jefferson Energy Terminal. KCS trains entering and exiting the terminal block the eastern approach to the bridge. To the west, trains operate at reduced speeds over a series of converging and diverging tracks.

Applicants plan to increase traffic on KCS's Beaumont Subdivision from 8.9 trains per day to 20.3 trains per day, and increase of 11.4 trains per day, or 128%.[39] However, Applicants did not identify any need for additional bridge capacity. We believe adding more than eleven

[39] *See* APP Vol. 2 at 364, OP Plan, App. A at 1.

trains per day to the bridge would put the bridge above any reasonable measure of fluid capacity.

In addition, as noted above, the bridge is not available 24-hours a day because it opens for river traffic. We also pause freight rail traffic to accommodate Amtrak trains. Applicants may be reluctant to acknowledge the issue. Adding capacity to the Neches River bridge might be a costly, time-consuming undertaking. But even if Applicants were willing to accept poor service due to an over-capacity bridge, they should not be allowed to impose and shift those costs on UP, BNSF, and Amtrak as the price of their transaction.

Kansas City and the Polo Line. UP has similar concerns with Applicants' failure to provide for capacity investment on the Polo Line. CP and UP access Kansas City from the north using paired tracks over approximately 42 miles between Airline Junction in Kansas City and a location on CP's Kansas City Subdivision called Polo. UP operates approximately eight trains per day on the Polo Line. Applicants plan to increase traffic on CP's Kansas City Subdivision from 2.9 trains per day to 16.9 trains per day, an increase of 14 trains per day, or nearly 500%.[40] However, Applicants did not identify any plan to add capacity on the Polo Line.

CP controls dispatching of the Polo Line. Recently, UP has been forced to invoke the parties' contractual dispute resolution procedure to address persistent dispatching issues. UP is concerned that the problems it experiences when CP operates only three trains per day over the

[40] *See* APP Vol. 2 at 364, OP Plan, App. A at 1.

line would multiply if CPKC operated nearly 17 trains per day over the line. Most lines serving the Kansas City terminal are dispatched by the Kansas City Terminal Railway from a joint dispatching center. The Polo Line is dispatched by a CP employee from a drawbridge near Airline Junction. Although the Polo Line consists of two tracks, the tracks are not operated like double-track lines. Over a long portion of the joint facility, the two tracks are far apart, so trains cannot cross from one line to the other to maximize efficient use of both lines. Each line is generally operated in one direction only. In addition, although the line has a version of Centralized Traffic Control, the system does not allow for full CTC operations, which prevents true centralized dispatching and prevents UP and CP from maximizing capacity on one of the paired tracks when the other is out of service. In light of Applicants' plan to increase traffic by more than 14 trains per day on the Kansas City Subdivision, UP expected some provision for improving the Polo Line. This appears to be another situation in which Applicants have not accounted for shared facilities in planning the proposed transaction.

Twin Cities. Applicants' apparent failure to account for the impacts of their proposed transactions on other railroads' operations extends to their plan for operations in the Twin Cities. Applicants tout their plan to route traffic around Chicago. However, Applicants' plan to route traffic around Chicago will increase the number of trains moving through St. Paul on CP's River Subdivision from 11.9 trains per day to 18.1 trains per day, an increase of 6.2 trains per day, or 52%.[41] But Applicants do not propose adding capacity in St. Paul.[42]

St. Paul can become extremely congested under current conditions. As shown in the figure below, CP's River Subdivision converges with BNSF's St. Paul Subdivision near CP's

[41] *See* APP Vol. 2 at 364, OP Plan, App. A at 1.

[42] *See* APP Vol. 2 at 337, OP Plan ¶ 231, Fig. 11.

PUBLIC REDACTED VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

VERIFIED STATEMENT OF MARK REDD

EXHIBIT 4

BEFORE THE
SURFACE TRANSPORTATION BOARD

CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION – CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO COUNTIES, ALABAMA, FD 36732; CSX TRANSPORTATION, INC. – ACQUISITION AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., FD 36727

COMMENTS AND REQUESTS FOR CONDITIONS

Appendix B

Verified Statement of Michael R. McClellan

BEFORE THE
SURFACE TRANSPORTATION BOARD

CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION – CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO COUNTIES, ALABAMA, FD 36732; CSX TRANSPORTATION, INC. – ACQUISITION AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., FD 36727

COMMENTS OF NORFOLK SOUTHERN RAILWAY COMPANY

APPENDIX B

VERIFIED STATEMENT OF MICHAEL R. MCCLELLAN

BEFORE THE
SURFACE TRANSPORTATION BOARD

CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION – CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO COUNTIES, ALABAMA, FD 36732; CSX TRANSPORTATION, INC. – ACQUISITION AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., FD 36727

COMMENTS OF NORFOLK SOUTHERN RAILWAY COMPANY

APPNEDIX B

VERIFIED STATEMENT OF MICHAEL R. MCCLELLAN

My name is Michael R. McClellan. I am Senior Vice President and Chief Strategy Officer at Norfolk Southern Corporation and Vice President of Norfolk Southern Railway Company (collectively "Norfolk Southern"). I have been with Norfolk Southern since 1998, and in my current position since April 2021. I am a career railroader and have a diverse transportation background that spans three decades in railroad management, technology, logistics consulting, and sales and marketing. As such, I am intimately familiar with the existing conditions and operations through Meridian, MS. I am aware that Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC ("CPKC") has filed an application for approval to purchase the Meridian & Bigbee Railroad, L.L.C. ("MNBR") between Meridian and Myrtlewood, Alabama (the "Western Line"). I am also aware that CSX Transportation, Inc. ("CSXT") has filed an application for approval to reacquire the MNBR rail assets between Myrtlewood and Burkeville, Ala. (the "Eastern Line").

I know that the public version of the application provided by CPKC (the "CPKC Application") to the Surface Transportation Board (the "Board") had descriptions of rail assets and operations in what was characterized as "Meridian, MS", but that document appeared to me to focus mostly, if not entirely on descriptions of rail assets and operations currently owned by MNBR and to be acquired by CPKC. I also read the public version of the CPKC's Supplemental Information, which only lightly addressed the rail operations moving through the Meridian rail hub. Similarly, I read the public version of the application put forth by CSXT (the "CSXT Application") for CSXT to reacquire the Eastern Line, and the public version of the CSXT's Supplemental Information.

My Verified Statement will focus on the impact of CPKC's proposed transaction on the Meridian, MS Terminal (the "Meridian Terminal"). Specifically, I will: (1) provide comment as to how rail infrastructure improvements at Meridian, MS can help mitigate the exacerbation of delays and congestion likely to accompany the introduction of new and diverted traffic resulting from the CPKC transaction; and (2) identify five specific infrastructure projects and accompanying operational proposals that Norfolk Southern has developed that will mitigate the congestion-related harm caused by this Transaction.[1]

I. Rail Infrastructure Improvements Needed at Meridian, MS.

In my role at Norfolk Southern, I have a unique perspective as to the importance of the Meridian Terminal in Meridian, Mississippi, which is a singularly complex Gateway city that hosts five railroad operations, including Norfolk Southern, CPKC, Amtrak, Meridian and Bigbee, and Meridian Southern. The two primary rail operators, Norfolk Southern and CPKC, come together at a location called the "Switch Tender" which is capacity-constrained with antiquated

[1] In addition to the Board ensuring that the competitiveness of the Meridian gateway is preserved, the Board must protect the competitiveness of operations at Selma for the reasons explained herein.

infrastructure. Figure 1 provides an overview of the Meridian area, including the location of the Switch Tender. Figure 2 shows a close up of the Switch Tender.

Figure 1
Overview of the Meridian Terminal.

Not to scale. Not all lines shown.

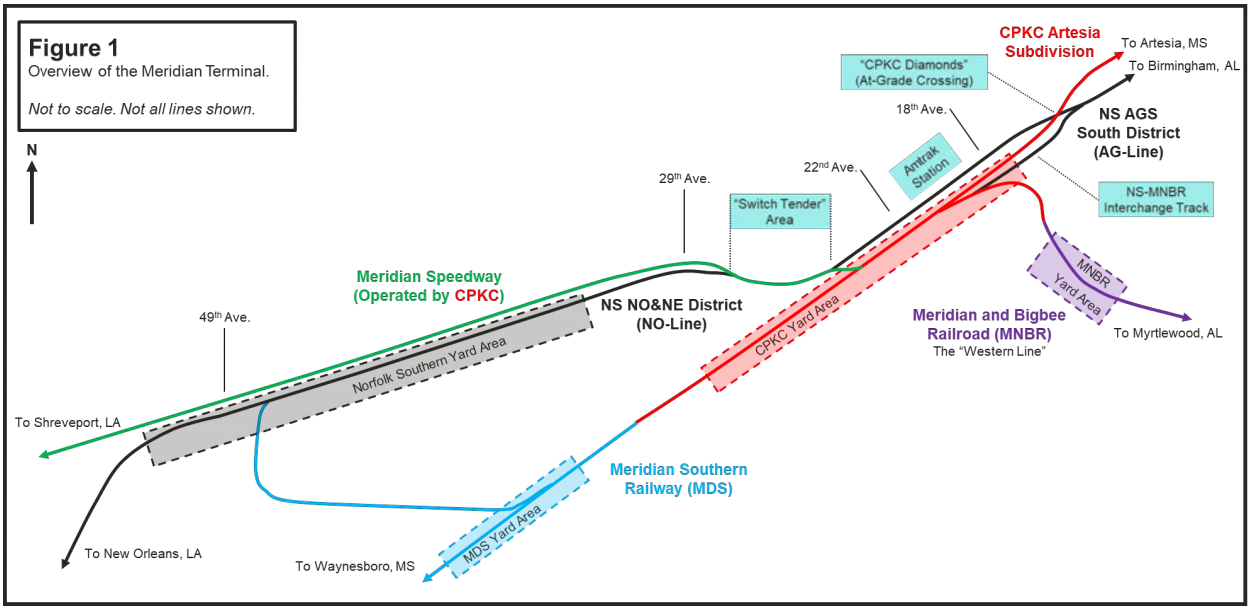
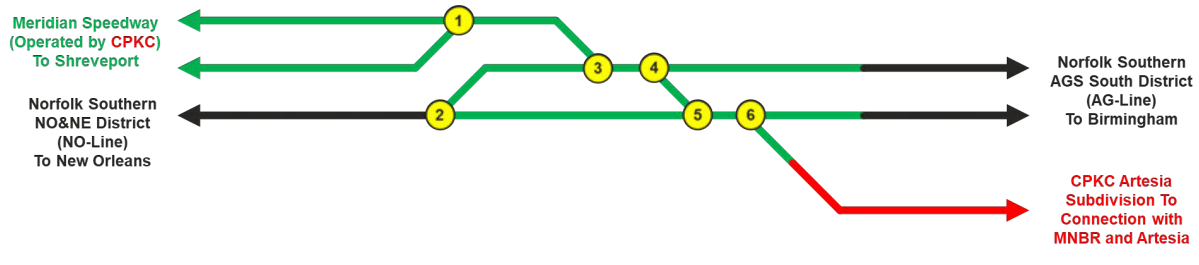


Figure 2
Detailed track schematic of the Switch Tender area. Switches are marked with yellow numbered dots. All switches shown are hand-thrown and under the control of CPKC.

The table at right details the switches that a train on each route encounters when transiting the Switch Tender.

Not to scale. Not all lines shown.

Route	Switch Progression
Amtrak Crescent	2 ↔ 3 ↔ 4
Norfolk Southern NO-Line ↔ AG-Line	2 ↔ 3 ↔ 4 or 2 ↔ 5 ↔ 6
Norfolk Southern Meridian Speedway ↔ AG-Line	1 ↔ 3 ↔ 4 or 1 ↔ 3 ↔ 4 ↔ 5 ↔ 6
CPKC Meridian Speedway ↔ MNBR	1 ↔ 3 ↔ 4 ↔ 5 ↔ 6
CPKC Meridian Speedway ↔ Artesia Subdivision	1 ↔ 3 ↔ 4 ↔ 5 ↔ 6



I have read the Verified Statement of Andrew Koch.[2] Based upon my experience, I find his description of the operations and challenges at the Meridian Terminal to be accurate. Both Figure 1 and Figure 2 above are based on figures from his verified statement.

Further, I have read the Verified Statement of William Rennicke and Jason Kuehn, both from Oliver Wyman. [3] Based on my experience and knowledge of this location, I find their description of infrastructure, operations and solutions around the Meridian Terminal to be accurate as well.

Messrs. Rennicke and Kuehn note in their Verified Statement that "[i]n the case of the Meridian Terminal, both Amtrak and Norfolk Southern trains already experience significant delays. . . . adding additional trains, without making any capacity improvements, will only increase the delays for all trains dependent on the [Meridian] Terminal."[4] Messrs. Rennicke and Kuehn go on to note that while the CPKC filing confirms the addition of at least one new CPKC train pair to operate through the Meridian Terminal, CPKC leaves the door wide open to introduce additional train pairs without any acknowledgement of the additional harm that would be imposed on Norfolk Southern and Amtrak from the first, second, third, etc. new train pair introduced by CPKC.

This is the crux of my concern about this transaction: CPKC is going to introduce new trains through a constrained interlocking at Meridian, and as such worsen service performance for Norfolk Southern and Amtrak (which runs on Norfolk Southern).[5] CPKC is less likely to be

[2] Appendix A - Verified Statement of Andrew Koch ("Koch V.S.").

[3] Appendix C - Verified Statement of William J. Rennicke & Jason Kuehn ("Rennicke/Kuehn V.S.").

[4] See Rennicke/Kuehn V.S. at 32.

[5] I understand that CPKC states that it anticipates only one additional daily train pair (that is, two new trains) to operate through the Meridian Terminal within the first five years of the closing of the transaction, and that this train pair is the basis for many of the statements that CPKC makes claiming no

adversely impacted as they control movement through the Switch Tender. In the end, the ones that would be most adversely impacted are Norfolk Southern's freight customers and Amtrak's passengers.

The Meridian Speedway ("MSLLC") has been one of the most innovative, successful and competitive rail ventures introduced and approved by the STB this century. Since its inception, Norfolk Southern and KCS have removed hundreds of thousands of trucks from the highway in the extremely competitive Texas to Southeast truck market. Speed, cost and reliability are critical to competing with trucks in this lane, and anything done to degrade this service reduces Norfolk Southern' competitive position and our ability to compete against trucks. It is plainly obvious from my experience, and confirmed by Mr. Koch and Messrs. Rennicke and Kuehn in their respective verified statements, that the proposed CPKC transaction will have a significant adverse impact on the ability to feed traffic onto and off of the Meridian Speedway through the Meridian Terminal.

Amtrak will be affected as well, as Mr. Koch and Messrs. Rennicke and Kuehn have thoroughly demonstrated. Amtrak Crescent trains 19 and 20 lose more time at the Meridian station than any other place by far on their route between Alexandria, VA, and New Orleans, LA, on Norfolk Southern. Ironically, when delays are incurred at Meridian by Amtrak, it solely impacts Norfolk Southern's on-time report card, even when those delays are caused by actions

real adverse impact arising from the proposed transaction. But in my experience, transactions like the one proposed have longer runways before the anticipated diversions and efficiencies arise. I am aware that there are a number of plans for infrastructure improvements along the Western Line. Economically rational rail companies do not enter into such transactions requiring the significant investment anticipated here with the plan that those significant investments will necessarily produce a return within the initial five years. As a result, I pay attention not only to the claim that CPKC intends to introduce one daily train pair within the first five years, but also to the statement made in the CPKC supplemental submission that discusses a second train pair as early as year eight. CPKC Supplemental Information ("CPKC-7"), filed November 21, 2023, at 8.

taken, or not taken, by CPKC in moving freight through the Switch Tender. Given Messrs. Rennicke's and Kuehn's assessment of the capacity situation in Meridian, it is reasonable to expect even further delays on Amtrak Crescent 19 and 20 if this transaction is approved without condition.

In its supplemental information filing, CPKC states that, "[i]f in the future, Norfolk Southern and CPKC volumes are expected to exceed capacity, Norfolk Southern and CPKC can invest in additional infrastructure under the terms of their agreements. Moreover, the MSLLC agreement governs service and addresses infrastructure needs."[6] That is true: Railroads can agree to make investments in infrastructure together. However, Norfolk Southern is hesitant to accept that this is the solution in this instance, for three important reasons. First, and as explained in the Rennicke/Kuehn verified statement,[7] some of the infrastructure projects Norfolk Southern believes are necessary to address the added congestion from the CPKC transaction are not to be constructed on MSLLC property. Second, even for those to be constructed on MSLLC property, the cost of construction would be borne in whole or in part by Norfolk Southern (directly or through its interest in the MSLLC), even though the reason for the construction are the trains that CPKC is bringing to the line due to CPKC's transaction.[8] Finally, Norfolk Southern is hesitant to accept this as an acceptable solution based on a lengthy history of unsuccessful negotiations between Norfolk Southern and KCS – and now CPKC – in which the parties have talked about

[6] See CPKC-7, at 13 (presumably referring to the limited liability company agreement governing the Meridian Speedway LLC ("MSLLC") which is majority owned by CPKC and in which Norfolk Southern has a minority interest).

[7] See Rennicke/Kuehn V.S. at 58, 60, and 61.

[8] The MSLLC agreement is complicated with regard to what member of the company has to finance what proposed pieces of infrastructure, and CPKC is the majority owner of that company, but even if the cost of a particular piece of infrastructure lands on the MSLLC company itself, that affects the value of the Norfolk Southern membership interest in the company.

improvements on numerous occasions, without ever having been able to come to final terms. These conversations about investment in additional infrastructure cannot wait until "Norfolk Southern and CPKC volumes are expected to exceed capacity."

Given the complexity and density of the current rail operations at the Meridian Terminal, I remain unconvinced by CPKC's conclusory statements, that "existing capacity between Shreveport and Meridian can easily accommodate this modest additional train service with no material impact on the fluidity of rail operations"[9] and further that, "Meridian can easily accommodate more cross traffic without negatively impacting fluid operations on NS's line."[10] The failure of CPKC to provide any in-depth analysis to back up these statements underscores my skepticism. As a career railroader, it is clear to me that if CPKC acquires the Western Line with the intention of growing CPKC traffic, without making infrastructure improvements at the Meridian Terminal, Norfolk Southern and the shippers and passengers relying on Norfolk Southern and Amtrak rail service will bear the brunt of the congestion that is soon to follow.

Norfolk Southern has repeatedly expressed during this proceeding its concern that the CPKC Transaction and the CSXT Transaction combined may have "broader impacts beyond local shippers on the line segments themselves." I lead Norfolk Southern's strategic network development, and, as such, I join in this concern based on my first-hand knowledge that the Meridian Terminal is a crucial north-south connection for Norfolk Southern. Congestion and delays at this interchange already have an impact on Norfolk Southern's other rail operations that will be exacerbated by the anticipated CPKC traffic growth at the Meridian Terminal as a result of this Transaction.

[9] See CPKC-7, at 8.

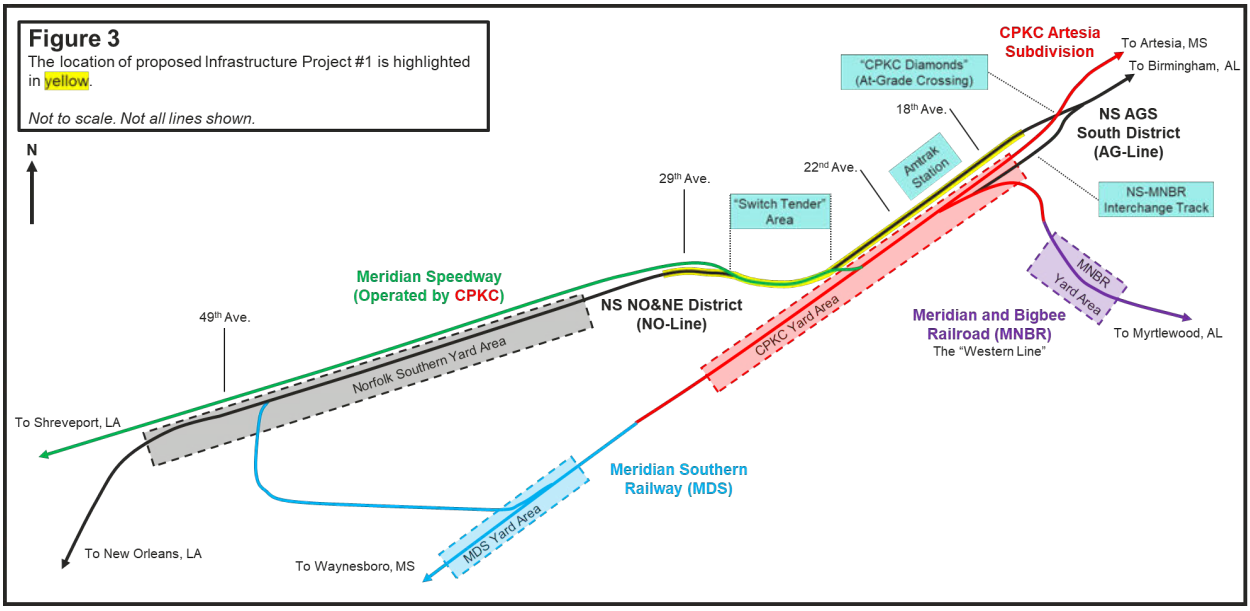
[10] Id. at 10.

Fortunately, Norfolk Southern believes that it has introduced a package of infrastructure improvements and operating practices that can mitigate – but not entirely eliminate – the most adverse impacts of the introduction of these new CPKC trains. Of the five (5) infrastructure projects that CPKC and Norfolk Southern can implement, three can be implemented within the first five years of the transaction, for the purpose of ameliorating the negative impacts to Meridian expected from the CPKC Transaction. Norfolk Southern believes so strongly that these improvements are necessary, that it is willing to cost-share in the improvements, which will mitigate against the anticipated effects of the CPKC transaction, while preserving competition amongst all carriers.[11] Each of these projects has been tailored to address the adverse operational impacts Norfolk Southern believes will arise as a result of the CPKC Transaction.

Infrastructure Project #1: Construction of Additional Main Line

The first project involves a rail infrastructure project that would reconfigure the terminal area. It involves Norfolk Southern being permitted to construct an approximately 5,500 foot additional main line from the north end of its yard (M.P. NO 0.9) to just south of the CPKC/Norfolk Southern diamond (M.P. AG 294.9). This would include a diamond or cross-over through the Switch Tender area. This infrastructure project may involve some construction on CPKC property and/or reasonable modification of CPKC track or signaling. Figure 3 shows in yellow where this additional main line would be installed.

[11] Norfolk Southern would be willing to finance the cost of construction and maintenance of the first project, and would own the resulting infrastructure. The cost-sharing of the remainder of the projects remains to be determined but should predominantly be borne by CPKC as a cost of projects necessary in order to mitigate harm arising directly from its proposed transaction. The cost of the second and third projects (powering of switches and installation of a connection) are minor. Further, the cost of grade crossing closures are often subsidized by public funds in line with the value received by the general public. Norfolk Southern would agree to Board-sponsored mediation to reach a cost-sharing agreement.



This project would allow two trains to make simultaneous moves through the Switch Tender. With the current track layout of the Switch Tender, Norfolk Southern can only send one train at a time between its AG-Line and its NO-Line. This additional mainline would allow for two Norfolk Southern trains to make this move simultaneously. It would be long enough to hold trains without blocking grade crossings and trains of 6,600 feet or less, could sit south of the Switch Tender without blocking grade crossings. Furthermore, existing track configurations at the Switch Tender and on the Meridian Speedway immediately to the west limit the ability to meet trains moving between the Meridian Speedway and the Norfolk Southern AG-Line. Constructing this additional main line would provide additional flexibility for executing these train meets, as well as adding flexibility for Amtrak flows.

Infrastructure Project #2: Power Switches

The second infrastructure project to mitigate the adverse effects of the increased CPKC transaction traffic growth is to power up the switches at the Switch Tender. The Switch Tender is owned by MSLLC and operated and dispatched by CPKC, so these powered switches would be

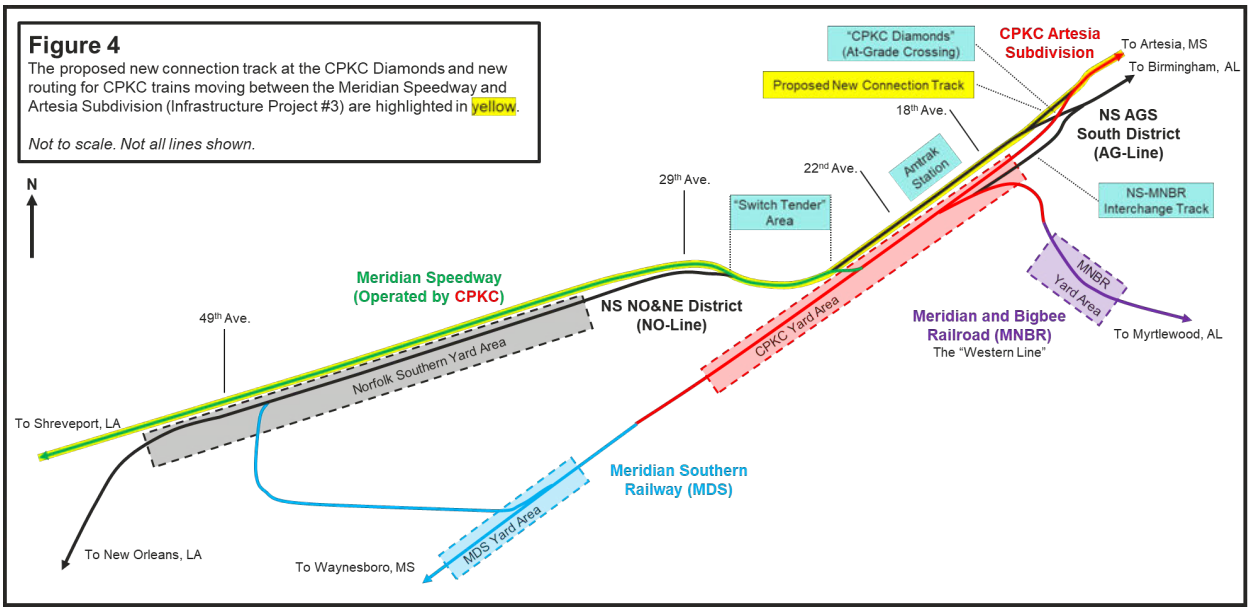
tied into the CPKC yard master or dispatcher's office. The powering of these switches would allow the CPKC dispatcher to align the switches in the Switch Tender properly as traffic approaches, eliminating the need for that traffic to stop and hand-throw switches. Trains could coordinate their arrival time at the Meridian Terminal with the dispatcher or yard master. As a result, trains on all five lines radiating from the Meridian Terminal would encounter faster running times through the Switch Tender, and thus a significant downstream negative effect arising from the proposed Transaction on Norfolk Southern and its shippers would be addressed.

Infrastructure Project #3: Connection between Norfolk Southern and CPKC Line to Artesia

The third infrastructure project that must be constructed to mitigate the adverse effect of the increased traffic resulting from the CPKC transaction also involves an operational change. The CPKC traffic that moves between the Meridian Speedway and the CPKC route to Artesia today must cross the Norfolk Southern route twice – once over the Switch Tender and again over the CPKC Diamonds. However, a simple powered connection between the Norfolk Southern tracks and the CPKC line to Artesia, when combined with CPKC trackage rights over the Norfolk Southern between KCS Interlocking and the Switch Tender, would allow some CPKC trains to avoid a significant amount of time currently spent maneuvering through the Meridian area. The CPKC trains that do not require any work at the CPKC Meridian Yard could simply "bypass" the most significant Meridian bottleneck points by using the operating rights and the proposed CPKC-NS connection.

The CPKC trains would use the Norfolk Southern track closest to the passenger station, leaving the new Norfolk Southern mainline, described as Infrastructure Project #1 above, and the existing Norfolk Southern mainline open for other train movements. This new routing is much

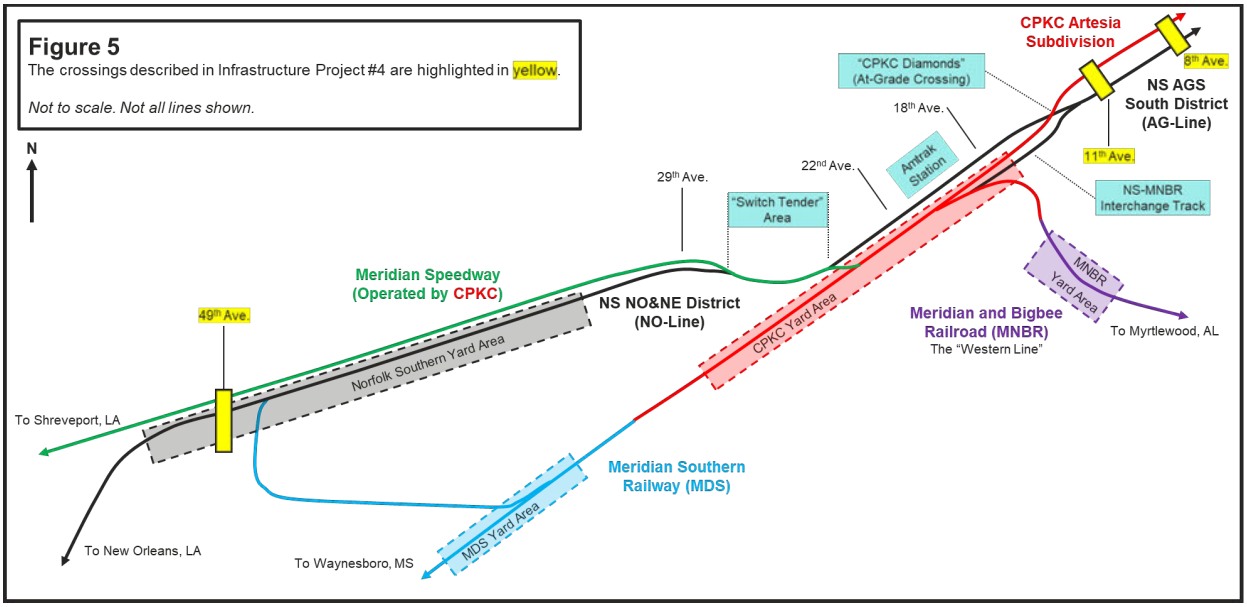
simpler and avoids causing multiple conflicts with Norfolk Southern trains both at the CPKC Diamonds and the Switch Tender. Figure 4 below shows the location of the Infrastructure Project #3: the Connection between Norfolk Southern and CPKC Artesia Subdivision.



I realize that CPKC has not forecasted an increase in the number of these specific trains as a result of the proposed CPKC transaction. Nevertheless, by removing them from the heart of the Meridian Terminal and thus their interactions with other cross traffic, this infrastructure project and operating directive would free up a significant amount of capacity to handle the additional east-west traffic (and attendant congestion) that will result from the proposed CPKC transaction. Norfolk Southern is willing to provide trackage rights to CPKC for these trains on industry-standard terms and conditions to free up capacity in the Meridian Terminal, thereby minimizing the adverse impacts to Norfolk Southern and Amtrak resulting from the proposed CPKC transaction.

Infrastructure Project #4: Crossing Closures or Grade Separations at 8th, 11th, and 49th Avenues

As described by Mr. Koch and Messrs. Rennicke and Kuehn, the current grade crossings at 8th, 11th, and 49th Avenues in Meridian are choke points that prevent any of the Norfolk Southern double track from being used as a meet-pass location at the Meridian Terminal. Figure 5 shows the locations of these crossings in yellow. The increase in traffic as a result of the CPKC Transaction will exacerbate the restrictions these crossings impose on the gateway infrastructure fluidity. While any grade crossing project will necessarily require the cooperation of City, State, and Federal authorities, as a member of the executive team at Norfolk Southern, I can ensure Norfolk Southern's full cooperation to implement this project, which is critical not only for Norfolk Southern traffic, but for the public as well.



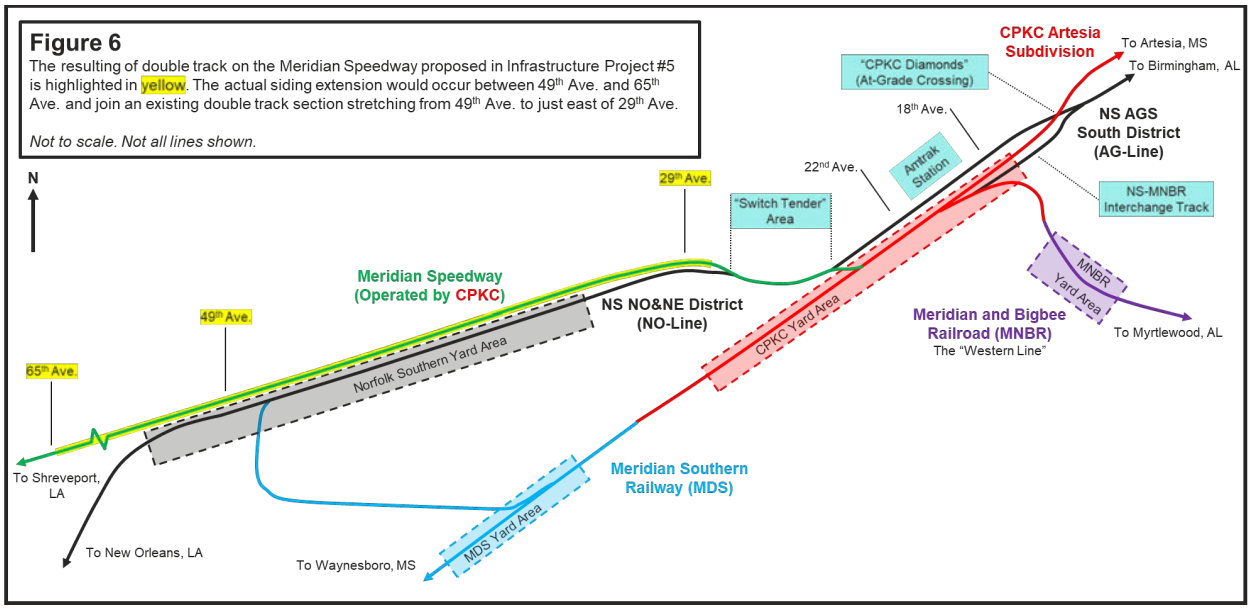
Closing these grade crossings would facilitate train meets at Meridian. For example, even the closure of both 8th and 11th Avenues alone would provide about 7,200 feet of track to hold a train on Norfolk Southern between the CPKC Diamonds and Hawkins Crossing Road. When this is combined with the connection anticipated at the CPKC Diamonds, offering an alternative route for CPKC for trains operating between the Meridian Speedway and the Artesia Subdivision,

Norfolk Southern would be able to stage trains of approximately 10,000 feet. These trains would block the diamonds, but would not impact CPKC trains.

The initiative to close or grade-separate 49th Avenue would help both NS and CPKC with capacity in Meridian. Addressing 49th Avenue will create approximately 10,500 feet of double main track for NS train meets between Arundel Road and the Switch Tender, and would add a great deal of operational flexibility for NS in Meridian. Additionally, the 49th Avenue grade crossing is important because 49th Avenue also is a constraint on the CPKC-controlled MSLLC AV tracks. Eliminating that constraint through a grade crossing project will enable the expansion of those tracks, as I discuss below.

Infrastructure Project #5: Siding Extension between 49th Street and 65th Avenue

The fifth infrastructure project is dependent on the elimination of the at-grade crossing at 49th Avenue. Once project four is complete, then MSLLC would be able to extend the siding/second track (AV02) on the Meridian Speedway from just east of 49th Avenue to just east of 65th Avenue. Exhibit VI-3: New Holding Points for Trains After Completion of the Projects, reproduced below, shows the extended double-track area that would be created on AV01 and AV02. The AV tracks are too short to hold long trains. Extending this siding would allow for trains of 12,000 feet to hold or to meet and pass on the Meridian Speedway at the western entrance to the Meridian Terminal, rather than in the heart of the Meridian Terminal, and thus remove some train meets from the Switch Tender area. This would enhance capacity, fluidity, and operational flexibility for the broader terminal area. Figure 6 below depicts Infrastructure Project #5: Siding Extension between 49th Street and 65th Avenue.



Other Operating Practice Modification

As described, Norfolk Southern has proposed that, once the connection is constructed at the CPKC Diamonds, and the switches are powered up at the Switch Tender, CPKC should be directed to route its trains running between the Meridian Speedway and the Artesia Subdivision that do not require a work event in Meridian over Norfolk Southern trackage utilizing trackage rights to be granted by Norfolk Southern. Obviously, this can only be effective once the associated infrastructure improvements have been completed.

Norfolk Southern also has proposed that the Board should condition its approval of the proposed transactions on directing CPKC to adopt an operating practice that ensures that any train that originates or terminates east of Meridian should not be allowed to foul the Switch Tender when changing crews or picking-up or setting-off traffic in the Meridian Terminal. That operating practice can go into effect immediately. Given the small amount of traffic that CPKC claims it will be moving on this route, this should not be unduly burdensome, and the practice will add significantly to the Meridian Terminal's fluidity. Extending the AV Track as described in Project #5 above, though, would go a long way to facilitating that effort. A "Master Plan"

would have to be developed by CPKC and Norfolk Southern to implement these five infrastructure projects and the Master Plan would be divided into phases. Norfolk Southern is committed to working with CPKC to come to an agreement for all phases of the road map for the Meridian Terminal.[12] Yet, this also requires a commitment from CPKC to help execute and fund these improvements, which should be a condition to the Board's approval**.**

Preserving Competition in Selma

CSXT's commitment to keeping Selma as an open gateway must be clarified. CSXT states that it "commits to maintain[ing] the existing gateway at Selma with Norfolk Southern Railway Company ("NSR") open on commercially reasonable terms."[13] All Class Is, particularly CSXT, [14] understand that true open gateways not only deal with the quoting of rates, but also the need to keep the gateway open operationally. CSXT specifically promised that it was "not going to do anything either physically or financially that is going to take away a competitive option that exists today."[15] Service reliability is of the utmost importance to shippers, as such, CSXT must be ordered not to do anything either physically or financially to take away the competitive option that exists today at Selma, and as such must provide to all potential shippers[16] the same level of frequency and reliable service shippers, whether in existence today or in the future, and regardless of their physical locations, have available to them today. The Board must ensure that Selma remains an open gateway.

[12] Projects 1, 2 and 3 could be initiated by either party within 5 years of an agreement on a Master Plan while Projects 4 and 5 are longer term in nature.

[13] CSXT Application, at APP-230, citing the Verified Statement of Arthur Adams, Jr., at APP-222.

[14] CSX Corporation and CSX Transportation, Inc., et al. – Control and Merger – Pan Am Systems, Inc., et al., FD 36472 (STB served April 14, 2022) (admitting that price was not the only consideration in preserving competition).

[15] Id at 16.

[16] One NSR customer physically located on the Eastern Line that is currently using the Selma interchange.

II. Conclusion

Based on my experience, and the attestations made in the Verified Statements of Mr. Koch and Messrs. Rennicke and Kuehn, I have significant concerns related to the impacts of the CPKC Transaction and the CSXT Transaction on Norfolk Southern's rail operations moving through the Meridian Terminal. The additional traffic anticipated by CPKC as a result of this Transaction will exacerbate the capacity, fluidity and service issues Norfolk Southern and Amtrak are facing at Meridian, MS. I believe that a transaction that improves CPKC's competitive position at the expense of Norfolk Southern's, Amtrak's and our customer's competitive position is antithetical to competition. Fortunately, Norfolk Southern has offered a series of projects that help CPKC to pursue its transaction while harm to Norfolk Southern, our customers, Amtrak and its passengers is mitigated. Further, Norfolk Southern is willing to share in the cost of these mitigating improvements. The result will be one where CPKC's competitive position is improved, Norfolk Southern's operating position is at least preserved, and Amtrak's passengers can be served better.

Similarly, for the reasons explained herein, the Board must clarify CSXT's commitment to keep Selma as an open gateway. Without a condition requiring CSXT to keep the gateway open operationally, in addition to preserving price protections, shippers through Selma would be deprived of a competitive rail option.

I respectfully urge that if approved, any Board approval of the CPKC Transaction be conditioned on the implementation of these five infrastructure projects and the operational directives described above, as well as expanding the gateway protections for shippers through Selma.

CERTIFICATION

I, Michael R. McClellan, Senior Vice President and Chief Strategy Officer for Norfolk Southern Corporation, and Vice President for Norfolk Southern Railway Company, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed this 28th day of December 2023.



Michael R. McClellan

Exhibit 14
Density Charts

CPKC Lines in the USA with greater than 1 million tons per mile of road.

Highly Confidential Attachment

Filed under seal pursuant to Protective Order