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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

SUPPLEMENTAL OPENING COMMENTS AND REQUEST FOR CONDITIONS OF M4 RAILCAR GROUP

Operational Capacity, Competition, Shipper Protection, Workforce, Transparency, and Environmental Review

18 October 2026

Dear ALJ Soulikias and Parties of Record,

PRELIMINARY STATEMENT

M4 Railcar Group respectfully submits these supplemental opening comments regarding the proposed acquisition of control of Norfolk Southern Corporation and Norfolk Southern Railway Company by Union Pacific Corporation and Union Pacific Railroad Company (collectively, "Applicants"), and the proposed consolidation of their rail operations. M4 supports a safe, reliable, efficient, and competitive freight-rail system. It does not ask the Board to reject the transaction merely because it is large, nor does it deny that eliminating certain interchange events could produce benefits for some movements. The controlling question is whether Applicants have proved, with reliable evidence and enforceable commitments, that the transaction as a whole is consistent with the public interest and that its claimed benefits outweigh the foreseeable harms.

The Board must decide this proceeding on the evidence properly placed in the record—not on executive confidence, shareholder approval, political support, or Applicants' assurances that the merger will succeed. A prediction of regulatory approval is not evidence of public benefit. A shareholder vote is not a substitute for the Board's statutory analysis. A promise of future growth is not proof that track, terminals, equipment, labor, and competitive alternatives will be adequate when that growth arrives.

M4 requests that the Board deny the application unless the evidentiary record establishes that the projected benefits are achievable, that material competitive harms are prevented or remedied, and that service, workforce, safety, and environmental protections are specific, measurable, durable, and enforceable. If the Board considers approval, M4 requests the conditions set out below.

I. PROCEDURAL POSTURE AND THE BOARD'S ROLE

The Board rejected Applicants' original December 19, 2025 application on January 16, 2026, finding it incomplete under the Board's major-merger regulations. Applicants filed a revised application on April 30, 2026. On May 28, 2026, the Board accepted that revised application for consideration but held the proceeding in abeyance and required supplemental information. On August 18, 2026, the Board removed the proceeding from abeyance and adopted a schedule for consideration of the merits. On September 18, 2026, the Board denied motions seeking summary denial, expressly stating that the decision was not a determination on the merits and was not an endorsement of Applicants' arguments or positions. The Board stated that parties should renew merits arguments in opening comments.

The current schedule sets November 18, 2026 for comments on the revised application, including protests, requests for conditions, and evidence and argument in opposition; responses are due February 16, 2027. The Board has stated that a public hearing will be scheduled by a subsequent decision. These procedural decisions permit a merits review; they do not establish that Applicants have met their burden.

The statutory inquiry includes, among other things, the adequacy of transportation to the public, the effect on competition, and the interests of affected railroad employees. See 49 U.S.C. § 11324(b). The Board should evaluate Applicants' operating plan, competition analyses, employee-impact exhibits, environmental record, and proposed protections as one integrated case. The Board should not resolve disputed factual questions through public-relations claims or assume that promised benefits will materialize without identifying the operational and financial steps required to produce them.

II. APPLICANTS' PUBLIC CLAIMS ARE TESTABLE PROPOSITIONS, NOT FINDINGS

Applicants describe the transaction as creating a coast-to-coast single-line network of approximately 50,000 miles of track across 43 states. The Board's environmental project materials state that the combined network would include lines over which Applicants have trackage rights; the transaction would change traffic on some line segments, yards, and intermodal facilities, and Applicants propose capital improvements including siding extensions and expansions at certain yards and intermodal facilities. The Board's materials identify potential operational or environmental changes across numerous states. These facts make a geographically specific analysis essential.

Applicants have also emphasized projected diversion of more than 2.1 million long-haul truckloads, approximately $3.5 billion in annual shipper savings, more than 88,000 new county-to-county single-line opportunities, and transit-time reductions of roughly 24 to 48 hours for affected movements. Those are Applicants' estimates, not Board findings. The Board should require the underlying assumptions, lane-level data, calculation methods, sensitivity analyses, and clear identification of the customers and freight flows that support each projection.

A single-line movement may remove an interchange delay, but it does not automatically add mainline capacity, yard tracks, terminal slots, locomotives, freight cars, crews, dispatching capacity, maintenance windows, bridge capacity, or intermodal handling capacity. Nor does it guarantee that an individual shipper will receive lower rates, more reliable service, or an effective competitive alternative. The Board should distinguish between (1) administrative benefits from common ownership, (2) time potentially saved by eliminating an interchange, and (3) new physical and operating capacity that must be funded, built, staffed, and brought into service.

III. JIM VENA'S PUBLIC STATEMENTS AND THE INDEPENDENCE OF THE REVIEW

A. "99.99%" confidence in approval

FreightWaves reported on October 7, 2026 that UP Chief Executive Officer Jim Vena, speaking to Fox Business on October 6, said he was "99.99%" confident that regulators would approve the proposed transaction. The report also quoted Vena describing the STB process as lengthy but expressing confidence that the Board would reach what he considered the "right decision." The same report described Applicants' position that the combined network would improve service and competition with trucking, and noted opposition from labor, agricultural groups, and competing railroads.

M4 does not contend that an executive is prohibited from expressing confidence in a transaction. The concern is institutional and evidentiary: when the chief executive of an applicant publicly portrays approval as

virtually certain while the Board is still building the record, that rhetoric risks creating the impression that the result is predetermined. The Board should make clear through its decision and process that no executive prediction, shareholder vote, or political statement controls its independent judgment.

M4 respectfully asks Applicants to avoid further statements implying that approval is a foregone conclusion. This request is not a demand to restrict lawful advocacy. It is a request that public discussion distinguish Applicants' expectations from the regulatory decision the Board has yet to make. The Board's written rulings already make that distinction clear: denial of summary-denial motions was not a merits decision and did not endorse Applicants' arguments.

B. The March 2026 SWARS remarks and shipper-retaliation concerns

Senator Tammy Baldwin's July 2026 letter to the Board alleged that remarks by Vena at the Southwest Association of Rail Shippers' spring meeting in Houston in March 2026 amounted to a "thinly veiled threat" to raise rates for customers who did not publicly support the merger. Trains.com reported on the dispute, and Senator Baldwin called on the Board to address potential retaliation against shippers who oppose the transaction. These are reported allegations and characterizations; M4 does not present them as adjudicated facts.

Nevertheless, the allegation is material to the integrity of this proceeding. Shippers may depend on Applicants for essential transportation service and may reasonably fear commercial consequences from publicly opposing a proposed merger. The Board should ensure that customers can participate candidly without fear of rate increases, degraded service, reduced car supply, adverse contract treatment, switching restrictions, or loss of commercial opportunities because of their position in this docket.

M4 requests that the Board consider any available recording, transcript, contemporaneous notes, written communications, and sworn or otherwise reliable attendee accounts relating to the March remarks. The Board should allow Applicants a fair opportunity to respond and should distinguish what the evidence establishes from what parties allege. To the extent the record supports a finding that safeguards are warranted, the Board should prohibit retaliation for participation in the proceeding and establish a practical process for reporting, investigating, and remedying substantiated violations.

Any anti-retaliation condition should cover rates, surcharges, service levels, equipment allocation, switching, facility access, contract negotiations, routing, and decisions to begin or expand service. It should require preservation of relevant records, confidential complaint intake where appropriate, prompt investigation, written findings, and meaningful remedies. The condition should apply to shippers, receivers, suppliers, labor organizations, communities, short lines, and other participants—not only customers that publicly testify.

IV. CONFIDENTIALITY, TESTIMONY, AND CONTACT WITH BOARD MEMBERS

Public reporting has described a dispute over whether Vena's March remarks should be made public and whether UP sought confidential treatment. M4 does not ask the Board to disclose legitimately protected commercial information indiscriminately. It asks that confidentiality be justified item by item, narrowly tailored, and consistent with the Board's obligation to maintain a record that permits meaningful participation and review. The Board's July 22 order requiring public redesignation of employee-impact exhibits is a relevant example: the Board found that the information had been disclosed publicly in prior proceedings and did not appear commercially or competitively sensitive.

M4 also understands that concerns have been raised about a proposed or requested meeting between Vena and Board members without opposing parties present. This draft does not assert, without a verified docket citation, that a particular private meeting occurred or that any communication violated a rule. The Board should ensure that all substantive contacts comply with applicable law and Board procedures. Any material

relied on to decide the merits should be placed on the record in a manner that allows other participants a fair opportunity to respond. A private briefing must not become a substitute for evidentiary submissions, cross-examination where permitted, or the public merits process.

M4 requests that the Board identify the governing procedures for substantive communications with Board members, apply them consistently to Applicants and opponents, and make a record of any permitted substantive communication as required. The same rules must apply regardless of the party's size, political access, market position, or ability to attract public attention.

V. COMPETITIVE RAILROADS AND THE PROPOSED CONDITIONS

A. BNSF and CSX

BNSF publicly stated on September 10, 2026 that it opposed the merger and had filed a description of conditions it would seek if the Board nevertheless approved it. BNSF also stated that the proposed conditions would not, in its view, cure the underlying harms. BNSF and CSX were among the parties that filed August motions seeking summary denial, alongside a coalition of shipper associations. On September 18, the Board denied those motions but expressly invited parties to renew their merits arguments in opening comments.

The Board should assess BNSF's and CSX's evidence and proposed conditions on their merits rather than accept either their opposition or Applicants' rebuttals as conclusive. For each condition, the Board should identify the competitive harm, affected shipper groups and locations, legal mechanism, implementation timetable, monitoring method, enforcement authority, and remedy for noncompliance. The Board should also examine whether the conditions would work in ordinary operations and during congestion or disruption.

B. Canadian National

CN filed a description of anticipated requested conditions on September 9, 2026, publicly describing proposals intended to preserve competitive options for shippers in central and southern Illinois and Des Moines, Iowa, and to improve CN access to Kansas City, East St. Louis, and St. Louis. CN's public description refers to potential trackage rights and access to facilities, including UP's Neff Yard in Kansas City, as well as other measures. CN states that these proposals build on a memorandum of understanding with UP announced in July.

These proposals are not self-proving remedies. The Board should determine whether each would be legally enforceable, operationally practical, available to all eligible shippers on transparent terms, and sufficient to preserve genuine independent routing and pricing alternatives. The Board should examine whether access rights would be limited by capacity, dispatching priorities, interchange practices, rates, facility availability, or unilateral amendment rights. The Board should also assess whether the proposed remedy benefits only a defined set of locations while leaving other captive or two-to-one shippers exposed.

C. CPKC and other responsive applications

CPKC has publicly raised competition concerns regarding the proposed UP–NS transaction, and the Board's October 6, 2026 decision accepted four late-filed descriptions of anticipated responsive applications. The Board's docket materials should be consulted for the actual text and scope of each responsive application. M4 does not assume that all anticipated applications are identical or that a responsive application necessarily remedies the harm it identifies.

The Board should analyze each proposal separately and cumulatively, including potential access, gateway, reciprocal-switching, divestiture, trackage-rights, terminal-access, or other protective measures. If any proposal permits an applicant to withdraw, narrow, or claw back a previously offered benefit, the Board

should examine triggers, notice, dispute resolution, duration, and unilateral discretion. No condition essential to a public-interest finding should be alterable by Applicants alone.

D. Conditions must be enforceable, not aspirational

A remedy should be evaluated by its practical effect on customers, not by its title. For every proposed condition, the Board should require: (1) a precise statement of the harm addressed; (2) a defined class of eligible users; (3) objective access and service standards; (4) transparent rates and operating rules; (5) deadlines for implementation; (6) periodic reporting; (7) independent verification where appropriate; (8) a prompt dispute-resolution mechanism; (9) meaningful Board enforcement; and (10) a duration sufficient to prevent the harm from reappearing after integration. The Board should not rely on a memorandum of understanding or voluntary commitment where the public-interest finding requires an enforceable order.

VI. SHIPPERS, COMMODITIES, AND INDUSTRIAL USERS

The Board's September 18 decision identifies the American Chemistry Council, American Fuel & Petrochemical Manufacturers, the Alliance for Chemical Distribution, the National Industrial Transportation League, and The Fertilizer Institute among the shipper-association coalition that sought summary denial. These organizations represent sectors with differing transportation requirements, including hazardous-material handling, plant-specific facilities, tank-car supply, seasonal demand, and limited routing alternatives. The Board should consider their actual filings and evidence rather than treat the coalition as a single undifferentiated interest.

Agricultural and grain interests face different operational constraints: harvest surges, elevator capacity, unit-train availability, export terminal access, and dependence on short-line connections. The National Farmers Union announced opposition in September 2026, citing concerns about higher rates, less reliable service, and reduced transportation alternatives for family farmers. Other shippers may support the transaction based on expected new single-line routes or access to eastern and western markets. The record should fairly reflect both supportive and opposing customers.

Chemical, fertilizer, grain, feed, coal, petroleum, forest-products, metals, automotive, construction-material, and general-industrial traffic should be evaluated at the lane, plant, terminal, and commodity level. A customer's support does not establish that other customers will benefit; an association's opposition does not by itself prove every projected harm. The Board should test actual rates, routing options, car supply, transit times, service variability, interchange performance, switching access, and the presence or absence of a viable competing carrier.

M4 asks the Board to protect confidential shipper data where justified while ensuring that confidentiality does not conceal the analytical basis for Applicants' public-benefit claims. Aggregated public tables, protected data access for qualified participants, and carefully tailored protective orders may allow meaningful scrutiny without disclosing genuine trade secrets.

VII. LABOR, EMPLOYEE IMPACTS, AND OPERATING CAPACITY

On July 22, 2026, the Board granted a motion by several labor unions and ordered Applicants to redesignate as public certain employee-impact exhibits previously marked highly confidential. The exhibits identify craft and management positions that would be abolished, created, or transferred, including transfer locations. The Board concluded that this type of information had been publicly disclosed in prior proceedings and did not appear commercially or competitively sensitive. Applicants filed redesignated exhibits on July 27.

That order confirms that employee impacts are part of the public record and are relevant to meaningful participation. The Board should evaluate the actual exhibits and the positions they identify—not rely solely on Applicants' overall estimate of net job creation or a general jobs-for-life commitment. A net positive employment figure can coexist with reductions in critical crafts, transfers away from local operating territories, or temporary staffing gaps during integration.

The Board should require a craft-by-craft and location-by-location analysis of positions eliminated, created, transferred, or consolidated; the timetable for those changes; employee attrition and retirement assumptions; training and qualification requirements; maintenance-of-way staffing; dispatching; train and engine crews; mechanical and signal workers; supervision; emergency response; and local knowledge. It should test whether the Growth Plan has sufficient staffing under peak demand and disruption, not merely whether the optimized plan appears workable.

Any employment protection should specify which employees are covered, its duration, exceptions, enforcement, dispute procedures, and interaction with collective bargaining agreements. The Board should also consider whether job transfers or management reductions could weaken safety oversight, maintenance response, service recovery, or operating resilience during the integration period.

VIII. ENVIRONMENTAL REVIEW, COMMUNITIES, AND PUBLIC HEARING

The STB's Office of Environmental Analysis restarted the environmental review when the Board removed the proceeding from abeyance on August 18, 2026. Preliminary consultation materials were distributed to agencies, Tribes, and elected officials on August 19, with preliminary consultation comments due September 21. The STB states that it will prepare an Environmental Impact Statement under the National Environmental Policy Act and related environmental laws.

The Board's transaction overview identifies potential operational changes across many states and notes that Applicants propose capital improvements, including siding extensions and expansions at some yards and intermodal facilities, to support increased traffic. Those improvements and traffic changes should be evaluated in the EIS alongside noise, vibration, air emissions, grade-crossing activity, emergency access, hazardous-material movements, construction effects, and cumulative impacts. The economic and environmental records should inform one another: a location forecast to experience significant traffic growth should also be evaluated for terminal capacity, maintenance resources, safety and emergency response.

The Board has said a public hearing will be scheduled in a subsequent decision. M4 requests sufficient advance notice and meaningful participation for affected shippers, employees, local and state governments, Tribes, emergency-response agencies, and communities. Hearing procedures should permit affected people to identify specific locations and operational changes, while giving Applicants a fair opportunity to respond. Community testimony should be considered with the technical record, not dismissed as anecdotal merely because it concerns local effects.

The Department of Transportation and Department of Justice are identified in the procedural schedule as federal agencies that may submit preliminary comments. This draft does not claim that either agency, or the Department of Energy, has taken a position unless an actual submission is located and verified. The Board should consider all relevant agency submissions properly placed in the record and should identify any material gaps requiring further information.

IX. OPERATING CAPACITY, EQUIPMENT, AND SERVICE ASSURANCE

The Board should require geographically specific evidence that the merged railroad can accommodate projected demand without materially degrading existing service. At a minimum, the record should identify

incremental trains by corridor; changes in train density and gross ton-miles; mainline and siding capacity; terminal dwell; yard classification and switching capacity; locomotive and freight-car requirements; container and chassis supply; crew availability; dispatching and signal constraints; maintenance-of-way staffing; bridge and structure limitations; port and inland terminal capacity; and the timing, funding, and commissioning of planned capital improvements.

The Board should evaluate the operating plan under plausible stress conditions, including earlier-than-forecast growth, simultaneous increases in intermodal and industrial freight, severe weather, temporary loss of a bridge or subdivision, yard or terminal disruption, equipment shortages, crew constraints, and delayed capital projects. A system that works only if all assumptions are met at once has not demonstrated resilience.

Applicants' Service Assurance Plan should be tested as an enforceable protection. It should include measurable baselines, reporting at a useful geographic level, trigger thresholds for intervention, prompt corrective-action deadlines, customer complaint channels, independent audit or verification, public reporting where practicable, and consequences for failure. Protections should cover both integration and the later period when Applicants expect substantial growth. A plan that merely promises to monitor service without specifying what happens when service deteriorates is insufficient.

The Board should require Applicants to reconcile the Growth Plan and Optimized Plan with the actual capital project list, staffing levels, equipment forecasts, and implementation schedule. The October 7, 2026 UP-NS capital-improvement letter and maps, along with the September 25 information-request responses concerning locomotives, consists, track, manifest yards, intermodal and auto ramps, hazardous-material releases, and capital projects, should be considered in the record and tested for consistency with public claims.

X. COMPETITION, SHORT LINES, AND THE CUSTOMER'S REAL ALTERNATIVES

Applicants emphasize competition with trucking and the benefits of new single-line opportunities. Those benefits may be relevant, but they do not answer whether the merger reduces rail-to-rail competition for individual customers. The Board should identify customers and facilities that would move from two Class I options to one, or from three to two, and assess whether proposed remedies actually preserve an effective alternative in practice.

The analysis should include short lines and regional railroads, ports, industrial facilities, gateways, interchange locations, and customers whose economics depend on continued access to more than one carrier. Traffic may shift to major corridors while secondary routes lose strategic importance to the merged carrier even though local customers continue to depend on those routes. The Board should examine whether any changes would weaken short-line connectivity, reduce interchange frequency, create discriminatory access, or make a previously practical route uneconomic.

The Board should not treat a nominal alternative as meaningful if it lacks capacity, requires uneconomic switching, is subject to unilateral restrictions, or cannot meet the shipper's service needs. If competitive access conditions are necessary, they should be available through clear rules and enforceable procedures without forcing each shipper to pursue prolonged individual litigation.

XI. STRUCTURAL REMEDIES: SALE OF RAIL LINES, YARDS, AND FACILITIES WHERE ACCESS ALONE IS INSUFFICIENT

A. Principle: evaluate ownership divestiture where access alone may not restore competition

If the Board concludes that the transaction may be approved only with conditions, it should not presume that trackage rights or a contractual access commitment will always be an adequate substitute for independent

ownership and control. Depending on the route, traffic, operating conditions, and competitive record, a durable remedy may require transferring ownership of a line or a coherent segment, yard, interchange track, industrial lead, terminal facility, or connecting link to a qualified competing railroad.

M4 requests an evidence-based, asset-by-asset review of whether a sale at fair market value (FMV) is necessary to restore effective competition, preserve a short line's or regional railroad's practical access to the network, or prevent the merged carrier from controlling a bottleneck facility. This is not a request that every line for which another carrier seeks trackage rights automatically be sold. Trackage rights may be sufficient in some circumstances; in others, independent ownership may provide more durable control over dispatching, maintenance priorities, capacity investment, customer service, and future development. The Board should decide on the record which remedy is necessary and proportionate for each affected segment. If it rejects a sale where the record shows that ownership would materially improve the remedy, it should explain why an alternative would be equally effective and enforceable.

B. BNSF's reported request for access toward Harrisburg and eastern Pennsylvania

Public reporting has described BNSF as seeking access over approximately 824 miles between the Chicago area and Harrisburg and Bethlehem, Pennsylvania, in connection with the UP–NS proceeding. The precise route, mileage, endpoints, assets, and requested operating rights must be verified against BNSF's actual filing and the current docket before the Board relies on that description. M4 does not ask the Board to treat a reported mileage or summary as a substitute for the primary filing.

If the evidentiary record establishes that a particular corridor or segment is necessary to provide BNSF with a meaningful, durable competitive route, the Board should expressly consider whether sale of the relevant line or a coherent, operationally viable segment to BNSF at independently determined FMV would be more effective than trackage rights alone. The analysis should compare the remedies' practical effects on dispatching, capacity allocation, maintenance, capital investment, access to terminals and customers, interchange options, and the ability to offer competitive service over time. The Board should identify the minimum coherent asset package needed to achieve the remedy rather than assume that an entire corridor must be transferred.

If necessary to maintain network connectivity or protect existing traffic, the transaction could include carefully defined reciprocal or limited operating rights for UP and NS over specified portions of a transferred segment. Any such rights should be clear, operationally workable, and subject to safeguards preventing them from undermining the independent owner's ability to compete. If a sale is not feasible or is beyond the Board's lawful authority on the record presented, the Board should explain why and consider enforceable trackage rights with defined capacity, dispatching priority, maintenance standards, service levels, capital responsibilities, transparent rates, dispute resolution, and effective monitoring.

C. Protect short-line and regional railroad access, yards, and interchange facilities

The Board should examine not only formal termination of an interchange agreement, but also practical impairment caused by changes to yard access, switching, interchange frequency, industrial leads, connecting tracks, terminal windows, dispatching practices, or the commercial terms of access. A short line or regional railroad may remain nominally connected to the network yet lose the practical ability to interchange cars reliably, serve existing customers, reach a competing Class I carrier, or compete for new business.

Where the record demonstrates that a merger-related change would materially impair a short line's or regional railroad's viability or competitive access, the Board should consider requiring the affected yard, interchange tracks, industrial lead, connection, or other necessary facility to be offered for sale at FMV to that railroad, if legally authorized and operationally feasible. The remedy should include the easements, switching rights, signal and communications access, operating records, and other ancillary property or rights reasonably

necessary for safe and functional operation. If the incumbent short line cannot or does not purchase, the Board may evaluate another qualified short-line or regional operator, a competing carrier, or an independently governed arrangement that preserves practical access.

The inquiry should be based on demonstrated operating need and competitive effect, not on a presumption that every facility should be transferred. The Board should consider the affected railroad's ability to meet applicable safety requirements, maintain the property, provide common-carrier service where required, and protect continuity for shippers and employees. FMV terms should not be structured to make a necessary remedy commercially impossible.

D. Identify lines and facilities not required for the merged railroad's core trunk system

The Board should require Applicants to identify lines and facilities that are not reasonably necessary for the merged railroad's principal through-freight network, essential network connectivity, safe and reliable operations, or the maintenance and service commitments used to justify the transaction. "Core trunk system" should be assessed functionally and on evidence, not defined solely by Applicants' label or by whether an asset appears on a strategic map. A route may be secondary to the merged carrier yet remain essential to a community, customer, short line, regional railroad, port, or competing carrier.

For each potentially non-core asset, Applicants should provide a schedule identifying ownership and access rights; current and recent traffic; customers and industries served; interchange and connection points; service levels and operating plans; maintenance and capital spending; projected future use; relevant easements and terminal dependencies; and any proposed reduction, consolidation, or discontinuance. Where an asset is not needed for the merged carrier's core system, and the evidence shows that independent operation could preserve or enhance competition or service, the Board should consider requiring an offer for sale at FMV to a qualified competing Class I, regional, or short-line railroad or other eligible operator, subject to the Board's statutory authority and appropriate safeguards.

The Board should also guard against a situation in which an asset is retained primarily to control access or prevent entry while investment or service is reduced. Any decision to retain rather than divest a potentially important bottleneck or non-core asset should be supported by specific findings about network necessity, operational feasibility, competitive consequences, and the effectiveness of less structural alternatives.

E. Fair-market-value process and safeguards for continuity

Any sale remedy should use a transparent, time-limited process with an independent valuation by a qualified appraiser or valuation professional. The valuation should identify precisely the property, operating rights, easements, facilities, and obligations being transferred and account for condition, deferred maintenance, necessary capital expenditures, traffic and revenue, operating costs, environmental or other liabilities as applicable, and the rights retained by the seller. The process should avoid a valuation methodology that artificially inflates the price because the prospective buyer needs the asset to compete against the merged railroad. If the parties dispute valuation or asset scope, an independent dispute process and prompt Board-supervised resolution should be considered.

The remedy should also provide for safe transition and service continuity, including reasonable access to operating and engineering records, signal and communications systems, maintenance information, interchange arrangements, employee transition planning where applicable, and coordination of dispatching and emergency response. A purchaser must demonstrate the ability to operate safely and satisfy applicable legal and common-carrier obligations. Transfer terms should not create avoidable interruptions to customers, ports, connecting carriers, or hazardous-material movements. Interim access protections may be needed while a sale process proceeds, to the extent authorized.

M4 recognizes that any compelled sale must be grounded in the Board's statutory authority, the governing merger standards, and findings supported by the evidentiary record. M4 therefore asks the Board to make express findings on authority, necessity, proportionality, feasibility, and the expected competitive effect of each proposed structural remedy, and to identify an equally effective alternative where it determines that divestiture is unavailable or unwarranted. The requested approach is targeted and evidence-based: preserve independent competition and practical rail access where access-only conditions would not accomplish those objectives.

XII. PUBLIC-INTEREST FINDINGS REQUESTED

Before approving the transaction, M4 requests affirmative findings supported by substantial evidence on the following matters:

1. Transportation capacity: the network can accommodate projected growth, or the required capacity will be funded, built, staffed, and operational before it is needed.
2. Public-benefit claims: the 2.1 million truckload-diversion projection, shipper-savings estimates, single-line opportunities, and transit-time claims are supported by transparent assumptions and reproducible data.
3. Terminal and gateway fluidity: eliminating interchanges will not merely transfer congestion to yards, terminals, ports, gateways, or connecting carriers.
4. Equipment and workforce: locomotives, freight cars, intermodal equipment, crews, maintenance-of-way staff, mechanical and signal personnel, and emergency resources will be adequate geographically and over time.
5. Competition: each material loss of rail-to-rail competition is identified and remedied by a practical, durable, enforceable alternative.
6. Responsive applications and conditions: each proposed condition is effective, sufficiently broad, enforceable by the Board, monitored, and not subject to unilateral clawback or withdrawal.
7. Shipper protection: customers can participate without retaliation, and substantiated violations will trigger meaningful remedies.
8. Labor impacts: employee-impact exhibits, job protections, transfers, craft requirements, and staffing plans are considered together with operational and safety needs.
9. Environmental effects: the EIS and public record adequately evaluate traffic changes, noise, emissions, crossings, hazardous-material routes, construction, and cumulative effects.
10. Public participation: affected stakeholders receive fair access to the record, appropriate confidentiality protections, and meaningful hearing opportunities.
11. Implementation risk: enforceable contingency measures address delayed projects, demand surges, equipment shortages, labor constraints, and sustained service deterioration.

XIII. REQUESTED RELIEF

For the reasons stated above, M4 Railcar Group respectfully requests that the Board:

12. Deny the application if Applicants fail to establish, on the full evidentiary record, that the transaction is consistent with the public interest.
13. Require Applicants to provide geographically specific, reproducible evidence supporting material traffic-growth, shipper-savings, transit-time, and capacity claims.
14. Evaluate the SWARS remarks and related retaliation allegations on reliable evidence, permit a fair response, and adopt appropriate anti-retaliation protections if warranted by the record.

15. Apply the Board's confidentiality and communication procedures consistently and ensure that substantive material relied upon in deciding the merits is placed on the record with a fair opportunity to respond.
16. Review BNSF, CSX, CPKC, CN, shipper-association, agricultural, labor, community, and other submissions based on their actual evidence and the specific remedies proposed.
17. Reject voluntary or vague commitments as substitutes for enforceable conditions; require measurable standards, reporting, oversight, dispute resolution, and remedies.
18. Integrate the environmental, economic, competition, safety, and operational records in the Board's final analysis.
19. Provide adequate notice and meaningful public-hearing participation for affected stakeholders.
20. If approval is considered, impose binding and durable conditions protecting competition, service reliability, shippers, employees, communities, short lines, and regional railroads, with no unilateral withdrawal of conditions essential to the Board's findings.

XIV. CONCLUSION

The proposed UP–NS transaction could reshape the structure of American freight rail for decades. The Board should therefore demand proof proportionate to the scale and irreversibility of the transaction. A corporate executive's confidence, shareholder approval, and promises of efficiency are not substitutes for evidence. Nor should the Board assume that projected truck diversion or new single-line opportunities will automatically produce lower costs, better service, or stronger competition for every customer.

M4 Railcar Group respectfully requests a rigorous, transparent, and evidence-based review. The Board should approve the transaction only if the record establishes that its benefits are achievable, that harms are prevented or adequately remedied, and that the required protections are enforceable. If the evidence does not support those findings, the application should be denied.

Respectfully submitted,

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SOURCE LIST AND FILING VERIFICATION

- 1. STB, UP–NS Merger Resources, Docket FD 36873 (procedural actions, filings, and decisions; includes Oct. 6 decision accepting four late-filed descriptions of anticipated responsive applications): https://www.stb.gov/resources/major-railroad-mergers/
- 2. STB, "STB Denies Motions Seeking Summary Denial of UP-NS Merger Application," Sept. 18, 2026: https://www.stb.gov/news-communications/latest-news/pr-26-23/
- 3. STB, "STB Adopts Procedural Schedule for Consideration of UP-NS Merger; Removes Proceeding from Abeyance," Aug. 18, 2026: https://www.stb.gov/news-communications/latest-news/pr-26-21/
- 4. STB, "STB Accepts UP-NS Merger Application for Consideration; Requires Supplemental Information and Holds Proceedings in Abeyance," May 28, 2026: https://www.stb.gov/news-communications/latest-news/pr-26-13/
- 5. STB, UP-NS EIS project page and transaction overview (updated Aug. 19, 2026): https://www.stb.gov/upns-eis-fd36873/ and https://www.stb.gov/upns-eis-fd36873/transaction/

- 6. STB, “STB Orders UP-NS Merger Applicants to Make Employee Data Public,” July 22, 2026: https://www.stb.gov/news-communications/latest-news/pr-26-18/
- 7. FreightWaves, Stuart Chirls, “Union Pacific CEO ‘99.99%’ confident rail merger will win approval,” Oct. 7, 2026: https://www.freightwaves.com/news/union-pacific-ceo-99-99-confident-rail-merger-will-win-approval
- 8. Senator Tammy Baldwin, “Baldwin Demands the Surface Transportation Board Take Union Pacific’s Threats of Retaliation Against Shippers Seriously,” July 2026: https://www.baldwin.senate.gov/news/press-releases/baldwin-demands-the-surface-transportation-board-take-union-pacifics-threats-of-retaliation-against-shippers-seriously
- 9. Trains.com, “Dispute over Vena speech shows no detail is too small in merger fight”: https://www.trains.com/pro/regulatory/dispute-over-vena-speech-shows-no-detail-is-too-small-in-merger-fight/ (verify the full article and underlying docket filings before alleging that a particular meeting occurred or violated a rule).
- 10. BNSF, “Our Latest Filing on the UP-NS Merger—and What It Means,” Sept. 10, 2026: https://www.bnsf.org/news-media/customer-notifications/notification.page?notId=our-latest-filing-on-the-up-ns-merger-and-what-it-means
- 11. CN, “CN Files Description of Anticipated Requested Conditions to Preserve Rail Competition and Expand Customer Options in the Midwest,” Sept. 10, 2026: https://www.cn.ca/en/news/2026/09/cn-files-description-of-anticipated-requested-conditions-to-pres/
- 12. CN, “CN Says STB Was Right to Freeze the UP-NS Merger and Demand More Information,” May 28, 2026: https://www.cn.ca/en/news/2026/05/cn-says-stb-was-right-to-freeze-the-up-ns-merger-and-demand-more/
- 13. National Farmers Union, “National Farmers Union Opposes Union Pacific–Norfolk Southern Rail Merger,” Sept. 2026: https://nfu.org/news/national-farmers-union-opposes-union-pacific-norfolk-southern-rail-merger/
- 14. FreightWaves/Trains reporting on UP–NS CEOs’ public statements, July 29, 2026: https://www.freightwaves.com/news/ceos-of-up-ns-say-latest-additions-to-rail-merger-application-further-enhance-competitive-aspects
- 15. M4 Railcar Group, “Comments Regarding the Operational, Infrastructure, Workforce, Competitive, and Public-Interest Implications of the Proposed Transaction,” dated Sept. 7, 2026, and “Trump Letter STB Comments.pdf,” supplied by M4.
- 16. BNSF, “Our Latest Filing on the UP-NS Merger—and What It Means,” Sept. 10, 2026 (consult the underlying BNSF filing in STB Docket FD 36873 to verify the precise route, mileage, requested rights, and proposed conditions before making definitive assertions): https://www.bnsf.org/news-media/customer-notifications/notification.page?notId=our-latest-filing-on-the-up-ns-merger-and-what-it-means
- 17. STB, UP–NS Merger Resources, Docket FD 36873 (official docket portal for verifying BNSF’s actual filing, responsive applications, proposed conditions, and any subsequent Board rulings): https://www.stb.gov/resources/major-railroad-mergers/

PRE-FILING CHECKLIST — NOT PART OF THE ARGUMENT

- Verify every citation against the current docket and obtain the full text of each cited filing, especially responsive applications and proposed conditions.
- Attach or cite exact docket entry numbers and dates for any evidence concerning the SWARS remarks, confidentiality dispute, and requested or proposed meeting with Board members.

- Insert M4's exact prior filing reference numbers and any new declarations or exhibits supporting company-specific claims.
- Review the latest procedural schedule and all service requirements, including the Board's March 17, 2026 service decision; serve all parties of record as required.
- Confirm whether any Department of Justice, Department of Transportation, Department of Energy, state, Tribal, municipal, or other agency has actually submitted comments before attributing a position to it.
- Have regulatory counsel review the final version for filing format, procedural posture, record citations, and legal sufficiency.

Submitted by: M4 Railcar Group



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Copy: All Parties of Record